
(1974) 11 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 412 of 1966

Gopi Chand

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 05-11-1974

Acts Referred:

Income Tax Act, 1922 — Section 3, 5

Citation : (1976) 102 ITR 707

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Bhagirth Dass, S.K. Hirajee and B.K. Gupta, for the Appellant; D.N. Awasthy, for the Respondent

Judgement

Bal Raj Tuli, J.—The petitioner was assessed to Income Tax for the assessment years 1945-46, 1946-47 and 1947-48, vide orders dated 31st May, 1948, 14th October, 1948, and 29th January, 1949, respectively, by the Income Tax Officer, Rohtak. The assessment orders for the first two years show that the petitioner had filed returns of income as "individual" but the Income Tax Officer assessed him in the status of Hindu undivided family. In all the three orders the name of the assessee is mentioned as "Lala Gopi Chand Dallal, Railway Road, Rohtak" while the status is mentioned as Hindu undivided family. Against these orders, the petitioner filed appeals which were accepted in part by the Appellate Assistant Commissioner of Income Tax on May 13, 1950. The Appellate Assistant Commissioner allowed reduction in the income of the petitioner by Rs. 9,000 for the year 1946-47 and Rs. 1,200 for the year 1947-48. He also held that the status of the petitioner was that of an individual and not Hindu undivided family. He, therefore, ordered that the status shall be changed to that of an individual. Against the orders of the Appellate Assistant Commissioner in all the three appeals, the petitioner filed appeals before the Income Tax Appellate Tribunal, which were decided on April 5, 1951. The Tribunal reduced the income of the petitioner for 1945-46 from Rs. 35,000 to Rs. 27,000, for 1946-47 from Rs. 56,000 to Rs. 40,000 and for the year 1947-48 from Rs. 1,25,000 to Rs. 75,000.

2. The Income Tax Officer had issued notices of demand to the petitioner under Sections 29 and 45 of the Income Tax Act, 1922, along with the assessment orders, but on his failure to pay the amounts, recovery certificates were sent to the Collector, Rohtak, on July 17, 1948, with regard to the assessment year 1945-46, on January 26, 1949, with regard to the assessment year 1946-47, and on February 23, 1950, for the assessment year 1947-48. In pursuance of those recovery certificates, the Collector, Rohtak, attached the property of the petitioner. However, no further proceedings were taken till December 21, 1965, on which date the Tax Recovery Officer of the Income Tax department, Patiala, called upon the petitioner to deposit the amounts due from him within a week failing which coercive measures would be taken against him. On February 21, 1966, the Tax Recovery Officer told the petitioner that if the amounts were not deposited, he would be arrested. At that stage, the petitioner filed the present petition challenging the recovery proceedings mainly on the following grounds:

1. That no notices under Sections 29 and 45 of the Income Tax Act, 1922, were at all issued and served on the petitioner after the orders of the Assistant Appellate Commissioner of Income Tax and the Income Tax Appellate Tribunal, and hence no certificate for the recovery of the amount could be issued to the Collector u/s 46(2) of that Act.

2. That in view of the appellate orders, the earlier orders, notices of demand and recovery certificates issued by the Income Tax Officer must be taken to have been superseded and attachments made in pursuance of the recovery certificates, already issued, must be deemed to have ceased with effect from the date of the appellate orders. Consequently, the order of the Collector and the threat of arrest are void and without jurisdiction.

3. That a certificate could be forwarded u/s 46(2) of the Income Tax Act, 1922, to the Collector for recovery only if the petitioner was an assessee in default u/s 45 of that Act. Since no notice of demand u/s 29 of the said Act was issued to the petitioner within time, the recovery certificate could not be issued and no recovery proceedings could be taken in pursuance thereof.

3. Written statement has been filed by the respondents in which it has been submitted that the recovery proceedings were in accordance with law and not invalid, and so cannot be quashed.

