

**“Hon’ble Supreme Court delivered its judgment in appeal filed by the I.T. department reported as (1995) 5 SCC 200 wherein it was held that the Special Court has no power to sit in appeal or overrule the orders of tax authorities and ITAT or the Courts in regard to the tax liability. It can only determine the priorities to be accorded for making payments taking into account the funds available with the Custodian.”**



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**(1995) 5 Supreme Court Cases 200**

(BEFORE A.M. AHMADI, C.J. AND S.P. BHARUCHA, J.)

**ASSISTANT COMMISSIONER OF INCOME TAX** .. Appellant; a

*Versus*

**A.K. MENON AND OTHERS** .. Respondents.

Civil Appeal No. 6323(NT) of 1995<sup>†</sup>, decided on July 18, 1995

**Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992 — S. 11 — Jurisdiction of Special Court to determine tax liabilities of notified persons — Scope of — Held, Special Court has no power to sit in appeal over the orders of tax authorities, tribunals or courts — It cannot decide whether claim of the notified person was bona fide or reasonable or justified or enforceable** b

The Special Court has no power to sit in appeal over or overrule the orders of the tax authorities, the Income Tax Appellate Tribunal or the courts in regard to the tax liabilities of notified persons. The only power of the Special Court is to determine the priorities in which claims upon the property under attachment shall be paid. The claims relating to the tax liabilities of a notified person are, along with revenues, cesses and rates entitled to be paid first in the order of priority and in full, as far as may be. In relation to a claim for payment of the tax liability of a notified person, the Special Court has, therefore, only the limited power to determine what, having regard to the funds available, can be paid; that is to say, whether the claim can be satisfied in full or only in part. If a particular tax claim cannot at any time be paid in full, provision would have to be made for the balance, so far as may be, so that it is not jeopardized. (Para 4) c

The Special Court has, therefore, no jurisdiction to determine whether or not any assessment of the tax liability of a notified person by the appropriate authority is bona fide or reasonable or justified or enforceable. (Para 6) d

*S.V. Kandeekar v. V.M. Deshpande*, (1972) 1 SCC 438 : AIR 1972 SC 878, explained and distinguished e

Appeal allowed S-M/14703/C

ORDER

1. Special leave granted.

2. This appeal is filed against an order of the Special Court appointed under the provisions of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The appellant, an Assistant Commissioner of Income Tax, sought release of the sum of Rs 80,80,198.34, being the tax liabilities of the respondents, who are notified persons under the said Act, from the funds available with the Custodian appointed under the provisions thereof. Learned counsel appearing for some of these notified persons submitted to the learned Judge that he wished to show that the demands of the appellant were unreasonable and unjustified and, if satisfied, he should not order release of the amounts claimed. Having heard counsel, the learned Judge passed the impugned order. It said that while the Special Court could not sit in appeal over orders of the tax authorities, it was f

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<sup>†</sup> Arising out of SLP (C) No 11594 of 1995

a entrusted with the task of distributing the funds in the manner laid down under Section 11 of the said Act and the priorities laid down thereunder had to be observed. The priorities and objects of the said Act could and would be defeated if the Special Court could not “go into the bona fides of a claim. In that case a party, like the Income Tax Department, may make a claim in an absurdly large amount”. Whether a claim was “justified or enforceable can only be decided by looking into that claim”. Counsel for the notified parties was, therefore, “entitled to try and show to court that the claim is unreasonable and unjustified”. The appellant’s application was adjourned for the purpose, and he has appealed.

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d 3. The said Act was enacted to provide for the establishment of a Special Court for the trial of offences relating to transactions in securities and for matters connected therewith or incidental thereto. The Act requires the appointment of a Custodian thereunder who is, inter alia, required to deal with the property of persons notified in such manner as the Special Court may direct. The Special Court has jurisdiction, under Section 7 of the Act, exclusively to hear and decide prosecutions in respect of offences under the said Act, that is to say, offences relating to transactions in securities after 1-4-1991 and on or before 6-6-1992. By reason of the amendment of the said Act and the inclusion of Sections 9-A and 9-B, the Special Court is invested with civil jurisdiction in regard to such transactions. Section 11 is relevant for our purpose. Sub-section (1) states that the “Special Court may make such order as it may deem fit directing the Custodian for the disposal of the property under attachment”. Sub-section (2) states that “the following liabilities shall be paid or discharged in full, as far as may be, in the order as under:

