(1965) 02 AHC CK 0035

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4930 of 1964

Sheo Mahendra Kumar Singh APPELLANT

Vs

The State of U.P. and Others RESPONDENT

Date of Decision : 26-02-1965

Acts Referred:

Uttar Pradesh Agricultural Income Tax Act, 1948 — Section 30, 32(2)

Citation : (1965) 35 AWR 470

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

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Pathak, J.—The Petitioner was assessed to agricultural income tax under the U.P. Agricultural Income Tax Act, 1948, for the assessment year 1363 Fasli. A notice of demand dated August 28, 1961 was served upon the petition on September 29, 1961, calling up him to pay the sum of Rs. 12,079. as tax. Under the terms of the notice of demand, which were in accordance with the provisions of Section 30 of the Act, the amount specified in the notice was payable in two equal instalments the first instalment to be paid within one month of the service of the notice and the second within six months from the due date of the first instalment. The Petitioner preferred an appeal against the assessment order, which was filed on October 3, 1961. On the same day the Petitioner obtained an order from the appellate authority directing that he should be treated as not being in default for not paying the tax assessed. The appeal was dismissed on November 28, 1961, and with it the order that the Petitioner should be treated as not being in default was discharged. Then the Petitioner, on Feb. 17, 1962, proceeded in revision before the Revision Board. The revision application was dismissed on 15.9.1962. Thereafter a reference application, u/s 24(2) of the Act, was dismissed by the Revision Board. The Petitioner then filed a reference application in this Court u/s 24(4), which is pending. Meanwhile, on 29.4.1962 the Petitioner deposited a sum of Rs. 6,039,56 towards the first instalment of tax. On 16.4.1964, as the Petitioner had not deposited the balance of tax, the assessing authority imposed a penalty in the sum of Rs. 1,509,89. The total of the amount of tax and penalty, therefore, came to Rs. 7,549,45 and on 9.6.1964, the Collector passed an order directing the recovery of that amount as arrears of land revenue.

2. The Petitioner objected to the recovery proceedings against him, but his objections were rejected. He has now filed this petition for certiorari challenging the validity of the recovery proceedings.

3. The only contention raised by learned Counsel for the Petitioner is that the recovery proceedings are barred by limitation. There is force in this contention.

Section 30 of the Act provides:

(1) The amount specified in any notice of demand u/s 20 or in any order communicated u/s 23 shall be payable in two equal instalments.

(2) The first instalment shall be paid within'' one month of the service of the notice of demand or communication of the order, as the case may be, and second instalment within six months from the due date of the first instalment.

(3) If any instalment is not paid within the time allowed under Sub-section (2) the Assessee shall be in default.

Provided that when an Assessee has presented an appeal u/s 21 the appellate authority, on application, may, on Such terms and conditions as he may specify, direct that the Assessee shall be treated as not being in default.

Then follows Section 31 which provides for the imposition of penalty upon an Assessee who is in default. It empowers the assessing authority to recover a sum not exceeding one quarter of the tax remaining in arrears from the Assessee by way of penalty. Section 32 sets out the provisions relating to the recovery of arrears of tax and penalty. It reads:

(1) The Collector may, on the motion of the assessing authority, recover any sum imposed by way of penalty under the provisions of Section 17 or Section 31, or; where an Assessee is in default, the amount assessed as agricultural income tax, as if it were an arrear of land revenue.

(2) No proceedings for the recovery of any sum payable under this Act shall be commended after the expiration of one year from the date on which the last instalment fixed u/s 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.

The period of limitation for commencing proceedings for the recovery of any sum payable under the Act is prescribed u/s 32(2). This provision applies for the purpose of recovering any sum payable, whether the sum is payable on account of arrears of tax for on account of a penalty imposed on the Assessee.

