

## **S. V. Kandaskar vs V. N. Deshpande & Anr on 4 January, 1972**

**Equivalent citations: 1972 AIR 878, 1972 SCR (2) 965**

**Author: I.D. Dua**

**Bench: I.D. Dua, S.M. Sikri, J.M. Shelat, Hans Raj Khanna**

PETITIONER:

S. V. KANDASKAR

Vs.

RESPONDENT:

V. N. DESHPANDE & ANR

DATE OF JUDGMENT 04/01/1972

BENCH:

DUA, I.D.

BENCH:

DUA, I.D.

MITTER, G.K.

SIKRI, S.M. (CJ)

SHELAT, J.M.

KHANNA, HANS RAJ

CITATION:

1972 AIR 878

1972 SCR (2) 965

1972 SCC (1) 438

ACT:

Income Tax-S. 148 and Companies Act-S. 446(1)-Whether Income Tax Officers require leave of the liquidation Court to reopen assessment of a company for escaped income.

HEADNOTE:

A company (in liquidation) was ordered by the High Court to be wound up and the official liquidator was appointed its liquidator. Thereafter the I.T.O. issued notices under s. 148 of I.T. Act proposing to reopen the assessment of the Company in respect of the assessment years 1950-51 to 1955-56. The I.T.O. further notified the official liquidator to produce accounts and documents specified at the back of the notice.. The official liquidator made an application before the High Court questioning the jurisdiction of the I.T.O. to issue the said notices without the leave of the High Court, as required under S. 446(1) of the companies Act. The

learned single Judge of the High Court issued an injunction restraining the I.T.O. to reassess the said Company. On appeal, the appellate bench of the High Court reversed the order and set aside the injunction. On appeal to this Court only one question arose for determination as to whether it was necessary for the I.T.O. to obtain leave of the liquidation court when he wants to reassess the company for escaped income in respect of the past years. Dismissing the appeal,

HELD : The Income Tax Officer need not obtain leave of the winding up court for commencing or continuing assessment or reassessment proceedings. 'The Income-tax Act is a complete Code and s. 147 empowers the Income, Tax Officer to assess or reassess escaped income. Further while holding these assessment proceedings, the Income Tax Officer does not perform the functions of a Court as contemplated by s. 446(2) of the Act.

The liquidation court cannot perform the functions of Income Tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the Company which is being wound up,, by the Court. It would lead to anomalous consequences if the winding up Court were to be held empowered to transfer the assessment proceedings to itself and assess the Company to Income tax. [1978 B-D]

Governor-General in Council v. Shiromani Sugar Mills- Ltd.. [1946] F.C.R. 40, Shakuntala v. The Peoples' Bank of Northern India Ltd. (in liquidation). [1941] T.L.R. 22 Lab. 760 and M. K. Ranganathan v. State of Madras. [1955] 2 S.C.R. 374, referred to and discussed.

#### JUDGMENT:

**CIVIL APPELLATE JURISDICTION:** Civil Appeal No. 1650 of 1970. Appeal from the Judgment and order dated January 31, 1970 of the Bombay High Court in Appeal No. 94 of 1967. S. T. Desai, P. C. Bhartari. Ajit Mehta. Kirit Mehta, J. B. Dadaichanji O. C. Mathur and Ravinder Narain, for the appellant.

14-L736SuPCT/72 B. Sen, S. K. Aiyar and R. N. Sachdev, for the respondents. The Judgment of the Court was delivered by Dua, J.-The Colaba Land and Mills Co., Ltd., (in liquidation) was ordered by the Bombay High Court on October 7, 1959 to be wound up under the provisions of the Companies Act, 1 of 1956 and the Official Liquidator was appointed its liquidator. Earlier on May 1, 1959 the Official Liquidator had been appointed by the High Court its provisional liquidator. On August 23, 1966 the Income-tax Officer (Companies Circle) concerned issued six different notices under S. 148 of the Income-tax Act, 1961 proposing to reopen the assessment of the Company and to re-assess it in respect of the assessment years 1950-51 to 1955-56. On December 31, 1966, the Income-tax Officer served further notices under S. 142(1) of the Income-tax Act upon the Official Liquidator calling upon him to produce accounts and documents specified at the back of the notices and to furnish any information called for by the said officer. At the foot of the said notices it was

