

# RAJASTHAN HIGH COURT

Commissioner Of Income-Tax.

Vs.

Official Liquidator, Golcha Properties (P) Ltd.

D.B. Special Appeal No. 125 of 1972

(B.P. Beri, C.J. and V.P. Tyagi, J.)

10.04.1973

## JUDGMENT

**V.P. Tyagi, J.**

1. The Commissioner of Income-tax (Central), New Delhi, and the Income-tax Officer, Central Circle III, Jaipur, have filed this special appeal under Section 483 of the Companies Act, 1956, read with Section 18 of the Rajasthan High Court Ordinance, 1949, against the order of the learned company judge dated 22nd March, [since reported as *Official Liquidator, Golcha Properties (P) Ltd. (In Liquidation) v. Income Tax Officer, Central Circle, III, Jaipur, and others*,<sup>1</sup>

2. The facts giving rise to this appeal are, in a nutshell, as follows:

2.1 After Messrs. Golcha Properties (Private) Ltd. (hereinafter called " the company ") was ordered on 10th May, 1968, to be wound up, the Income-tax Officer, Central Circle-I, Jaipur (who was then the assessing authority for the said company), sent a letter on 29th August, 1961, to the official liquidator, notifying to the company that ₹ 41 lakhs were payable or likely to be payable as income-tax by the company to the department and, therefore, he was specifically directed to set apart this amount under Section 178 of the Income-tax Act, 1961 (hereinafter called " the Act "). The official liquidator wrote back to the Income-tax Officer, vide his letter dated 3rd October, 1968, that such a direction could be issued to him only after obtaining leave of the High Court under Section 446 of the Companies Act, 1956, but the Income-tax Officer did not agree with this suggestion. The official liquidator was under the circumstances forced to. move an application before the High Court under

Section 460(4) of the Companies Act and stated in his application that out of the amount of ₹ 41 lakhs of the estimated tax as pointed out by the Income-tax Officer, the claim of the tax liability was admitted by him only to the extent of ₹ 1,12,583 and the balance claim amounting to ₹ 39,87,417 had been rejected for reasons set forth in his order dated 30th October, 1971. He also mentioned in that application that the amount of tax found payable after the assessments shall be treated as ordinary claim and not as preferential claim under Section 530 of the Companies Act and, accordingly, the estimated amount of tax that will rank as ordinary claim like that of unsecured creditors cannot be ordered to be set apart. His grievance further was that the income-tax department was not prepared to see reason when it insisted to set apart a sum of ₹ 41 lakhs as notified under Section 178 of the Act even though a suggestion was made by him that he will provide a security for the amount as might be mutually agreed upon. The official liquidator, therefore, described this demand of the income-tax department as arbitrary and expressed his apprehension that if the estimated amount of tax is not set apart then under the law he will be personally liable and if he obeyed the command of the Income-tax Officer then the amount shall be frozen for an indefinite time and it would cause unnecessary impediment in the winding up proceedings as he would not be able to declare any dividend to the unsecured creditors of the company. Since all these questions related to the winding-up of the company and arise in the course of winding-up he prayed that the learned company judge had jurisdiction to entertain and dispose of these questions under Section 446(2) read with Section 460(4) of the Companies Act. After giving notice of this application to the Income-tax Officer and the Commissioner of Income-tax, Central Circle, New Delhi, the learned judge came to the conclusion that as the jurisdiction exclusively vests in the company judge leave of the court is necessary under Section 446 of the Companies Act to get the estimated amount of tax notified by the Income-tax Officer to be set aside under Section 178 of the Act. The learned company judge, therefore, held that the proceedings to be taken by the official liquidator under Section 178 of the Act are subject to the provisions of Section 446 of the Companies Act. In this view of the matter, the learned judge quashed the notice annexure " 1 " as it was issued without obtaining the leave of the court under Section 446 of the Companies Act and a direction was issued to the liquidator not to comply with the notice issued by the Income-tax Officer. It is against this order of the

learned company judge that the present appeal has been preferred by the revenue.

