Supreme Court of India
Manmohanlal And Ors. vs Income Tax Officer, Ward-E, City ... on 22 September, 1987
Equivalent citations: 1988 (34) ELT 419 SC, 1987 168 ITR 616 SC, JT 1987 (4) SC 68, 1987 (2) SCALE 661, 1987 Supp SCC 760
Bench: R Pathak, M Kania
ORDER

1. Special leave granted.

2. This appeal by special leave arises out of proceedings for recovery of tax under Section 226(4) of the Income Tax Act, 1961. The question is whether it is open to a Court, to whom an application is made under Section 226(4) of the Act by the Income Tax Department, to decide whether the amount claimed by the Income Tax Department is a debt due from the assessee.

3. In case No. 181 of 1985 in the Court of Sub-Judge, Cuttack, the judgment debtor deposited a sum of Rs. 3,08, 533.10 to the credit of the decree obtained by the decree holders who are the petitioners before us. The Income Tax Officer filed an application on November 20, 1985 before that Court under Section 226(4) of the Income Tax Act, 1961 for adjustment of the aforesaid amount, namely, Rs. 3,08,533.10 against alleged income-tax dues of the decree holders (appellants herein) amounting to Rs. 6,88,244/-. The decree holders objected on the ground that no notice of demand as required under Section 156 of the Income Tax Act had been served on them for this amount. On February 10, 1986, another application was filed by the Income Tax Officer disclosing the break-up of the said sum of Rs. 6,88,244/-. This petition shows that the alleged dues were for the year 1962-63to 1966-67. Thereafter, the Income Tax Officer filed another application on 29 April, 1986 under Section 226(4) showing that the correct alleged income-tax dues against the decree holders amounted to Rs. 4,72,402/-. Out of the amount of Rs. 4,72,402/-, it was alleged by the income Tax Officer that a demand notice for the year 1963-64 for Rs. 1,973/- and a demand notice for the year 1962-63 for Rs 97,832/25p had been served on M/s. Allied Dealers who were one of the decree holders. The said M/s. Allied Traders is a partnership in which the other decree holders were partners. Out of this amount, admittedly, a reduction was granted of Rs. 20,000/. The Net amount towards the income-tax dues of the said firm was Rs. 97,832.25. As far as this amount is concerned. Mr. Diwan on behalf of the appellants concedes that it may be paid out of the amount lying to the credit of the decree holders in the aforesaid suit. In respect of the other demands, the learned sub-Judge found that no proper notices of demand were served on the respective decree holders from whom the amounts were claimed, as required under Section 156 of the Income Tax Act and in view of this he rejected the application of the Income Tax Officer. The Income Tax Officer preferred a revision by way of Civil Revision No. 543 of 1 986 in the High Court of Judicature at Cuttack. The learned single Judge who disposed of the Revision Petition took the view that a Civil Court to which a petition or application has been made under Section 226(4) of the Income Tax Act has no jurisdiction to decide the questions of fact, such as absence of service of a notice of demand for arrears tax. It was held by him that once an application was made by the Income Tax Officer under Sub-section (4) of Section 226, no discretion was given to the Civil Court at all to make an investigation as to whether the assessment of tax was according to law or if the tax was in arrears or whether the notice of demand had been served or whether the recovery of tax was 1 barred by a

general or special law of limitation and that on such an application, the amount deposited in Court to the credit of the assessee must be paid over to the Income Tax Officer. It was held by the learned judge that if the assessee had any objection against the amount claimed by the Income Tax Officer, he would have to satisfy the Tax Recovery Officer about the same. We are of the view that the learned Judge was completely in error in the view which he took. When an assessee is in default, there are two modes of recovery open to an Income Tax Officer. The first mode is provided under Section 222 of the Income Tax Act. Under that. Section, when an assessee is in default in making payment of tax, the Income Tax Officer may forward to the Tax Recovery Officer a certificate specifying the amount of arrears due from the assessee and on such certificate, the Tax Recovery Officer shall proceed to recover from the assessee the said amount by one or more of the modes set out in Section 222. The other modes of recovery are specified in Section 226. Sub-section (4) of Section 226 provides that the Income Tax Officer may apply to the Court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money or if it is more than the tax due an amount sufficient to discharge the tax.

4. A perusal of these provisions clearly shows that the Tax Recovery Officer has nothing to do with an application under Section 226(4) made by the Income Tax Officer to a Court in which there is money lying to the credit of the assessee in default. If such an application is made, it is certainly open to the Court to determine as to whether there has been a proper notice of demand served on the decree holder (assessee in default) according to law. It is only after the Court is satisfied of this that the Court can proceed to pay over the amount demanded to the Income Tax Officer.

5. It is settled by authority long accepted that tax can be recovered from an assessee only when it becomes a debt due from him, and that is become a debt due when a notice of demand calling for payment of the tax has been served on the assessee. If an assessee objects to the recovery proceeding taken under Section 226(4) on the ground that there has been no valid service of a notice of demand and that therefore no debt is due, the Court must decide the objection, and if it upholds the objection it cannot permit recovery of the tax claimed.

6. In view of this, the judgment of the learned Single Judge is set aside and the matter is remanded to the High Court of Judicature at Cuttack to determine the Civil Revision Application afresh in the light of what we have stated earlier and keeping in mind the limits of revisional jurisdiction. We trust it will be possible for the High Court to dispose of the matter within four months from receipt of the record from this Court. The Registry of this Court will transmit the record forthwith to the High Court.