IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16249 of 2015

M.Kannabiran [Petitioner]

Vs

1 The Commissioner of Income Tax (Appeals-10) 121 M.G.Road Chennai-34.

2 The Income Tax Officer
Non Corporate Ward-20(3) Room No.407
Wanaparthi Block 121 M.G.Road
Chennai-34. [Respondents]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus directing the 2nd respondent to keep his Notice of Demand dated 31.3.2015 in abeyance by not recovering the Tax amount of Rs.12,37,540/- for the Assessment Year 2009-2010 as per his Assessment Order 31.3.2015 from the petitioner till the disposal of the Appeal by the 1st respondent besides directing the 2nd respondent to lift the Pre-Assessment Order of Attachment dated 26.3.2015 as regards Item Numbers 2 to 6.

For Petitioner : Mr.K.Ravi Anantha Padmanabhan

For Respondents : Mr.T.Pramod Kumar Chopda, Senior Standing Counsel.

O R D E R

Heard the learned counsel for the petitioner and Mr.T.Pramod Kumar Chopda, learned Senior Standing Counsel, who takes notice for the respondents and, with their consent, the main writ petition itself is taken up for hearing.

2. This writ petition has been filed seeking issuance of a writ of mandamus directing the Income Tax Officer, the 2nd respondent herein to keep his Notice of Demand dated 31.3.2015 in abeyance by

not recovering the Tax amount of Rs.12,37,540/- for the Assessment Year 2009-2010 from the petitioner till the disposal of the Statutory Appeal by the 1st respondent, who is seized of the same filed on 01.05.2015 and for a further direction to the 2nd respondent to lift the Pre-Assessment Order of Attachment, dated 26.3.2015, as regards Item Numbers-2 to 6.

3.1. Learned counsel for the petitioner would submit that the petitioner, who is a retired employee was served with summons by the Income Tax Department to explain the sources of income for the house property allotted to him by the Government of Tamil Nadu at Nolambur, Chennai, for a consideration of Rs.30,86,645/-. The petitioner, on receipt of the summons, explained that he invested the above amount by way of jewellery loan, his savings and from the contributions by his friends and father-in-law. But the 2nd respondent did not agree with the explanation and finally, passed the order of assessment, dated 31.03.2015, and imposed the tax liability of Rs.12,37,450/- by holding his sources of income as "unexplained income". Being aggrieved by the order of assessment, the petitioner preferred a statutory appeal before the Commissioner of Appeals, the 1st respondent, under Section 246 of the Income Tax Act (hereinafter referred to as "the Act") along with a stay application on 01.05.2015. In spite of the fact that the petitioner has filed an appeal under Section 246 of the Act within 30 days as stipulated under the Act, by ignoring their own departmental circular which finds reference in 182 ITR 413, mandating the Income Tax Officers to keep in abeyance the collection of tax until disposal of the statutory appeal by the appellate authority, and by causing great prejudice to the petitioner, an order of attachment, dated 26.03.2015 in terms of Section 281B of the Income Tax Act, attaching about six items including his Savings Bank Account, House property etc., was issued.

3.2. Learned counsel appearing for the petitioner would further submit that item No.1 in the Specification of the Property/Assets viz., MIG Plot No.2, TNHB Scheme, Alapakkam, Chennai, will fetch more than Rs.25 lakhs and that would take care of the entire dues, however, even ignoring the value of the house property, erroneously, the petitioner's bank account, in which his monthly pension is being credited, has been attached, as a result, he has been put to grave prejudice and now, he is unable to eke out his bread and butter for his two school going children, his wife and age-old mother.

3.3. Continuing his argument, the learned counsel for the petitioner would submit that since the assessment order is under challenge before the appellate authority, it is no longer necessary to have provisional attachment of all the six items including the petitioner's savings bank account and other land properties. On that basis, it is prayed that since the order of attachment is purely incidental to the assessment order, which is under challenge in the statutory appeal filed under Section 246 of the Act, the same is liable to be lifted.

4. Mr.Pramod Kumar Chopda, learned Senior Standing Counsel for the respondents submitted that the respondents were of the opinion that, for the purpose of protecting the interest of the Revenue, with the previous approval of the Principal Chief Commissioner or Chief Commissioner by order in writing, it was necessary to issue the notice of provisional attachment, dated 26.03.2015, in terms of Section 281(B) of the Act, attaching six items including the petitioner's savings bank account, house properties etc. However, he would fairly submit that the provisional attachment may be confined to only item No.1 in the Specification of the Property/Assets viz., MIG Plot No.2, TNHB Scheme, Alapakkam, Chennai, since the same would fetch about Rs.25 lakhs and, with regard to attachment of his bank account in which his monthly pension is credited, the order of attachment may be lifted.

5. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. From the point made by the learned counsel for the petitioner citing the Circular mentioned in 182 ITR 413 as well as from the guidelines issued by the Central Board of Direct Taxes (CBDT), it could be seen that, where the income assessed is huge in nature, the collection of tax shall be kept in abeyance till the final disposal of statutory appeal by the appellate authority. Very clearly, the Circular referred to vide Instruction No.96, dated 21st August, 1969 states that -

> "where the income determined on assessment was substantially higher than the returned income, say twice the later amount or more, the collection of the tax in dispute should be held in abeyance till the decision on the appeals, provided there were no lapses on the part of assessee."

That being so, this Court is not able to find any justification whatsoever as to how the respondent could ignore their own departmental guidelines and pass the attachment order during pendency of the statutory appeal. Such action only shows that, in the light of the settled legal position that no pension of a retired employee can be made as the subject matter of attachment, even the responsible officer concerned in the Department is not able to appreciate as to how attachment of pension could be ordered under the given circumstances. It is the established proposition of law that departmental circular/guidelines are binding on the Revenue Authorities even though they may not be binding on the assessee concerned.

7. While adverting to the aspect that the Department cannot go contrary to their own Circular or Guidelines which ordain the Authorities to keep in abeyance the collection of tax until the statutory appeal preferred by the assessee before the appellate authority is disposed of, this Court deems it quite relevant to quote below the ratio laid down by the Apex Court in AIR 2009 SC 930 (Radhey Shyam Gupta v. Punjab National bank & Anr.) making it succinctly clear that pension/gratuity would not be liable to attachment even for satisfaction of a court decree:-

> " 24. Having considered the submissions made on behalf of the respective parties, we are inclined to accept Mr. Mehta's submission that the order impugned in the revision petition before the High Court did not attract the bar of the proviso to sub-section (1) of Section 115 of the Code as it sought to finally decide the manner in which the decree passed in Suit No.66 of 1992 by the learned Additional and Sessions Judge, Bayana, Rajasthan, was to be satisfied. However, we are also of the view that having regard to proviso (g) to Section 60 (1) of the Code, the High court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In other words, the High Court erred in altering the decree of the Trial Court in its revisional jurisdiction, particularly when the pension and gratuity of the appellant, which had been converted into Fixed Deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in the Jyoti Chit Fund case (supra) has been considerably watered down by later decisions which have been indicated in paragraphs 15 and 16 herein before and it has been held that gratuity payable would not be liable to attachment for satisfaction of a Court

decree in view of proviso (g) to Section 60(1) of the Code.

25. We also agree with Ms. Shobha that the High Court could not have gone behind the decree in the execution proceedings and the alteration in the manner of recovery of the decretal amount was erroneous and cannot be sustained. We also agree with Ms. Shobha that even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code. Except for the decision in the Jyoti Chit Fund and Finance case (supra), where a contrary view was taken, the consistent view taken thereafter support the contention that merely because of the fact that gratuity and pensionary benefits had been received by the appellant in cash, it could no longer be identified as such retiral benefits paid to the appellant. ”

8. Inasmuch as the petitioner's only source of livelihood viz., the pension, cannot be attached even for satisfaction of a court decree and, more particularly, when the petitioner's statutory appeal filed under Section 246 of the Act along with the stay application filed on 01.05.2015 is pending, the order of attachment cannot be legally sustained and hence, this Court is of the view that the petitioner is entitled for the relief sought for.

9. Net result, the writ petition is allowed by setting aside the Demand Notice, dated 31.03.2015, and by lifting the Pre-Assessment Order of Attachment, dated 26.03.2015 as regards Item Nos.2 to 6. The first respondent / appellate authority is consequently directed to dispose of the statutory appeal preferred by the petitioner before him within a period of 8 weeks from the date of receipt of a copy of this order on merits and in accordance with law.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1 The Commissioner of Income
Tax (Appeals-10) 121 M.G.Road Chennai-34.

2 The Income Tax Officer
Non Corporate Ward-20(3) Room No.407
Wanaparthi Block 121 M.G.Road Chennai-34.

4 CCs to Mr.K.Ravi Anantha Padmanabhan, Advocate SR.No. 27499

1 CC to Mr.T.Pramod Kumar Chopda, Advocate SR.No. 27598

W.P.No.16249 of 2015

CTK (CO)
PSI (11.06.2015)