3. Mr. Gupta, appearing on behalf of the department, urged that the provisions of Section 178 of the Act are independent of the provisions of Sections 446 and 530 of the Companies Act and, therefore, the requirements of Section 178 of the Act cannot in any manner be whittled down by taking resort to the provisions of Section 530 or 446 of the Companies Act. He also contended that the Income-tax Act is a complete code in itself and the act of quantifying the tax against the company in liquidation cannot in any manner be subjected to the jurisdiction of the company judge under Section 446 of the Companies Act. According to Mr. Gupta the official liquidator was under a statutory duty to comply with the requirements of Sub-Section (3) of Section 178 when the amount of tax was duly quantified by the Income-tax Officer and notified to the official liquidator under Sub-Section (2) of Section 178 of that Act.

4. Mr. Rastogi, appearing on behalf of the official liquidator, on the other hand, argued that the provisions of Sub-Section (3) of Section 178 of the Act, which deal with the step in aid of the recovery of tax, cannot operate independently of the provisions of the Companies Act. His argument is that simply because the amount of tax has been notified under Sub-Section (2) of Section 178 it does not place the tax liability of the company at a footing higher than the other unsecured debts of the company, as according to him tax liability ranks paripassu with other unsecured debts. In these circumstances, it was urged that payment of tax could be made only after all the unsecured debts against the company were admitted by the liquidator and the assets in the hands of the liquidator permitted him to declare dividends to pay off unsecured debts. He further urged that when the official liquidator sets aside the amount of tax under Sub-Section (3) he should be deemed to have initiated a proceeding in aid of recovery of the debt relating to tax and this action of the liquidator falls within the expression " legal proceeding " as used in Section 446 of the Companies Act which attracts the jurisdiction of the company judge. The leave of the court, therefore, becomes necessary before the entire amount as notified by the Income-tax Officer is set apart to ensure the ultimate payment of the tax to the income-tax department during the course of the winding-up of the company. Mr. Rastogi further argued that if the entire amount of ₹ 41 lakhs as demanded by the income-tax department was set aside, then the official liquidator would be left with no funds to pay the dividends to other creditors and since income-tax dues rank pari passu with other unsecured debts,

neither the income-tax department shall get anything out of the funds available with the official liquidator nor shall the creditors be paid any dividend. There is, however, no dispute between the parties that the amount of ₹ 41 lakhs does not include any such amount of tax which may get preference within the provisions of Section 530(1)(a) of the Companies Act over other unsecured debts.

5. Other creditors have been represented by Mr. Balram Sangal who also urged that the assets of the company in liquidation cannot be reached by the revenue without the leave of the court and in that connection reliance has been placed on certain observations of the Supreme Court in *S.V. Kondaskar, Official Liquidator and Liquidator of the Colaba Land and Mills Co. Ltd. v. V.M. Deshpande, Income-tax Officer, Companies Circle* <sup>2</sup>

6. These rival contentions of the parties raise an important question of law: Whether the official liquidator while taking action under Section 178(3)(b) of the Act is subject to the control and supervision of the company judge so as to attract the provisions of Section 446 of the Companies Act of 1956.

7. In order to understand the true scope and the nature of the provisions of Section 178 of the Act it will be relevant to examine the scheme of this Section. Section 178 of the Act reads as follows:

"178(1). Every person-

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of a company, (hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Income-tax Officer who is entitled to assess the income of the company.

(2) The Income-tax Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Income-tax Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator-

(a) shall not, without the leave of the Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Income-tax Officer under Sub-Section (2); and

(b) on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands:

Provided that nothing contained in this sub-Section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with subSection (1) or fails to set aside the amount as required by Sub-Section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-Section, he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under Sub-Section (2), the personal liability of the liquidator under this sub-Section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this Section shall attach to all the liquidators jointly and severally.

(6) The provisions of this Section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force."

