

(1960) 01 AP CK 0001

Andhra Pradesh High Court**Case No:** Writ Petitions No"s. 980 and 981 of 1958

P. RAJESWARAMMA

APPELLANT

Vs

Income Tax OFFICER, NELLORE,
AND ANOTHER.RESPONDENT

Date of Decision: Jan. 28, 1960**Acts Referred:**

- Income Tax Act, 1961 - Section 46

Citation: (1960) 39 ITR 654**Hon'ble Judges:** Bhimasankaram, J**Bench:** Division Bench

Judgement

BHIMASANKARAM, J. - These writ petitions raise the same question and involve the construction of sub-section (5A) of section 46 of the Income Tax Act.

The assessee is P. Change Reddy & Co. Ltd., Gudur. A notice dated February 28, 1952, issued by the Income Tax Officer, Nellore, under the sub-section mentioned, was served on the petitioners in W.P. No. 981 of 1958 on March 7, 1952. In that notice it was stated that tax amounting to the sum of Rs. 72,819-9-0 was due from the assessee to the Department and a demand was made that the petitioners, who owed money to the assessee, should pay the Officer the amount due from them or held by them for or on account of the assessee, up to the amount of arrears stated. A similar notice was served on the petitioner in W.P. No. 980 of 1958 also at about the same time.

The petitioners in W.P. No. 981 of 1958 assert that soon after receiving the notice, they sent the Officer a written objection to it on the ground that no sum was due from them to, or held by them on account of, the assessee, but for the purposes of these petitions, I am assuming that that fact has not been established. It is not denied, however, by the Department that on July 9, 1958, the petitioners objected to the notices issued to them. In spite of the objection so made, the Income Tax Officer

by his letter dated August 5, 1958, repeated his demand and then attended to take coercive steps against the petitioners. The petitioners have approached this court for the issue of a writ of mandamus directing the respondent (income tax Officer) to forbear from taking any action against them under the provisions of the Act.

Now, the question turns on the proper interpretation of the terms of sub-section (5A) of section 46. It reads thus :

"The Income Tax Officer may at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the assessee at his last address known to the Income Tax Officer) require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the Income Tax Officer, either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of arrears of Income Tax and penalty or the whole of the money when it is equal to or less than that amount.

The Income Tax Officer may at any time or from time to time amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

Any person making any payment in compliance with a notice under this sub-section shall be deemed to have made the payment under the authority of the assessee and the receipt of the Income Tax Officer shall constitute a good and sufficient discharge of the liability of such person to the assessee to the extent of the amount referred to in the receipt.

Any person discharging any liability to the assessee after receipt of the notice referred to in this sub-section shall be personally liable to the Income Tax Officer to the extent of the liability discharged or to the extent of the liability of the assessee for tax and penalties, whichever is less.

If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Income Tax Officer, further proceedings may be taken by an officer before the Collector on the footing that the Income Tax Officer's notice has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of section 46.

Where a person to whom a notice under this sub-section is sent objects to it on the ground that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Income Tax Officer."

The argument urged by Mr. Chinnappa Reddy is that the petitioners are in the position of a person protected by the last of these clauses. It seems to me that this

contention is sound. Now, this sub-section was inserted in the Act by the Income Tax and BUSINESS PROFITS TAX (Amendment) Act, 1948, as a result of a recommendation made in the report of the Income Tax Investigation Commission. The object of the Commission in suggesting the enactment of the sub-section (without the last clause which was later included at the suggestion to the Select Committee which sat upon the Bill) is contained in the following extract from Appendix A of the Report of the Commission :

