

ORDER SHEET
WPO/213/2013
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

RAJA RAM DALMIA
VS
COMMISSIONER OF INCOME TAX, KOLKATA-I & ORS.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN

Date : 21st April, 2022.

Appearance:
Mr. Pujon Chatterjee, Adv.
...For the Petitioner

Ms. Smita Das De, Adv.
...For the respondent
Ms. Debjani Mitra, Adv.
....for Official Liquidator

The Court : In compliance of my order dated 16th March, 2022, Official Liquidator has filed a report through its learned advocate which may be kept with the records.

This writ petition has been filed against the impugned two garnishee notices dated 18th February, 2009 for recovery of the income tax demand in question against the petitioners who were the directors of one M/s. Basant Udyog (P) Ltd. at the relevant period relating to assessment years 1983-84, 1984-85 and 1985-86 relating to which the demand in question arises and against the recovery of which the impugned garnishee notices were issued. Petitioner has challenged the impugned garnishee notices on the ground that at the time of initiation of impugned recovery proceeding and the issuance of garnishee notices they were no more attached to the company and had retired in 1990 and in view of Section 179 of the Income Tax Act, 1961 respondent Income Tax Authority should have taken steps only

if they could not recover from the company. It is an admitted position that the petitioners were directors of the company during the period relating to which demand in question arises and garnishee notices were issued. In view of the report of the Official Liquidator dated 8th April, 2022 which has been filed in Court it appears that the company has already gone into liquidation on 11th August, 1997 and further on perusal of the aforesaid report of the Official Liquidator it appears that he has got no fund in his hand. Since it is a Government revenue arises out of a valid assessment order which was never challenged before any authority, it is the bounden duty of the Income Tax Authority concerned to take steps for recovery of the demand arises from such assessment order and law empowers them to take recovery steps against the persons who were directors at the relevant point of time. This Court cannot shut its eyes towards ground reality that department is not in a position to recover this genuine and valid Government revenue from the company since the same is no more in existence. Though learned advocate appearing for the petitioner contends that no claim was lodged before the Official Liquidator in accordance with law though learned advocate appearing for the respondent submits that claim was lodged before the Official Liquidator on the basis of instruction from the respondent Authority concerned.

Without going into these disputed facts that whether claim was lodged before the Official Liquidator, admitted position today which exists on the basis of report of the Official Liquidator is that even if the respondent Income Tax Authority wants to recover the demand from

the said company, it is not in existence and has already been dissolved in March 2013 upon formal advertisement in the newspaper as stated in the report of the Official Liquidator and no fund is lying with it.

Considering these facts, this Court cannot interfere with the impugned recovery proceeding and garnishee notices in this writ petition and stop the respondent from realising valid Government revenue from the petitioners since at present there is no option before them to recover this demand except from the petitioners.

Considering the facts and circumstances of the case, this writ petition being WPO 213 of 2013 is dismissed. No order as to costs.

(MD. NIZAMUDDIN, J.)

