

Ranjit Singh

Vs

Commissioner of Income-Tax, U.P., & Others

Petition No. 85 of 1959

(T. L. Venkatarama Ayyar, S. K. Das, J. L. Kapur, JJ )

14.04.1961

JUDGMENT

S. K. DAS, J. –

One Ranjit Singh is the petitioner before us. The respondents are Commissioner of Income-tax, Lucknow, the Income-tax Officer, Lucknow, and the Collectors of three districts in Uttar Pradesh, namely, Dehra Dun, Kanpur and Lucknow, being officers under whose orders certain properties of the petitioner and his family have been attached in pursuance of a notice of demand issued section 29 of the Indian Income-tax Act, 1922, in circumstances which we shall presently state.

The facts are shortly these : In 1948, the Central Government referred a number of cases in which the petitioner was concerned to the Income- tax Investigation Commission set up under the relevant provisions of the Taxation on Income (Investigation Commission) Act, 1947 (XXX of 1947), hereinafter referred to as the Act. On May 30, 1948, the Secretary of the Commission issued a notice to the petitioner to furnish a list of businesses or concerns in which the petitioner was interested and to produce the account books, registers, etc., relating thereto. The petitioner complied with the notice. Then an authorised official appointed by the Commission commenced an investigation into the cases in February, 1949, and in due course submitted a report to the Commission. The Commission heard the petitioner and on April 16, 1949, submitted a report under section 8A(I) of the Act. The findings of Commission appear from the following extract from their report :

"The total tax payable on the undisclosed income up to March 31, 1947, would accordingly be Rs. 6,61,917...

The amount of Rs. 6,61,917 may be recovered from Mr. Ranjit Singh and from the family assets in the hands of Mr. Ranjit Singh. In view of the admission recorded as number (III) in paragraph 6 supra, the tax will also be recoverable from the properties acquired between 1939 and 1947 in the names of Mrs. Ranjit Singh and Mr. Ranjit Singh's sons, Baljit Singh and Satendrajit Singh. In the circumstances, we recommend that no penalty be levied on the assessee in respect of nondisclosures and false or incorrect statements so far made either to the income- tax authorities or in the course of the present proceedings (including those before the authorised official). Mr. Ranjit Singh and Mr. Vaidyanath Ayyar representative of Mr. Ranjit Singh) have asked that they be allowed sufficient time to pay up the tax. It has been represented that out of taxes already assessed by the Income-tax Department about Rs. 3,86,000 is still due and the addition of the amount Rs. 10.5 lakhs. Mr. Ranjit

Singh has asked that he

Then, on November 7, 1949, the petitioner, his wife and two sons submitted a petition to the Commission in which they accepted the findings of the Commission as correct and offered to pay the tax in instalments in accordance with certain terms of settlement., some of these terms are :

"We offer to pay the aforesaid amount of Rs. 6,61,917 as per the following instalment :

(1) on or before the 31st March, 1951 : Rs. 1,00,000.

(2) on or before the 31st March, 1952 : Rs. 2,31,000.

(3) on or before the 30th June, 1952 : Rs. 3,30,917.

(4) We, however, pray that so far as the last instalment is concerned in case we are unable to pay the same by the date mentioned above and are able satisfy the Central Board of Revenue that we have failed to raise the money for reasons beyond our control and for no fault of our own, a suitable extension of time may be granted.

(5) In respect of the other instalments, we agree that in case of default in the payment of any one of them, the whole amount of tax outstanding at the time shall become immediately payable."

The report of the Commission and the terms suggested by the petitioner for a settlement were accepted by the Central Government and an order was passed under section 8A(2) of the Act on November 21, 1949, which stated in its operative part that a demand notice be served immediately by the Income-tax Officer concerned under section 29 of the Indian Income-tax Act, 1922, on the petitioner in accordance with the terms and conditions of settlement and that all such other proceedings under the Indian Income-tax Act or under any other law as may be necessary be taken with a view to enforce the payment of the demand and terms and conditions of the settlement.

