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**SooperKanoon Citation :** [sooperkanoon.com/869375](http://sooperkanoon.com/869375)

**Court :** Kolkata

**Decided On :** Feb-07-1973

**Reported in :** [1974]95ITR486(Cal)

**Judge :** Sabyasachi Mukharji, J.

**Acts :** [Income Tax Act, 1922](#) - Section 46(1); ;[Estate Duty Act, 1953](#) - Section 73(5); ;Bengal Public Demands Recovery Act

**Appeal No. :** Matter No. 318 of 1966

**Appellant :** Jibanitosh Ghatak

**Respondent :** Assistant Controller of Estate Duty-cum-income-tax and ors.

**Judgement :**

**Sabyasachi Mukharji, J.**

1. The petitioner in this application challenges three orders, namely, orders dated 30th of March, 1964, 27th of April, 1964, and 8th of June, 1966, being annexures ' E ', ' F ' and ' G ' to the petition. These are orders of penalty passed under Section 73(5) of the [Estate Duty Act, 1953](#), read with Section 46(1) of the Indian Income-taxAct, 1922. It appears that one Bhabatosh Ghatak died on 15th of January,

1957. Then in September, 1957, return of assets under the Estate Duty Act was filed. Then on 31st of March, 1958, there was initial payment of duty of Rs. 6,889.90. On 28th of July, 1958, there was assessment of duty at Rs. 1,33,129.20; On 1st of August, 1958, there was a demand for Rs. 1,26,239.30 less Rs. 6,889.90 already paid. The petitioner thereafter applied for payments of the dues by instalments and they paid certain instalments between March, 1959, and April, 1960. Inasmuch as the petitioner had failed to pay the balance in accordance with the instalments granted, a certificate under the Bengal Public Demands Recovery Act was forwarded for Rs. 97,239.30 on the 30th of April, 1960. On the 9th of July, 1960, the certificate officer issued notice under Section 7 of the Bengal Public Demands Recovery Act on the petitioner. On the 20th October, 1960, the certificate officer directed payment of instalments of Rs, 800 per month. Payments have been made according to the instalments granted by the certificate officer. But on the 30th March, 1964, inasmuch as the duty was outstanding for about Rs. 70,000, penalty was imposed because the assessee had defaulted in payment of the dues in accordance with the instalments granted to him as mentioned in paragraph 7 of the petition. Thereafter, two subsequent orders were passed on 24th April, 1964, and 18th January, 1966, imposing further penalties. The petitioner on the 10th June, 1966, moved this application under Article 226 of the Constitution and obtained a rule nisi.

2. The only contention in support of this application is that under Section 46(1) of the Indian Income-tax Act, 1922, a penalty can be imposed only when an assessee 'is in default' in making the payment of income-tax and by virtue of Section 73(5) of the [Estate Duty Act, 1953](#), such power can also be exercised when an assessee is in default in payment of the dues under the Estate Duty Act. But, it was contended that when instalments had been granted by the certificate officer under the Bengal Public Demands Recovery Act, the petitioner was not 'in default' and could not be considered to be an assessee in default. The Indian Income-tax Act, 1922, and by incorporation of the said provision of applicability to the [Estate Duty Act, 1953](#), provides for the liability of the assessee to make the payment in accordance with the Act. Section 45 of the Act stipulates the time when tax dues have to be paid and when an assessee should be considered to be in default and not to be in default. When an order of payment by instalments has

been made pursuant to the Act and the assessee fails to pay the instalment in accordance with the order for instalment granted, the assessee, in my opinion, would be in default under the Indian Income-tax Act, 1922, and in this case under the [Estate Duty Act, 1953](#). It is immaterial that he is not in default under the provisions of the Bengal Public Demands Recovery Act. The time for imposing penalty is regulated by the provisions of the Indian Income-tax Act, 1922, read with the [Estate Duty Act, 1953](#). It is independent of the certificate proceedings. When an assessee is in default he incurs the liability of having certificate proceedings initiated against him as also of the penal provisions contemplated under the Act. It is open to the department to proceed with both or either of these proceedings; one is not exclusive of the other in the scheme of the Act unless specifically enjoined by the Act. It is in any event not so in the case of imposing penalty when an assessee is in default under Section 46(1) of the Act.

3. In the aforesaid view of the matter the petitioner is not entitled to any relief under Article 226 of the Constitution. In the premises, this application fails and is accordingly dismissed. Rule nisi is discharged. Interim order is vacated. There will be no order as to costs on this application.