4. Section 32(2), as appears from its terms, refers to two starting points from

which the period of limitation commences to run. On is the date on which the last instalment fixed u/s 30 Falls due, and the other is the date on which any appeal relating to the sum, in respect of which the recovery proceedings are taken, has been disposed of. The point for consideration is: which of these two starting points is the one from which limitation runs in the instant case? The last instalment fixed u/s 30 is payable within six months from the due date of the first instalment. The due date of the first instalment is the date of service of the notice of demand u/s 20 or of any order communicated u/s 23. The notice of demand u/s 20 is the notice calling for payment of tax consequent upon the assessment order. The order communicated u/s 23 is the order made in appeal or in revision. Where the tax sought to be recovered is the tax payable by virtue of the assessment order, the period of limitation for recovering it is one year from the date on which the last instalment fixed for payment of the tax falls due. Where, however, the tax payable is the tax determined pursuant to an appellate order or a revisional order, the period of limitation, is one year from the date on which the last instalment of the tax so payable falls due. A case may, however, arise where, although tax is payable under a notice of demand u/s 20 consequent to an assessment order, the Assessee prefers an appeal and obtains an order from the appellate authority that he shall be treated as not being in default during the pendency of the appeal. But for such order, the Appellant would be in default by reason of Section 30(3), and the Collector could, because the Assessee is in default, invoke the provisions of Section 32(1) and commence proceedings for recovery of the tax. If the Assessee obtains an order that he shall be treated as not being in default during the pendency of the appeal, then clearly no recovery proceedings u/s 32(1) can be taken. Recovery proceedings under that provision can be taken, against such an Assessee only where he is in default. The statute has not fixed any period of time within which the appeal must be disposed of. The appeal may remain pending for quite some time. In the absence of appropriate provision, it may well be that the period af one year commencing from the date on which the last instalment of tax payable upon a notice of demand u/s 20 falls due may expire, and be cause of the order of the appellate authority that the Assessee shall be, treated as not being in default the Collector may unable to take recovery proceedings within that period. It was to provide for such a case that Section 32(2) sets out another starting point from which the period of limitation begins to run, and that, is the expiration of one year from the date on which the appeal has been disposed of. It is apparent that upon the appeal being disposed of, the order that the Assessee shall be treated as not being in default ceases to operate and the Assessee is immediately liable to be treated as being in default. The Collector can then move under the provisions of Section 32(1) to take proceedings for recovery of the tax from such Assessee, and the period, of limitation within which he can do so is, u/s 32(2), one year from the date on which the appeal has been disposed of.

5. Upon the facts of the instant case, it is clear that the period of limitation must be one year from the date on which the Petitioner''s appeal was disposed of.

Against the assessment order he preferred an appeal on October 3, 1961, and obtained an order from the appellate authority that he should be treated as not being in default for not paying the tax demanded from him. The appeal was dismissed on November 28, 1961. Accordingly, the Collector had time up to November 28, 1962, to take proceedings u/s 32(1) for recovery of the tax due from the Petitioner. It seems that no action in that behalf was taken until June 9, 1964. In the circumstances, it must be held that the recovery proceedings taken by the Collector were barred by limitation.

6. A sum of Rs. 1,509,89 was imposed as penalty upon the Petitioner on 16.4.1964. Now, in order to determine the period of limitation for recovering an amount imposed as penalty, reference roust be had to Section 32(2). That is a comprehensive provision. It prescribes a period of limitation for the recovery of any sum payable under the Act. That sum may be payable as tax or as penalty. There is no separate provision providing a period of limitation for recovery of penalty. The very period of limitation prescribed for recovering tax is available for recovering the amount imposed as penalty. In the instant case, the penalty was imposed on account of the Petitioner being in default in payment of the tax. No appeal against the imposition of the penalty was filed by the Petitioner. Consequently, the starting point of the period of limitation for recovering the amount of penalty cannot be "the date on which any appeal relating to such sum has been disposed of." That starting point of the period of limitation is available only, where the sum sought to be recovered u/s 32(1) has been the subject of appeal. Consequently, the starting point of the period of limitation for recovering the amount of penalty imposed upon the Petitioner is "the date on which the last instalment fixed u/s 30 falls due." The last instalment fixed u/s 30 can be the last instalment payable by virtue of a notice of demand u/s 20 or payable by virtue of an appellate or revisional order communicated, u/s 23. Both the appeal and the revision application filed by the Petitioner were dismissed. The last instalment payable by the Petitioner was consequent to a notice of demand u/s 20. The first instalment of tax was liable to be paid within October 29, 1961, and the second or last instalment was, therefore, due, six months from the due date of the first instalment, on April 29, 1962. That is the starting point of the period of limitation for recovering the amount of penalty. The period of limitation is one year from that date. Consequently, proceedings for recovering the amount imposed as penalty upon the Petitioner should have been commenced before April 29, 1963. The order imposing penalty was, as I have mentioned above, made on April 16, ly64. That order was made when the period of limitation for recovering an amount imposed as penalty had expired It is an order to which no effect can be given.

7. In the circumstances, the amount imposed as tax and as penalty cannot be recovered from the Petitioner by the Respondents.

8. The petition is allowed. The recovery proceedings against the Petitioner in respect of the arrears of tax for the assessment year 1363 Fasli and the penalty

imposed in connection therewith are quashed. The Petitioner is entitled to his costs.

