

J. R. MALHOTRA & ANR.

v.

ADDITIONAL SESSIONS JUDGE, JULLUNDUR & ORS.

December 11, 1975

[A. N. RAY, C. J., M. H. BEG, R. S. SARKARIA AND
P. N. SHINGHAL JJ.]

Income tax—Money seized from assessee suspecting offence—Prosecution dropped for want of evidence—Right of Revenue to keep money seized from assessee without valid order of assessment.

Under a search warrant issued under s. 132, Income Tax Act, 1961, the Income Tax Authorities seized certain documents and money from the respondent. The Police also registered a criminal case against him. Thereafter, the Income Tax Officer assessed him to tax and adjusted the money seized against the tax due. The respondent moved the High Court, and the High Court held that the search and seizure were illegal and directed the Revenue authorities to hand over the money and documents to the Police to enable them to proceed in accordance with law. The Police, however, dropped the proceedings (filed as untraced) against the respondent for want of evidence.

The respondent then moved the Magistrate for return of the documents and the money, alleging that the Police had not filed any challan against him for a long time, while the Revenue Authorities applied for retaining them. The Magistrate directed their return to the Police. The order was confirmed by the Sessions Court. The High Court, in revision, set aside the order of the Sessions Court and remanded the matter to the Magistrate to decide whether the adjustment of the amount against tax was permissible and valid.

Meanwhile, the respondent had appealed against the order of assessment and Appellate Assistant Commissioner stayed the recovery of the tax assessed.

The Magistrate after remand held that the amount seized be retained by the Revenue in partial satisfaction of the tax due from the respondent, but the Additional Sessions Judge in revision directed the Income Tax Authorities to return the documents and money to the respondent.

A writ petition filed by the Revenue challenging the order was dismissed by the High Court.

Dismissing the appeal to this Court,

HELD : After the prosecution against the respondent was dropped for want of evidence, the authorities had no right to keep the money seized from him under any provision of law. There is also no question of its adjustment, because, there is no valid order of assessment and there is no demand for tax. In fact, the Appellate Assistant Commissioner finally held that there is no order of assessment and that there was no demand for income tax. The Revenue Authorities cannot indirectly keep the money on the plea that there will be a demand and that, therefore, they should be allowed to keep the money. There must be authority of law under which the money can be kept, but in this case there was no legal order to keep the money. [1997-C-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 999 of 1975.

Appeal by special leave from the Judgment and order dated the 6th May 1975 of the Punjab and Haryana High Court at Chandigarh in Civil Writ Petition No. 2292 of 1975.

S. P. Nayar for the appellant.

A *B. Datta and Harbans Singh* for respondents 2—4.

The Judgment of the Court was delivered by

RAY, C.J. This appeal is by special leave from the order dated 6 May 1975 of the High Court of Punjab and Haryana dismissing *in limine* the writ petition of the appellant.

B The appellant filed a writ petition in the High Court challenging the order dated 4 January 1975 of the Additional Sessions Judge, Jullundur who allowed the revision petition of the respondent Romesh Chander and dismissed the petition of the appellant.

C The facts leading to the order are these : On 6 August, 1971 the respondent Romesh Chander was travelling in a car. His car was intercepted by the police. A sum of Rs. 1,61,411/- was found in a bag in his hands. The respondent Romesh Chander was taken to the police station. A criminal case was registered against him under sections 411, 413 and 414 of the Indian Penal Code and under sections 4, 5, 6 and 8 of the Foreign Exchange Act, 1947. The Commissioner of Income Tax issued a warrant of authorisation empowering certain officers under section 132 of the Income Tax Act to conduct a search and seizure. Pursuant to that authorisation the authorised officer seized the sum of Rs. 1,61,411/- and certain books and documents. **D** The business premises of the respondent Romesh Chander and the other respondents who were his partners were searched and certain documents and books were seized.

