

Union of India

Vs

M/s Jardine Henderson Ltd.

Civil Appeal Nos. 1575 and 1965 of 1971

(N. L. Untwalia, R. S. Pathak JJ)

16.03.1979

JUDGMENT

UNTWALIA, J. –

1. These two appeals one by the Union of India and the other by M/s. Jardine Henderson Ltd. are by certificate granted by the Calcutta High Court. Since the facts in both the cases are very much similar involving the interpretation of the various clause of Section 3(1) of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964, hereinafter referred to as the Validation Act, the two appeals have been heard together and are being disposed of by this judgment.

2. There were two brothers named Basanta Kumar Daw, respondent 2 in Civil Appeal 1575 of 1971 and Haridhan Daw, respondent 2 in Civil Appeal 1965 of 1971. The facts of Civil Appeal 1575 of 1971 are these : For realization of arrears of income-tax dues the Certificate Officer of 24 Parganas forwarded to the Collector a certificate in accordance with Section 46(2) of the Indian Income-tax Act, 1922 specifying the amount of arrears due from respondent 2. Thereupon a Certificate case was started against him (Basanta Kumar Daw) under the Bengal Public Demands Recovery Act, 1913, hereinafter called the Bengal Act, by the Certificate Officer acting as a Collector. Notice under Section 7 was served on the certificate-debtor on October 31, 1949. Basanta Kumar Daw entered appearance and filed an objection under Section 9 of the Bengal Act. This objection was rejected by the Certificate Officer by his Order dated March 8, 1951. On April 2, 1951 the certificate-debtor made an application for review of the said order dated March 8, 1951 stating therein, inter alia, that the appeal preferred by him before the Income-tax Appellate Tribunal had been allowed in part and some payments also had been made since then; the Certificate case, therefore, could not proceed for the recovery of the sum of Rs. 36,874.10 annas, the original amount mentioned in the certificate. The Certificate Officer declined to review his previous order and rejected the review petition. But he made certain enquiries from the Income-tax Officer whether the amount of the Certificate had to be reduced. The Income-tax Officer informed him that the Tribunal had reduced the demand on appeal on September 13, 1950 and after adjustment of the previous payments made by the Certificate-debtor the revised demand stood at Rs. 19,001.3 annas only. Thereupon the Certificate Officer amended the Certificate on the basis of the information received from the Income-tax Officer and reduced the demand. On July 18, 1956 he directed the issue of sale notice under Rule 46(2) framed under the Bengal Act in respect of the half share of Basanta kumar Daw (the other half belonging to his brother Haridhan Daw) in premises Nos. 201 to 25/1, Old China Bazar Street, Calcutta.

3. Now a few facts of the other appeal being Civil Appeal 1965 of 1971 may be stated. The Income-

tax Officer sent a requisition to the Certificate Officer of 24 Parganas for the recovery of a sum of Rs. 59,541.15 annas against Haridhan Daw, respondent 2 in this appeal. A Certificate case was started. A notice under Section 7 of the Bengal Act was served on the Certificate-debtor on January 30, 1951. He also filed a petition of objection under Section 9. But the Certificate Officer by his order dated January 13, 1954 rejected the objection filed by the Certificate-debtor under the Bengal Act. A review application was also rejected in this case on January 27, 1954. On March 2, 1954, the Income-tax Officer informed the Certificate Officer that the original demand of Rs. 59,541.15 annas had been enhanced to Rs. 59,604.7 annas under Section 35 of the Income-tax Act and requested him to realize the enhanced amount. The order under Section 35 was passed on March 2, 1953. The Certificate Officer thereupon informed the Income-tax Officer that the Bengal Act did not provide for enhancing the demand of the existing Certificate and asked him to file a separate Certificate for the additional amount. He, however, continued the Certificate proceedings for the recovery of the original amount.

4. M/s. Jardine Henderson Ltd., respondent in Civil Appeal 1575 of 1971 and appellant in Civil Appeal 1965 of 1971 purchased the whole of the premises in question on September 20, 1954 for a total sum of Rs. 3,00,100 purchasing one half of the undivided share from each of the two brothers.