"An amendment to section 46 of the Act seems necessary to facilitate realisation of the tax and in some instances even to ensure that recovery proceedings are not rendered infructuous by the assessee. Under the law as it now stands, the Income Tax Officer must seek the aid of the Collector to recover tax in arrears except in cases falling under sub-sections (3) and (4) of section 46. Even under these two sub-sections, the procedure is not always simple. Other system of law permit the taxing authority to serve a notice upon persons who may hold or who may be expected to come into possession of monies belonging to the assessee, c.f., section 72 of the Canadian Income War Tax Act of 1917 (Revised Statutes of Canada, Volume II, page 2160 and section 218 of the Australian Income Assessment Act, 1936). On receipt of such notice, the person holding the money is restrained from paying it over to the assessee without satisfying the tax claim. The principle of these provisions is given effect to in sub-section (5) of section 46 of the Indian Act but this provision is limited to salaries. It frequently happens that monies lying to the credit of a person with another or with his bankers can be made available if the fund can be got without delay but they may be lost by reason of dilatory procedure as the assessee will in the meanwhile be able to withdraw the money. It might, therefore, be desirable to extend the principle of sub-section (5) of section 46 of other classes of funds held by any person, authority or institution to the credit of or on behalf of the assessee."

It would appear that the last clause in the sub-section was suggested, as stated already, by the Select Committee.

Mr. Kondaiah, for the Department, argues that the whole object and purpose of enacting sub-section (5A) would be nullified if it is to be held that a mere objection by the person upon whom a notice is served entitled him to plead immunity from coercive proceedings which the Income Tax Officer is expressly authorized to enforce by the clause preceding the clause now under discussion. I am not disposed to agree. The provision, it seems to me, is intended to apply only to an admitted liability. Where a person admits by word or conduct that any money is due to the assessee or is held by him for or on account of the assessee, he becomes liable to pay it and may well be exposed to the penal provision which enables the Income Tax Officer to take further proceedings before the Collector on the footing that the notice issued has the same effect as an attachment by the Collector in exercise of his powers under the proviso to sub-section (2) of this section. If, for instance, after

taking the notice, a person makes a payment to the assessee, and that can only be on the footing that he owed money to the assessee, then, to the extent of the sum so paid (up to the amount due from the assessee), the person would become liable personally to the Department and the penal provisions of the Act can be invoked and enforced against him for its recovery. Where, however, the person to whom the notice is sent denies that any money is due from him, then the Income Tax Officer cannot take any further proceedings under this sub-section even though the denial may not be true. Mr. Kondaiah's contention is that the last clause applies only to cases where the person to whom the notice is sent is raising a bona fide objection, an objection which is true and not false to his knowledge. In such a case, he contends, it is open to the authorities to ascertain and find whether, as a matter of fact, coercive processes if it be found that there is a debt due to the assessee. I am not prepared to accede to this contention. If the position taken up by Mr. Kondaiah were right, then the authorities acting under the Act would be armed with what seems to me a very extraordinary power : they would be able to decide questions of liability of third persons to the assessee. There is nothing in the language of the sub-section which points to such a result. It seems to me that the interpretation I am inclined to put is also in consonance with principle because the Legislature could hardly have meant to entrust the officers of the Department with the jurisdiction to decide questions relating to the existence and quantum of such liability-matters which are normally within the purview of civil courts.

I am add that this interpretation seems also to accord with the language of sub-section (5), of which it is clear that this provision is an extension. That sub-section is as follows :

"If any assessee is in receipt of any income chargeable under the head Salaries the Income Tax Officer may require any person paying the same to deduct from any payment subsequent to the date of such requisition any arrears due from such assessee, and such person shall comply with any such requisition, and shall pay the sum so deducted to the credit of the Central Government, or as the Central Board of Revenue directs."

The power of the Income Tax Officer to require any person paying a salary due to the assessee is, under the terms of this sub-section, dependent upon the fact that the assessee is in receipt of any income chargeable under the head Salaries. The Officer is not empowered to decide the fact itself. He may, of course, *prima facie* assume its existence in order to make a demand but that is not the same thing as saying that he can ascertain the fact when it is denied and enforce the provision.

Mr. Kondaiah also argues that any objection taken under the clause relied upon by the petitioners must be taken within a reasonable time and if no objection is taken within such time, then the Income Tax Officer would be entitled to resort to the penal provisions. I do not see any way to uphold this contention. There is nothing said in the clause as to the time when an objection is to be taken. It would not,

therefore, be permissible for the Income Tax Officer or the court, if the matter comes before it, to limit the time within which it could be taken.

The result of the foregoing discussion is that these petitions must succeed. In each of these cases a mandamus will issue as prayed for with costs.

Pleaders fee Rs. 200 in each.

Petition allowed.