8. According to this provision of law, as soon as a liquidator is appointed for the company ordered to be wound up, it becomes the duty of the liquidator to notify his appointment to the Income-tax Officer within a period of thirty days. On receipt of this information, the Income-tax Officer shall make such enquiries and call for such information as he may deem fit, and shall determine the estimated amount of tax which is payable or likely to be payable by the company and shall notify the same to the liquidator within a period of three months from the date of the receipt of the appointment of the liquidator. Sub-Section (3) of this Section requires that if the liquidator has to part with the assets of the company or has to sell its properties in his

hands, then he can do so before the receipt of the estimated tax liability of the company with the leave of the Income-tax Commissioner." After the estimated tax liability is notified to the liquidator, then it becomes incumbent under Sub-Section (3)(a) for the liquidator to set aside the amount equal to the amount so notified to him and not to part with that amount or the assets of the company in his hands. There is, however, one exception to this rule that the liquidator has the liberty to part with the assets or the properties of the company for making any payment to secured creditors whose debts are entitled under the law to get priority over debts due to the Government. Sub-Section (4) of this Section deals with the contingency as to what will be the consequences if the liquidator fails to comply with the mandate of law contained in Sub-Section (3) and the legislature makes the liquidator personally liable for tax if he fails to set aside the amount of tax duly notified to him and he is also made punishable for the contravention of this provision under Section 276A of the Companies Act. This provision of the Act has been enacted by the legislature with a view to ensure the payment of the legitimate dues of the income-tax department and the official liquidator may not by his manoeuvring deprive the revenue of its dues by disposing of the assets of the company in liquidation as was the experience of the department in certain voluntary winding-up proceedings of certain private companies. But the question is whether the safeguard provided by the statute does, in any manner, make the claim of the revenue preferential to the claim of other unsecured debtors under the company law and take away the proceedings to be taken by the liquidator under Section 178(3)(b) beyond the purview of the provisions of Section 446 of the Companies Act.

9. Section 178 of the Act can, for this purpose, be conveniently divided into two parts, one dealing with the duty of the Income-tax Officer and the other relating to the action to be taken by the official liquidator. So far as the question of quantifying the amount of tax is concerned, the contention of Mr. Gupta is that it is entirely within the competence of the Income-tax Officer to compute the amount of tax which may be found payable or which may become payable by the company. This computation, according to Mr. Gupta, is to be done in accordance with the provisions of the Income-tax Act which is a complete code in itself and not in any manner subjected to the provisions of the Companies Act. This argument of Mr. Gupta finds support from the judgment of the Supreme Court in *S.V. Kondaskar v. V.M. Deshpande*,<sup>3</sup> Mr. Rastogi has no quarrel with this proposition of law that the quantification of tax liability of the company is entirely within the jurisdiction of the income-tax hierarchy and the amount

so notified by the Income-tax Officer cannot be subjected to the scrutiny of the company judge under Section 446 of the Companies Act. But, his case is that after the tax liability of the company is determined by the Income-tax Officer the question of its realization from the assets of the company in liquidation is governed purely by the provisions of the Companies Act and according to Section 530 of the Companies Act the tax liability of the company is treated as an ordinary debt and it ranks pari passu with other unsecured debts of the company and such a debt cannot be put on a higher level and cannot be given any priority over the debts of other unsecured creditors. His argument, therefore, is that if the tax liability of the company as notified by the Income-tax Officer under Section 178 of the Act is given any preference to the other unsecured debts and the entire amount of ₹ 41 lakhs is set aside by the liquidator, then the unsecured creditors in this case would not get any dividends from the liquidator, and the department would also not receive any payment till the assessments are completed and the position of the tax liability vis-a-vis other unsecured debts is determined by the liquidator and, therefore, this heavy amount shall remain frozen for the benefit of none and eventually the revenue shall not get the whole amount as the debt relating to tax shall stand at par with other unsecured debts. In these circumstances, Mr. Rastogi contends that by keeping this amount of ₹ 41 lakhs idle with the liquidator, neither the revenue nor shall the unsecured creditors be benefited and in that event when the Income-tax Commissioner did not pay any heed to the request of the official liquidator, he was left with no alternative but to apply to the company judge under Section 460(4) read with Section 446 for seeking instructions. According to Mr. Rastogi, the act of setting aside of the amount of tax notified to the official liquidator is a step in aid for the recovery of the tax and since it has got to be done by the official liquidator in accordance with the provisions of the law, this action of the liquidator comes within the purview of the expression " legal proceedings " as used in Section 446 of the Companies Act and since no legal proceedings can commence after the winding-up order has been made without the leave of the court, it was well within the right of the liquidator to approach the court under Section 446 of the Companies Act and the learned company judge has jurisdiction to entertain such request of the liquidator to decide the question raised therein.

