IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 1139 OF 2013
IN
SUIT NO. 77 OF 2009

Mr.Rahul K. Bajaj ...Applicant / Orig.Deft.No.6

In the matter between

Shri Madhavlal Narayanlal Pittie & Ors. ...Plaintiffs
vs.
Bachhraj & Co.Pvt.Ltd. & Ors. ....Defendants

WITH

CHAMBER SUMMONS NO. 333 OF 2015
WITH
CHAMBER SUMMONS (L) NO. 1934 OF 2015

Mr.Zal Andhyarujina, Ashish Kamat and Abhay Jadeja i/b. Crawford Bayley & Co. for Plaintiff.
Mr.Jahangir Mistry with S.V. Mehta i/b. Malvi Ranchoddas & Co. for Defendant Nos.1,3 4 and 6.
Mr.Abhayankar i/b. Federal & Rashmikant for Defendant No.2.
Mr.Dharmesh Pandya i/b. Ashwin Pandya & Associates for Defendant No.7.

CORAM : S.C. GUPTE, J.

18 DECEMBER 2015

P.C. :

This notice of motion seeks modification of an order passed by this Court on 12 October 2009. The basis of modification is a circular issued by the Central Board of Direct Taxes ("CBDT") after the order was passed. The relevant circular is Circular No.8 of 2011 bearing Reference No. F.No.275/30/2011 – IT(B). The controversy concerns the TDS deducted from the interest accrued on the fixed deposits kept by the Prothonotary & Senior Master of this Court for investing the amounts deposited by Defendant No.6 in Court.

2 The Plaintiffs had contracted to purchase 3,46,96,250 shares of Bajaj Hindustan Ltd. ("suit shares") from Defendant No.1 and / or Defendant Nos.2 to 5. There was some controversy between the parties relating to the price of the suit shares, as a result of which the purchase transaction did not go through. In the meantime, Defendant No.6 agreed to purchase the suit shares from the holders of the shares. As a result, the present suit was filed and Notice of Motion No.305 of 2009 was taken out by the Plaintiffs for restraining Defendant No.1 and / or Defendant Nos.2 to 5 from in any manner seeking to sell, transfer or alienate the suit shares and / or any part thereof to Defendant No.6. At the hearing of the notice of motion, under an order dated 29 December 2008 passed by this Court, Defendant No.6 undertook to deposit the difference between the market value of the suit shares as on 1 March 2008 and the price stipulated in the impugned sale. Pursuant to this order, Defendant No.6 deposited a sum of Rs.79,12,91,352/- in this Court and against which deposit, the suit shares were duly transferred to Defendant No.6. The amount deposited by Defendant No.6 was invested by the Prothonotary & Senior Master of this Court in fixed deposits of Indian Bank. The question then arose about deduction of TDS and issuance of TDS certificates in respect of the interest accruing on the fixed deposits, in view of the fact the depositor being the Prothonotary & Senior Master of this Court, had no entitlement to the monies and held the property merely as a custodian for and on behalf of the party, who ultimately succeeds in the suit. Since the issue concerned the income-tax department, a notice was duly issued by this Court to the department. The Deputy Commissioner of Income-tax filed an affidavit submitting *inter alia* that amount of Rs.79,12,91,352/- deposited by Defendant No.6 as well as the interest accrued thereon shall be treated as deposits by the Income-tax department and not be assessed for tax purpose until after the final orders of this Court. In view of this stand taken by the department and considering the facts of the present case, this Court directed Defendant No.6 to continue to show the said amount as a deposit with Court and ordered that interest accrued on the original sum deposited would not be treated as income. The motion was, accordingly, disposed of.

