

(1990) 03 BOM CK 0092

Bombay High Court

Case No: Writ Petition No. 387 of 1984

Duncan Stratton and Co. Ltd.
and another

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision: March 14, 1990

Acts Referred:

- Income Tax Act, 1961 - Section 222

Citation: (1990) 82 CTR 314 : (1990) 183 ITR 204

Hon'ble Judges: T.D. Sugla, J

Bench: Single Bench

Advocate: P.K. Samdani, for the Appellant; Dr. V. Balasubramaniam, for the Respondent

Judgement

T.D. Sugla J.

1. By this petition under article 226 of the Constitution of India, the petitioner-company has challenged the proceedings taken out by the Tax Recovery Officer in pursuance of tax recovery certificates dated March 1, 1968, February 25, 1969, March 13, 1970, and July 18, 1971. Notice was issued to the petitioner-company by the Income Tax Officer, Company Circle-V, Bombay. In response to the said notice, the petitioner-company, it may be stated, wrote to the Income Tax Officer, Company Circle-V(8), Bombay, as well as the Tax Recovery Officer, Company Circle-V, Bombay, vide letter dated February 15, 1984, requesting for cancellation or withdrawal of the tax recovery certificates, inter alia, on the ground that its assessments for the assessment years 1957-58 to 1966-67 had been set aside by the appellate Assistant Commissioner by orders dated April 27, 1971, and August 16, 1971, with a direction to make fresh assessments according to law. It was pointed out that fresh assessments had not yet been completed. In view of the cancellation of all these assessments, there was no demand outstanding against the petitioner-company. Accordingly, the tax recovery certificates issued on the basis of

assessments completed originally should have been cancelled and/or withdrawn.

2. No affidavit-in-reply has been filed on behalf of the respondents. The petition came up for hearing on March 9, 1990, when it was adjourned to this date to enable Dr. Balasubramaniam, for the Income Tax Department, to furnish relevant information and/or to produce the assessment records. However, neither the information required nor the necessary and relevant records are available with Dr. Balasubramaniam at the time of hearing. It was argued by Dr. Balasubramaniam that so far as the assessment year 1966-67 is concerned, the assessment was not set aside. The Income Tax Officer was only directed to look into two of the three grounds urged and make a fresh assessment with regard thereto. According to Dr. Balasubramaniam, even if it is assumed that the grounds on which the assessment for the assessment year 1966-67 is set aside are ultimately allowed, the assessment would result in an income exceeding Rs. 3,00,000 and there may be consequently a huge tax demand.

3. Counsel for the petitioners, on the other hand, stated that unless the earlier assessments were completed, it was not possible to know as to what adjustments would be required even against the income for the assessment year 1966-67. In any event, it was for the Income Tax Officer to modify the tax recovery certificates as required u/s 225 of the Income Tax Act when the assessment was partly set aside and was required to be made afresh in pursuance of the appellate order.

4. It is pertinent to mention that the Tax Recovery Officer, in his notice dated January 27, 1984, to defaulter for settling a sale proclamation, stated that the proceedings were taken by her in execution of certificates dated March 1, 1968, February 25, 1969, March 13, 1970, and July 18, 1971, etc., forwarded by the Income Tax Officer, Company Circle- V, Bombay. Despite the request by the petitioner-company to her as well as to the Income Tax Officer, Company Circle-V(8), Bombay, no information was furnished as to the year or years to which these tax recovery certificates pertained and whether the tax recovery certificates remained valid despite the assessments for the assessment years 1957-58 to 1966-67 having been set aside by the Appellate Assistant Commissioner. Admittedly, the assessments for the assessments for the assessment years 1957-58 and from 1966-67 having been set aside by the Appellate Assistant Commissioner, vide his orders dated April 27, 1971, and August 16, 1971. It is true that the petition does not indicate as to what happened as regards the assessment for the assessment year 1958-59. It is also true that the assessment for the assessment year 1966-67 was not fully set aside but was set aside only on two grounds. However, it is not known from the notice issued by the Tax Recovery Officer dated January 27, 1984, for settling a sale proclamation as to which assessment years the certificates pertained, nor is there any material made available to this court which would indicate as to whether any of the certificates pertained to the assessment year 1958-59 or 1966-67 and, if so, to what extent. That apart, it is not without significance that the assessment orders for none of these

years have yet been completed.

5. In the above view of the matter, the court finds merit in this writ petition. The rule is made absolute in terms of prayer, clauses (b), (c) and (d). No order as to costs.