

## CIVIL WRIT.

*Before Gosain, J.*FIRM H. R. LUXMAN AND CO.,—*Petitioner**versus*THE INCOME-TAX OFFICER, AMRITSAR, AND  
ANOTHER.—*Respondents.*

Civil Writ No. 712 of 1957

1958

Jan., 30th

*Income-tax Act (XI of 1922)—Section 46—Several modes of recovery under—Whether mutually exclusive or affect any other law—Commissioner of Income-tax—Whether can remit the amount of arrears of tax—Demand written off—Effect of—State, whether bound by the act of an officer which he is not legally authorised to do.*

*Held*, that the several modes of recovery specified in section 46 are neither mutually exclusive nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government. If one mode of recovery is adopted, the Income-tax Officer can later take any other mode of recovery as alternative of and even in addition to the first mode.

*Held*, that the Commissioner has no power at all under any section of the Income-tax or any other law to remit any amount out of the assessment made as long as the assessment stands. The mere fact that the demand is written off by the Department in their own accounts does not preclude the Department to recover the amount if and when they find that it has become possible to recover the same.

*Held*, that the State is not bound by an act of an officer which he is not legally authorised to do.

*Petition under Articles 226 and 227 of the Constitution praying that a Writ of Mandamus, Certiorari or Prohibition be issued and the proceedings taken by respondent No. 1 for recovery of the arrears of income-tax which were previously remitted and the notice under section 46(5A) of the Act to the Netherlands Trading Society, Calcutta, be quashed.*

BHAGIRATH DASS, for Petitioner.

S. M. SIKRI, Advocate-General and H. R. MAHAJAN, for Respondents.

### ORDER

GOSAIN, J. The petitioners Messrs H. R. Luxman and Company constitute a joint Hindu family firm and are carrying on their business at Amritsar and Calcutta. They were assessed to income-tax for the years 1944-45, 1945-46 and 1946-47 by assessment orders, dated 21st March, 1949, 24th January, 1950 and 31st August, 1950, respectively. Three recovery certificates in respect of the amounts of Rs. 357-14-0, Rs. 5,907-2-0 and Rs. 17,164-6-0, outstanding against the assesseees out of the assessments for the aforesaid years were issued on 19th January, 1950, 18th January, 1951, and 5th January, 1952. Nothing was, however, recovered. The Income-tax Officer made a report to the Commissioner that the amounts were outstanding

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against the assesseees and that nothing had been recovered from them on which the Inspecting Assistant Commissioner recommended that the demands may be written off. The Commissioner of Income-tax on 6th February, 1956, passed an order, saying—

“In the circumstances, I authorise the remission of outstanding demand.”

On 20th September, 1956, a certificate, technically called the Import and Export Verification Certificate, was issued by the Income-tax Officer in which he said—

“In my opinion, the applicant mentioned above has been doing everything possible to pay the tax demands promptly and regularly and to facilitate the completion of the pending or outstanding proceedings. This certificate is valid for one year from the date of issue.”

The Department later came to know that a firm Messrs Netherland Trading Society, Calcutta, owed some money to the assesseees and in exercise of the power vested in the Income-tax Officer by section 46(5-A) of the Income-tax Act the Income-tax Officer sent a notice to the said firm saying that the assessed amounts were due from the petitioners and that the sums owed by the firm (Messrs Netherland Trading Society) to the petitioners to the extent of the assessed amounts should be paid to him instead of to the petitioners. The petitioners have come up to this Court under Articles 226 and 227 of the Constitution of India and have prayed for a writ of mandamus to issue to the respondent enjoining upon him to withdraw his notice under section 46(5-A) of the Income-tax Act. They have also prayed for a writ in the nature of certiorari to

issue for quashing the proceedings so far taken in that direction. The main allegations of the petitioners are that the assessed amount had been remitted by the Commissioner by means of his order, dated 6th February, 1956, and that there was no money to be recovered from them regarding which action under section 46(5-A) could be taken. The petitioners also allege that the Income-tax Officer could not issue a fresh certificate under section 46(2) of the Act in view of the provisions of section 46(7).

