

Raja Jagdish Pratap Sahi

Vs

State of Uttar Pradesh

Civil Appeal No. 1192 of 1970

(K.S. Hegde, P. Jagmohan Reddy, H.R. Khanna JJ)

13.02.1973

JUDGMENT

JAGANMOHAN REDDY J. -

1. The State of Uttar Pradesh filed a suit against the appellant for the recovery of a sum of Rs. 26,548.62 being two instalments of the agricultural income-tax due from him under the U. P. Agricultural Income-tax Act, 1948 (III of 1948) (hereinafter referred to as "the Act"). The appellant was assessed to agricultural income-tax for the year 1359 Fasli in a sum of Rs. 53,097.25 and was directed to pay the same in four instalments of Rs. 13,274.31 each payable on December 9, 1952, February 9, 1953, and April 9, 1953 and June 9, 1953, and, accordingly, the first instalment was recovered from him with penalty. Notice to pay the second and third instalments by April 21, 1953, was served on him but this amount was not paid. Instead, the appellant filed a writ petition in the Allahabad High Court and obtained a stay order which was subsequently vacated. Thereafter, the State sought to recover the amount but the appellant filed a revision challenging the proceedings for recovery on the ground th

In view of the decision of the Board, the State of Uttar Pradesh filed a suit for the recovery of the amounts aforesaid in which the appellant pleaded that the only remedy open to the State was that permitted under section 32(2) of the Act, and that no regular suit was maintainable. This plea was sustained, and the suit was dismissed as not maintainable. The High Court, however, in an appeal reversed the judgment of the trial court and decreed the suit. Against that judgment, this appeal is by certificate.

It is contended before us that the only mode of recovery of arrears of tax or penalty due under the Act is under section 32, and the State cannot recover any such amount by any other mode such as by a suit. Section 32 is as follows :

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

(2) No proceedings 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 or after the expiration of one year from the date on which any appeal relating to such sum has been disposed of."

Before we deal with the main contention, it may be stated that once a notice of demand is served on the assessee for payment of tax due under the Act, and the assessee makes a default after the date for payment specified therein has expired, a debt is created in favour of the State. This debt the State can recover by any of the modes open to it under the general law. This is also the position under the Indian Income-tax Act, but it is contended that the analogous provisions of sub-section (7) of section 46 of the Indian Income-tax Act, 1922, or the corresponding provisions of section 232 of the Income-tax Act of 1961 cannot be relied upon for interpreting section 32 of the Act inasmuch as there are special provisions in these Acts which enable the revenue to file a suit for the recovery of arrears of tax due from the assessee. It is true that section 232 of the Income-tax Act of 1961 provides that the modes of recovery under that Act are not exhaustive, but this clarification, which it is, does not imply tha

"Explanation. - A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

It is manifest that this Explanation does not in any way confer a right on the revenue to recover arrears of tax by any mode other than those provided under that Act. That right which the State or the revenue has for recovering arrears of tax which is a debt due to it, is a general right conferred on it under the law either by a suit or by some other method open to it. Section 32, though it does not have an Explanation analogous to section 46, none the less does not preclude either specifically or by necessary implication a right to recover the arrears of tax due by a suit. The method prescribed in this section is one of the modes of recovery which is a summary remedy. It is, however, open to the State to adopt any method available to it for the recovery of tax in the same way as it would be open to it to recover an ordinary debt due to it. It can institute a suit and obtain a decree with costs against the assessee or other persons liable to pay. It could also probably, without obtaining a decree or attachme

Even prior to the amendment of sub-section (7) of section 46 of the 1922 Act, several High Courts in this country had taken this view. In *Manickam Chettiar v. Income-tax Officer, Madura*, a Full Bench of the Madras High Court was dealing with the right of the Crown to obtain payment of arrears of tax due from the assessee's properties sold in execution of a decree where the questions were, firstly, whether the Government was entitled to claim a priority, and, secondly, whether, as a matter of procedure, the petition by the Income-tax Officer to the civil court for payment to him from the amounts to the credit of the assessee, was sustainable. It was contended before the Full Bench, as it is contended before us, on the analogous provisions of section 32 of the Indian Income-tax Act of 1922, that inasmuch as section 46 of that Act provides modes for the recovery of income-tax, the Crown is not entitled to adopt any different method. This contention was repelled. Leach C.J. observed at page 185 :

"This section, however, does not profess to be exhaustive and it cannot without express words to that effect take away from the Crown the right of enforcing payment by any other method open to it. Therefore, I do not regard section 46 as

imposing a bar to an application of the nature of the one we are not concerned with."

Varadachariar J. had expressed a doubt as to the procedure for recovery, but he had however no doubt that the Crown had a priority for the recovery of debt due to it, and consequently agreed in favour of the view expressed by Leach C.J. Mockett J. also agreed with this view. This case was considered by Harris C.J. and Chatterjee J. of the Patna High Court in *Inderchand v. Secretary of State*. In this case the Patna High Court was considering whether the Crown as a creditor has the ordinary right of suit against the assessee. Following the Full Bench judgment of the Madras High Court, it was held that a suit was maintainable. The contention of Mr. P. R. Das, learned counsel for the appellant, that the only method by which income-tax may be recovered is that laid down in section 46, was repelled by Chatterjee J. In *Chaganti Raghava Reddy v. Income-tax Officer*, the Andhra Pradesh High Court also took a similar view. On principle as well as on the consistent view of the High Courts, it is beyond doubt that where

In this view, the judgment of the High Court is affirmed, and the appeal is dismissed with costs.

Appeal dismissed.

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