stated that failure on the part of the Official Liquidator to comply with the terms of those notices would not only result in *ex parte* assessment against the Company but might also entail penalty under S. 271 of the Income-tax Act. Certain negotiations followed between the Official Liquidator and the Inspecting Assistant Commissioner of Income-tax but they were infructuous. On an application made by the Official Liquidator in the High Court questioning the jurisdiction of the Income-tax Officer to issue the said notices or to proceed with the reassessment of the Company without the leave of the High Court winding up the Company, Vimadlal J., on 28th September, 1967 held that the income-tax authorities were not entitled to commence the assessment or reassessment proceedings contemplated against the Colaba Land and Mills Co., Ltd., or to continue the same without obtaining leave of the Court under S. 446(1) of the Companies Act, 1956 (Act No. 1 of 1956) (hereinafter called the Act). The learned Judge on this view granted an injunction restraining the Income-tax Officer from assessing or re-assessing the said Company for the assessment years 1950-51 to 1955-56. On appeal by the Income-tax Officer and the Union of India before the appellate bench of the High Court against the order of injunction, the Division Bench (Modi and Desai, JJ.) reversed the order of the learned single Judge and set aside the injunction issued by him. Before the appellate bench two contentions were raised on behalf of the Income-tax Officer: (1) that notices for reassessment issued under s. 148 were not legal proceedings within the meaning of that phrase as used in s. 446(1) of the Act, and (2) that, assuming the re-assessment proceedings started under the said notices to be legal proceedings, leave of the Company Court under s. 446(1) of the Act was not necessary because the Income-tax Officer had exclusive jurisdiction to make re-assessment and to determine the tax liability. The proceedings by way of assessment before the Income-tax Officer, according to the contention were outside the pale of jurisdiction of all civil courts including the Company Court. The appellate bench did not consider it necessary to decide the first contention because, on the authority of *Damji Valji Shah v. Life Insurance Corporation of India*(1), the second contention deserved to be accepted and that was considered sufficient to conclude the appeal. The Official Liquidator, after securing a certificate of fitness from the High Court under Art. 133(1)(c) of the Constitution has appealed to this Court and the only question which requires consideration here is, if it is necessary for the Income-tax Officer to obtain leave of the liquidation court when he wants to re-assess the company for escaped income in respect of past years.

Section 446 of the Act reads :

"(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the Court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or (1) A.I.R. 1966 S.C. 135.

after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960. (3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.

(4) Nothing in sub-section (1) or sub-

section (3) shall apply to any proceeding pending in appeal before the Supreme Court or High Court."

To appreciate and understand the precise scope of this section so far as it concerns us in the present controversy, we consider it proper to turn to the scheme of the Act on this aspect. Chapter II of Part VII of the Act beginning with s. 433 deals with winding up by the Court. Section 439 provides for applications for winding up and s. 441 tells us when the winding up of a company is to be deemed to commence. Section 442 which confers power on courts to stay or restrain proceedings against the company reads "442. At any time after the presentation of a winding up petition and before a winding up order has been made, the company or any creditor or contributory may-

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceeding;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit." Section 444 enjoins the Court making an order for the winding up of a company to cause intimation thereof to be sent forthwith to the Official Liquidator and the Registrar appointed under the Companies Act. Official Liquidators attached to the High Courts are appointed by the Central Government under s. 448 and the Registrars by the Central Government under s. 609 of the Act.