4. The Supreme Court in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, held that on 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 assessee before he could be treated as a defaulter and since no notice was issued, recovery proceedings initiated against him had to be quashed. In order to overcome the effect of that judgment, Parliament enacted the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (hereinafter referred to as the Validating Act), which came into force on May 12, 1964. Section 3(1)(b) of that Act relates to the contingency in which the

Government dues are reduced in appeal or other proceedings and is relevant for the decision of this petition. This clause read as under :

"3. 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 proceedings is filed or taken in respect of such Government dues, then,--.....

(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."

5. According to this clause, after the amount is reduced, it is not necessary to issue a fresh notice of demand to an assessee, but an intimation of the fact of such reduction has to be given to the assessee. Clause (c) of Section 3(1) of this Act reads as under :

" 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."

6. The provisos to this clause are not relevant. Sub-section (3) of Section 3 provides :

"(3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority."

7. Section 5 makes the provisions of this Act retrospective and is in the following terms :

" 5. Act to have retrospective effect.--The provisions of this Act shall apply and shall be deemed always to have applied, in relation to every notice of demand served upon an assessee by any taxing authority under any scheduled Act whether such notice was or is served before or after the commencement of this Act."

8. It is apparent that the Validating Act was enacted to counter the effect of the Supreme Court judgment referred to above and all recovery proceedings taken before its enactment were validated. When the original notices of demand were

issued to the petitioner, they were in accordance with the assessment orders passed by the Income Tax Officer. As I have pointed out above, in those orders, the assessee was described as " Lala Gopi Chand Dallal, Railway Road, Rohtak ", while the status was described as " Hindu undivided family ". That status was changed to " individual" by the Appellate Assistant Commissioner in appeal and no direction was issued to pass fresh assessment orders on the petitioner in the status of " individual ". The orders already passed by the Income Tax Officer were maintained with the reduction allowed by the Appellate Assistant Commissioner, as if they had been passed in the" status of an individual. Against the orders of the Appellate Assistant Commissioner the petitioner filed appeals wherein the amount of income was reduced, and subject to that reduction, the assessment orders were maintained. Those orders were passed in the presence of the petitioner. It cannot, therefore, be justifiably urged by the petitioner that the original assessment orders of the Income Tax Officer, having been made on him in the status of Hindu undivided family, fresh assessment orders had to be passed to make him liable in his status as individual. This plea cannot be allowed to be taken by the petitioner at this stage. He should have raised that objection in appeal before the Income Tax Appellate Tribunal and the Tribunal might have ordered that fresh orders of assessment be passed. In this view of the matter, I hold that the orders shall be deemed to have been passed against the petitioner in his status as "individual". The notices of demand were issued in his name and not in the name of the Hindu undivided family. The recovery certificates were also issued in that name. For this reason, no further notice of demand was to be issued to the petitioner by the Income Tax Officer after reduction in the amount of income was made, as provided in Section 3(1) (b) and (c) and Section 5 of the Validating Act and the recovery proceedings carried on in pursuance of the earlier notices were valid.

9. The learned counsel for the petitioner has urged that even intimation of reduction in the Income Tax payable by him was not issued to him as was required under Clause (ii) of Section 3(1)(b). In my opinion, this requirement is for the future and not for the proceedings that had been taken before the Validating Act came into force, since this provision did not exist prior thereto. It has been stated in the return filed by the respondents that the intimation of the reduction in the amount of Income Tax was given to the Tax Recovery Officer informing him to recover the reduced amount. The object of Sections 3(1)(c) and 5 of the Validating Act is to validate all the proceedings for recovery taken against the assessee in default before its enforcement and since the proceedings for recovery of the tax had been taken against the petitioner before that date, any defect in those proceedings has been cured by Sections 3 and 5 of the Validating Act and the petitioner cannot now challenge the validity of those proceedings. There is thus no merit in this petition which is dismissed but the parties are left to bear their own costs.