E The respondent Romesh Chander by a writ petition challenged the warrant of authorisation. The High Court of Punjab and Haryana on 25 May 1972 held the search to be invalid and directed the Revenue to return the money and the books. On appeal the High Court on 22 November 1972 accepted in part the appeal of the Revenue and held that the amount and the books and documents be returned by the Revenue to the Station House Officer, Police Station, Kartarpur who was directed to proceed in accordance with law. **F**

The respondent Romesh Chander filed an application on 12 March 1973 in the court of the Judicial Magistrate, Jullundur and alleged that the police had not filed any challan against the respondent Romesh Chander for a long time and prayed for an order that the Station House Officer, Kartarpur be directed to get the money from the Income-tax **G** Authorities and comply with the orders of the High Court.

H The Revenue Authorities filed an application under section 523 of the Code of Criminal Procedure on 25 March 1973 before the Judicial Magistrate, Jullundur and prayed that orders might be passed directing that the sum of Rs. 1,61,411/- be retained by the Income-tax Department in partial satisfaction of their outstanding demand against the respondent Romesh Chander, and the papers of the Respondent Romesh Chander be also retained by the Revenue Authorities for completion of assessment proceedings against the respondent Romesh Chander.

In the aforesaid application of the Revenue Authorities before the Judicial Magistrate, Jullundur it was alleged that a regular assessment order had been passed on 26 June 1972 against the respondent Romesh Chander and the demand of the Revenue Authorities against the respondent Romesh Chander was Rs. 7,90,293/-. The Revenue further alleged that the respondent Romesh Chander was given 35 days notice to pay the amount and because he did not pay the amount demanded, the sum of Rs. 1,61,411/- was adjusted on 5 October 1972, towards the outstanding demand. It also appeared in the aforesaid application of the Revenue before the Judicial Magistrate, Jullundur that the criminal case registered against the respondent Romesh Chander had been "filed as untraced" by the order of the Court dated 25 January, 1973.

The Judicial Magistrate on 24 April 1973 passed an order directing the Income-tax authorities to return the amount in dispute, the books and other documents to the Station House Officer, Police Station, Kartarpur.

The order of the Judicial Magistrate was affirmed by the Additional Sessions Judge, Jullundur in revision on 5th May 1973.

The order of the Judicial Magistrate and the order of the Additional Sessions Judge, Jullundur were challenged by the Revenue in Criminal Revision No. 430 of 1973 in the High Court of Punjab and Haryana. On 26 June 1974 the High Court set aside the orders and remanded the matter to the Judicial Magistrate, Jullundur for determining whether the amount in dispute could be adjusted in law against the outstanding tax dues from the respondent Romesh Chander and further whether the adjustment made by the Commissioner of Income-tax on 5 October 1972 was valid and justifiable.

Meanwhile the respondent Romesh Chander filed an application under section 146 of the Income Tax Act before the Income-tax Officer against the order of assessment. The respondent Romesh Chander also filed an appeal against the assessment orders before the Appellate Assistant Commissioner on 3 August, 1972. The application of the respondent Romesh Chander under section 146 of the Income Tax Act was rejected by the Income Tax Officer on 2 August 1973. The respondent Romesh Chander filed an appeal against the rejection of the petition on 27 August 1973. On 17 September 1973 the appeals filed by the respondent Romesh Chander against the orders of the Revenue in regard to assessment of Income tax of the respondent were heard. The Income Tax Officer on 18 September 1973 asked for adjournment to explain the departmental case. The Appellate Assistant Commissioner granted adjournment and informed the respondent Romesh Chander by letter dated 22 September 1973 that steps had been taken by the department to stop all recovery proceedings against the respondent Romesh Chander and that the appeal would be heard later on.