It is the duty of the petitioner in the winding up proceedings and also of the company to file under s. 445 a certified copy of the order of winding up with the Registrar who has to notify in the Official Gazette that such an order has been made. Such order is to be deemed to be a notice of discharge of the officers and employees of the company except when the business of the company is continued vide s. 445 (3). Then comes s. 446, which has already been set out. The present sub-s. (2) of this section was substituted for the old one in 1960 by Act 65 of 1960 and sub-s. (4) was also added by that Act. Sub-section (2) is on the lines of s. 7 of the Presidency Towns Insolvency Act, 1909, s. 4 of the Provincial Insolvency Act, 1920 and s. 45B of the Banking Companies Act. The object of this sub-section appears to be to empower "the court as in exercise of insolvency jurisdiction to decide, all claims made by or against any company and other questions whatsoever so that winding up proceedings might be expedited". Subsections (2) and (3) both seem to have been inserted to give effect to the recommendation of the Company Law Committee Report contained in para 207(c), namely, that "all suits by or against a company in winding up should, notwithstanding any provisions in any law for the time being in force, be instituted in the court in which the winding up proceedings are pending". This was considered to be to quote the exact words "on balance an advantage to all concerned, including the parties which have a claim against the companies, to institute suits relating to its affairs in the Court where the winding up proceedings are pending". In the Indian Companies Act, 1913, s. 171 provided for preventing litigation against a company in the process of being wound up and it read as :

" 171. When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the Court, and subject to such terms as the Court may impose."

The words underlined were inserted by the Companies Amendment Act, 1936 which followed the English Act. It is hardly necessary to point out that company legislation in India has, ever since the first enactment of 1850 (Registration of Joint-stock Companies Act, No. XLIII of 1850) broadly been following the lines of development of the company law in England. The object of s. 171 was designed to achieve was to prevent all litigation against the company in the process of being wound up except with the consent of the court. We have reproduced this section because the decisions to which reference has been made by Shri Desai in the very beginning of his arguments relate to the cons-

truction of this section by the Federal Court of India and by this Court. The Federal Court in *The Governor-General in Council v. Shiromani Sugar Mills Ltd.*(1) while construing this section held that the words "other legal proceedings"

in this section comprise any proceedings by the revenue authorities under s. 46(2) of the Indian Income-tax Act and accordingly, before forwarding the requisite certificate under S. 46(2) to the Collector, which would put the machinery for the collection of the arrears of land revenue into motion, the Income-tax Officer should have applied under s. 171 of the Indian Companies Act for leave of the winding up Court. The passage on which Shri Desai specifically relied is where, disagreeing with the observations of a Full Bench of the Lahore High Court in *Shakuntla v. The People's*

Bank of Northern India Ltd. (In Liquidation,)(2), Spens, C.J. observed that the expression "or other legal proceedings" in s. 171 need not and, therefore, should not be confined to "original proceedings in a court of first instance analogous to a suit initiated by means of a petition similar to a plaint". The learned Chief Justice there went on to observe :

"Section 171 must, in our judgment, be construed with reference to other sections of the Act and the general scheme of administration of the assets of a company in liquidation laid down by the Act. In particular, we would refer to s. 232. Section 232 appears to us to be supplementary to s. 171 by providing that any creditor (other than Government) who goes ahead, notwithstanding a winding up order or in ignorance of it with any attachment, distress, execution or sale, without the previous leave of the Court, will find that such steps are void. The reference to 'distress' indicates that leave of the Court is required for more than the initiation of original proceedings in the nature of a suit in an ordinary Court of law. Moreover, the scheme of the application of the company's property in the pari passu satisfaction of its liabilities, envisaged in S. 211 and other sections of the Act, cannot be made to work in coordination, unless all creditors (except such secured creditors as are ' outside the winding up in the sense indicated by Lord Wrenbury in his speech in *Food Controller v. Cork*(3) are subjected as to their actions against the property of the company to the control of the Court. Accordingly, in our judgment, no narrow construction should be placed upon the words 'or other legal proceeding' in s. 171. In our judgment, the words can and should be held (1) [1946] F.C.R. 40. (2) [1941] I.L.R. 22 Lah. 760. (3) [1923] A.C. 647.

to cover distress and execution proceedings in the ordinary Courts. In our view, such proceedings are other legal proceedings against the company, as contrasted with ordinary suits against the company."

