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INCOME-TAX OFFICER, MADRAS

v.

BUDHA PICTURES, MADRAS

April 5, 1967

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

B

Indian Income-tax Act, 1922, s. 46(5A)—Notice under section to whom can be given—There must be subsisting relationship between assessee and person to whom notice is given.

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The respondent a film producing company was served a notice under s. 46(5A) by the Income-tax Officer on June 18, 1957, asking it to pay to the Income-tax Officer any amount due from the company or held by it for or on account of 'B' an actor. On June 26, 1959 the company replied that it had not engaged 'B' for its current production and there was no contract with him and consequently it could not comply with the notice. On March 28, 1960 the company signed a contract with 'B' agreeing to pay him Rs. 20,000 for a role in its current production. The amount was paid to him in three instalments on March 28, 1960, February 9, 1961 and March 18, 1961. On March 22, 1961 the Income-tax Officer sent to the company another notice under s. 46(5A) to which the company replied that there were no payment due and payable to 'B' on the date of receipt of the notice. The Income-tax Officer held that the payment of Rs. 20,000 to 'B' was in violation of the notice under s. 46(5A) issued on June 18, 1959 and requested the company to pay the said amount to the Income-tax department. The company filed a writ petition in the High Court which decided in its favour holding that the section required the subsistence of a similar relationship as between a garnishee and the assessee. The department appealed to this Court.

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HELD: In s. 46(5A) the legislature contemplates a subsisting relationship of which the Income-tax Officer gets information and which can reasonably lead to the recovery of arrears. [429C]

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The expression "may become due" or "may subsequently hold money" suggest in the context a subsisting relationship between the person served with a notice and the assessee; e.g. assessee's employer or banker or debtor, or a person paying an annuity to him; they do not suggest a bank which he has never dealt with, a person he has never lent money to or dealt with, or all persons who may possibly in the future employ an assessee out of job or work. The section cannot apply to all possible employers or traders [429F]

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Since there was no subsisting relationship between the company and 'B' at the time when the notice was issued the recovery of Rs. 20,000 from the company was not justified.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 401 of 1966.

Appeal by special leave from the judgment and order dated October 10, 1963 of the Madras High Court in Writ Petition No. 71 of 1962.

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T. V. Viswanatha Iyer, S. K. Aiyar, S. P. Nayyar for R. N. Sachthey, for the appellants.

K. Srinivasan and R. Gopalakrishnan, for the respondent.

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the Madras High Court allowing the petition filed under art. 226 of the Constitution by Budha Pictures, Madras, respondent before us. The respondent had, *inter alia*, prayed for a writ of *mandamus* or such other appropriate writ, order or direction in the nature of a writ directing the 4th Income-tax Officer, City Circle V, Madras, to forbear from collecting from the respondent the sum of Rs. 20,000/- in pursuance of his notices dated June 18, 1959, and March 21, 1961, issued under s. 46(5A) of the Indian Income-tax Act, 1922. These notices came to be issued in the following circumstances :

One, T. S. Balaiah, a cine artist, was apparently in arrears of income-tax. The III Additional Income-tax Officer sent a letter dated June 18, 1959 to the respondent saying :

"I understand that you have engaged the services of Shri T. S. Balaiah for a film being produced by you. As the above gentleman is in arrears of income-tax, I herewith enclose a notice under Section 46(5A) of the I.T. Act, attaching the remuneration payable by you to Shri Balaiah. Please credit to the Government account all amount that is and will become payable to him."

The first paragraph of the notice reads as under :

"A sum of Rs. 46819-15 is due from Shri T. S. Baliah on account of Income-tax and/or penalty, I am to request you, under Section 46(5A) of the Income-tax Act, 1922, to pay to me forthwith any amount due from you to, or held by you for or on account of the said Shri T. S. Baliah of 4, Arulammal St. Madras-17 upto the amount of arrears shown above, and also request you to pay any money which may subsequently become due from you to him or which you may subsequently hold for or on one account of him up to the amount of arrears still remaining unpaid, forthwith on the money becoming due or being held by you as aforesaid as such payment is required to meet the amount due by the tax-payer in respect of arrears of Income-tax and penalty. I am to say that any payment made by you in compliance with this Notice is in law deemed to have been made under the authority of the tax-payer and my receipt will constitute a good and sufficient discharge of your liability to the person to the extent of the amount referred to in the receipt."

The respondent replied on June 26, 1959, as follows :

"We have not engaged Sri T. S. Baliah for acting in our production No. 2. Hence there is no contract with

A said Shri T. S. Baliah, and consequently we are unable to comply with your request."

