

V. Vr. N. Vr. Nagappa Chettiar and anr. Vs. Union of India (Uoi)

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Court : Chennai

Decided On : Mar-01-1968

Reported in : [1969]72ITR255(Mad)

Judge : Srinivasan, J.

Acts : [Income Tax Act, 1922](#) - Sections 46, 46(2) and 46(7); [Income Tax Act, 1961](#) - Sections 67 and 232; Limitation Act, 1908 - Schedule - Article 149

Appeal No. : Second Appeal No. 329 of 1964

Appellant : V. Vr. N. Vr. Nagappa Chettiar and anr.

Respondent : Union of India (Uoi)

Advocate for Def. : V. Balasubrahmanyam and ;J. Jayaraman, Advs.

Advocate for Pet/Ap. : K. Srinivasan and ;D.S. Meenakshisundaram, Advs.

Judgement :

Srinivasan, J.

1. The first appellant (hereinafter referred to as the appellant) was assessed to income-tax for the year 1941-42 and the tax payable by him was determined to be Rs. 13,661-3-0. After deducting certain payments made by the appellant and allowance for a refund, a revised assessment order was made which resulted in fixing the appellant's liability at Rs. 9,244.69. The appellant sought for extension of time to pay the amount, and time was being granted. This was principally due to the reason that the appellant claimed that he was assessed to tax in Burma as well. In 1951, the department issued certificate to the Collector for realising the amount due under Section 46(2) of the Income-tax Act. Thereupon, the appellant moved the High Court by way of writ and the appellant partly succeeded therein, but his liability to pay the amount stated was not affected by that writ proceeding. Finally, the Union of India, represented by the Commissioner of Income-tax, laid the suit. The defences of the appellant in so far as they survive for consideration in this second appeal were that the suit is barred by Section 67 of the Indian Income-tax Act and that the suit is also barred by limitation. These contentions were negated by the trial court, which granted a decree in favour of the plaintiff, the Union of India, This decision of the trial court was confirmed in appeal by the learned District Judge of Madurai. The defendant-appellant again presses in this second appeal the two contentions referred to.

2. Section 67 of the Indian Income-tax Act, 1922, bars the jurisdiction of the civil

court in so far as any relief sought in the civil court seeks to set aside or modify any assessment made under the Act. The plain language of the section does not admit of the construction placed upon it by the learned counsel, Mr. K. Srinivasan, that it bars a suit for recovery of the amount due upon an assessment. As the counsel for the department rightly points out, what the action before the civil court seeks to do is to enforce the assessment, not to set aside or modify it. Mr. Srinivasan purported to urge that the expression ' assessment ' is capable of a wide connotation and it would include recovery as well.

3. It is now necessary to refer very briefly to the various provisions of the Act, Section 3 of the Income-tax Act is the charging section and it makes liable every person in respect of an income to pay income-tax at the rate or rates which the Central Act specifies. What is taxable income is determined according to other provisions, which provide for exemptions and allowances under various heads. A return of the income by the assessee is stipulated by other provisions, and what is called an assessment is made by the Income-tax Officer, who has firstly to assess the total income of the assessee and next to determine the sum payable by him on the basis of such income. Yet other provisions deal with cases where a return is not submitted by the assessee. The provisions of the Act deal with a variety of situations and a multitude of legal persons in respect of whom an assessment can be made. These proceedings result finally in a notice of demand issued under Section 29. We may ignore the other provisions with regard to appeals against orders of assessment or revision or rectification of mistakes in the assessment. Chapter VI of the Act of 1922 provides for the recovery of tax and penalties and Section 46 specifies various modes of recovery. It is obvious even from a brief survey of the relevant provisions and the scheme of the Act that the assessment procedure only results in determining the liability of the assessee. Any proceedings to set aside or modify the assessment so made are found in other parts of the Act which create a hierarchy of Tribunals for that purpose. What Section 67 of the Act accordingly purports to do is to bar the jurisdiction of the civil court in respect of matters for which special tribunals are constituted under the Act.