5. In both the cases the Company received a notice on August 6, 1956 fixing a date for settling the terms of the sale proclamations in respect of the respective one half share of each of the two Certificate-debtors. Immediately thereafter the respondent-company made an application in each of the two cases that it had purchased the property being unaware of the pendency of any Certificate case against any of its vendors for realization of income-tax dues and that the Company was the owner of the property and it was not liable to be sold as that of the Certificate-debtor. The Certificate Officer rejected the objection holding that the purchase, having been made after service of notice under Section 7 of the Bengal Act on the Certificate-debtor, was void as against any claim enforceable in execution of the Certificate and hence the Company had no right to object to the sale. The Company went up in appeal before the Commissioner and succeeded in both the cases. Two revisions were filed before the Board of Revenue which were allowed. The respondent-company then moved the High Court under Article 227 of the Constitution. The petition giving rise to Civil Appeal No. 1575 was allowed and hence the Union of India has come up in appeal. The other petition giving rise to Civil appeal 1965 of 1971 was dismissed by the same Bench and the Company has, therefore, come up in appeal.

6. The Validation Act was not there when the orders were passed either by the Commissioner or the Board of Revenue. But in the High Court as also here the main controversy between the parties was the effect of the Validation Act on the two Certificate proceedings.

7. Mr. V. S. Desai, appearing for the Union of India, in the first, instance submitted that the order reducing the amount of the Certificate in Civil Appeal 1575 was an order under Section 10 of the Bengal Act. Hence the notice served under Section 7 on the Certificate-debtor continued to have its effect in spite of the reduction of the amount and no fresh notice under Section 7 was necessary to be served. In agreement with the High Court we have no difficulty in rejecting this argument.

8. We may first read some of the relevant provisions of the Bengal Act. Section 7 reads as follows:

When a certificate has been filed in the office of a Certificate-officer under Section 4 or Section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

The effect of service of notice of certificate is provided in Section 8 which provides :

From and after the service of notice of any certificate under Section 7 upon a certificate-debtor -

(a) any private transfer or delivery of any of his immovable property situated in the district in which the certificate is filed, or of any interest in any such property, shall be void against any claim enforceable in execution of the certificate.

Under Section 9 the certificate-debtor may file a petition of objection denying his liability in whole or in part. Under Section 10 it is provided :

The Certificate-officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary), and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly :

9. On reading the provisions aforesaid it is clear that if the Certificate is modified or varied by the Certificate Officer under Section 10 while disposing of the petition of objection filed by the certificate-debtor under Section 9, then the Certificate case proceeds further without a fresh notice under Section 7. But in the instant case the amount was not reduced on the objection of the Certificate-debtor but it was reduced on receipt of the information from the Income-tax Officer.

10. In the Bengal Act itself there is no express provision enabling a person other than the certificate-debtor claiming an interest in the property to be sold to file any objection. He, of course, under Section 22 can take recourse to the said provision by filing an application to set aside the sale of immovable property on deposit of the amounts provided therein. But the rules in Schedule II under Section 38 have the effect as if enacted in the body of the Act. In Schedule II is to be found Rule 39 which is very much like Rule 58 of Order 21 of the Code of Civil Procedure, 1908. The Company preferred a claim objecting to the sale of property on the ground that it was not liable to sale as it had purchased the property from the two certificate-debtors. It was, therefore not quite accurate to say that the Company had not locus standi to prefer to claim. It was open to it to show under Rule 40 that at the date of the service of notice under Section 7 it had some interest in the property in dispute. If the notice served at the beginning of the two certificate cases under Section 7 on the two certificate-debtors was not a valid notice in the sense that in one case on the reduction of the amount of the certificate it became necessary to give a fresh notice and in the other without a fresh demand notice under the Income-tax Act for the enhanced amount, the certificate case could not proceed, then the Company had validly purchased the property and its purchase was not void. The property purchased by it could not then be sold for realization of the income-tax due against the two brothers. If, however, no fresh notice was necessary to be served in either of the two cases then it is plain that the Company's purchase was void as against the claim enforceable in execution of the certificate. The answer in both the case has got to be given with reference to the Validation Act and no other point of any consequence was argued or could be pressed with any success in either of the two appeals.