10. This argument brings us to the scrutiny of the provisions of Section 446 of the Companies Act. Section 446 reads as follows:

"446. Suits stayed on winding-up order.--(1) When a winding-up order has been made or the official liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding-up order, shall be proceeded with, against the company, except by leave of the court and subject to such terms as the court may impose.

(2) The court which is winding-up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of-

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under Section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the company;

whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding-up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

(3) Any suit or proceeding by or against the company which is pending in any court other than that in which the winding-up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that court.

(4) Nothing in Sub-Section (1) or Sub-Section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court."

11. A careful examination of Section 178 of the Act reveals that Sub-Section (3) of that Section casts a statutory duty on the liquidator to set aside an amount equal to the amount notified under Sub-Section (2) of that Section and till it was done the liquidator is debarred from parting with any of the assets of the company. The object of this provision of law is to ensure the ultimate recovery of the tax which may eventually be found due against the company. The argument of Mr. Rastogi is that the provisions of Sub-Section (3)(b) of Section 178 of the Act is a step in aid of recovery of tax from the company as it guarantees the preservation of funds to the extent to which the company is likely to pay the amount of tax as notified to the liquidator and

any step taken by the liquidator in accordance with this provision of the statute would, therefore, fall within the expression " legal proceeding " so as to attract the application of Sub-Section (1) of Section 446 of the Companies Act. The question which in the light of the aforesaid argument arises for our determination is whether the action taken by the liquidator under Section 178(3)(b) of setting aside the amount as notified by the Income-tax Officer under Section 178(2) of the Act can be said to be "legal proceeding " so as to attract the application of Section 446 of the Companies Act.

12. A question as to what is the true meaning and the scope of the expression " legal proceedings" came up for examination before the Federal Court in *Governor-General in Council v. Shiromani Sugar Mills Ltd*<sup>4</sup>

16. and the learned judges, while examining this question in the context of the recovery proceedings started by the revenue under Section 46 of the Indian Income-tax Act of 1922, observed as follows :

" That still leaves open the question whether action under Section 46, Income-tax Act, is covered by the phrase ' other legal proceeding '. Clearly it is not a proceeding in an ordinary court of law. But we see no reason why in British India no ' legal proceeding ' can be taken otherwise than in an ordinary court of law, or why a proceeding taken elsewhere than in an ordinary court of law, provided it be taken in a manner prescribed by law and in pursuance of law or legal enactment, cannot properly be described as a ' legal proceeding '."

13. These observations of the Federal Court leave no room for doubt that the action taken by, the official liquidator in accordance with the provisions of Section 178(3)(c) to set aside the amount of tax duly notified under Sub-Section (2) of Section 178 is a proceeding which can conveniently be termed as " legal proceeding ".

14. Section 446 of the Companies Act puts a ban on suits or other legal proceeding to be commenced or if pending at the date of the winding up to be proceeded with against the company except by leave of the court and subject to such terms as the court may impose. There is a reason behind imposition of such a ban by the legislature and it is that the winding-up proceedings may not be hampered by any outside agency and proceed smoothly under the supervision of the winding-up court. If any dispute regarding the affairs of the company arise during the course of the pendency of the

winding-up proceedings then such a dispute under the scheme of the Companies Act should be settled by the company judge under Section 446 of that Act so that agencies not knowing the true state of affairs of the winding-up of the company may not interfere with the functioning of the liquidator who has to wind up the company under the direct supervision of the winding-up court. It is with this view that the legislature has centralized the power of supervision in the company judge and a statutory ban is put on the institution of suits or initiation of legal proceedings without the leave of the court. It is in this scheme of the statute that we have to see whether provisions of Section 446 of the Companies Act are attracted to the circumstances of the instant case. If during the course of the winding-up the official liquidator is required by the Income-tax Officer to deal with the assets of the company in a particular manner and to set aside the funds of the company exclusively for the payment of tax liability then would this direction of the Income-tax Officer, which is undoubtedly issued under a statutory provision, take away the supervisory jurisdiction of the company judge so as to render him a helpless and a silent spectator to the developments which take place on account of the action of the Income-tax Officer under Section 178 of the Act which in the opinion of the official liquidator create impediment in the winding-up of the company, and the freezing of the amount proves beneficial to none including the revenue. The scheme of Section 178 of the Act when carefully examined in the light of the provisions of the Companies Act, then the only harmonious construction that can be given to this provision is that so far as the duty is cast on the Income-tax Officer to quantify the estimated amount of tax liability of the company and to notify the same to the liquidator he cannot in any manner be subjected to the supervision of the company judge but as regards the setting aside of the quantified amount of tax is concerned the provisions of Section 446 of the Companies Act are attracted as the act of the liquidator can be said to have been covered by the expression "legal proceeding" as used in Section 446 of that Act.