4. The arguments of Mr. Srinivasan seek to bring into operation Section 67 of the Act even with regard to the proceedings for recovery. The proceedings for recovery under the Act are outlined in Chapter VI thereof. If the arguments are accepted, it would amount to saying that the expression ' to set aside or modify an assessment made under the Act ' would take in the recovery proceedings as well. I am wholly unable to accept this argument.

5. I am not aware of any decision which has taken this extreme view. The expression ' assessment ' has been used in the Act for two purposes, firstly, the assessment of the taxable income of the assessee, and, secondly, of the assessment of the sum payable by the assessee as tax under the Act. *Kalawati Devi Harlalka. v. Commissioner of Income-tax*, : [1967]66ITR680(SC) , which has been referred to by the learned counsel does not to my mind support the argument of counsel. Their Lordships say that the expression ' assessment ' can bear a comprehensive meaning and it can comprehend the whole procedure for ascertaining and imposing the liability upon the taxpayer. The ascertainment and imposition of the liability cannot possibly take in the discharge of the liability as well. In *Firm Illuri Subbayya Chetty and Sons v. State of Andhra Pradesh*, : [1963]50ITR93(SC) , the question of the ouster of the civil court's jurisdiction under the Madras General Sales Tax Act arose. Their Lordships no doubt say that there is a general presumption that there must be a remedy in the civil courts to a citizen claiming that an amount has been recovered from him illegally and

that such a remedy can be held to be barred only on a very clear and unmistakable indication to the contrary. They further say that the mere fact that a special statute provides for certain remedies may not by itself exclude the jurisdiction of the civil courts to deal with a case brought before them in respect of some of the matters covered by such a statute and that the exclusion of the jurisdiction of the civil court will not be assumed unless the relevant statute contains an expression to that effect or leads to a necessary and inevitable implication of that nature. That was a case where it was alleged that the assessment itself was bad in law and that the levy was illegal. While the trial court held in favour of the assessee that the civil court had jurisdiction in the instant case, a contrary view was taken by the High Court relying upon Section 18A of the Madras General Sales Tax Act of 1939, and that decision came before the Supreme Court in appeal. Their Lordships point out that an assessment made under the Act would not necessarily mean a correct assessment, but that it only connoted the activity of the assessing officer acting as such officer exercising his jurisdiction and authority under the Act making an order of assessment. They observe that while providing for a bar to suits in ordinary civil courts, the Act in question had taken the precaution of safeguarding the assessee's rights by providing adequate alternative remedies by way of appeal and revision, and in the light of these elaborate alternative remedies, the effect of Section 18A of the Act was quite clearly that any attempt to set aside and modify an assessment should be had only before the Tribunal constituted under the Act. I am unable to agree with the learned counsel that the general observations made by their Lordships as to the manner in which a provision of this nature should be construed help his arguments in any way. I am accordingly satisfied that Section 67 is not a bar to a suit seeking to recover the amount covered by an assessment and that in terms such a suit does not come within the scope of the wording of the section.

6. The next contention is that the suit is barred by limitation. Learned counsel does not deny that Article 149 of the First Schedule to the Indian Limitation Act, 1908, provides for a period of limitation of 60 years in respect of any suit by or on behalf of the Central Government. The Union of India claims that, by reason of the assessment, a liability has been created and that the assessee occupies the status of a debtor vis-a-vis the Union, which is the creditor. The nature of the suit covered by Article 149 is not indicated therein. Any suit by a Government is comprehended therein. After the assessment creates a liability, the notice issued under Section 29 of the Income-tax Act fixes the date before which payment should be made. If no date is specified in the form of demand issued under Section 29, Section 45 of the Act states that such amount shall be paid on or before the first day of the second month following the date of service of the notice. It is obvious that the demand becomes enforceable against the assessee from the date of service of the notice under Section 29 or at least by the date upon which the amount becomes payable as under Section 45 of the Act, and Article 149 provides for a period of limitation of 60 years computed from one of these two dates, whichever may apply. The argument of Mr. Srinivasan, on the other hand, is that Section 46 of the Act provides for the mode and time of recovery and this being a special enactment, it is only these modes of recovery that are available to the department. Nextly, he contends that by virtue of certain parts of this section, to which I shall presently refer, even if the department proceeds by way of suit, the period of limitation is cut down to one year.

