

Goverdhan Lal Jagdish Kumar vs Commr. Of Income-Tax, U.P., Lucknow And ... on 11 November, 1955

Equivalent citations: AIR1956ALL130, [1956]29ITR591(ALL), AIR 1956 ALLAHABAD 130

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the order dated 27-5-1955 passed by the Income-tax Officer and a writ of mandamus be issued to the Commissioner of Income-tax and the Income-tax Officer, A Ward, Farrukhabad, directing them not to realise the income-tax till the disposal of appeals filed by the petitioner.

2. The petitioner was assessed by the Income-tax Officer, A Ward, Farrukhabad by his orders dated 15-3-1954, 28th February, 7th February, and 15th March 1955 to an income-tax: amounting to Rs. 75,477/- for the assessment years 1945 to 1951. Appeals were filed against the aforesaid orders before the Appellate Assistant Commissioner.

A notice of demand was sent to the applicant and on his failure to deposit the amount of the tax, the applicant was ordered, by an order dated 27-5-1955, to deposit the whole amount of tax, within three days. Thereafter the penalty was to be imposed upon the applicant under Section 46(1), Income-tax Act at 10 per cent. Against the aforesaid order the present petition was filed.

3. Notices were issued to the opposite parties and a counter-affidavit has been filed in which it is stated that the assessment for the years 1945-46 was made on 21-3-1955 amounting to a sum of Rs. 51,01773/-; for 1946-47 on 7-2-1955 amounting to Rs. 5,887/13/-; for 1947-48 on 28-2-1955 amounting to Rs. 3,5717/-; for 1948-49 on 28-2-1955 amounting to Rs. 4,336/12/-; for 1949-50 on 15-3-1954 amounting to Rs. 5,363/- and for 1950-51 on 28-2-1955 amounting to Rs. 5,301/4/-.

Against the demand of 1949-50, a sum of Rs. 5,363/- was paid in 1953-54. This amount was paid by Raja Sharda Narain Singh of Tirwa against a notice under Section 46(5)(A). Against the total amount of Rs. 70,000/- and odd for 1945-46 to 1948-49 and 1950-51 assessment years, the applicant paid only a sum of Rs. 2,500/- and for 1946-47 and 1947-48, a petty sum of Rs. 887/13/- and Rs. 1,612/3/- were paid. After allowing sufficient time to the petitioner to pay up the amounts, a show-cause notice was issued to him on 17-5-1955.

On 22-5-1955, in reply to the aforesaid notice, an application was filed by the applicant which was pressed by his counsel before the Income-tax Officer on 27-5-1955. The Income-tax department was

also informed that there was a sum of Rs. 7,500/-, which was alleged to have been due to the petitioner from Raja Sharda Narayan Singh of Tirwa and that it should be realised from him under Section 46(5) (A).

Thereupon a letter was sent to Raja Sharda Narain Singh. The Raja informed that a sum of Rs. 5,000/- only was due from him and that too was lying with the Civil Judge on account of the assessee's refusal to sign a voucher jointly. The applicant was duly informed by the Income-tax department on 9-7-1955. As the applicant had not paid any thing, his request for the stay of realisation was rejected.

Although the application had been rejected, the petitioner's counsel was informed verbally that he could pay the amount by instalments if he liked but the petitioner's counsel did not agree to the proposal. Thereupon the applicant was directed to pay the amount of demand within three days. No amount having been paid within the time fixed, a penalty under Section 46 was imposed.

Thereupon the applicant approached the Inspecting Assistant Commissioner of Income-

tax, A Range, Lucknow who allowed him to pay the various demands on specified dates. Even this concession was not availed of by the applicant. On these facts it is stated that the petitioner has no right to ask this Court for a writ of mandamus.

4. Two points have been urged by the petitioner: Firstly, it is contended that under Section 45, Income-tax Act, as the petitioner had filed appeals against the orders of assessment, he could not be regarded as being in default and no penalty could thereafter be imposed against him and no coercive measure could be taken for the realisation of the amount.

Secondly, it is contended that even if the order under Section 45 be held to depend upon the discretion of the Income-tax authorities, the discretion in the present case was exercised arbitrarily inasmuch as having regard to the amount, the time allowed was very short and this Court, in the exercise of its power under Article 226 of the Constitution, should set aside the discretion exercised by the Income-tax Officer.