2 It appears that, in accordance with the order passed by this Court

on 12 October 2009, the Bank stopped deducting any tax at source from the interest accrued on the fixed deposits and credited the entire interest to the account of the depositor and reinvested the amounts. This went on till 18 December 2012. There was a circular issued by the CBDT on 14 October 2011 on the subject of deduction of tax at source on the deposits in banks in the names of the Registrar / Prothonotary and Senior Master attached to the Supreme Court / High Court, etc. during the pendency of the litigation concerning a claim. This circular contained a direction that the depositor, at the time of making deposit of the amount ordered by the Court, shall submit a prescribed declaration for the purposes of record and for the purposes of facilitating the administration of TDS. The circular further provided that in accordance with such declaration, the credit of TDS on interest accruing on such deposit would be allowed subject to final resolution of the controversy after adjudication of the disputes finally by the Court. The department claims to have put in place a suitable mechanism for transfer of TDS in such cases from the depositors to the parties succeeding in the litigation. Under this new dispensation, Defendant No.6 appears to have filed a declaration with this Court and moved the present notice of motion, seeking a suitable clarification or modification of the order passed by this Court on 12 October 2009. It appears that during the pendency of this notice of motion various deductions of TDS were made on the basis of this declaration made by Defendant No.6 to the bank (now, Central Bank) and the amounts of TDS were deposited with the Income-tax department. According to a statement furnished by learned Counsel for Defendant No.6, a sum of Rs.2,18,95,761/- appears to have been deducted from the accrued interest and deposited with the treasury upto Financial Year 2014-15 corresponding to Assessment Year 2015-16. As per the information available with Defendant No.6, in the Financial Year 2015-16, TDS aggregating to Rs.20,99,910/- has already been deducted by the bank and deposited with the department. Defendant No.6 is not aware of further deductions of TDS. That is the position as of date as far as the TDS is concerned.

3 The difficulty has now arisen as a result of an order passed by Delhi High Court setting aside the CBDT circular of 14 October 2011. The Delhi High Court, vide a judgment and order dated 11 November 2014 in Writ Petition

No.3563 of 2012 in the case of UCO Bank vs. Union Bank of India and others and Writ Petition No.2714 of 2014 in the case of UCO Bank vs. Deputy Commissioner of Income-tax, set aside the circular *inter alia* on the ground that in a case like this, there is no person to whom any income irrevocably accrues before the court case is finally decided. Setting aside of the new circular implies that in the matter of TDS the position would be relegated to that which obtained when this Court passed its order of 12 October 2009. There is no dispute between the parties that this would be so.

4 The question now pertains only to the TDS already deducted by the bank from interest accrued on the deposits kept by the Prothonotary & Senior Master and which is deposited with the Income-tax department. Based on the affidavit originally filed by the Deputy Commissioner of Income-tax and the order passed by this Court in the light thereof, ordinarily the department would be required to refund the entire amount of TDS deposited with it to the depositor, namely, Prothonotary & Senior Master, and the same would have to be invested in further fixed deposits in accordance with the orders of this Court. It, however, appears that in pursuance of a declaration issued by Defendant No.6, noted above, the deductor bank has issued TDS certificates in favour of Defendant No.6. The Income tax department submits that since TDS certificates have already been issued to Defendant No.6, who is entitled to claim the benefit of TDS, the refund of TDS can only be claimed after a correction statement is issued by the Prothonotary & Senior Master of this Court for withdrawal of credit given to Defendant No.6. The department relies on a clarification issued in that behalf by CBDT on 26 November 2015. The clarification issued by the CBDT indicates that the *raison de atre* of the correction statement asked for is the benefit claimed by holder of the TDS certificates, namely, Defendant No.6. Learned Counsel for Defendant No.6, however, clarifies that Defendant No.6 has not claimed any benefit or credit in respect of the TDS nor shall he claim such benefit. (Interest accrued on the fixed deposits has not been offered as income by Defendant No.6.) In that view of the matter, it is not really necessary for the Prothonotary & Senior Master of this Court to file any correction statement as claimed by the department. The department may instead refund the entire

amount of TDS on the basis of an undertaking given by Defendant No.6 to this Court, and accepted by this Court, that no benefit shall be claimed in respect of the TDS and nor shall the income be shown as income of Defendant No.6.

5 In the premises, it is ordered that Defendant Nos.8 and 9 or the concerned authority of the Income-tax department, as the case may be, shall refund the entire TDS deducted with effect from Financial Year 2008-09 on the fixed deposits kept by the Prothonotary & Senior Master of this Court to the latter. Such refund shall be made within a period of six weeks from today.

6 The Prothonotary & Senior Master shall invest the amount of TDS refunded in appropriate fixed deposits in accordance with the original order of deposit and its investment passed by this Court on 28 January 2009. Such investment and accrual of interest thereon shall abide by that order.

7 All TDS certificates issued to Defendant No.6 in respect of the interest on the fixed deposits shall be treated as cancelled. The original certificates, if any, with Defendant No.6 shall be surrendered by Defendant No.6 to the department.

8 Notice of Motion No.1139 of 2013 is, accordingly, disposed of.

9 Place Chamber Summons (Lodging) No.1934 of 2015, Chamber Summons No.333 of 2015 and Notice of Motion No.305 of 2009 for hearing on 13 January 2016.

(S.C. Gupte, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/ Order.