7. It seems to me that these arguments are misconceived and find no support either in the scheme or in the provisions of the Act. Section 46 provides for various methods of recovery. Under Section 46(2), the Income-tax Officer may forward to the Collector

a certificate of a specified description and containing specified particulars and the Collector is authorised by this provision to proceed to recover from the assessee the amount as if it were an arrear of land revenue and the Collector is empowered by this provision to exercise all the powers which the Collector has under the Land Revenue Recovery Act, 1890, or a civil court has under the Code of Civil Procedure for the recovery of an amount due under a decree. Sub-section (3) also makes available the processes enforceable for recovery of an arrear of any municipal tax or local rate under any enactment for the time being in force in any part of the State. If the assessee is in receipt of salaries the Income-tax Officer may require the employer of the assessee to pay the tax and effect a deduction from the salary due to that person. The Income-tax Officer is also competent to call upon any person, who is indebted to the assessee, to withhold the payment to the assessee and to pay the sum due to the assessee to the department in discharge of the tax payable by the assessee. These are the various modes indicated in the section. Mr. Srinivasan, however, relies upon Sub-section (7) of Section 46 and the Explanation thereto. Sub-section (7) of Section 46 states that (save as provided) no proceedings for the recovery of any sum payable under the Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act. Shortly put, the argument of the learned counsel is that the expression ' proceedings ' herein should include proceedings by way of suit in a civil court as well and the claim is accordingly made that no suit can be laid for the recovery of the amount after the expiration of the one year period referred to herein.

8. It seems to me that this construction cannot be given in the light of the other parts of the section. The Explanation to the section states :

' 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... '

9. The word ' proceeding ' seems to me to indicate the variety of proceedings contemplated in the earlier sub-sections of Section 46. It really refers to this procedural machinery and the resort thereto under the earlier parts of Section 46. It is impossible to read into this section any reference to a suit in a civil court, though that may no doubt be a proceeding in the larger sense of the term. The further parts of the Explanation give ample support to this view, for it continues :

' ...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 way any other law for the time being in force relating to the recovery of debts due to Government... '

10. The reference to the several modes of recovery has to be read in conjunction with the word ' proceeding ' and by reason of the saving of resort to any other law. I am fortified in the view that I have taken that a suit is not comprehended within the expression ' proceeding ', in respect of which alone, it is stated that no proceeding shall be commenced after the expiration of one year from a specified date.

11. Builders Supply Corporation v. Union of India, : [1965]56ITR91(SC) does not give any support to the argument of the learned counsel in this regard. The question that arose there was whether the Union of India was entitled to priority or precedence in respect of the tax due to it. But it is worth noting that their Lordships say that the

rules of common law relating to substantive rights which had been adopted by this country and enforced by judicial decisions amount to law in force in the territory of India. It would accordingly follow from this decision that the common law right to proceed by way of suits in the civil courts to recover the debt represented by an assessment to tax is available to the State. But the argument of the learned counsel purports to suggest that, in view of the special provisions contained in Section 46 of the Act relating to recovery of tax, this right must be held to be no longer available. The Explanation to Section 46(7), however, clearly specifies that the resort to the modes of recovery laid down in the other parts of this section does not affect in any way any other law for the time being in force relating to the recovery of a debt due to the Government. If, as their Lordships of the Supreme Court say, this common law right is indeed any* other law relevant to such a purpose, far from the provision of special methods of recovery destroying this common law right, the saving contained in the Explanation supports the contrary view. Nor am I impressed by the argument of the learned counsel that the law in force referred to in this Explanation as relating to the recovery of debts due to Government points only to such enactments as the Public Debts Recovery Act or such other special law. The expression 'any other law' is merely qualified by the further expression 'for the time being in force in the territory', and if the common law right is such other law as declared by the Supreme Court, the limitation sought to be placed upon this expression by the learned counsel cannot be accepted.