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The case was contested by the Department *inter alia* on the ground that the Commissioner's order only amounted to writing off of the demand in their books of account and was never intended to be an order remitting the amount and that the Commissioner had really no power to remit any amount. Mr. Bhagirath Das, learned counsel for the petitioners, has drawn my attention to the order of the Commissioner, dated 6th February, 1956, and submits that the order must be taken to be one for the remission of the demand *in toto*. As I have already pointed out, this order was passed on the recommendation of the Income-tax Officer and the Inspecting Assistant Commissioner for the writing off of the demand and although the word actually used by the Commissioner was "remission", the whole idea was to write off the demand. The Commissioner's order must in the circumstances of the case be interpreted as meaning that he agreed to write off the demand. The mere fact that the demand is written off by the Department in their own accounts does not, however, preclude the Department to recover the amount if and when they find that it has become possible to recover the same. If the order be interpreted to mean that the Commissioner remitted the amount assessed against the petitioners, the order must be treated to be one without jurisdiction and inoperative.

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The Commissioner has no power at all under any section of the Income-tax Act or any other law to remit any amount out of the assessment made as long as the assessment stands. Under section 33-A of the Act, he has, no doubt, the power to revise the various orders of the Income-tax Officers, but he cannot remit an amount when the assessment is allowed to stand. It is a well-known principle of law that the State is not bound by any act of an officer which he is not legally authorised to do: see in this connection *Attorney-General for Ceylon v. A. D. Silva* (1), *Howell v. Falmouth Boat Construction, Ltd.* (2), *Federal Crop Insurance Corporation v. Merrill* (3). The certificate issued by the Income-tax Officer on 20th September, 1956, does not in any way help the assessee inasmuch as it does not say that the assessee does not owe any amount of tax to the Department. I am, therefore, unable to hold that no amount was due from the assessee on the date when the Income-tax Officer issued a notice under section 46(5-A).

Mr. Bhagirath Das, then contends that the Income-tax Officer could not take any action under section 46(5-A) after the expiration of one year from the last day of the financial year in which the demands were made under this Act. Mr. Sikri, Advocate-General, contends that subsection (5-A) has been added to section 46 and is a complete code in itself. This section provides—

“(5-A) 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

(1) 1953 A.C. 461.  
(2) 1951 2 A.E.R. 27 at p. 280.  
(3) 92 L. Ed. 10.

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 to 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 tax-payer 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.

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He submits that action can be taken by the Income-tax Officer under this subsection at any time or from time to time and is not governed by the period of limitation prescribed in subsection (7) of this section. He further contends that subsection (7) merely says that no proceedings for the recovery of any sum payable under this Act shall be commenced after the expiration of one year from the last day of the financial year in which any demand is made under this Act. In fact Explanation to subsection (7) of section 46 makes this point amply clear. The Explanation runs as under:—

“*Explanation.*—A proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of this section, if some action is taken to recover the whole or any part of the sum within the period hereinbefore referred to, and for the removal of doubts it is

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hereby declared that the several modes of recovery specified in this section are neither mutually exclusive, nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government, and it shall be lawful for the Income-tax Officer, if for any special reasons to be recorded he so thinks fit, to have recourse to any such mode of recovery notwithstanding that the tax due is being recovered from an assessee by any other mode."

It is clear from the perusal of the Explanation that a proceeding for the recovery of any sum shall be deemed to have commenced within the meaning of section 46 if some action is taken to recover the whole or any part of the sum. It is also clear from the Explanation that the several modes of recovery specified in section 46 are neither mutually exclusive nor affect in any way any other law for the time being in force relating to the recovery of debts due to Government. If one mode of recovery is adopted, the Income-tax Officer can later take any other mode of recovery as alternative of and even in addition to the first mode. In this case it is clear that the proceedings for the recovery had commenced within the prescribed period of one year and it cannot, therefore, be held that the Income-tax Officer had no power to take action under subsection (5-A) of section 46.

No other point was urged.

In the result, this petition is dismissed with costs. Counsel's fee Rs. 200.

R. S.