Section 45, Income-tax Act provides that-

"Any amount specified as payable in a notice of demand under Sub-section 3 of Section 23A or under Section 29 or an order under Section 31 or Section 33, shall be paid within the time, at the place & to the person mentioned in the notice or order, or if a time is not so mentioned, then on or before the first day of the second month following the date of the service of the notice or order, and any assessee failing so to pay shall be deemed to be in default, provided that, when an assessee has presented an appeal under Section 30, the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of."

The filing of an appeal does not under Section 45 amount to an automatic stay of the realisation of the amount of tax. By merely filing an appeal it cannot be said that the failure to pay the amount within the time specified in the notice of demand under Section 29 will not make an assessee a defaulter. It is discretionary with the Income-tax Officer not to consider him a defaulter in case appeals have been filed against the orders of the Income-tax Officer.

The power not to regard an assessee a defaulter, even though he did not pay the amount of tax within a specified time, has been given to the Income-tax Officer and the exercise of such a power depends upon the discretion of the Income-tax officer. The contention of the applicant is that the power given under Section 45 is coupled with a duty and it is incumbent upon the Income-tax Officer not to regard the petitioner, who has gone up in appeal, as a defaulter.

In my judgment it is not a correct reading of Section 45. If such a duty has to be inferred from the provisions of Section 45, the words "in the discretion of the Income-tax Officer" would become redundant. It will be an absolute right in all cases, where an appeal has been filed, of the assessee not to pay the amount of the tax till the appeal has been disposed of.

It was never intended by the Legislature to provide that the filing of an appeal will amount to an automatic stay of the realisation of the amount of tax. Reliance was placed on -- 'Ladhuram Taparia v. B. K. Bagchi', (1951) 20 ITR 51 (Cal) (A). No doubt the observations made in that case give support to the contention of the applicant but the circumstances of that case were different from the present case and if that case lays down that in all cases where an appeal has been filed, there is a duty cast upon the Income-tax Officer not to regard the assessee as a defaulter, I have no hesitation in differing from that opinion.

It has been held in the -- 'Lord Krishna Sugar Mills Ltd., v. Income-tax Officer, Ambala', AIR 1953 Punj 113 (B) that the power given to the Income-tax Officer under Section 45 is discretionary and it is not necessary in each case that the Income-tax Officer should not regard the assessee as a defaulter in case an appeal has been filed against the order of assessment. There is, therefore, no force in the first point raised by the applicant.

5. The second contention of the applicant is that in the circumstances of the present case, the exercise of discretion was arbitrary. Notice of demand must have been sent to the petitioner earlier than 27-5-1955. It was on 27-5-1955 that he was given further three days' time to pay up the amount. Out of the huge amount of Rs. 75,477/-, the petitioner had paid very little towards the tax. In those circumstances it cannot be said that the Income-tax authorities acted arbitrarily in rejecting the application of the petitioner.

Further, as has been pointed out by the opposite parties in the counter-affidavit, the petitioner's counsel did not agree to the payment of the amount by instalments. He claimed it as an absolute right that the realisation should be stayed till the disposal of the appeals. It cannot, therefore, be said that the exercise of discretion by the Income-tax authorities was arbitrary.

6. It was then contended by the petitioner that proper steps were not taken by the Income-tax authorities to realise the amount from Raja Sharda Narain Singh of Tirwa. According to the applicant, a sum of Rs. 7,500/- was due from the Raja of Tirwa which he could have been asked to pay under Section 46(5) (A). As has been pointed out in the counter-affidavit, the Raja was asked to pay up the amount but he said that only Rs. 5,000/- was due and that amount also could have been realised by the assessee if he signed a voucher jointly.

If the contention of the applicant be accepted that a sum of Rs. 5,000/- deposited in Court was due to the assessee from the Raja of Tirwa, still if the amount was lying in Court, it belonged to the Raja Sahib and if it had been made available to the assessee towards the liquidation of his debt, the assessee should have signed the voucher so as to make the amount available to the Income-tax authorities to be realised and set off towards the income-tax liability of the petitioner. It cannot, therefore, be said that the authorities did not take proper and sufficient steps to realise the amount due to the assessee from the Raja of Tirwa.

7. There is, therefore, no force in this petition and it is rejected. I make no order as to costs.