
(1957) 10 MAD CK 0026
In the Madras High Court

K.M. Adam

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 14-10-1957

Acts Referred:

Income Tax Act, 1961 — Section 46(5A)

Citation : AIR 1958 Mad 181 : (1957) 70 LW 1016 : (1958) 1 MLJ 34

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Division Bench

Judgement

Rajagopala Ayyangar, J.—K.M. Adam, the petitioner, is a dealer in skins. He was assessed to Income Tax for the years 1948-1949 to 1953-1954. The quantum of the tax levied in these assessments was disputed, by the petitioner, assessee, but that is not material for the present petition. What, however, is of relevance is that as a result of these assessments a sum of over Rs. 3,00,000 was found due from the petitioner as arrears of Income Tax.

2. The petitioner had for the purpose of his business opened an overdraft account with the Indian Bank, Ltd., for which he had pledged with them, his stock of hides and skins. The limit set to the overdraft by the Bank was at Rs. 1,37,500. On the date relevant to the present petition the assessee had drawn on this account a sum of Rs. 1,31,301-2-1 and this sum was shown in the books of the Bank as debit to his account. While so, the Additional Income Tax Officer, Second Circle, Madras, who is the respondent in this petition, served a notice on 19th November, 1955, on the Indian Bank u/s 46(5-A) of the Indian Income Tax Act. In view of the points raised during argument it is necessary to set out the terms of this notice:

To The Indian Bank (Head Office), Madras I.

A sum of Rs. 345,689-14-0 is due from K. M. Adam on account of Income Tax and/or penalty. I am to request you u/s 46(5-A) of the Income Tax Act, 1922. to pay me forthwith any amount due from you, to, or held by you for, or on account

of, the said Mr. K.M. Adam of 46, Harris Road, Pudupet, Madras-2, up to the amount of arrears shown above, and also request you to pay any money which may subsequently become due from you to him or which you may subsequently hold for or on account of him up to the amount of arrears still remaining unpaid, forthwith, on the money becoming due or being held by you as aforesaid, as such payment is required to meet the amount due by the tax-payer in respect of arrears of Income Tax and penalty. I am to say that any payment made by you in compliance with this notice is in law deemed to have been made under the authority of the tax-payer and my receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount referred to in the receipt.

I am to observe that if you discharge any liability to the tax-payer after receipt of this notice, you will be personally liable to me as Income Tax Officer, II Additional Circle, Madras, to the extent of the liability discharged or to the extent of the liability of the tax-payer for tax and penalties whichever is less.

Further if you fail to make payment in pursuance of this notice to me as Income Tax Officer further proceedings may be taken by and before the Collector on the footing that this notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to Sub-section (2) of Section 46.

The necessary chalan for depositing the money to the credit of Government in the Reserve Bank of India will be supplied immediately on hearing from you.

A copy of this notice is being sent to Mr. K.M. Adam (tax-payer).

(Sd.)....

3. On receipt of this notice, a copy of which was also sent to the assessee, the Bank replied to the Income Tax Officer, on 23rd November, 1955, stating that there was no amount with them which was payable to Mr. Adam. They also set out the fact that the assessee has pledged with them his stock of hides and skins and had also executed a mortgage of certain of his properties described in the letter. They then stated the amount due to them, as also the limit set for the overdraft. A copy of this reply was sent to the assessee, with a note addressed to him reading " Please do not operate on your account until you get the above order of the Income Tax Officer vacated ". The Income Tax Officer replied to this on the next day (24th November, 1955) when he said " With reference to the above, I have to state that as and when you make future payments the above notice comes into play." The result of this last communication was that the Bank refused to pay the petitioner any further sums on his overdraft account and this has led to the filing of the present writ petition under Article 226 of the Constitution.

4. The prayer in paragraph 8 of the supporting affidavit to the writ petition was that the records relating to the notice u/s 46(5-A) issued by the respondent may be called for and quashed. Though in the petition there was also a prayer for the

issue of a writ of prohibition restraining the Income Tax Officer from taking coercive steps for the recovery of the tax for the year 1950-1951 pending an appeal of the assessee before the Appellate Assistant Commissioner what was argued at the hearing of the petition was confined to the validity of the notice u/s 46(5-A) and the action taken in pursuance thereof, particularly by the communication, dated 24th November, 1955.

5. Section 46 is the provision dealing with the mode of the recovery of the tax. Sub-section (5-A) enacts:

The Income Tax Officer may at any time or from time to time by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income Tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay to the Income Tax Officer either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the tax-payer in respect of arrears of Income Tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income Tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this Sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income Tax Officer shall constitute good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this Sub-section shall be personally liable to the Income Tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this Sub-section is sent fails to make payment in pursuance thereof to the Income Tax Officer, further proceedings may be taken by and before the Collector on the footing that the Income Tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to Sub-section (2) of Section 46.

