

PATNA HIGH COURT

Inderchand

Vs

Secretary of State

(Chatterji, J.)

29.03.1941

JUDGMENT

Chatterji, J.

1. This appeal arises out of suit brought by the plaintiff against the Secretary of State for Indian in Council for recovery of Rs. 5,163-4-0 on account of income-tax said to be refundable to the plaintiff together with interest. The plaintiff who is a trader, was assessee under Section 23(4) of the Income-tax Act with income-tax amounting to Rs. 36,924-5-0 for the year 1932-33. This amount was realised from him on March 29, 1933. On application to the Commissioner of Income-tax the assessment was cancelled by his order dated February 18, 1935, and he directed the Income-tax Officer to make a fresh assessment. Eventually on March 31, 1935, the Income-tax Officer assessed the income-tax at Rs. 5,733 only. The plaintiff was accordingly entitled to a refund of Rs. 31,191-5-0. He had also deposited Rs. 100 when he moved the Commissioner of Income-tax for referring the matter to the High Court. In the meantime on March 26, 1935, the plaintiff was assessed with income-tax of Rs. 13,715-5-0 for the year 1934-35. The Income-tax Officer deducted this amount from the sum of Rs. 31,191-5-0 which was refundable to the plaintiff for the year 1932-33 so that the balance actually refundable was Rs. 17,476. On April 9, 1935, a notice was issued by the Income-tax Officer to the plaintiff intimating that he was entitled to a refund of Rs. 7,364-13-0 on account of income-tax and Rs. 10,111-1-0 on account of super-tax. But on April 18, 1935, the plaintiff received from the Income-tax Officer a refund voucher for Rs. 10,111-13-0 on account of super-tax and a refund voucher for Rs. 3,939-13-0 only instead of Rs. 7,364-13-0 on account of income-tax. He accepted the refund voucher for Rs. 10,111-13-0 and obtained refund of this amount. But he returned the refund voucher for Rs. 3,939-13-0 and submitted a petition to the Income-tax Officer stating that this refund voucher was issued by mistake for Rs. 3,939-13-0 instead of Rs. 7,364-13-0 and he requested the Income-tax Officer to rectify the mistake and issue a refund voucher for Rs. 7,364-13-0. In reply to this the Income-tax Officer by his letter dated May 28, 1935, informed the plaintiff that the sum of Rs. 3,425 had been adjusted towards the dues for 1930-31 which had remained outstanding. This plaintiff then filed a petition before the Income-tax Officer on June 5, 1935, requesting him to

issue a refund voucher for Rs. 3,939-13-0 subject to his right to move the higher authorities for the balance. He also prayed for a refund of the sum of Rs. 100 which he had deposited with the Commissioner. But the Income-tax Officer paid no heed to his request.

The plaintiff sent a registered notice on February 7, 1936, under Section 80 of the Civil Procedure Code to the Secretary of State for India in Council claiming refund of Rs. 7,364-13-0 on account of income-tax and of Rs. 100 which had been deposited by him together with interest. The notice was served on the Collector of Shahabad on February 8, 1936. Thereafter the Income-tax Officer issued a refund voucher for Rs. 3,939-13-0 which the plaintiff accepted under protest on February 10, 1936. The plaintiff filed the present suit on May 21, 1936, claiming refund of the balance of Rs. 3,425 on account of income-tax and of Rs. 100 which had been deposited by him with the Commissioner together with interest, the total claim being Rs. 5,162-4-0. In the plaint it was asserted that the plaintiff had no knowledge of any outstanding arrears of income-tax for 1930-31 and that even if Rs. 3,425 was due for such arrears the amount was not legally recoverable from him and therefore the action of the Income-tax Officer in deducting this amount was illegal, arbitrary and without jurisdiction. The defendant contested the suit alleging, inter alia, that the Civil Court had no jurisdiction to entertain the suit and that the sum of Rs. 3,425 remained due from the plaintiff on account of income-tax for the year 1930-31 and this amount was rightly deducted by the Income-tax Department from the sum of Rs. 7,364-13-0 which was refundable to the plaintiff on account of income-tax for the year 1932-33. In written statement an account is given of how by mistake the sum of Rs. 3,425 remained unrealised from the plaintiff on account of income-tax for the year 1930-31. The details of this account need not be stated, because it has been found by the learned Subordinate Judge, and it has not been disputed before us, that on account of some mistake in the entries in the demand and collection register of the Income-tax Department a sum of Rs. 3,425 remained unrealised out of Rs. 13,862-14-0 which had been assessed as income-tax on the plaintiff for the year 1930-31. The learned Subordinate Judge has dismissed the suit holding that the Income-tax Office had a right to deduct the sum of Rs. 3,435 which remained outstanding on account of income-tax payable by the plaintiff for the year 1930-31 and that the Civil Court has no jurisdiction to try the suit. Hence this appeal by the plaintiff. The first contention raised by Mr. P. R. Das for the appellant is that the Income-tax Officer had no right to deduct the sum of Rs. 3,425, which remained unrealised from the plaintiff on account of income-tax for the year 1930-31. The deduction was made by the Income-tax Officer under Section 49-A of the Indian Income-tax Act, 1922, as it stood in 1935. The section ran as follows :-

"Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Assistant Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded, or any part of that amount against the tax, if any, remaining payable by the person to whom the refund is due."