The respondents allege that a demand notice was accordingly issued to the petitioner on December 2, 1949. The petitioner alleges, however, that he received the notice in or about April, 1950, after the Constitution of India had come into force. Thereafter in pursuance of the demand notice certain payments were made by the petitioner. The petitioner was, however, unable to make full payment within the stipulated periods mentioned in the demand notice. The result was that according to the terms of settlement the whole amount outstanding at the time became immediately payable by the petitioner. Then, certain properties of the petitioner and his family were attached by the Collector of the district concerned in pursuance of the orders received from time to time from the Income-tax Officer.

On June 8, 1959, the petitioner filed the present writ petition challenging the legality of the demand notice dated December 2, 1949 and the subsequent proceedings taken in pursuance of that notice. The case of the petitioner is that after the coming into force of the Constitution of India on January 26, 1950 the demand notice could not be given effect to and the proceedings taken in pursuance of that notice are unconstitutional inasmuch as they violate his fundamental rights guaranteed by the Constitution. In the petition a reference has been made to articles 14, 31, and 19(1)(g) of the Constitution, but the argument before us has proceeded on the contention urged on behalf of the

petitioner that there has been a violation of the fundamental right of equal protection of the laws guaranteed to him under article 14 of the Constitution inasmuch as he has been dealt with differently from other debtor who owe money to the State under a contractual liability. The substantial prayer of the petitioner is for the i

The petition has been contested by the respondents and the principal point taken on their behalf is that the legality of the demand notice dated December 2, 1949 cannot be challenged by the petitioner on the strength of the provisions of the Constitution, because the Constitution is prospective and not retrospective; secondly, it is contended on behalf of the respondents that the subsequent proceedings taken in pursuance of the demand notice aforesaid do not in any way violate the right of equal protection of the laws guaranteed under article 14 of the Constitution.

It is convenient at this stage to refer to some of the earlier decisions of this court on the question of constitutionality of some of the provisions of the Act. On May 28, 1954, this court delivered judgment in Suraj Mall Mohta and Co. v. Visanatha Sastri It is not necessary to state the facts of that decision. It is enough to say that it was held therein that sub-section (4) of section 5 of the Act was bad, as it offended the provisions of Article 14 of the Constitution. Sub-section (4) of section 5 of the Act having been declared void, Parliament passed the Indian Income-tax Amendment Act (33 of 1954) amending section 34 of the Indian Income-tax Act, 1922. As a result of this amendment, the validity of sub-section (1) of section 5 of the Act came in for challenge on the ground that the Income-tax Officer could pick out some out of the class of substantial tax evaders and refer their cases under sub-section (1) of section 5 while dealing with other such persons under the amended section 34 of the Indian In

"The result therefore, is that barring the cases of persons which were already concluded by reports made by the Commission and the directions given by the Central Government under section 8(2) of Act XXX of 1947 culminating in the assessment or reassessment of the escaped income, those cases which were pending on the 26th January, 1950, for investigation before the Commission as also the assessment or reassessment proceedings which were pending on the 26th of January, 1950, before the Income-tax Officers concerned in pursuance of the directions given by the Central Government under section 8(2) of the Act would be hit by article 14 of the Constitution and would be invalidated."

Lastly, came the decision in Basheshar Nath v. Commissioner of Income- tax. That was a case of a settlement under section 8A of the Act as in the present case, but the fact which distinguishes that case from the present is that the settlement there was made after the commencement of the Constitution. It was held therein that the settlement was the result of a procedure which become discriminatory after the commencement of the Constitution and was therefore bad, and as the discriminatory process of investigation continued even after the commencement of the Constitution, the principle laid down in Syed Qasim Razvi v. State of Hyderabad did not apply.

The point which requires emphasis with regard to these earlier decisions is this; they all dealt with the operation of a discriminatory procedure under the different provisions of the Act after the commencement of the Constitution. The position in the case under our present consideration is that settlement, the order under section 8A(2) of the Act, and even the notice of demand in pursuance of that order - all these took place before the coming into force of the Constitution, and this vital distinction must borne in mind in considering the contentions urged by learned counsel for the petitioner.

The main contention is that the proceedings taken against the petitioner in pursuance of the order under section 8A(2) are violative of the guarantee of equal protection of the laws under article 14 of the Constitution. There are, however, two subsidiary contentions which do not directly raise any question of the violation of a fundamental right, and these may be disposed of before we deal with the main contention.