15. Apart from the fact that the proceedings initiated by the official liquidator under Sub-Section (3) of Section 178 of setting aside the notified amount falls under the expression "legal proceeding " it is necessary that the court should see that the liquidator proceeds in accordance with other provisions of the Companies Act which are to be strictly followed by him in the matter of disbursing the assets of the company. Section 530 in this connection may be referred to which deals with the preferential claims of the creditors. The tax liability which does not fall within the expression " preferential payment " under Section 530(1) of the Companies Act is to

rank pari passu in the matter of disbursement of the assets with the unsecured debts of the creditors of the company and, therefore, it cannot be treated as a preferential claim in the matter of payment. If the revenue starts claiming that the amount notified by the Income-tax Officer under Sub-Section (2) of Section 178 of the Act must be given preference over other debts which are to be paid by the company to its unsecured creditors then such a claim would run contra to the scheme of the Companies Act and the duty is cast on the winding-up court to see that the provisions of the Companies Act and that of the Income-tax Act are to be given a harmonious construction in order to avoid such a conflict. Every debt of the insolvent company during the course of the winding-up proceedings shall be admissible to proof against the company. The tax due under the Act also falls within the expression "debt" and after the same has been quantified by the department it is also admissible to proof before the liquidator. The effect of all these statutory provisions is, inter alia, that all the unsecured debts are to rank pari passu and in the matter of payment no preference is to be given to the debt relating to the tax liability unless it falls within the provisions of Section 530(1) of the Companies Act. Therefore, when the claim of the revenue is proved in the liquidation proceedings, it is treated as the unsecured debt and the department cannot claim any preference over other creditors in the matter of payment because certain amount has been set aside to ensure the payment of the debt under Sub-Section (3) of Section 178 of the Act. It is also clear that while setting aside the notified amount under the provision of Section 178(3) of the Act, the department does not get any immunity from the operation of the provisions of the Companies Act as the liability of tax also ranks pari passu with other debts and it has accordingly to be paid to the revenue treating the debt as one of an unsecured creditor like other creditors. In view of this position in law, it is necessary for the winding-up court to exercise its supervisory jurisdiction under Section 446 of the Companies Act in the matter of setting aside the company's funds or assets in pursuance of the instructions issued by the Income-tax Officer under Section 178(2) of the Act and it is the duty of the court to show light to the liquidator as to how he should proceed in the matter of setting aside the amount notified to him under Sub-Section (2) of Section 178 of the Act.

16. In *Union of India v. India Fisheries (Private) Ltd.*<sup>5</sup> a question arose before the Supreme Court that in view of the provisions of Section 49E of the Indian Income-tax Act, 1922, the tax due to the department must get priority over other unsecured creditors in spite of the provisions of Sections 228 and 229 of the Companies Act of 1913, which are analogous to Section 530 of the Companies Act, 1956. In that

connection their Lordships observed:

" If we were to read Section 49E in the way suggested by the learned Additional Solicitor-General, it would be defeating the very object underlying Sections 228 and 229 of the Companies Act, 1913."

17. On the strength of these observations, it can safely be said that if the proceedings taken by the liquidator under Sub-Section (3) of Section 178 is taken out of the control and the overall supervision of the company judge under Section 446 of the Companies Act, then it would defeat the entire scheme of the Companies Act about the disbursement of the company's assets during the winding-up proceedings because a situation may arise when the entire assets of the company may be frozen by the Income-tax Officer while notifying the amount of tax liability under Section 178 of the Act and both the creditors as well as the department may not gain out of these proceedings and the interim dividends which the liquidator may declare to the creditors of the company including the revenue have to be deferred because of the demands raised by the income-tax department which may not in its entirety be eventually paid to the department because its claims are to rank *pari passu* with other unsecured creditors who may take a lion's share in the assets of the company.