In that case a company was ordered to be wound up in April, 1942 and an order of assessment to income-tax of the profits made by the company in the year ending May 31, 1940 was made in 1943 and the Income-tax Officer, without obtaining leave of the winding up court, commenced proceedings for recovery of tax as if it were an arrear of land revenue. It was on these facts that it was observed that the words "or other legal proceedings" can and should be held to cover distress and execution proceedings. This expression was not held to cover assessment proceedings to which apparently no objection was raised by the parties though they were represented by eminent counsel. The decision of this Court to which Shri Desai has next referred is *M. K. Ranganathan v. Government of Madras*(,'). The head-note which gives a clear idea of the ratio of this decision is in these words "The secured creditor is outside the winding up and can realise his security without the leave of the winding up Court, though if he files a suit or takes other legal proceedings for the realisation of his security he is bound under s. 171 of the Indian Companies Act to obtain the leave of the winding up Court before he can do so although such leave would almost automatically be granted.

It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. It is also a well-

recognized rule of construction that the legislature does not intend to make a substantial alteration in the law beyond what it explicitly declares either in express words or by clear implication and that the general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the existing policy untouched. Held, therefore, that having regard to the context in which the words 'any sale held without leave of the Court of any of the properties' added in s. 232(1) by the amending Act XXII of 1936 have been used in a position with "any attachment, distress or execution put into force without leave of the Court against the estate or effects" it would be a legitimate construction to (1) [1955] 2 S.C.R. 374.

be put upon them that they refer only to sales held through the intervention of the Court and not to sales effected by the secured creditor outside the winding up and without the intervention of the Court, and that the amendment was not intended to bring within the sweep of the general words sales effected by the secured creditor outside the winding up. Held accordingly that in the present case the sale effected by respondent no. 2 as the receiver of the trustees of the debenture holders in July 1954 was valid and binding on all parties concerned and could not be challenged as it was sought to be done by the Official Receiver."

In this case the observations already reproduced from the judgment of the Federal Court in Shakuntla's case (supra) were approved. It may also be pointed out that in this decision this Court observed that the winding up court assures pro rata distribution of the assets of the company in the same way in which the court under the Presidency Towns Insolvency Act or the Provincial Insolvency Act ensures such distribution of assets. Section 232(1) of the Act of 1913 which was held supplemental to S. 171 was also stated to have reference to legal proceedings in the same way as such proceedings were envisaged by s. 171. These two decisions in our opinion do not lay down that assessment proceedings under the Income-tax Act should be held to be within the contemplation of s. 171 of the Indian Companies Act, 1913. The next decision to which reference has been made by Shri Desai is Union of India v. India Fisheries (P) Ltd..(1). In that case the respondents, Fisheries (P) Ltd., had been directed to be wound up by the winding up court and an Official Liquidator had been appointed by an order of the High Court in October, 1950. The head-note in that case gives a clear idea of the facts and the decision. It reads :

"The respondent company was directed to be wound up and an official liquidator appointed by an order of the High Court in October, 1950. In December 1950 the respondent was assessed to tax amounting to Rs. 8737 for the year 1948-49. A claim made for this tax on the official liquidator was adjudged and allowed as an ordinary claim and certified as such in April, 1952. The Liquidator declared a dividend of 9 1/2 annas in the Rupee in August, 1954 and paid a sum of Rs. 5188 to the Department, leaving a balance of Rs. 3549.

(1) [1965] 3 S.C.R. 678.

In June, 1954, the Department made a demand from the respondent and was paid Rs. 2565 as advance tax for the year 1955-56. On a regular assessment being made for that year, only Rs. 1126 was assessed as payable so that a sum of Rs. 1460, inclusive of interest, became refundable to the respondent. However, the Income Tax Officer, purporting to exercise the power available to him under s. 49E of the Income Tax Act, 1922, set off this amount against the balance of Rs. 3549 due for the year 1948-49. A revision petition filed by respondent in respect of this set off was rejected by the Commissioner of Income-tax. Thereafter, petition under Art. 226 filed by the respondent to set aside the orders of the Income Tax Officer and Commissioner was allowed by the High Court, on the ground that the demand for Rs. 8737 in respect of 1948-49, being adjudged and certified came to have all the incidents and character of an unsecured debt payable by the liquidator to the Department; it was therefore governed by the provisions of Company Law and no other remedy or method to obtain satisfaction of the claim was available to the creditor.

In the appeal to this Court it was contended on behalf of the appellant that s. 49E gave statutory power to Income Tax Officer to set off a refundable amount against any tax remaining payable and that this power was not subject to any provision of any other law. Held the Income Tax Officer was in error in applying s. 49E and setting off the refund due to the respondent.