In his petition the petitioner has stated that he received the demand notice dated December 2, 1949 in or about April 1950. In the counter-affidavit of the respondents it has been stated that the assessee was informed of the demand early in December, 1949. A copy of the order of the central Government under section 8A(2) of the Act dated November 21, 1949 was sent to the petitioner; there is an endorsement in the office copy of the demand notice dated December 2, 1949 that it was sent by registered post, acknowledgment due. Thereafter, the petitioner paid part of the tax on different dates without raising any objection that he had not received the demand notice before April, 1950. It was for the first time in April, 1959, some ten years after, that the petitioner asked for a copy of the order under section 8A(2) and information as to the date when he had received the registered notice of demand. He also asked for an inspection of the file. This was, however, refused. Then, the petitioner made the statement

On the construction of section 8A of the Act it has been argued that after the order made by the central Government under sub-section (2) thereof, a fresh assessment was necessary and as no such assessment was made, all subsequent proceedings for recovery of the tax are illegal. This is a point which has not been specifically taken in the petition. That apart, we do not think that there is any substance in this contention. We may here read section 8A, so far as it is relevant.

"8A. (I) Where any person concerned in any case referred to or pending before the commission for investigation applies to the commission at any time during such investigation to have the case or any part thereof settled in so far as it relates to him, the commission shall, if it is of opinion that the terms of the settlement contained in the application may be approved, refer the matter to the Central Government, and if the Central Government accepts the terms of such settlement, the commission shall have the terms thereof recorded and thereupon the investigation, in so far as it relates to matters covered by such settlement, shall be deemed to be closed.

(2) For the purpose of enforcing the terms of any settlement arrived at in pursuance of sub-section (I), the central Government may direct that such proceeding as may be appropriate under the Indian Income-tax Act, 1922 (XI of 1922), the Excess Profits Tax Act, 1940 (XV of 1940), or any other law may be taken against the person to whom the settlement relates, and, in particular, the provisions of the proviso to clause (a) of sub-section (5) of section 23, section 24B, the proviso to sub-section (2) of section 25A, the proviso to sub-section (2) of section 26 and sections 44 and 46 of the Indian Income-tax Act, 1922, shall be applicable to the recovery of any sum specified in such settlement by the Income-tax Officer having jurisdiction to assess the person by whom such sum is payable as if it were income-tax or an arrear of income-tax within the meaning of those provisions."

The scheme of section 8A is different from that of section 8. The latter section contemplates an assessment or reassessment in accordance with the direction of the Central Government: see sub-section (4) of section 8. That is not the position under section 8A, sub-section (2) whereof provides for the enforcement of the terms of any settlement arrived at in pursuance of sub-section (I). There is

no doubt a reference to certain special provisions of the Indian Income- tax Act, 1922, regarding assessment of partners in a registered firm, tax payable by the representative of a deceased person, etc.; but the reference to those provisions does not necessarily mean that a fresh assesment must be made. They merely show that these special provisions will be applicable in appropriate cases. Sub-section (2) ends by saying that "sections 44 and 46 of the Indian Income-tax Act, 1922 shall be applicable to the recovery of any sum specified in such settlement by the Income-tax Officer having jurisdiction to assess the person

This brings us to the main contention that the petitioner has been subjected to a discriminatory procedure after the coming into force of the Constitution by reason of section 8A(2) of the Act. Learned counsel for the petitioner has put his argument in the following way. He has submitted that what the petitioner agreed to pay to Government was really a debt arising out of a contract, viz., the settlement between him and the Government, and the petitioner is one amongst the larger class of persons who are debtors of Government; against all other debtors Government have the ordinary remedy by way of suit but against the petitioner a special remedy is provided which is more drastic and envisages the imposition of a penalty under section 46 of the Indian Income-tax Act, 1922, if the petitioner is in default in making a payment of the amount due. This, it is argued, is a discriminatory procedure which has been continued even after the coming into force of the constitution. We are unable to accept this argument as

Learned counsel for the petitioner relied on the decision in Muthiah Chettiar v. Commissioner of Income-tax. The facts of that case were entirely different and no question arose there of considering the provisions of section 8A(2) of the Act.

For these reasons we hold that there is no merit in the petition which is, accordingly dismissed with costs.

Petition dismissed.

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