

(1956) 04 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: None

OM PRAKASH

APPELLANT

Vs

COMMISSIONER OF Income Tax,
PUNJAB, HIMACHAL PRADESH,
PEPSU, AND BILASPUR AT SIMLA,
AND OTHERS.

RESPONDENT

Date of Decision: April 24, 1956

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1956) 30 ITR 12

Hon'ble Judges: Bhandari, C.J; Bishan Narain, J

Bench: Full Bench

Judgement

BISHAN NARAIN, J. - Om Prakash is one of the proprietors of the firm Hans Raj and Company. This firm was during 1943-44 carrying on its business at Phagwara (Kapurthala State). An Income Tax amounting to Rs. 33,750 was imposed on the firm for the assessment year 1943-44 by order dated the 30th of April, 1945. A demand notice was served on the assessee firm on the 12th of November, 1945, but admittedly no tax was realized by the Kapurthala state Income Tax authorities. On the 15th of May, 1951, the Income Tax Department of the Kapurthala State was abolished. In July, 1951, the Tahsildar, Phagwara, called upon Om Prakash to pay Rs. 33,750, and this notice was sent to him at the instance of the Income Tax Officer, Jullundur. The Tahsildar, having proceeded to take proceedings u/s 46 of the Indian Income Tax Act, Om Prakash has filed the present petition under article 226 of the Constitution to get these proceedings quashed. A single Judge of this Court has referred the case for decision by a Division Bench.

Mr. Tek Chand on behalf of the petitioner has raised three points before us. He has urged (1) that the Indian Income Tax authorities have no power to collect tax levied by the Kapurthala authorities, (2) that in the present case certificate of non-payment

as contemplated in section 46 (2) was sent to the Tahsildar, Phagwara, and (3) that in any case the proceedings for the recovery of this amount have been commenced after the expiry of one year from the date of demand and therefore the proceedings are barred by time u/s 46 (7) of the Indian Income Tax Act.

The learned counsel has urged before us that the Indian Income Tax authorities have no power to realize the tax imposed by the Kapurthala authorities, and it is argued that the Indian Finance Act, 1950, does not empower the Indian Income tax authorities to realise such a tax. Construing section 13 of the Indian Finance Act, 1950, however, the Supreme Court has held in *Union of India v. Madan Gopal Kabra*, that section preserves the operation of the state laws for the purpose of levy, assessment and collection of tax in respect of the income of previous years relevant to assessment years prior to 1950-51. Thus the law of the Kapurthala state is applicable to the collection of the tax imposed on the firm by order dated the 30th April, 1945. The first proviso to section 13 of the Indian Finance Act lays down that any reference in the state law to an officer or authority shall be construed as reference to the corresponding officer or authority appointed or constituted under the Indian Act. Therefore after the Income Tax authorities of Kapurthala State had been abolished the corresponding authorities under the Indian Act got the power to collect the tax imposed by the state law, i.e., by the Kapurthala authorities. It is conceded by the learned counsel for the petitioner that the Income Tax Officer, Jullundur, is such a corresponding officer. Consequently, the Income Tax Officer, Jullundur, has the authority to collect the tax imposed by the Kapurthala authorities, and the argument of the learned counsel for the petitioner to the contrary has no force.

The next point urged by the learned counsel for the petitioner is that in the present case the Income Tax Officer did not comply with the provisions of section 46 (2) of the Indian Income Tax Act. It is argued that the Income Tax Officer has not sent any certificate of non-satisfaction as contemplated in section 46(2) to the Collector, Jullundur, and therefore all the subsequent proceedings taken by the Tahsildar are invalid. There is substance in this argument. The notice of demand was served on the petitioner on the 12th of November, 1945. The respondents case is that a certificate of non-satisfaction was sent by the Income Tax Officer, Kapurthala state, on the 3rd of January, 1946, to the Tahsildar, Phagwara, in the form of a list of defaulters according to the law then in force in that state. It is to be noticed that section 46 (2) does not provide any particular form in which such a certificate should be sent, and when the respondent state that the list sent to the collector complied with section 46 (2) as then force in Kapurthala state, then in the proceedings under article 226 of the Constitution this Court will not call upon the respondent to substantiate the allegation made in the reply. It is for the petitioner to establish positively that the action complained of is not in accordance with law and this onus is not discharged by merely stating in the course of arguments that it is for the respondent to establish that the list sent in the present case which included the

petitioners name is not in accordance with law. I may mention here that the petitioner entered into correspondences with the Income Tax Officer, Jullundur, before filing the present petition and by letter dated the 7th August, 1951, the Income Tax officer, Jullundur, informed the petitioner of all the facts relating to this list. It is significant that the petitioner while filing this letter with the petition never urged that the list mentioned by the Income Tax officer did not comply with the Kapurthala law which was in force in 1946. I am therefore of the opinion that the petitioner has failed to prove that the provisions of law corresponding to section 46 (2) in force in Kapurthala in 1946 were not complied with in the presents case when the list of defaulters including the petitioners name was sent to the Tahsildar, Phagwara.

The last point raised before us is regarding limitation. Section 46 (7) of the Indian Income Tax Act lays down that no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the date of that demand. In the present case the demand was made on the 12th of November, 1945, and the proceedings for collection of the tax were started on the 3rd of January, 1946. That being so, the question of limitation does not arise as the list was sent within two months of the demand dated the 12th November, 1945. I have therefore, no hesitation in rejecting this contention of the learned counsel for the petitioner.

The result is that this petition fails and is dismissed with costs. Counsels fee Rs. 100

BHANDARI, C.J. - I agree.

Petition dismissed