

(1976) 11 GAU CK 0004

Gauhati High Court

Case No: Civil Rule No. 131 of 1972

SHYAM SUNDAR TEA CO. (PVT.)
LTD.

APPELLANT

Vs

AGRICULTURAL Income Tax
OFFICER, SHILLONG, AND
OTHERS.

RESPONDENT

Date of Decision: Nov. 22, 1976

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Income Tax Act, 1961 - Section 154, 31

Citation: (1978) 114 ITR 424

Hon'ble Judges: Pathak, C.J; Ibotombi Singh, J

Bench: Full Bench

Judgement

PATHAK C.J. - By this application under article 226 and/or article 227 of the constitution of India the petitioner has prayed for a writ of certiorari quashing the assessment order dated August 3, 1967, under the Assam Agricultural Income Tax Act, 1939, notice of demand dated August 3, 1967, Certificate dated April 6, 1971, and the Bakijai proceedings in Bakijai case No. DRBJ-13/19/70-71 before the Bakijai Officer, Dibrugarh.

The petitioner is a company registered under the Companies Act and it possesses a tea estate known as Nilmoni Tea Estate in the district of Dibrugarh. In the said tea estate, tea is manufactured for sale in places within the state of Assam as well as in places outside the State of Assam. The petitioner is regularly assessed to Income Tax under the Income Tax Act and also to agricultural Income Tax under the Assam Agricultural Income Tax Act, 1939, hereinafter referred to as "the Act".

For the assessment year 1960-61, the assessee-petitioner submitted a return showing its total agricultural income from cultivation, manufacture, and sale of tea

of Rs. 1,26,628.80. Along with the said return the petitioner forwarded to the Agricultural Income Tax Officer a statement of the income assessed under the Income Tax Act, as required under the provisions of the Act and the Rules framed thereunder. The Agricultural Income Tax Officer on the basis of the return submitted by the petitioner completed the assessment and assessed the agricultural Income Tax at Rs. 48,390.35 by order dated September 25, 1965. A demand notice dated October 6, 1965, was also issued to the petitioner in pursuance of the assessment order demanding payment on or before October 31, 1965.

Thereafter, the Income Tax authority revised and rectified the orders of assessment passed for the assessment years 1959-60 and 1960-61. Under the circumstances, a petition dated August 1, 1967, was filed on behalf of the petitioner before the Agricultural Income Tax Officer, contending, inter alia, that the Income Tax assessment of the petitioner-company for the assessment year 1959-60 and 1960-61 had since been revised u/s 154 of the Income Tax Act, 1961, and on the basis of such revised assessments under the Income Tax Act, the agricultural Income Tax under the Act for the assessments years 1959-60 1960-61, would be Rs. 62,404 and Rs. 53,326, respectively. Accordingly, the Agricultural Income Tax Officer by his order dated August 3, 1967, revised the earlier order of assessment u/s 31(1) of the Act for the assessment year 1960-61 by determining the tax payable under the Act at Rs. 53,320.10. On the basis of the revised order of the assessment, a demand notice dated August 3, 1967, u/s 23 of the Act was issued to the petitioner for payment of the tax assessed.

The agricultural Income Tax Officer thereafter filed a certificate No. S-30/13205 dated August 20, 1969, in the office of the Collector, Lakhimpur, Dibrugarh, u/s 4 and 6 of the Bengal Public Demands Recovery Act for recovery of sum of Rs. 57,045.10 including the court-fees from the petitioner. On the basis of the said certificate dated August 20, 1969, the certificate Officer (Bakijai Officer), Dibrugarh, started a Bakijai case, being Bakijai case No. DRBJ-12/7/60-70/2-R, and issued a notice dated August 25, 1969, u/s 7 of the Bengal Public demands recovery Act, asking the petitioner to pay a sum of Rs. 57,045.10 towards the agricultural Income Tax for the assessment years 1960-61, or to show cause within thirty days from the date of service of the notice as to why the certificate should not be executed under the provisions of the said Act and sum of Rs. 55,820.10 towards the tax and a sum of Rs. 1,225 towards costs should not be realised from the petitioner. The said certificate was subsequently cancelled by the Agricultural Income Tax Officer by his letter No. S-30/31, dated April 18, 1970, with a direction to the collector to withdraw the Bakijai proceedings immediately.

Thereafter, the Agricultural Income Tax Officer issued another Certificate No. S-30/35-36, dated April 6, 1971, to the Collector, Lakhimpur, district, Dibrugarh, whereby the Collector was informed that a sum of Rs. 47,819.70 was due from the

petitioner-company on account of agricultural Income Tax and penalty for the assessment years 1960-61 and that the said amount was in arrear. By the said certificate the Collector was requested to recover the said amount from the petitioner as arrear of land revenue. On the basis of the said certificate a Bakijai proceeding, being Bakijai case No. DRBJ. 13/19/70-71, was started and properties of the petitioner were attached. Thereafter, the petitioner obtained this rule on February 1, 1972.

Mr. J. P. Bhattacharjee, the learned counsel for the petitioner, submits that the recovery proceedings in the instant case is barred by limitation under the provisions of the Act and, that the position, the entire Bakijai proceedings are without jurisdiction.

