Raja Jagdish Pratap Sahi vs State Of Uttar Pradesh on 13 February, 1973

Equivalent citations: 1973 AIR 1059, 1973 SCR (3) 528, AIR 1973 SUPREME COURT 1059, 1973 3 SCC 815, 1973 TAX. L. R. 898, 1973 TAX. L. R. 896, 1974 (1) SCJ 5, 1973 (1) SCWR 414, 1973 SCC (TAX) 329, 87 I T R 641, 1973 3 SCR 528, 88 ITR 443

Author: P. Jaganmohan Reddy

Bench: P. Jaganmohan Reddy, K.S. Hegde, Hans Raj Khanna

PETITIONER:
RAJA JAGDISH PRATAP SAHI

Vs.

RESPONDENT:
STATE OF UTTAR PRADESH

DATE OF JUDGMENT13/02/1973

BENCH:
REDDY, P. JAGANMOHAN
BENCH:
REDDY, P. JAGANMOHAN
HEGDE, K.S.
KHANNA, HANS RAJ

CITATION:
1973 AIR 1059 1973 SCR (3) 528
1973 SCC (3) 815

ACT:
U.P. Agricultural Income-tax Act (3 of 1948), s. 32-Suit for recovery of tax assessed-Maintainability.

HEADNOTE:
The appellant was assessed to Agricultural income-tax under the U.P. Agricultural Income.-tax Act, 1948, and was directed to pay it in four instalments. The appellant defaulted and, when summary proceedings to recover the amounts as arrears of land revenue were taken under s. 32 of the Act, it was found that two of the instalments had become time barred under s. 32(2). In a suit by the respondent State for recovery of those amounts, the appellant contended

that the only remedy open to the respondent was under s. 32 and that the suit was not maintainable. The trial court dismissed the suit, but the High Court in appeal decreed the suit.
Dismissing the appeal to this Court,
HELD : Where a taxing statute provides for a summary mode of recovery and is not exhaustive, it will be open to the State to have recourse to any other mode open to it under the general law. [532D]
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; and the State has the right to recover it by any of the modes open to it under the general law, unless, as a matter of policy ,only a specific mode to the exclusion of any other is prescribed by the law. No such prohibition is enacted in s. 32 of the Act. [531C-E]
Manickam Chetiar v. Income-tax Officer, Madurai, [1938] VI I.T.R. 180, Inder Chand v. Secretary of State, A.I.R. [1942] Patna 87 and Chaganti Raghava Reddy v. State of Andhra Pradesh, A.I.R. [1959] A.P. 631 applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1192 of 1970.

Appeal by Certificate from the Judgment and order dated May 20, 1966 of the Allahabad High Court in First Appeal No. 161 of 1960.

Yogeshwar Prasad, Hajii Iqbal Ahmed, S. K. Bagga and S. Bagga, for the appellant.

S. C. Manchanda and O. P. Rana, for the respondent. The Judgment of the Court was delivered by JAGANMOHAN REDDY, J. 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 (111 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, 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 that they had become time-barred under s. 32(2) of the Act. The Board accepted the contention and held that no proceedings could be commenced for the recovery of third and fourth instalments which fell due on April 9, 1953 and June 9, 1953, but in respect of the proceedings for the recovery of the second instalment it was held that those

proceedings could be-continued. An application to the Board for re- ference to the High Court was dismissed. The appellant then paid the second instalment.

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 s. 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 re- versed 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 s. 32, and the State cannot recover any such amount by any other mode such as by s. suit. Section 32 is as follows :

> "32. Recovery of penalties-(1) The Collector may, on the motion of 'assessing authority, recover any sum imposed by way of penalty under the provisions of section 17 or section 3 1, or, where an assessee is in default, the amount assessed as agricultural income-tax, an 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 ana- logous provisions of sub-s. (7) of S. 46 of the Indian Income-tax Act, 1922, or the corresponding provisions of S. 232 of the Income-tax Act of 1961 cannot be relied upon for interpreting S. 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 S. 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 that it is only by virtue of a specific provision that the legislature has conferred this right upon the Revenue where it did not earlier possess. under s. 46 (2) of the Act of 1922, 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. Sub-section (7) of the said section prescribes a period of limitation of one year from the last day of the Financial year in which any demand is made under the Act, and thereafter no proceedings for the recovery can be taken. This section was amended by s. 21 of the Indian Income-tax (Amendment) Act, 1953, by which the following explanation was added :

> "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 way 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 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 nave an Explanation analogous to s. 46 nonetheless 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 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 attachment, apply to a Court for the payment of dues if there are funds lying to die credit of the assessee in the Court, or it may perhaps demand payment in the hands of the, receiver appointed, in respect of any property of the assessee, if due noticed to aft the parties interested in the funds is given. On these aspects, however, we do not propose to, express any views. As already observed, after an assessment is made upon the, assessee quantifying the tax due from him and a demand for the payment thereof is issued within the period specified therein, it creates a debt payable by the assessee in favour of the State. It is well established that once a debt is created, the State has the right to recover it by any of the modes open to it under the general law, unless as a matter of policy only a specific mode to the exclusion of any other is prescribed by the law. No such prohibition is enacted in s. 32 of the Act. Even prior to the, amendment of sub-s. (7) of 's. 46 of the 1922 Act, several High Courts in this country had taken this view. In Manickam Chettier v. Income-tax Officer, Madurai(1), 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 question 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 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 p. 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 (1) (1938) VI I.T.R. 180.

not regard section 46 as imposing a bar to an application or the nature of the one we are now 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 debts 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 Inder Chand v. Secretary of State(1). 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 S. 46, was repelled by Chatterjee, J. In Chaganti Raghava Reddy v. State of Andhra Pradesh(), 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 a taxing statute provides for a summary mode of re- covery and is not exhaustive,, it will be open to the State to have recourse to any other mode open to it under the general law.

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

V.P.S. Appeal dismissed.

(1) A.I.R. 942 Pat. 87. (2) A.T.R 1959 A.P. 631. L796SLip.C.1.173-2500-30-8-74-GIPF.