The effect of ss. 228 and 229 of the Companies Act, 1913, is, inter alia, that an unsecured creditor must prove his debts and all unsecured debts are to be paid *pari passu*. Once the claim of the Department has to be proved and is proved in liquidation proceedings, it cannot, by exercising the right under s. 49E get priority over other unsecured creditors and thus defeat the very object of ss. 228 and 229 of the Companies Act. Furthermore, if there is an apparent conflict between two independent provisions of law, the special provision must prevail. Section 49E is a general provision applicable to all assesseees in all circumstances; ss. 228 and 229 deal with proof of debts and their payment in liqui-

97 4 dation. Section 49E can be reconciled with ss. 228 and 229 by holding that S. 49E applies when insolvency rules do not apply."

In our opinion this decision is of no greater assistance to the appellant on the narrow point which requires determination by us. On the contrary to some extent it goes against Shri Desai because the assessment made in December, 1950, after the appointment of the Official Liquidator was assumed to be in order. It may be recalled that in *Shiromani Sugar Mills case* (*supra*) the assessment made after the winding up order was not challenged though on the argument addressed by Shri Desai before us it could have been challenged. The ratio decidendi or the principle accepted and applied in none of the decisions cited supports the appellant's contention on the precise point of assessment of tax. Shri Desai has next referred us to a more recent decision of this Court in *Balwant Singh v. L. C. Bharumal, Income-tax Officer, New, Delhi*.<sup>(1)</sup> In this case the Income-tax Officer was held to be a court for the purpose of s. 195 (1) (b), Cr. P. C. though it was added that the Income-tax Officer could not be treated as a re-venue court and, therefore, neither S. 476 nor s. 479-A, Cr. P. C. would be applicable. This decision has been cited for the purpose of contending that if the expression "other legal proceeding" in s. 446 is to be construed to mean a proceeding in a court, then, the Income-tax Officer must be considered to be a court when holding assessment or re-assessment proceedings.



This contention may be disposed of with the observation that merely because the Income-tax Officer is considered to be a court for the purpose of S. 195 (1) (b), Cr. P. C. it does not necessarily follow that the said officer must be considered to be a court for the purposes of s. 446 of the Act. There is no justification for extending the scope of this decision beyond its own facts. The decisions which apparently seem to lend more direct support to the appellants contention are *Union of India v. Seth Spinning Mills Ltd., (In Liquidation)* (2) and *Mysore Spun Silk Mills Ltd., (In Liquidation), In re Official Liquidator v. Commissioner of Income-tax, Bangalore*("). Both of them are decisions by single Judges, the former by the Punjab High Court and the latter by the Mysore High Court. In *Seth Spinning Mills case* (supra) it was observed "that S. 171 of the Indian Companies Act, 1913 provides that when a winding up order has been made no suit or other legal proceeding shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose. The language of this section is wide enough to include proceedings under the Income-tax Act.

(1) [1968]70 I.T.R.89(S.C.) (2) [1962] 46 I.T.R. 193. (3) [1968] 68 I.T.R. 295.

No leave of the court has been obtained. In view of this the claim of the petitioner for Rs. 4,000 on account of the penalty order passed on 14th April, 1956 cannot be entertained". in this case the Union of India through the Commissioner of Income-tax had applied to the learned single Judge, who was apparently functioning as a company Judge, praying that the department's claim amounting to Rs. 16,500 should have been admitted by the Official Liquidator and that his refusal to do so was not justified in law. This amount, it appears, consisted of the penalty imposed by the Income-tax Department. Part of the penalty was imposed by means of an order passed prior to the company's going into liquidation but a sum of Rs. 4,000 related to the penalty imposed after the date of winding up. The learned single Judge while dealing with that petition observed :

"Section 171 of the Indian Companies Act, 1913, provides that when a winding up order has been made no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the court and subject to such terms as the court may impose. The language of this section is wide enough to include proceedings under the Income-tax Act. No leave of the court has been obtained. In view of this, the claim of the petitioner for Rs. 4,000 on account of the penalty order passed on 14th April, 1956, cannot be entertained."

