

(1971) 08 AHC CK 0010

Allahabad High Court

Case No: Special Appeal No. 369 of 1962

Income Tax Officer

APPELLANT

Vs

Khanjan Lal and Another

RESPONDENT

Date of Decision: Aug. 27, 1971

Citation: (1973) 89 ITR 120

Hon'ble Judges: S.K. Verma, C.J; Gopi Nath, J

Bench: Division Bench

Advocate: Gopal Behari, for the Appellant; R.K. Gulati, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Verma, C.J.

This special appeal has been filed against the judgment of a learned single judge of this court in Writ Petition No. 2135 of 1959.

2. There was a firm, Khanjan Lal Sewak Ram, which consisted of six partners who fell into two groups; one group consisted of Khanjan Lal, Lalloo Ram, Dwarka Prasad and Ram Lal and the other group consisted of Sewak Ram and Jagrani. We are concerned with the payment of Income Tax by the partners of the firm for the year 1948-49. The total tax liability of the firm was Rs. 68,709-4-0. The liability of the two partners of the second group was Rs. 17,177-6-0. The position in law, however, is that the tax was realisable from all the partners jointly and severally. The Income Tax Officer, appellant No. 1, wrote a letter No. A. R. No. 27-K-STP dated February 24, 1953, to Khanjan Lal, the first petitioner in the writ petition, which reads as follows :

" As the firm, M/s. Khanjan Lal Sewak Ram has since been dissolved, its partners are jointly and severally liable for payment of entire tax due from the firm. You should, therefore, seize the first opportunity to pay your share of tax, otherwise the entire demand may be recovered from you....."

3. The obvious representation made through this letter to Khanjan Lal was that if he paid his share of the tax he would not be required to pay anything further. In

response to this letter Khanjan Lal wrote a letter dated February 24, 1953, to the appellant No. 1 which reads as follows :

" In compliance of your memo. No A. R. 27-K dated February 24, 1953, I beg to submit that I am ready to pay my share of tax as assessed against the firm styled M/s. Khanjan Lal Sewak Ram provided the balance is not realised from me. "

4. In short, Khanjan Lal, relying upon the representation made to him by the Income Tax Officer, worsened his position by paying his share of the tax. He could have chosen to sit back hoping that the entire tax would be realised from some of the other partners. In spite of the representation made by the appellant No. 1 and the offer by Khanjan Lal, appellant No. 1 wrote a letter dated June 9, 1969, annexure "E" to the affidavit filed in support of the writ petition, requiring Khanjan Lal to pay a sum of Rs. 15,586.15 on account of the balance of tax liability of the firm, M/s. Khanjal Lal Sewak Ram, for the assessment year 1948-49. M/s. Khanjan Lal Sewak Ram thereupon filed a writ petition out of which this appeal has arisen. The two main prayers in the writ petitions were : (1) for a writ of certiorari quashing the letter dated 9th June, 1959, mentioned above, and (2) for a writ of mandamus directing the appellants to refund a sum of Rs. 2,444-9-0 which was in excess of the proportionate share of Khanjan Lal. This amount became excess payment as the amount of tax assessed was reduced in appeal by a sum of Rs. 30,000. The learned single judge allowed the writ petition and granted both the reliefs mentioned above. Hence, this appeal by the Income Tax Officer.

5. Appellant No, 1 was obviously conscious of his difficulty arising out of the fact that the tax was not being realised from the other partners. In paragraph 7 of the counter-affidavit we find the following :

" Steps were taken from the other partners too but held in abeyance under executive instruction"s."

6. It should be borne in mind that appellant No. 1's case was not that he issued the impugned letter to Khanjan Lal because efforts to realise tax from others had failed. In fact there is an admission that all the other partners were solvent. In paragraph 26 of the counter-affidavit we find the following :

"That all the partners.....of M/s. Khanjan Lal Sewak Ram have sound financial status, possess considerable movable and immovable assets and are well capable of meeting the demand of Rs. 15,587.56 outstanding against the said firm. "

7. In accordance with the principles laid down by their Lordships of the Supreme Court in [Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another](#), and in Union of India v. Anglo Afghan Agencies AIR 1968 S.C. 718 appellant No. 1, in view of what he represented and in view of the response made to that representation by Khanjan Lal, was estopped from realising the balance of the tax from Khanjan Lal.

8. Learned counsel for the appellants has relied upon [MOTILAL AND ANOTHER Vs. Income Tax OFFICER, DISTRICT II \(III\) KANPUR.](#) in which a Division Bench of this court observed that, even though the individual partners had been invited to pay their shares of the tax the liability to pay the tax would still remain joint and several and the tax could be realised from one or more of them. This case is clearly distinguishable because in that case all efforts to realise the tax from others had failed. In the case in hand steps were initiated to realise tax from others but they were held "in abeyance under executive instructions ". In this state of affairs, in our view, the learned single judge was perfectly justified in holding that the decision of appellant No. 1 to realise the balance of tax from Khanjan Lal alone was tainted with capriciousness.

9. No argument has been addressed to us with regard to the orders of the learned single judge directing a mandamus to issue for the refund of Rs. 2,544-9-0 possibly because the amount is refundable in view of the reduction of the total tax liability in appeal.

10. We find no merit in this appeal and it is dismissed with costs.