

CIVIL ORIGINAL

Before Falshaw, J.

IN THE MATTER OF THE INDIAN COMPANIES ACT,
VII OF 1913

and

OF THE KAITHAL GRAIN AND BULLION EXCHANGE,
LIMITED, KAITHAL

Civil Original No. 37 of 1953

1953

August 14th.

Company—Winding up—Company assessed to income-tax—Appeals by the company rejected—Later on company wound up—Income-tax officer claimed the assessed tax from the Liquidator—Liquidator rejected the claim on the grounds that the books of the company only disclosed a small profit in the first year and loss in the following year and that the income-tax assessments have not been properly contested—Rejection of Income-tax Officer's claim to tax whether justified.

Held, that the rule that on a proof for a judgment debt the Court will go behind the judgment and ascertain whether there is a probable debt, does not apply to a proof for assessed taxes unless the assessment is vitiated by fraud. Therefore the rejection of Income-tax Officer's claim by the Liquidator to the assessed taxes was not justified.

Petition by the Official Liquidator praying that the list of debts and claims be settled and date fixed for the same, and further praying that any orders that may seem just and proper may please be passed.

Mr. H. L. SARIN, Advocate, for Kaithal Grain and Bullion Exchange, Limited, Kaithal.

and

Mr. S. M. SIKRI, Advocate-General and Mr. H. R. MAHAJAN, Advocate for I.T.O., Karnal.

ORDER

Falshaw, J.

FALSHAW, J. A dispute has arisen on account of the fact that the claim of the Income-tax Officer, Karnal, for Rs. 16,574 has been rejected by the Liquidator of the Kaithal Grain and Bullion Exchange, Limited, Kaithal, in liquidation. The company was ordered to be wound up by an order, dated the 11th of July 1952, and the claim of the Income-tax Officer relates to the assessment years 1947-48 and 1948-49, i.e., to the accounting years 1946-47 and 1947-48. The ground on which the Liquidator rejected the claim was that the books of the company only showed a small profit of about Rs. 6,000 for the assessment year 1947-48 and a loss in the following year, and that the income-tax assessments have not been properly contested. He relied on the decision in *Income-tax Officer, Lucknow v. Lucknow Sugar Works, Ltd.* (1), a decision by Srivastava, J., and the decision of the Full Bench of Harries, C. J., Abdul Rashid and Beckett, JJ., in *Governor-General in Council through Commissioner of Income-tax, Punjab, N. W. F. and Delhi Provinces, Lahore v. Sargodha Trading Co., Ltd.* (2).

Before discussing these cases the circumstances under which the assessments in dispute were made may be related. It seems from the orders of the Income-tax Officer with regard to both the assessment years, dated the 29th of February 1949, that no returns had been filed by the company in spite of notices under section 34 of the Income-tax Act. and no books had been produced in spite of further notices under section 22(2). In the circumstances the Income-tax Officer assessed the income of the company under section 23(4) at Rs. 30,000 for the assessment year 1947-48 and at Rs. 6,000 for the assessment year 1948-49. Applications under section 27 were rejected by the Income-tax Officer by orders, dated the 30th of June 1949. Appeals were preferred by the company to the Appellate Assistant Commissioner at the hearing of which

(1) A.I.R. 1935 Oudh 451

(2) A.I.R. 1943 Lah. 228

the company was represented by counsel, but both In the matter these appeals were dismissed by the orders of the of the Indian Appellate Assistant Commissioner, dated the 17th Companies Act of February 1950. The matter was apparently not VII of 1913 contested any further by way of appeal to the and Appellate Tribunal, and as the income-tax due on of the Kaithal these years was not paid, by orders, dated the 12th Grain and Bul- Act, the Income-tax Officer imposed penalties of lion Exchange, Limited, Kai- Rs. 4,000 and Rs. 1,000 for the respective years. thal.

Falshaw, J.

In the Oudh case the learned Judge rejected a claim of the Income-tax Officer in the case of a company which had been similarly assessed under section 23(4) after failing to produce its accounts and it was found by the Liquidator in the liquidation proceedings that the company had sustained a loss for the assessment year in question. Unfortunately in the judgment, although some account is given of the proceedings before the income-tax authorities, there is no mention of the date on which the company was ordered to be wound up, and it is, therefore, not possible to say what the decision of the learned Judge would have been if the assessment years were long before the order of winding up, and in fact the company's appeal against the assessment had been dismissed by the Appellate Assistant Commissioner two years before the winding-up order. In the Lahore case all that was held by the Full Bench was that income-tax which does not become due and payable until after the winding-up order has been made is not a debt for which priority can be claimed. The facts of that case were that the company concerned had been ordered to produce its books before the Income-tax Officer on the 14th of July 1938, and the winding-up order was passed on the 12th of July 1948. It seems that thereafter nobody ever appeared on behalf of the company before the income-tax authorities, and it was only after an assessment order had been passed *ex-parte* that the Liquidator took any steps in the matter. There were thus very special circumstances existing in that case which do not exist in the present case. On the other hand there is the English case

In the matter *In re Calvert ex-parte Calvert* (1), in which it was of the Indian held by Wright, J., that the rule that on a proof for Companies Act a judgment debt the Court will go behind the VII of 1913 judgment and ascertain whether there is a prov- and able debt, does not apply to a proof for assessed of the Kaithal taxes. This being a bankruptcy case, and I find that Grain and Bul- this decision was followed by a Division Bench of lion Exchange, the Lucknow Court—Bennett and Ghulam Hassan. Limited, Kai- JJ., in *Messrs Dinshaw, and Co. v. The Income-tax Officer, Lucknow* (2), in which it was held that thal. where no statement of account is filed, and the ——— notice for production of accounts is not complied Falshaw, J. with and consequently a company is assessed on an estimated income under section 23(4) against which there is no appeal and it becomes final. it cannot be challenged or reopened subsequently by the liquidator of the company in liquidation proceedings unless there is reason to think that the assessment is vitiated by fraud. This was a case in which although all the dates are not given in the judgment it is clear that the winding-up order of the company followed fairly soon after the assessment in question which was for the year 1934-35 and the company was wound-up on the 15th of October 1935. The present case for not re-opening the assessments is even stronger.

In the circumstances I consider that the claim of the Income-tax Officer was wrongly rejected by the Liquidator and I accordingly order him to recognize the claim of the Income-tax Officer for Rs. 16,574-1-6 shown in the 3rd part of the List A. As I understand that the assets of the company are at present negligible I make no order as to costs.