11. In *I. T. O. v. Seghu Buchiah Setty* (52 ITR 538 : (1964) 7 SCR 148 : AIR 1964 SC 1473) best judgment assessments had been made for the assessment year 1953-54 and 1954-55. A notice of demand for each of the two years was served upon the assessee under Section 29 of the Income-tax Act, 1922. The assessee preferred appeals. In the meantime for non-payment of tax he was treated as

a defaulter and a Certificate was forwarded to the Collector under Section 46(2). Thereafter the tax payable by the assessee was substantially reduced in appeal. The Income-tax Officer informed the assessee of the reduced tax liability and called upon him to pay the reduced amount. No fresh notice of demand was issued under Section 29. Pending further appeals to the Appellate Tribunal the assessee wanted the certificate proceedings to be stayed and on his request being rejected he moved the High Court under Article 226 of the Constitution. The High Court held that the department was not entitled to treat the respondent as a defaulter in the absence of a fresh notice of demand and quashed the recovery proceedings. On appeal to this Court the majority view expressed was that the amount of tax assessed being reduced as a result of the orders of the Appellate Assistant Commissioner, a fresh demand notice had to be served on the respondent before he could be treated as a defaulter. The recovery proceedings initiated against him on the basis of the original demand notice were therefore rightly quashed by the High Court.

12. The Statement of Objects and Reasons which led to the introduction and passing of the Validation Act would show that it was to get over the difficulties in the collection of income-tax and other direct taxes created by the Supreme Court decision in Seghu Buchiah Setty's case (supra) that the Validation Act was passed with retrospective effect. The interpretation of this Act falls for our consideration for the first time in this Court.

13. This is an Act "to provide for the continuation and Validation of proceedings in relation to Government dues and for matters connected within". In the Schedule appended to the Act are enumerated various tax statutes including the Income-tax Act. "Taxing Authority" had been defined in clause (d) of Section 2 and clause (e) defines "Tax Recovery Officer" to mean an officer to whom a certificate for the recovery of arrears of Government dues may be issued under this Act. Section 3 without the proviso may be read as a whole :

Continuation and validation of certain proceedings. - (1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then, -

(a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceedings in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(b) where such Government dues are reduced in such appeal or proceeding -

(i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;

(ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee, and where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, also to that officer;

(iii) any proceedings initiated on the basis of the notice or notices of demand served

upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding :

The Act was made retrospective by an express provision in Section 5.

14. Clause (a) deals with the case of an enhancement of Government dues and provides that the proceedings initiated may be continued from the stage at which such proceedings stood immediately before the disposal of the appeal or proceedings in which the enhancement was made. Another notice of demand is required to be served in respect of the amount by which the dues are enhanced. On a plain reading of clause (a) of Section 3 it is clear that the intention of the legislature is not to allow the nullification of the proceedings which were initiated for recovery of the original demand. On the basis of another notice of demand for the enhanced amount, two courses are open to the department - (1) to initiate another proceeding for the recovery of the amount by which the dues are enhanced treating it as a separate demand, or (2) to cancel the first proceedings and start a fresh one for the recovery of the entire amount including the enhanced one. In the latter case the first proceedings started for the recovery of the original amount will lose its force and the fresh proceeding will have to proceed de novo. But in the former the first proceedings are not affected at all. In Civil Appeal 1965 of 1971 this is exactly the view taken by the High Court and in our opinion rightly.

15. Mr. S. T. Desai appearing for the Company submitted that where the amount was enhanced in appeal or revision there was no express provision in the Income-tax Act for service of a fresh or another notice of demand for the additional amount. But if the amount was enhanced under the power of rectification under Section 35 then sub-section (4) thereof requires :

Where any such rectification has the effect of enhancing the assessment or reducing a refund the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under Section 29, and the provisions of this Act shall apply accordingly.