On March 22, 1961, another communication was sent enclosing a notice under s. 46(5A) of the Indian Income Tax Act. The notice is in the same form except that the sum to be recovered had increased to Rs. 86111/12. The respondent replied on March 25, 1961, saying that "there are no payments due and payable to Shri T. S. Baliah, cine-artist, as on the date of receipt of your letter." The respondent enclosed a statement of account which showed that on March 28, 1960, a cheque for Rs. 7,000/- was given to T. S. Baliah; on February 9, 1961, cash amounting to Rs. 6,000/- was paid to him, and again on March 18, 1961, cash amounting to Rs. 7,000/- was paid to him. The respondent also enclosed a copy of the contract with T. S. Baliah. The contract shows that there was an agreement between T. S. Baliah and the respondent, signed on March 28, 1960, whereby T. S. Baliah agreed to a role in production No. 2 (Tamil) for a consolidated remuneration of Rs. 20,000/-. On April 26, 1961, the Income Tax Officer wrote to the respondent stating that payment of Rs. 20,000/- made to T. S. Baliah was in violation of the notice under s. 46(5A) issued on June 18, 1959, and requested the respondent to pay the sum of Rs. 20,000/- to the Income Tax Department within three days from the receipt of the letter. On June 26, 1961, the respondent wrote to the Income Tax Officer protesting that the respondent was not liable to pay the sum of Rs. 20,000/- giving various reasons, which need not be mentioned at this stage. On August 29, 1961, the Income Tax Officer declined to accept the contention of the respondent and requested him to pay to the Department Rs. 20,000/- on or before September 7, 1961. On January 18, 1962, the respondent filed the petition under art. 226. After giving the above facts and the grounds the petitioner, in brief, alleged that according to law the demand made by the Income Tax Officer for the sum of Rs. 20,000/- was illegal and without jurisdiction.

The High Court, as we have already mentioned, held that the Department was not entitled to call upon Budha Pictures Ltd., the respondent, to make good the sum of Rs. 20,000/- already paid to Baliah as such payments did not contravene the notice under s. 46(5A) dated June 18, 1959.

Section 46(5A) reads as follows :

H "(5A) 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 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.

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 and 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 learned counsel for the appellant contends that s. 46(5A) applies in four sets of circumstances :

- (1) when money is due from a person to the assessee;
- (2) when money may become due to the assessee;

- A (3) when a person holds money for an assessee; and
 (4) when a person may hold money on account of the assessee.

B He says that there is no reason for cutting down the words in categories (2) and (4); the words are plain and they do not suggest that at the time of notice a relationship, which may result in money being owed or being held on account of the assessee, should subsist. In our view, if the assessee has no subsisting relationship with a person it would be speculative to think that that person may get into relationship with the assessee and start owing money to him or start holding money for him. We can hardly believe that the Legislature framed this sub-section on speculative considerations.

C It seems to us that the Legislature contemplated a subsisting relationship of which the Income-tax Officer gets information and which could reasonably lead to recovery of arrears. Theoretically it would be possible for an assessee to enter into relationship with almost anybody, say in the town in which he resides. We can hardly imagine that it was expected that the Income Tax Officer

D would issue notices to all the residents of a locality or a town to pay money *in case* they begin to hold or owe money to the assessee.

It seems to us that the High Court was right in holding that what was contemplated was the subsistence of a similar relationship as between a garnishee and the assessee. This construction of the sub-section is strengthened by the last para in s. 46(5A). A person to whom the notice has issued has only to object that the sum demanded or part thereof is not due to the assessee or that he does not hold any money on account of the assessee. He has not to say that he is not likely to owe or to hold money. It seems to us that the expressions "may become due" or "may subsequently hold money" suggest, in the context, a subsisting relationship between the person served with a notice and the assessee; *e.g.* assessee's employer, or banker, or debtor, or a person paying annuity to him; they do not suggest a bank with which he has never dealt with, a person he has never lent money to or dealt with, or all persons who may possibly in the future employ an assessee out of job or work. If the contention of the Department were to be accepted, the Income Tax Officer could send a circular letter under s. 46(5A) in respect of all defaulters to all possible employers or traders. This would cast enormous burden on persons receiving such notices. We cannot sustain a construction which could lead to such results. We agree with the conclusion arrived at by the High Court.

H In the result the appeal fails and is dismissed with costs.

G.C.

Appeal dismissed.