In the Mysore case it appears that in the course of winding up of the mills in liquidation large sums of money came into the hands of the liquidator which could not be immediately applied for distribution of dividends to the creditors. Those moneys were invested pursuant to the relevant provisions of the Companies (Court) Rules. The question arose whether in respect of the receipts of income the liquidator was liable to pay income-tax on those receipts. The learned single Judge, after discussing the scheme of the Companies Act, observed :

"The liquidator is only an officer of the court. Unlike a receiver in the case of insolvency, properties of the insolvent do not vest in him but come within the control of the court. All his actions are subject to the control of the court for which purpose

the court issues to him appropriate directions from time to time in the course of winding up. No court or other authority (subject to the exception contained in sub-section (4) of section 446 of the Companies Act) can take any proceedings or attach or otherwise reach any of the matters, the winding up court treats the liquidator as its special officer specially charged with the duty of representing the company and protecting its interests in winding up.

In the light of the above principles, it is the duty of the court to see that all liabilities of a company are properly met in accordance with the provisions of the law and the special provisions in that behalf contained in the Companies Act. Liability to income-tax is also one of the liabilities which the court is expected to provide for in the course of winding up.

Such being the position, the question is whether, because the liquidator does not answer the description of the principal officer as defined in the Income-tax Act, the liability, if any, of the company for payment of income-tax itself comes to an end and therefore the winding up court may ignore that liability."

The Court thereafter observed that the corporate existence of the company continues even after the winding up order; but after the winding up order the question of payment of income-tax has to be dealt with or answered on a joint application of the terms or provisions of the Income-tax Act and the Companies Act. After so observing the court proceeded :

"that even after a winding up order is passed, the company continues to be a person within the meaning of section 4 of the Income-tax Act, that therefore any receipt in the course of winding up which would attract liability to income-tax under appropriate provisions of the Income-tax Act would be liable to income-tax or for payment of tax under Income-tax Act, but that before any action can be taken by the appropriate Incometax Officer under the Income-tax Act for the purpose of quantification or collection of the income-tax he should obtain the leave of the winding up court under section 446 of the Companies Act, and further that the collection of the tax can only be by securing the orders of the winding up court for payment of tax in the light of the appropriate provisions of the Companies Act."

In this case so far as collection of the tax assessed is concerned there can scarcely be any difficulty in agreeing with the view taken there. But it is only when the court said that for the purpose of quantification of the income- tax also leave under s. 446 of the Act ha-, to be obtained that we have to consider if this view is correct. It is on this observation that Shri Desai has principally relied. The decisions of the Federal Court and of this Court already cited by Shri Desai, it may be recalled, do not support this view.

Reference by Shri Desai has also been made to Abdul Aziz Ansari v. The State of Bombay<sup>(1)</sup> in which assessment proceedings under the Bombay Sales Tax Act, 1946 were considered to be legal proceedings for the purpose of continuance of those proceedings after repeal of the Bombay Sales

Tax Act, 1946 by s. 48(2) of the Bombay Sales Tax Act, 3 of 1953. We do not think this decision is of any assistance for considering the question whether assessment or re-assessment proceedings can be considered to be legal proceedings as contemplated by s. 446 of the Act. The learned counsel for the appellant has also drawn our attention to *Shiromani Sugar Mills v. Governor General in Council*(2) where, after referring to s. 171 of the Companies Act, 1913 it was held by the Allahabad High Court, that initiation by the Income-tax Officer of steps to recover the amount of assessment under s. 46 of the Income-tax Act of 1922 and the prosecution by the Collector of those steps amounted to "commencement" or "proceeding with" a "suit or other legal proceeding." Needless to point out that this is the view which the Federal Court on appeal upheld in the decision already referred to.

The further submission pressed by Shri Desai that s. 446 of the Act is a special provision and s. 148 of the Income-tax Act a general provision of law was sought to be supported by reference to *India Fisheries case*(3). It may here be pointed out that in that case it was, while dealing with s. 49E of the Income-tax Act, that this Court observed that the revenue could not, by exercising the right under that section get priority over other unsecured creditors, and it was in this context that it was said that there being apparent conflict between two independent provisions of law the special provision must prevail. In order to understand and appreciate the binding force of a decision it is always necessary to see what were the facts of the case in which the decision was given and what was the point which had to be decided. Thus considered *India Fisheries case*(3) lends no assistance to Shri Desai and we are unable to construe the observations in that decision to support Shri Desai's contention that s. 446 of the Act is a special provision as against s. 148 of the Income-tax Act under which Income-tax Officers hold proceedings for assessment or re-assessment of income-tax and that therefore the former should prevail over the latter.