Where a person to whom a notice under this Sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee, or that he does not hold any money for or on account of the assessee then nothing contained in the section shall be deemed to require such, person to pay any such sum or part thereof as the case may be to the Income Tax Officer.

6. It will be seen that this provision is analogous to an attachment of a debt or

what is commonly termed a garnishee summons. The classes of persons to whom such notice could be served are two : (1) any person from whom money is due or may become due to the assessee and (2) any person who holds or may subsequently hold money for or on account of the assessee. The question which arises for consideration in the present case is, as to whether a bank which has afforded overdraft facilities to its customer, holds the amount, specified as that up to which the customer may draw is either " a debtor " of the customer or holds that money on behalf of or on account of the customer.

7. I shall now proceed to consider whether the Bank in the present case stands in either of the two situations mentioned above. That moneys standing to the credit of a judgment-debtor in the current account of his in a bank is attachable is beyond dispute. This has been so held on the basis that the bank would be a debtor and could therefore be garnished. Similarly if the money of a customer is on a deposit account it would also be a case where the bank will be in the position of a debtor or as one who held money on behalf of the customer. It is unnecessary for the present case to complicate it by a consideration of the question which has been the subject of some debate as to the essentiality of a notice of demand before a sum due from a bank to a customer could be treated as garnishable debt. The sounder and the more generally accepted view on this point is that expressed in *Joachimson v. Swiss Bank Corporation* L.R. (1921) 3 K.B. 110 that a garnishee order itself constitutes a sufficient notice to turn a bank into a debtor. That question apart, there must be a debt to be attached. Unless the Bank were a debtor there could be no attachment and an unutilised overdraft account does not render the bank a debtor in any sense and therefore, the bank is not a person from whom money is due to the customer. Nor does the Bank in such a case fall within the expression " person from whom money may become due ". This refers to a case where there is a debitum in present solvendum in futuro, that is, where by reason of an antecedent contract between the garnishee and the judgment-debtor a " debt" automatically emerges, where the maturing into a presently payable debt is not by reason of external compulsion but due to pre-existing facts which of their own motion bring a debt into existence at a predetermined point of time. The proposition that a garnishee order does not accelerate the "time for payment and that it does not alter any of the terms of the contract between the garnishee and the judgment-debtor relative to the accrual of a debt arc too well established to need discussion.

8. Mr. Rama Rao Sahib, learned Counsel for the department, did not contend, that the margin between what the assessee had drawn and the limit of the overdraft was a debt either due at the date of the attachment or which could become due in the manner, I have stated above. He rather rested his case on attempting to bring the present instance into the second limb of Sub-section (5-A), namely, "holds or may hold money for or on account of the assessee". The argument under this head was somewhat on these lines. Immediately the customer drew a cheque on his overdraft account, which the Bank had by reason of the arrangement with the customer to honour, the money which it thus

decides to pay to its customer, becomes at once the customer's money which between the time when the Bank makes up its mind to pay and the time of the actual payment it holds on the customer's account. I must confess that this approach is too metaphysical for me to comprehend. Just by way of illustration I will take the case of an ordinary lender to whom a judgment-debtor applies for a loan. The theory would, if applied to Such an instance, result in some such position immediately the lender makes up his mind to lend and agrees to do so, viz-, that the lender holds the sum for or on account of the would-be borrower and so to speak becomes the debtor of the borrower and that when the money is actually paid that debt is discharged. But it would be seen that if the payment of the loan were thus a repayment of the borrower's money held by the lender, a loan would not result in any debt in favour of the lender which the borrower has to repay. I do not think it is worthwhile pursuing this theory any further. In my judgment when a Bank lends money on overdraft and the customer is always in debit there is no stage at which the bank is a debtor to its customer, nor any point of time at which it holds any money of his on his account. Section 46(5-A) of the Act cannot be on any construction be intended as a credit freeze, with this feature superadded, that if there was any thawing, the resultant credit released became immediately payable to the department. Of course, if at any stage the account of the customer is in credit, Section 46(5-A) would come into play and the sum so standing to the credit of these cases might be directed to be paid over. The present is not such a case and this undoubted right of the department is not what is now sought to be asserted. What the impugned order of the Income Tax Officer directs is virtually that the Bank should pay over to the Department the difference between the limit of the overdraft allowed to the petitioner and the amount drawn by him up to the date of the notice u/s 46(5-A). This in my judgment is not within the scope of the provision and the order understood in the light of the letter, dated 24th November, 1955, is consequently beyond the jurisdiction of the respondent. The notice is accordingly set aside but this will not prevent the department from proceeding to recover the arrears of tax in a manner authorised by the law. The rule is to this extent made absolute. There will be no order as to costs.