In support of his submission the learned counsel has referred to the unamended section 36(5) of the Act, which reads as follows :

"36. (5) No proceeding for the recovery of any sum payable under this Act shall be commenced after the expiration of three years after the date on which the original demand fixed u/s 23 falls due or after the expiration of three years after the date on which any appeal or reference relating to such sum has been disposed of, whichever date is later."

It is submitted by the learned counsel for the petitioner that the original assessment order in the instance case was passed on September 25, 1965, for the assessment years 1960-61, and a demand notice dated September 30, 1965/ October 6, 1965, was issued demanding payment on or before October 31, 1965. The assessment in question was rectified on August 3, 1967, and another demand notice was issued demanding payment on or before September 27, 1967. It so happened that the certificate, on the basis of which the Bakijai proceeding was started, was cancelled by the Agricultural Income Tax Officer by his order dated April 18, 1970. Thereafter, a fresh certificate was issued on April 6, 1971, and the Bakijai proceedings was started thereafter. The contention of the learned counsel for the petitioner is that the Bakijai proceeding that was started on the basis of the fresh certificate dated April 6, 1971, is far beyond three years from October 31, 1965, on which the date the tax was payable under the Act as demanded after the first assessment. Since it is beyond three years from October 31, 1965, the Bakijai proceeding started on the basis of the certificate dated April 6, 1971, is barred by limitation and the recovery proceedings, on the face of it, is, it is submitted by the learned counsel for the petitioner, without jurisdiction.

The learned counsel for the petitioner, however, fairly points out that the original section 36 of the Act has been substituted by section 4 of the Assam Agricultural Income Tax (Amendment) Act, 1967, (Assam Act IX of 1967), which came into force with effect from September 27, 1967, (vide Assam Gazette, Extraordinary, dated September 27, 1967). The amended section 36 of the Act reads as follows :

"36. (1) Mode of recovery. - If the demand in respect of any dues under this Act is not paid on or before the date specified in sub-section (4) of section 35, the assessee shall be deemed to be in default :

Provided that the superintendent of taxes or Agricultural Income Tax Officer may, in respect of any particular assessee and for reasons to be recorded in writing, extend the date of payment of the dues or allow such assessee to pay the same by instalments and in such cases the assessee shall not be deemed to be in default, but in all such cases the provision of the proviso to section 19(1) shall apply.

(2) Where an assessee is in default, the Superintendent of Taxes or Agricultural Income Tax Officer may, in his discretion, direct that, in addition to the amount due, a sum not exceeding that amount shall be recovered from the defaulter by way of penalty.

(3) Where an assessee is in default, the Superintendent of Taxes or Agricultural Income Tax Officer may order that the amount due shall be recoverable as an arrear of land revenue and may proceed to realise the amount as such.

(4) When agricultural Income Tax is payable by a trustee, or is u/s 10 payable by a mutawalli of a Musalman Wakf referred to in section 3 of the Musalman Wakf Validating Act, 1913, and such trustee or mutawalli is in default, the Superintendent of Taxes or Agricultural Income Tax Officer may forward to the collector a certificate under his signature specifying the amount of arrear due from the assessee, and the Collector on receipt of such certificate shall proceed to recover from such trustee or mutawalli the amount specified therein as arrear of land revenue :

Provided that any land held by a trustee or mutawalli as such shall not be attached or sold in execution of Bakijai proceeding but such arrears may be realised from the income of the trust or wakf estate by the appointment of a receiver of any property of the trust or wakf."

The old section 36 has been substituted by the new section as quoted above and it has come into effect from September 27, 1967, and in the amended section 36 we do not find the provision of three years limitation, as laid down by the unamended sub-section (5) of section 36. That being so, the only question is whether the amended 36 applies in the instant case.

In order to arrive at a decision on this point, two points arise. Firstly, whether the recovery proceeding was barred by the provisions of the unamended sub-section (5) of section 36 on the date of coming into force of the amended section 36 of the Act. If the recovery proceeding was barred under the unamended section 36 before the amended section 36 came into force, then may be an arguable case for the assessee to plead that the Bakijai proceeding that was barred by the unamended provision of law could not be revised by subsequent amendment, inasmuch as the provision of limitation creates right in the parties concerned. The second point that arises is that

if the recovery proceeding was not barred on the date of coming into force of the amended section 36 then obviously it would be a difficult case for the assessee to make out that the recovery proceeding is barred because there is no provision of limitation in the amended section 36.

As observed earlier, the original demand was payable on or before October 31, 1965, So, under the unamended provision of section 36, no proceeding for the recovery of the assessed tax could have been started on or after October 31, 1968. But before that date the amended section 36 came into operation with effect from September 27, 1967, and the amended provision has been substituted in place of the unamended provision of section 36. The unamended provision is thus effected from the statute and if we rely on the amended provisions on September 27, 1967, on which date the proceeding was not barred under the unamended Act, there cannot be any question of limitation and any question of the recovery proceeding being barred by any provision of law as found in the unamended section 36(5) of the Act. We therefore, find that in the instant case since the demand was very much alive and it was not barred on the day when the amended section 36 came into operation, there cannot be any bar for the recovery proceeding. This view is well supported by the decision of the Supreme Court in the case of [S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company](#), in which a similar point arose, though that was a case under the Income Tax Act.

In the result, we find that the petition has no merit and it is accordingly dismissed. The rule is discharged. The stay order stands vacated. in the facts and circumstances of the case, we make no order as to costs.

N. IBOTOMBI SINGH J. - I agree.