(1) A.I.R. 1958 Bom. 279. (2) I.L.R. 1945 Allahabad 352. (3) [1965] 3 S.C.R. 678.

Turning now to the Income-tax Act it is noteworthy that s. 148 occurs in Chapter XIV which beginning with S. 139 prescribes the procedure for assessment and S. 147 provides for assessment or re-assessment of income escaping assessment. This section empowers the Income-tax Officer concerned subject to the provisions of ss. 148 to 153 to assess or re-assess escaped income. While holding these assessment proceedings the Income-tax Officer does not, in our view, perform the functions of a court as contemplated by S. 446(2) of the Act. Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of s. 446 read as a whole, it appears to us that the expression "other legal proceeding" in sub-s. (1) and the expression "legal proceeding" in sub-s. (2) convey the same sense and the proceedings in both the sub-sections must be such as can appropriately be dealt with by the winding up court. The Income-tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and re-assessment of income-tax with which alone we are concerned in the present case. The fact that after the amount of tax payable by an assessee has been determined or quantified its realisation from a company in liquidation is governed by the Act because the income-tax payable also being a debt has to rank *pari passu* with other debts due from the company does not mean that the assessment proceedings for computing the amount of tax must be held to be such other legal proceedings as can only be started or continued with the leave of the liquidation court under s. 446 of the Act. The liquidation court, in

our opinion, cannot perform the functions of Income-tax Officers while assessing the amount of tax payable by the assessee even if the assessee be the company which is being wound up by the court. The orders made by the Income-tax Officer in the course of assessment or re-assessment proceedings are subject to appeal to the higher hierarchy under the Income-tax Act. There are also provisions for reference to the High Court and for appeals from the decisions of the High Court to the Supreme Court and then there are provisions for revision by the Commissioner of Income-tax. It would lead to anomalous consequences if the winding up court were to be held empowered to transfer the assessment proceedings to itself and assess the company to income-tax. The argument on behalf of the appellant by Shri Desai is that the winding up court is empowered in its discretion to decline to transfer the assessment proceedings in a given case but the power on the plain language of s. 446 of the Act must be held to vest in that court to be exercised only if considered expedient. We are not impressed by this argument. The language of s. 446 must be so construed as to eliminate such startling consequences as investing the winding up court with the powers of an Income-tax Officer conferred on him by the Income-

tax Act, because in our view the legislature could not have intended such a result.

The argument that the proceedings for assessment or re-assessment of a company which is being wound up can only be started or continued with the leave of the liquidation court is also, on the scheme both of the Act and of the Income-tax Act, unacceptable. We have not been shown any principle on which the liquidation court should be vested with the power to stop assessment proceedings for determining the amount of tax payable by the company, which is being wound up. The liquidation court would have full power to scrutinise the claim of the revenue after income-tax has been determined and its payment demanded from the liquidator. It would be open to the liquidation court then to decide how far under the law, the amount of Income-tax determined by the department should be accepted as a lawful liability on the funds of the company in liquidation. At that stage the winding up court can fully safeguard the interests of the company and its creditors under the Act. Incidentally, it may be pointed out that at the bar no English decision was brought to our notice under which the assessment proceedings were held to be controlled by the winding up court. On the view that we have taken, the decisions in the case of Seth Spinning Mills Ltd., (in Liquidation) (1) and the Mysore Spun Silk Mills Ltd., (In Liquidation) (2) do not seem to lay down the correct rule of law that the Income-tax Officers must obtain leave of the winding up court for commencing or continuing assessment or reassessment proceedings.

For the foregoing reasons we have no hesitation in dismissing the appeal with costs.

S.C.

Appeal dismissed.

(1) 46 I.T.R. 193.

(2) 68 I.T.R. 695.