

(1970) 03 AHC CK 0024
In the Allahabad High Court
Case No : Writ Petition No. 2813 of 1969

Ram Das Jaiswal

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 02-03-1970

Acts Referred:

Income Tax Act, 1922 — Section 34

Citation : (1971) 79 ITR 570

Hon'ble Judges : R.S. Pathak, J

Bench : Single Bench

Advocate : V.B. Upadhyaya, for the Appellant; Brij Lal Gupta and R.R. Misra, for the Respondent

Final Decision : Dismissed

Judgement

Pathak, J.—The petitioner is aggrieved by proceedings for recovery of Income Tax taken against him—pursuant to assessment orders dated June 26, 1964, for the assessment years 1951-52 to 1956-57, made against the United Motor Transport Service Association.

2. The petitioner alleges that there were two motor vehicles, one owned by him and the other by his wife, which were operated for the carriage of passengers along with the motor vehicles owned by other operators under the common management of the United Motor Transport Service Association; that the income from the operation of the two vehicles owned by him and his wife was assessed in the hands of his Hindu undivided family for the assessment years 1951-52 to 1956-57 on the basis that it was the income of the family and, it is said, the tax due thereon was paid by the family. Subsequently, the income was also assessed in the hands of the United Motor Transport Service Association for the same assessment years and the tax assessed is now sought to be recovered from the petitioner. Pursuant to the recovery proceedings, it is alleged that it is proposed to arrest the petitioner. The house property of the petitioner and the motor vehicles have been attached. The petitioner says that no notice of any

proceeding for the assessment of the United Motor Transport Service Association was ever served upon him, nor was he aware of any such proceeding and he cannot be treated as being in default of payment of the tax assessed against the association. Accordingly, the petitioner prays for the quashing of the recovery proceedings.

3. Upon the material before us, it appears that at first the income from the two motor vehicles mentioned above was assessed in the hands of the petitioner's Hindu undivided family for all the assessment years under consideration. Subsequently, the Income Tax Officer, being of opinion that the income properly fell to be assessed as the income of the United Motor Transport Service Association, treated as an unregistered partnership firm, issued a notice u/s 34 of the Indian Income Tax Act, 1922, in respect of the several assessment years and made consequent assessments upon the partnership firm. The petitioner was treated as a partner of the firm, and on that basis recovery proceedings were directed against him. There was considerable dispute before us whether notice of the assessment proceedings and of all the assessment orders, and notices of demand had been served upon the firm, but it is now clear from the material on the record and also from the original record produced before us by the respondents that the notices u/s 34 were addressed to the United Motor Transport Service Association and were in fact served upon one Baij Nath, and that, consequent upon such service the firm filed returns of its income for the assessment years. The assessment orders and the notices of demand were addressed to the United Motor Transport Service Association and service thereof was again effected upon the said Baij Nath. We find from the records produced before us that appeals against the assessments were filed by one Peter Philips on behalf of the firm, and that the several notices of demand served upon Baij Nath were filed with the appeals. The contention on behalf of the petitioner is that service of the assessment orders and the notices of demand on Baij Nath is not service upon the firm and, consequently, no liability can be fastened upon the petitioner as a partner of the firm in the matter of the pending tax liability. We have considered the contention carefully, but we are of opinion that it is without force. From paragraph 26 of the counter-affidavit it seems that Baij Nath was an employee of the firm. During the course of arguments that position was disputed by learned counsel for the petitioner and an attempt was made to file a supplementary affidavit by way of rebuttal. We have, however, declined to accept the supplementary affidavit on the record, because of the late stage at which it was filed. In any event, it was open to the petitioner to make a rebuttal in the rejoinder-affidavit filed by him to the counter-affidavit. If Baij Nath is treated as an employee of the firm, the position appears to be that the firm acted upon the notice u/s 34, served upon him, by filing returns of its income. It also treated the assessment orders and notices of demand served upon Baij Nath as effective service upon the firm, and this is evidenced by the filing of the appeals along with the notices of demand. It would appear from this that Baij Nath must be treated as an agent authorised by the firm to accept on its behalf the service of

notices issued by the Income Tax department. Even if Baij Nath is not treated as employee of the firm, there is no difficulty in holding that service upon him was accepted by a partner, Peter Philips, as notice upon himself, and functioning as such partner on behalf of the firm, he filed returns of the income as well as the appeals. Service upon such a partner must be treated as service upon the firm. We, therefore, reject the contention that there was no effective service of notices of the assessment orders and the notices of demand upon the firm

4. The next question which arises is whether the petitioner can be treated as being in default so that recovery proceedings can be taken against him. If service of the notices of demand can be taken as service upon the firm, and no tax is paid consequent upon such notices of demand within the time allowed by it, the partner himself can be treated as being in default. The law is now clear that if a notice of demand has been served upon a partnership firm, it is not necessary that a further notice should be served upon the partner of the firm in order to render that partner liable for payment of tax : see *Sahu Rajeshwar Nath Vs. Income Tax Officer, C-Ward, Meerut and Another*, . If a partner can be proceeded against for the debts of the firm, it is clearly on the principle that he is jointly and severally liable for those debts. The liability is a personal liability and we have no doubt that for the enforcement of that liability, the partner is vulnerable to all the processes of recovery which can be taken as if it was his personal debt. It is open to the recovering authority to proceed by way of arrest of the partner. Accordingly, we hold that the petitioner is not immune from arrest in the proceedings for recovery of the Income Tax dues in question.

5. Finally, learned counsel for the petitioner points out that the house property which has been attached for recovery of the Income Tax dues is property of the Hindu undivided family and is not the personal property of the petitioner. There is no statement to that effect in the writ petition itself, nor has any ground been taken in the writ petition, and, in the circumstances, we are not disposed to express any opinion on that question. The question is left open and it is open to the petitioner and the Hindu undivided family to take such proceedings as they may be advised in the matter.

6. Learned counsel for the petitioner mentions that an appeal by the firm in the matter of the aforesaid assessments is pending in the Income Tax Appellate Tribunal and is expected to be heard shortly, and prays for a direction that the recovery proceedings may not be enforced further during the pendency of that appeal. It seems that in a writ petition filed by one Panna Lal, another partner of the firm, the recovery proceedings being taken against him were also challenged, but when the petition came up for hearing, it was withdrawn by the petitioner on an undertaking given by counsel for the Income Tax department that the attached property would not be sold until the appeal filed by the firm before the Income Tax Appellate Tribunal was disposed of. Learned counsel for the Income Tax department is unable to give a similar undertaking at this stage. We have no doubt that the Income Tax department will properly appraise the situation and

take into consideration the circumstance that the appeal is pending before pursuing the recovery against the petitioner any further. The petition fails and is dismissed with costs.