IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 215 OF 2003

The Stock Exchange, Mumbai ..Petitioner
Vs.
Assistant Commissioner of Income Tax
Circle 4(2) & Ors. ..Respondents

WITH
WRIT PETITION NO. 217 OF 2003

The Stock Exchange, Mumbai ..Petitioner
Vs.
The Tax Recovery Officer-4 & Ors. ..Respondents

....
Mr. Kinshuk Banarjee a/w Yuvraj Chokshi, Advocates i/b Wadia Ghandy & Co. for Petitioner.
Mr. A.R. Malhotra, Advocate for Respondents.
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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 15 OCTOBER 2015

P.C.:

These petitions challenge the prohibitory and attachment orders issued by the Income Tax Department in respect of the income tax dues payable by Bharat S. Khona and Akhil Dalal who were card holders of the Bombay Stock Exchange in the hands of the petitioner. These prohibitory and attachment orders are issued by the Income Tax Department with regard to membership card licensed to Bharat S. Khona and Akhil Dalal and security deposit amounts of the defaulter members Bharat S. Khona and Akhil Dalal with the petitioner-Exchange.

2. It is agreed position between the parties that the decision of the Apex Court in ***Bombay Stock Exchange Vs. B.S. Kandalgaonkar & Ors.***[1] cover both the issues in principle in favour of the petitioner. The Apex Court has held that the membership card is only a personal privilege granted by the petitioner-Exchange and that no right to that card has ever been transferred to the card holder for the petitioner-Exchange so as to enable it's attachment by the Income Tax Department. So far as security deposit is concerned, the Apex Court has held that the petitioners would have a priority on the security deposits over the Income Tax Department.

3. However Mr. Malhotra, the learned Counsel for the revenue points out that the issue with regard membership card is completely covered in favour of the petitioner. However so far as the prohibitory orders were issued by the Income Tax Department

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in respect of security deposit of the defaulting card holder is concerned, any amount in excess after meeting it's liabilities should be handed over to the Income Tax Department. This is so as the amounts in excess in the hands of the petitioner stand attached in favour of the Income Tax Department. The defaulting member of the petitioner-Exchange would not have any right over the same. Mr. Banarjee, the learned Counsel for the petitioner does not dispute the aforesaid position.

4. Mr. Malhotra further states that the petitioner-Exchange is entitled to exercise it's lien over the security deposit in accordance with the by-law 400 of the petitioner-Exchange's By-laws. Mr. Banarjee on instructions, in all fairness, so as to have complete transparency in these matters states that before making payment in terms of by-law 400, petitioner would intimate the manner in which the security deposits would be adjusted to the Deputy Commissioner of Income Tax, Circle 4(1)(2) having his office at Room No.640, Sixth Floor, Aaykar Bhawan, M.K. Road, Mumbai in respect of Writ Petition No. 215/2003 and to the Income Tax Officer 4(1)(1) having his office at Room No.636, Sixth Floor, Aaykar Bhawan, M.K.

Road, Mumbai in respect of Writ Petition No. 217/2003 having jurisdiction over the defaulting assessee's case as informed by Mr. Malhotra, the learned Counsel for the revenue on taking instructions. The communication dated 19 October 2015 added by the office of Principal Commissioner of Income Tax to Mr. Malhotra informing him of the judicial officers in case of defaulting assessees is taken on record and marked 'X' for identification.

5. In case there is no response/objection within a period of three weeks from the communication of the above intimation by the jurisdictional income tax officer to the petitioner-Exchange, then the petitioner would be entitled to make the disbursements in accordance with the intimation/notice given to the jurisdictional Income Tax Officer. Needless to state the excess if any, after the adjustment of the security deposit would be made available to the Income Tax Department by the petitioner-Exchange.

6. In the above terms, both the petitions are disposed of. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**