12. It was next suggested that the right to proceed by way of suit in a civil court is a right which has been conferred for the first time by the Income-tax Act, 1961. Section 232 of this Act says that the several modes of recovery specified in the Chapter in which it occurs shall not affect in any way any other law for the time being in force relating to the recovery of debts due to Government or the right of Government to institute a suit for the recovery of arrears due from the assessee. If this section is compared with the Explanation to Section 46(7) of the 1922 Act, it apparently enlarges the scope of recovery by resort to the civil court. I do not, however, think that this is a new right that has been created. To my mind, it recognises only a pre-existing common law right and the reference to a right or suit in Section 232 is only a clarification of what Section 46(7), Explanation, stated. The principal argument that was advanced in connection with the right of suit was, however, that even that right has to be exercised within the period of one year specified in Sub-section (7) of Section 46. Here again, learned counsel relies upon his argument that a proceeding contemplated in Sub-section (7) would take in a suit in a civil court as well. But if this section is read in the light of the Explanation, for the Explanation is intended to guide the interpretation of the main provision to which it is an Explanation, it is obvious that the proceeding referred to in Sub-section (7) cannot include a suit in a civil court, for the Explanation clearly indicates such a suit to be something other than a proceeding which the earlier part of Section 46 provided for.

13. It is further urged, continuing this line of argument, that Section 29(2) of the Indian Limitation Act, 1908, limits the period of time in which the suit can be laid and cuts it down from the period of 60 years provided for by Article 149 to the period of one year contemplated by Section 46(2) of the Income-tax Act. Section 29(2) of the Limitation Act reads :

' Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, that period shall be regarded as the period prescribed by the Limitation Act.'

14. Mr. Srinivasan urges that the Income-tax Act is a special law and that, therefore, the period prescribed by Section 46(2) of the Act must override the general provision for the period of limitation of 60 years contained in the Schedule to the Limitation Act. The short answer to this question is that the period indicated by Section 46(2) of the Act is not a period of limitation in relation to a suit, appeal or application, for the proceedings in respect of which the one year period of limitation is prescribed therein are proceedings which are not in a court of law but before the tribunals appointed by the Indian Income-tax Act. This argument has, therefore to be rejected.

15. Learned counsel for the department has referred to *Manickam Chettiar v. Income-tax Officer, Madura*, : [1938]6ITR180(Mad) . This decision is of some interest. In execution of a money decree against a person, certain properties belonging to him were attached and brought to sale. That person was liable to pay income-tax arrears and the Income-tax Officer made an application to the court for an order directing payment to him out of the sale proceeds of the amount of income-tax due to the Government. The Income-tax Officer had not laid a suit against the assessee and obtained a decree. A Full Bench of the Madras High Court held that, despite that fact, the Crown was entitled to payment, having regard to the right of priority which the Crown has in payment of debts due to it and it was not necessary that a suit should have been riled by the Crown. As a corollary to this decision it would appear to follow that if the Crown was entitled merely on the basis of an undisputed debt owing to it to seek the inherent power to the court under Section 151, Civil Procedure Code, to pay over the money to it in discharge of the income-tax liability of the person whose money had been brought to court by way of execution by a third party, the Crown was more or less in the position of another decree-holder seeking rateable distribution of the assets lying in court, though claiming priority over the other creditors. That would in effect mean that the Crown is not disentitled to sue the defaulting taxpayer and obtain a decree in the civil court. This decision is no doubt not a direct authority laying down that a right of suit is available to the State in respect of income-tax arrears. But inferentially that conclusion follows. This decision has been referred to in *Builders Supply Corporation v. Union of India* and their Lordships of the Supreme Court have not expressed any disapproval of the principle underlying the Madras decision.

16. A case more directly in point is *Inderchand v. Secretary of Stale for India in Council* : [1941]9ITR673(Patna) . It is clearly stated in this decision that the time-limit prescribed in Section 46(2) of the Act applies only to proceedings under that section and further that when one the income-tax is assessed, it becomes a debt due by the assessee to the Crown and the Crown, as a creditor, has the ordinary right of suit against the assessee. On the other question whether the suit is barred by Section 67 of the Act, the Patna High Court also took the view which I have expressed earlier.

17. It follows that the contentions advanced on behalf of the appellant are devoid of substance. The second appeal fails and is dismissed with costs. No leave.