

Raja Yuvraj Dutt Singh

Vs

The Deputy Commissioner, Kheri and Others

Civil Appeals Nos. 743 and 744 of 1968

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

05.05.1970

JUDGMENT

GROVER, J. -

These cross appeals arise out of a judgment of the Division Bench of the Allahabad High Court by which the petitions under Article 226 of the Constitution filed by the assessee were partly allowed.

2. The assessee was assessed to agricultural income-tax under the U.P. Agricultural Income-tax Act, Act III of 1949 hereinafter referred to as the "Act" for the years 1360 Fasli (July 1, 1952 to June 30, 1953), 1361 Fasli (July 1, 1953 to June 30, 1954), 1362 Fasli (July 1, 1954 to June 30, 1955), 1363 Fasli (July 1, 1955 to June 30, 1956). The assessment orders relating to the first two years were made on November 23, 1959 and in respect of the subsequent years they were made on October 21, 1959 and August 13, 1957 respectively. It appears that certain penalties were also imposed. As the assessee made default in payment of the amount of tax and penalty, proceedings were taken against him for the realization thereof and attachment order were issued by the Tehsildar on March 10, 1962. On May 21, 1962 the appellant filed a writ petition in the High Court praying that all coercive processes for the realization of the taxes and the penalties including the sale of land attached be quashed. A learned single judge allowed the petitions and granted the relief claimed with regard to the assessments relating to all the years on the ground that proceedings for recovery had not commenced within the time prescribed by the Act. The departmental authorities preferred a Special Appeal to a Division Bench and during the pendency of the appeal sought to produce additional evidence to show that the proceedings relating to recovery had commenced within time. The Division Bench admitted additional evidence and after taking that into consideration held that proceedings were not barred in respect of the demand relating to the years 1360-F to 1362-F. It was, however, found that proceedings for recovery of tax and penalty for the year 1363-F were barred by time. The assessee as also the Deputy Commissioner, Kheri, have preferred appeals challenging that part of the order which was gone against them.

3. Section 30 of the Act provides that tax for any year is payable in two equal instalments. The first instalment was to be paid within one month of the service of the notice of demand or communication of the order and the second instalment within six months from the due date of the first instalment. Section 32 is in the following terms :

"(1) The Collector may, on the motion of the assessing authority recover any sum imposed by way of penalty under the provisions of sections 17, 31 and 37, or, where any assessee is in default the amount assessed as agricultural income-tax, as if it were an arrear of land revenue.

(2) No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date on which the last instalment fixed under Section 30 falls due :

Provided ....."

It was common ground before the High Court and has not been disputed before us that the date of last instalment for the years 1360-F to 1362-F was June 28, 1960. The date of last instalment for the year 1363-F was September 19, 1958. The order of attachment having been made on March 10, 1962 was clearly beyond one year from June 28, 1960 and September 19, 1958. The question which arose was whether the recovery proceedings were commenced before March 10, 1962. According to the assessee "the recovery proceedings commenced only when the attachment was effected and not earlier and that they could be said to commence only when some actual process was issued under the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950, Act I of 1951.

4. Now as regards the years 1360-F and 1361-F the evidence which was admitted by the Division Bench showed that the Deputy Commissioner, who was the assessing authority, had made orders directing the Tehsildar to realize various sums as arrears of land revenue. Thus, according to the High Court, the proceedings for recovery commenced with the making of these orders (Annexures A-1 to A-5). It was pointed out that these orders were made on various dates ranging between October 9, 1960 to December 2, 1960. These dates were within one year from June 28, 1960 which was the last date of instalment for the years 1360-F and 1361-F.

5. The question which falls for determination is whether proceedings can be said to commence for recovery when the assessing authority makes a motion within Section 32(1) to the Collector for recovery of the agricultural income-tax and penalty as an arrear of land revenue. The Allahabad High Court has consistently held that proceedings for recovery of tax under the Act should be deemed to commence from the date of the request made by the assessing authority under the Act to the Collector to take steps for realization of the arrears of tax and other dues (see *Lal Bhan Pratap Narain Bahadur Pal v. State of Uttar Pradesh and Another*). ((1962) Vol. 60 All LJ 358) This view is based on various decisions under the Indian Income-tax Act, 1922. Section 46(7) of that Act provided that no proceedings for the recovery of any sum payable under that Act could be commenced after the expiration of one year from the last day of the financial year in which the demand was made under that Act. Under Section 46(2) the Income-tax Officer was empowered to forward to the Collector a certificate specifying the amount in arrears due from an assessee, and the Collector on receipt of such certificate had to proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue. This provision together with Section 46(7) came up for consideration in a number of cases before the High Courts and there appears to be unanimity of opinion that when the certificate is forwarded by the Income-tax Officer to the Collector for recovery of the dues the recovery proceedings commence from that point of time. Some of these have been referred to in *Kishorilal v. Tirloki Nath* ((1962) Vol. 60 All LJ 360), and it pointless to refer to them again.

6. In our judgment there is hardly much difference between the provisions of Section 32 of the Act and the corresponding provisions of Section 46 of the Income-tax Act, 1922. Both these statutes relate to taxation of income and the provisions in question are in *pari materia* although the words employed may not be exactly the same. The proceedings for recovery, therefore, in the present case, were rightly held to have commenced with the making of the orders contained in Annexures A-1 to A-5.

7. As regards the assessment for the year 1362-F it has been pointed out on behalf of the assessee that the original orders passed for taking proceedings for realization of tax were missing from the record. The High Court, however, relied on the entries of the registers of demand and collection and was satisfied that "some order for realization of tax for 1362-F was received by the Tehsildar of Lakhimpur in July or August 1960". That date being within one year from June 28, 1960 the recovery proceedings were held to be within time. It appears that the departmental authorities did not produce satisfactory evidence relating to the making of order for realization of the tax in respect of the year 1362-F inasmuch as the original orders were not produced. The learned judges of the High Court, as stated before, saw the register and after examination of the entries therein were satisfied that an order had been made for realization of tax within one year from June 28, 1968. We would be most reluctant to interfere with that finding. So far as the year 1363-F was concerned the date of last instalment was September 19, 1958. According to Annexure A-5 the Sub-Divisional Officer, Lakhimpur, made an order on October 1, 1959 with regard to the demand for that year. The High Court found that the Deputy Commissioner had made an endorsement on October 5, 1959. As the order was made on October 1, 1959 it was beyond one year from September 19, 1958. In the appeal filed by the departmental authorities it has not been shown in what manner the High Court was in error in holding that the proceeding for recovery of tax and penalty for the year 1363-F were barred by time.

8. In the result both appeals fail and are dismissed. In view of the unsatisfactory nature of the evidence produced with regard to the year 1362-F by the departmental authorities we make no order as to costs in the appeal filed by the assessee. The assessee, shall, however, be entitled to his costs in the appeal filed by the departmental authorities.

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