The effect of this sub-section according to the counsel, has not been done away with the clause (a) of Section 3 of the Validation Act. We reject this argument as being unsound and for two reasons. Firstly, on a correct interpretation of sub-section (4) of Section 35 it would be noticed that though the expression used is "the sum payable" but in the context it would mean only the "extra enhanced sum payable" and not the whole of the enhanced amount. The expression "sum payable" had to be used in sub-section (4) because that sub-section was also providing for a contingency where by the rectification order the amount of refund was reduced. In such a case the expression "the sum payable" would obviously mean the difference between the amount refunded and the reduced amount which was liable to be refunded. The second reason is that even if it were to be held that in the case of enhancement the expression "the sum payable" in sub-section (4) means the whole of the enhanced amount by a rule of harmonious construction it has got to be held that in view of Section

3(1)(a) of the Validation Act even in the case of a rectification a notice of demand is to be served now only in respect of the amount by which the Government dues are enhanced.

16. Now coming to the case of reduction dealt with in clause (b) of sub-section (1) of Section 3 of the Validation Act it would be seen that sub-clause (i) clearly provides that it is not necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand. The only thing which he is required to do is that he had to give intimation of the fact of such deduction to the assessee and to the Tax Recovery Officer. The purpose of giving intimation to the assessee is to bring it to his pointed knowledge that the demand against him has been reduced, although by other method also such as by service of a copy of the Appellate Order or the revisional order being served on him he may be made aware of that. The intimation to the Tax Recovery Officer is essential as without that intimation from the Taxing Authority he cannot reduce the amount of the certificate debt in the proceedings already commenced. The High Court has taken the view that the provision contained in sub-clause (ii) of clause 3(1) of the Validation Act is mandatory and in absence of a formal intimation to the assessee and to the Tax Recovery Officer as required by the said provision the proceeding initially started could not be continued under sub-clause (iii). In our opinion the view of the High Court is not sustainable in law. On the facts of this case the assessee himself in his review application had clearly mentioned that the demand against him stood reduced in appeal. He also claimed that he had made certain payments. Although the Tax Recovery Officer rejected his review petition, as, probably, he had no power of review, he took the precautionary measure of making inquiry from the Taxing Authority. Thereupon the Taxing Authority gave him the information and the amount of the certificate debt was substantially reduced. We, therefore, hold that on the facts of this case the requirement of sub-clause (ii) stood fulfilled and nothing further had to be done in the matter by the Taxing Authority. That being so the proceedings initiated on the basis of the notice of demand served upon the assessee before the reduction of the amount in appeal could be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal as provided for in sub-clause (iii).

17. Clause (c) of Section 3(1) of the Validation Act is also important and it clearly and expressly provides that no proceedings in relation to Government dues shall be invalid merely because no fresh notice of demand was served upon the assessee after the dues were enhanced or reduced in any appeal or proceeding. It is, therefore, plain that in neither of the two cases did the certificate proceeding become invalid, in one case by reduction of the demand and in the other by an enhancement. In both the cases notices under Section 7 of the Bengal Act had been served upon the certificate-debtors before the property in question was transferred by them to the Company. The transfer was, void against the Certificate claims in both the cases under Section 8(a) of the Bengal Act.

18. Mr. S. T. Desai called our attention to the decision of the Allahabad High Court in Ram Swarup Gupta v. Behari Lal Baldeo Prasad (95 ITR 339 : 1973 TLR 2303 (All HC)). That case is, however, clearly distinguishable as in that the property was sold in certificate proceedings started for the realization of the original amount even after the amount had been reduced in appeal. It is obvious that that sale was illegal and invalid as rightly held by the High Court because after reduction the demand had to be reduced on intimation by the Taxing Authority and the property could not be sold for the original amount.

19. For the reasons stated above, Civil Appeal 1575 of 1971 is allowed with costs payable by the respondent-company, the judgment and order of the High Court are set aside and it is directed that the certificate case shall proceed to disposal in accordance with law as expeditiously as possible. Civil

Appeal 1965 of 1971 is dismissed but we make no order as to costs in this appeal.

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