

# **N.C. Mukherjee And Co. vs Union Of India And Anr. on 18 January, 1967**

**Equivalent citations: [1968]68ITR500(SC)**

**Bench: Chief Justice, J.C. Shah, J.M. Shelat, V. Bhargava**

## **JUDGMENT**

Subba Rao, C.J.

1. These four appeals by certificate granted by the High Court at Calcutta are filed against the common judgment and order of that court in four civil revision cases arising out of the proceedings under the Excess Profits Tax Act, 1940 (Act XV of 1940).

2. The facts may be briefly stated. The appellant was a registered firm with our partners. For the accounting years ending with March 31 of the years 1942, 1943, 1944 and 1945 the said firm was assessed to excess profits tax. Under notice dated September 3, 1954, the firm was directed to pay large amounts in respect of the said four years as excess profits tax by September 25, 1954. On March 12, 1956, the concerned Income-tax Officer forwarded four certificates to the Certificate Officer and Additional District Magistrate, 24-Parganas, for the recovery of the said amounts from the firm. On December, 20, 1956, the Certificate Officer issued notice to the firm under section 7 of the Bengal Public Demands Recovery Act, 1913 (Act III of 1913), hereinafter called "the Act", for the payment of the said amounts of tax. The firm filed objections under section 9 of the Act denying its liability to pay the amounts demanded from it. It also raised other objections with which we are not now concerned. The Certificate Officer rejected the objections. Against the said order of the Certificate Officer, the appellant firm preferred appeals under section 51 of the Act to the Commissioner, Presidency Division. The said Commissioner on April 18, 1958, dismissed the said appeals. Revision petitions filed by the firm to the Board of Revenue were rejected on April 21, 1960. The petitions filed by the firm against the orders of the Board Revenue in the High Court under article 226 of the Constitution were dismissed on September 26, 1962. Hence the present appeals.

3. Mr. Sen, learned counsel for the appellant firm, raised before us constitutional and legal objections questioning the validity of the proceedings under the Act. But on an indication of the order we would be making in the appeals he withdrawn them. Nothing, therefore, need be said about them.

4. On July 23, 1958, the concerned Income-tax Officer wrote to the Certificate Officer and Additional District Magistrate, 24-Parganas, in reply of his letter dated June 12, 1958, as follows :

"Apparently it appears that the partners of the above firm are entitled to a considerable sum of refund. However, due to the complicated nature of the cause, it will require a long time for its verification.

In the meantime, Certificate Officer may be requested to keep the proceedings pending."

5. Again on July 30, 1958, the concerned Income-tax Officer wrote to the Certificate Officer thus :

"As the partner of the above C. Dr. (Certificate Debtor) are entitled to heavy refunds the collection proceedings in the above certificate cases may kindly be stated. You will be informed as soon as the matters is finalised."

6. When the question of adjustment was raised before the Board of Revenue, it observed :

"This is really a matter for the taxing authorities. The certificate court cannot enter into this question."

7. When the point was again pressed before the High Court, it observed :

"In view of section 48(2) of the Indian Income-tax Act, 1922, read with section 21 of the Excess Profits Tax Act, the finality of the assessment to excess profits tax is not affected by the pending proceedings for refund."

8. Yet, it proceeded to observe :

"On behalf of the Union of India, Mr. Pal has assured as that the department still adheres to the stand taken in the two letters. It is to be observed that while the department should be free to take all steps to see that execution of the certificates is not barred by limitation, immediates steps should be taken for the completion of the pending refund proceeding, if any, so that the moneys, if any, due to the petitioner-firm on account of refund may be ascertained and the refund order, if any, of the petitioner-firm or its partners was be speedily issued."

9. Learned counsel for the respondent did not retract from the said position. But, though the High Court delivered the judgment as early as on September 26, 1962, and more than 4 years passed by, nothing seems to have been done by the concerned Income-tax Officer to certain the amounts refundable to the firm or its partners. We think that justice demands that before the Certificate Officer executes the demand against the appellant-firm, amounts refundable to it or its partners should be ascertained by the concerned Income-tax Officer so that the demand may be executed only for the balance. We, therefore, direct the concerned Income-tax Officer to completed his enquiry in regard to the amounts refundable to the appellant-firm or its partners under the Income-tax Act within 3 months from the receipt of the order by him. The Certificate Officer will thereafter execute the demand for the balance of the account, if any, due from the appellant-firm.

10. With this modification, the appeals are dismissed, but, in the circumstances, without costs.