18. Mr. Gupta, appearing for the revenue, cited before us a Supreme Court authority in *S. V. Kondaskar v. V. M. Deshpande*,<sup>6</sup> to suggest that the matters relating to tax assessments do not fall within the supervision of the company judge under Section 446 of the Companies Act. The question raised before the Supreme Court in that case was whether the assessment of tax under the Act against a company in liquidation was also subject to the jurisdiction of the company court under Section 446 of the Companies Act. Considerable stress was laid on the expression " suit or legal proceeding " to bring the action of the Income-tax Officer in the matter of assessment or reassessment of tax against the insolvent company in liquidation, but their Lordships rejected that argument by observing :

" Turning now to the Income-tax Act, it is noteworthy that Section 148 occurs in Chapter XIV which beginning with Section 139 prescribes the procedure for assessment and Section 147 provides for assessment or reassessment of income escaping assessment. This Section empowers the Income-tax Officer concerned subject to the provisions of Sections 148 to 153 to assess or reassess escaped income. While holding these assessment proceedings the Income-tax Officer

does not, in our view, perform the functions of a court as contemplated by Section 446(2) of the Act. Looking at the legislative history and the scheme of the Indian Companies Act, particularly the language of Section 446 read as a whole, it appears to us that the expression 'other legal proceeding' in Sub-Section (1) and the expression 'legal proceeding' in Sub-Section (2) convey the same sense and the proceedings in both the sub-Sections must be such as can appropriately be dealt with by the winding-up court. The Income-tax Act is, in our opinion, a complete code and it is particularly so with respect to the assessment and reassessment of income-tax with which alone we are concerned in the present case."

19. These observations throw light as to what type of legal proceedings can attract the jurisdiction of the winding-up court. According to their Lordships, only those proceedings which can properly be dealt with by the winding-up court shall attract the application of Section 446 of the Companies Act. In this connection, the learned judges observed that assessment and reassessment of income-tax with which they were concerned is the function of the Income-tax Officer under the Income-tax Act and, therefore, the winding-up court cannot perform that duty which is to be done by the Income-tax Officer in the hierarchy of the department under the Income-tax Act which is a complete code by itself, but in the matter of recovery of tax computed by the Income-tax Officer, their Lordships observed as follows:

" The fact that after the amount of tax payable by an assessee has been determined or quantified its realization 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."

20. The learned judges of the Supreme Court were concerned in that case only with the process of assessment or reassessment of tax and not with the recovery thereof. As regards the recovery of such tax which rank pari passu with other unsecured debts due from the company, their Lordships by making the aforesaid observations suggested that the question of recovery of debt stands on a different footing from the process of quantifying the amount of tax realizable from the company. On a careful perusal of

this authority of the Supreme Court, we can safely say that it does not help Mr. Gupta who has cited this authority before us. On the contrary we find support for the view that the process of recovery of tax which rank as a debt pari passu with other unsecured debts due from the company could not be taken away from the purview of Section 446 of the Companies Act.

21. In view of these discussions, we are of opinion that the impugned order passed by the learned company judge does not call for any interference. The appeal, therefore, fails and it is hereby dismissed. No order as to costs.

22. Appeal dismissed.

Cases Referred.

1. (1973) 1 Comp lj 528 (Raj)
2. I(8), Bombay, (1972) 1 Comp LJ 55 (SC) : (1972) 83 ITR 685 : 42 Comp Cas 168 (SC)
3. (1972) 1 Comp LJ 55 (SC): (1972) 83 ITR 685: 42 Comp Cas 168 (SC)
4. (1946) 14 ITR 248, 257: (1946) 16 Comp Cas 71,79 : AIR 1946 FC 16
5. (1965) 2 Comp LJ 71 (SC): [1965] 57 ITR 331, 334: 35 Comp Cas 669, 67: [1965] 3 SCR 679: AIR 1966 SC 35.
6. (1972) 1 Comp LJ 55 (SC): [1972] 83 ITR 685: 42 Comp Cas 168, (SC)