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- (a) all revenues, taxes, cesses and rates due from the persons notified by the Custodian under sub-section (2) of Section 3 to the Central Government or any State Government or any local authority;
  - (b) \* \* \*

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g 4. It is clear that the Special Court has no power to sit in appeal over or overrule the orders of the tax authorities, the Income Tax Appellate Tribunal or the courts in regard to the tax liabilities of notified persons. The only power of the Special Court is to determine the priorities in which claims upon the property under attachment shall be paid. The claims relating to the tax liabilities of a notified person are, along with revenues, cesses and rates entitled to be paid first in the order of priority and in full, as far as may be. In relation to a claim for payment of the tax liability of a notified person, the Special Court has, therefore, only the limited power to determine what, having regard to the funds available, can be paid; that is to say, whether the claim can be satisfied in full or only in part. If a particular tax claim cannot at any time be paid in full, provision would have to be made for the balance, so far as may be, so that it is not jeopardized.

h 5. Our attention was drawn by Mr A.M. Setalvad, learned counsel for the Custodian, to the judgment of this Court in *S.V. Kandeekar v. V.M.*

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SUPREME COURT CASES

(1995) 5 SCC

*Deshpande*<sup>1</sup> and to the observation thereunder that the: (SCC p. 449, para 18)

“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.”

The question that this Court had to decide in the case was whether it was necessary for the income tax officer to obtain the leave of the liquidation court when he wanted to reassess the company in liquidation for escaped income in respect of past years. This Court said: (SCC p. 449, para 17)

“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 Section 446 of the Act. The liquidation court, in our opinion, cannot perform the functions of the 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.

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The language of Section 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.”

It is after these observations that the court made the observation to which Mr Setalvad drew our attention. It is perfectly clear, in the circumstances, that

a this observation referred only to the obligation of the liquidation court to decide, having regard to the fact that the income tax payable by the company in liquidation had to rank *pari passu* with other debts due by it, how far the amount determined could be paid while still safeguarding the interests of the other creditors of the company in liquidation. We are of the view, therefore, that this judgment does not assist us in upholding the view taken by the Special Court.

b 6. The Special Court has no jurisdiction to sit in appeal over the assessment of the tax liability of a notified person by the authority or tribunal or court authorised to perform that function by the statute under which the tax is levied. The Special Court has, therefore, no jurisdiction to determine whether or not any assessment of the tax liability of a notified person by the appropriate authority is *bona fide* or reasonable or justified or enforceable.

c 7. The appeal is allowed. The order under appeal is set aside insofar as it requires the appellant to produce the records and permits the notified persons to satisfy the Special Court that the claims made in regard to their tax liability were not *bona fide*, or were unreasonable, unjustified or unenforceable.

d 8. There shall be no order as to costs.

(1995) 5 Supreme Court Cases 203

(BEFORE K. RAMASWAMY AND K.S. PARIPOORNAN, JJ.)

STATE OF ORISSA .. Appellant;

e *Versus*

BRIJ LAL MISRA AND OTHERS .. Respondents.

Civil Appeals Nos. 704-706 of 1980<sup>†</sup>, decided on July 26, 1995

f **Land Acquisition Act, 1894 — Ss. 23 and 24 fifthly and sixthly — Valuation of land for compensation — Future potentialities not relevant — Having taken the existing potentialities into consideration and determined the compensation courts below not justified in awarding 25% more for future potentialities**

g The market value prevailing on the date of the notification including potentiality the land possessed of or realisable potentiality existing as on the date of the notification would be the relevant fact for consideration to determine market value. It is possibility of the market value of the land and not realised possibility that must be taken into consideration. The statute expressly enjoins to omit consideration of the future use of the land or potentialities of the neighbouring lands on account of the acquisition in determining compensation. (Para 3)

h Thus, having taken the existing potentialities into consideration and determined the compensation at Rs 200 per decimal, the Reference Court as well as the High Court have committed obvious illegality in applying wrong principle to

<sup>†</sup> From the Judgment and Order dated 1-8-1978 of the Orissa High Court in F.As. Nos. 113, 114 and 115 of 1970