On 22 September 1973 the respondent Romesh Chander filed an application before the Appellate Assistant Commissioner that the operation of the assessment order during the pendency of the appeals

A might be stayed and the demand of the tax be held in abeyance. The Appellate Assistant Commissioner by letter dated 27 September 1973 informed the respondent Romesh Chander that recovery of demand of Rs. 7,90,293/- for the assessment year 1972-73 had been stayed by order of the Revenue Authorities dated 18 September 1973.

B It is in this background that the Judicial Magistrate, Jullundur on 3 June 1974 on revision petitions filed by the appellant and the respondent Romesh Chander held that the amount of Rs. 1,61,411/- be retained by the income-tax department in partial satisfaction of their outstanding demand against the respondent Romesh Chander. The Judicial Magistrate also held that in view of the invalidity of the order made under section 132(5) of the Income Tax Act the adjustment of the amount in dispute by the Commissioner of Income Tax on 5 October 1972 was not valid. The Judicial Magistrate further held that the business papers of the respondent Romesh Chander might be retained by the Income-tax department for the statutory period for completing pending assessment proceedings.

D The respondent Romesh Chander went up in revision against the order of the Judicial Magistrate. The Revenue also went up in revision. By order dated 4 January 1975 the Additional Sessions Judge, Jullundur allowed the revision petition of the respondent Romesh Chander and dismissed the petition of the appellant Revenue. The Additional Sessions Judge, Jullundur directed the Income Tax Authorities to return the amount of Rs. 1,61,411/- and the books to the respondent Romesh Chander.

E The appellant Revenue filed a writ petition in the High Court challenging the order dated 4 January 1975 of the Additional Sessions Judge, Jullundur.

F The High Court rightly rejected the writ petition at sight. The Additional Sessions Judge, Jullundur held that the criminal case against the respondent Romesh Chander was filed by an order of the Judicial Magistrate dated 25 January 1973. The second finding of the Additional Sessions Judge is that the High Court by order dated 20 March 1974 remanded the matter to the court of the Judicial Magistrate to find out whether it was permissible in law to adjust the amount of Rs. 1,61,411/- against the outstanding dues of the respondent Romesh Chander and the Judicial Magistrate held that adjustment was not justifiable under the relevant statutory provision. The Judicial Magistrate, however, held that the respondent Romesh Chander was not entitled to the amount and that the income-tax department could retain the amount in partial satisfaction of their outstanding demand. Before the Additional Sessions Judge, Jullundur the Revenue contended that the assessment was valid under section 226(4) of the Income Tax Act independently and under section 132 of the Income Tax Act. The Additional Sessions Judge, Jullundur referred to the appeals filed by the respondent Romesh Chander against the assessment proceedings and observed that the appeal had been heard on 17 September, 1973 and on the following day, viz., 18 September 1973 the matter was adjourned at the instance of the Revenue. The Additional Sessions

Judge, Jullundur further said that the search and seizure were illegal and therefore, the assessee was entitled to the return of all the documents and the amount in question. A

The orders of the Appellate Assistant Commissioner dated 17 October 1975 show that there is no order of assessment and there is no income-tax demand. B

There is no criminal case against the respondent Romesh Chander. The order of the High Court dated 25 May 1972 directed the return of the sum of Rs. 1,61,411/- and the documents to the respondent Romesh Chander. The order of the learned Single Judge was affirmed by the High Court on 22 November 1972. No appeal was preferred against the order of the High Court. The order of the High Court was that the amount of Rs. 1,61,411/- and the books and other documents were to be returned to the Station House Officer. After the criminal case had been filed the authorities have no right to keep the money, under any provision of law. There is no question of adjustment of the sum of Rs. 1,61,411/- by reason of the fact that there is no valid order of assessment and there is no demand for income-tax. C

The Revenue cannot indirectly keep the money on the plea that there will be a demand, and, therefore, the money should be allowed to be kept with the Revenue. There must be authority of law under which the money can be kept. There is no legal order to keep the money. The appeal, therefore, fails and is dismissed with costs. D

V.P.S.

Appeal dismissed.