

(1973) 02 AHC CK 0003
In the Allahabad High Court
Case No : Special Appeal No. 201 of 1965

Ram Swarup Gupta

APPELLANT

Vs

Behari Lal Baldeo Prasad and Others

RESPONDENT

Date of Decision : 23-02-1973

Acts Referred:

Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 —
Section 3

Citation : (1974) 95 ITR 339

Hon'ble Judges : Hari Swarup, J;G.C. Mathur, J

Bench : Division Bench

Advocate : S.C. Khar and R.R. Misra, for the Appellant; Deokinandan, R.B. Mehrotra, Ashok Gupta and J.N. Tewari, for the Respondent

Judgement

Hari Swarup, J.—This appeal has been preferred by an auction-purchaser against the judgment of the learned single judge allowing the writ petition filed by the assessee challenging the validity of the sale of his properties held in recovery of certain dues under the Income Tax Act. A certificate of recovery for Rs. 33,695 was sent by the taxing authority to the Tax Recovery Officer on July 20, 1959. The assessee preferred an appeal against the imposition of penalty. This appeal was allowed on December 6, 1961, and the penalty of Rs. 19,200 was reduced by Rs. 13,300. The amount that remained recoverable after the appellate order was only Rs. 20,395. The Tax Recovery Officer proceeded with the sale on the basis of the recovery certificate issued by the taxing authority for Rs. 33,695 and conducted the sale on 12th and 13th November, 1963. Properties belonging to the assessee were sold for a total amount of Rs. 35,100. The sale was confirmed on 14th April, 1964.

2. The assessee filed the writ petition in this court challenging the validity of the sale proceedings on the ground that no fresh notice of demand was issued to him after the amount had been reduced in appeal, and that the sale had been held for an amount in excess of what was recoverable from the petitioner on the date

of the sale. The contentions were based upon the decision of the Supreme Court in *Income Tax Officer, Kolar and Another Vs. Seghu Buchiah Setty*, in which it was held that after the liability is varied in appeal, proceedings for recovery of the amount consequent to the notice of demand issued on the basis of the original liability become void and no proceedings for recovery of the amount finally determined in appeal can be taken unless fresh notice of demand was issued and the assessee committed default in complying with the demand. At the hearing, the auction-purchaser and the department tried to justify the sale proceedings on the basis of Section 3(c) of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 (hereinafter referred to as "the Act"). It was contended that no fresh notice of demand was necessary in view of Section 3(c) of this Act and proceedings did not become invalid also because the demand had been reduced in appeal. The learned single judge did not accept the contention of the department and the auction-purchaser and held that the sale proceedings were not saved by Clause (c) of Section 3 of the Act. Clauses (b) and (c) of Section 3 of the Act run as follows : "(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 proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;

(c) 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. "

3. The learned single judge found as a fact that no intimation was given by the taxing authority to the Tax Recovery Officer of the fact that the demand had been reduced on appeal. In the appeal before us the appellant has also not challenged the correctness of this finding. Learned single judge took the view that the conditions mentioned in Sub-clause (ii) of Clause (b) of Section 3 were mandatory and the failure on the part of the taxing officer to give intimation to the Tax Recovery Officer of the fact that the demand had been reduced was fatal and the sales held by the Tax Recovery Officer were invalid.

4. The learned counsel for the appellant has contended that the requirements of Sub-clause (ii) of clause (b) of Section 3 of the Act were not mandatory, and that the provisions of Clause (c) were enough to save the proceedings. In support of

his contention he has placed reliance on a judgment of a learned single judge of this court in the case of BALADIN RAM KALWAR Vs. Income Tax OFFICER, B-WARD, VARANASI, AND ANOTHER., .. In that case the learned single judge had held that the intimation contemplated by Sub-clause (ii) of Clause (b) of Section 3 did not amount to a notice of demand and, therefore, the requirement for the issue of such an intimation did not create any hiatus in the sale proceedings and did not break the proceedings so that a fresh recovery certificate be issued and fresh proceedings for recovery be commenced. In the case of Baladin Ram Kalwar the sale was held for the amount that was actually due and the facts mentioned in the judgment do not indicate that the intimation, as contemplated by Sub-clause (ii) of Clause (b) of Section 3 of the Act, had not been given. The case of Baladin Ram Kalwar thus, cannot support the contention of the learned counsel for the appellant.

5. The Act was enacted to get over the effect of the judgment of the Supreme Court in Income Tax Officer v. Seghu Buchiah Setty, according to which the recovery proceedings started on the basis of the original notice of demand and the recovery certificate could not be continued after the amount was varied on appeal. The purpose of the Act is to continue such recovery proceedings without necessitating a fresh notice of demand, even though the amount may be varied on appeal. By Section 5 of the Act, Section 3 has been given retrospective operation and it will be deemed to be in existence also at the time when the sale in the present case was held. If Clause (c) of Section 3 were not there, the proceedings after the appellate order reducing the amount would have become invalid without a fresh notice of demand being issued. The purpose of Clause (c) is to avoid that situation and to keep the proceedings valid and alive even after the demand is reduced or enhanced. But the manner in which the proceedings so kept alive will be continued, is provided in Clause (b) of Section 3 of the Act. It is this clause that prescribes the procedure which has to be followed by the Tax Recovery Officer in recovering the reduced amount. Sub-clause (i) of Clause (b) of Section 3 is of a negative nature and makes it unnecessary for the taxing authority to serve upon the assessee a fresh notice of demand. On the other hand, Sub-clause (ii) requires a positive duty to be performed by the taxing authority. It enjoins upon him the duty to give intimation of the fact of reduction of the demand in appeal to the assessee ; and in case the certificate has already been issued to the Tax Recovery Officer, also to intimate the fact to that officer. Sub-clause (iii) permits the continuation of the proceedings after the appeal is allowed, but only for the amount that actually remains due after its reduction in appeal. The right to recover any amount from a defaulting assessee corresponds to his liability to pay the dues. Recovery of a larger amount is not permitted. Sub-clause (iii) of Clause (b) of Section 3 of the Act permits the continuance of the proceedings only in relation to the amount so reduced in appeal from the stage at which such proceedings stood immediately before the disposal of the appeal. It does not permit the continuance of the proceedings in relation to the amount higher than the amount that remains due after reduction.

6. The effect of these provisions is to dispense with the need of issuing a fresh notice of demand and the recovery certificate and to allow the original recovery proceedings to continue, but only for the amount found due after reduction in the appeal, and it is for this purpose that the taxing authority is required to send intimation of the fact of the reduction to the assessee and to the Tax Recovery Officer. As the proceedings for recovery can be continued only for the amount that finally remains due, and not for any amount in excess thereof, the requirement of sending intimation to the Tax Recovery Officer becomes an essential duty of the taxing authority and must be held to be a mandatory condition. Non-compliance of that condition will be an illegality in the procedure and will invalidate the proceedings. A sale held in proceedings initiated and continued for the recovery of an amount in excess of the amount payable by the assessee, after its reduction in appeal, will be invalid. Such a sale is not validated by Clause (c) of Section 3 of the Act. The sales in the present case were, therefore, illegal and invalid.

7. No other point has been argued before us. The appeal accordingly fails and is dismissed with costs.