Mr. Das relies on Section 46, sub-section 7, of the same Act which provides -

"Save in accordance with the provisions of sub-section (1) of Section 42, no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the year in which any demand is made under this Act". He contends that under the provisions of this sub-section any claim for recovery of income-tax for the year 1930-31 became barred after the expiration of one year from the last day of the year 1930-31, that is to say after 1932, and, therefore the Income-tax Officer had no right to realise in 1935 any sum that was due on account of income-tax for the year 1930-31. The question really turns on the meaning of the expression "remaining payable by the person" in Section 49-A of the Act. Section 46 of the Act prescribes "Mode, and time of recovery" of income-tax. Sub-section 2 of that section provides :-

"The Income-tax Officer may forward to the Collector a certificate under his signature specifying the amount of arrears due from an assessee, and the Collector, on receipt of such certificate, shall proceed to recover from such assessee the amount specified therein as if it were an arrear of land revenue".

Mr. Dass contention is that the only method by which income-tax may be recovered is that laid down in Section 46. If therefore, the tax is not realised within the time limit prescribed by sub-section 7 of the section, the tax is no longer payable by the assessee. This argument, to my mind, is wholly untenable. In the first place, Section 46 of the Act prescribes only a summary remedy and there is nothing in that section or in the other provisions of the Act to indicate that that is the only remedy by which income-tax is recoverable. The time limit prescribed in Section 46(7) of the Act obviously applies to proceedings under that section. When income-tax is assessed, it becomes a debt due by the assessee to the Crown. The Crown as a creditor has the ordinary right of suit against the assessee. This is a right under the common law and there is nothing in the Indian Income-tax Act to take away this right. A suit for recovery of arrears of income-tax would undoubtedly be a suit of civil nature and such a suit would clearly be maintainable under the provisions of Section 9 of the Civil Procedure Code. The expression "may forward to the Collector" in Section 46(2) of the Act clearly suggests that the section is not exhaustive. In *Manickam Chettiyar v. Income-tax Officer, Madura*, it was held by a Full Bench of the Madras High Court that Section 46 is not exhaustive of the remedies of the Crown to recover arrears of income-tax. If Section 46 of the Act is not exhaustive, it cannot be seriously disputed that the arrears of income-tax for the year 1930-31 remaining due from the plaintiff were legally recoverable in 1935. A suit for recovery of those arrears would lie and would be governed by Article 120, if not by Article 149, of the Limitation Act. In my view, therefore, the sum of Rs. 3,425 on account of the arrears of income-tax for 1930-31 still remained payable by the plaintiff in 1935, and the Income-tax Officer was perfectly entitled under Section 49-A of the Income-tax Act to deduct that amount from the sum of Rs. 7,364-13-0 which was refundable to the plaintiff on account of income-tax for the year 1932-33. In the second place, if Mr. Dass contention were to be accepted, the expression "remaining payable by the person" in Section 49-A of the Act would have to be read as meaning "legally recoverable from the person." If the Legislature had

really intended that under Section 49-A the right of set-off was to be limited to an amount of tax legally recoverable, they could have expressly said so. I have no doubt in my mind that though no proceedings under Section 46 of the Indian Income-tax Act could be taken in 1935 for recovery of the unrealised arrears of tax for the year 1930-31 those arrears still remained payable within the meaning of Section 49-A of the Act. In my opinion, therefore, the learned Subordinate Judge was right in holding that the Income-tax Officer was entitled under Section 49-A of the Income-tax Act to deduct the sum of Rs. 3,425 due from the plaintiff on account of arrears of income-tax for the year 1930-31 from the sum of Rs. 7,364-13-0 which was refundable to him on account of income-tax for the year 1932-33. As regards the sum of Rs. 100 deposited by the plaintiff with the Commissioner, the learned Subordinate Judge's decision that this deposit is not refundable has not been assailed before us. The only other contention raised by Mr. P. R. Das relates to the question whether the Civil Court has jurisdiction to try this suit. In the view I have expressed above this question does not arise. I may, however, observe that this suit does not fall within the terms of Section 67 of the Indian Income-tax Act and therefore, not barred. The section runs as follows :-

"No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution, suit or other proceeding shall lie against any Officer of the Crown for anything in good faith done or intended to be done under this Act."

Here the plaintiff does not seek to set aside or modify any assessment within the meaning of this section. Admittedly the plaintiff was entitled to a refund of Rs. 7,364-13-0, and the only question is whether his claim for this refund was validly discharged by the Income-tax Department. No question of setting aside or modifying any assessment made under the Act arises.

In the result the appeal fails and I would dismiss it with costs.

Harries, C.J.

I entirely agree.

Appeal dismissed.