IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.176 of 1988
Date of Decision: 29.04.2015

Commissioner of Income Tax, Patiala .....Appellant

Versus

Nachhattar Singh & others ....Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**

Present: Ms. Savita Saxena, Advocate for the appellant.

Mr. N.S. Rapri, Advocate for the respondents.

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RAJIVE BHALLA, J (ORAL)

The Commissioner of Income Tax, Patiala challenges judgments and decrees, dated 03.10.1986 and 17.10.1987, passed by the Subordinate Judge Ist Class, Fatehgarh Sahib and the Additional District Judge, Patiala.

Nachhattar Singh, respondent No.1 filed a suit for recovery alleging that he had deposited certain amounts with M/s Janta Janta Scheme (Regd.), Sirhind but the Income Tax Department has attached these amounts. The plaintiff also pleaded that as M/s Janta Janta Scheme (Regd.) has induced him by fraud to deposit these amounts, the suit for recovery may be decreed.

The Income Tax Department, filed a written statement controverting averments in the plaint and pleaded that in view of Section 293 of the Income Tax Act, the suit, is barred. The Income Tax Department also pleaded that M/s

Janta Janta Scheme (Regd.) was assessed to income tax but as it did not pay its dues, its accounts were attached and money in these accounts was appropriated towards arrears of income tax.

M/s Janta Janta Scheme (Regd.) and its partners filed a written statement denying averments in the plaint but admitted the attachment of their property, by the Income Tax Department. They denied having received any amount from the plaintiff/respondent No.1.

After considering the pleadings, the trial Court framed the following issues:-

> *"i) Whether the plaintiff is entitled to the suit amount? OPP.*
>
> *ii) Whether this court has no jurisdiction to try the suit? OPD.*
>
> *iii) Whether the suit is not maintainable in the present form? OPD.*
>
> *iv) Whether the receipts are not admissible in evidence? OPD.*
>
> *v) Whether the suit is under value? OPD."*

After going through the pleadings and evidence, the trial Court held that the plaintiff/respondent No.1 had succeeded in proving that he had deposited Rs.40,000/- with M/s Janta Janta Scheme (Regd.) and as he was induced by a fraud to deposit these amounts, the jurisdiction of a Civil Court is not barred. The trial Court referred to Rule 9 of the Income Tax Rules. The suit was decreed for recovery of

Rs.40,000/- with interest. The first appellate Court, has dismissed the appeal filed by the Income Tax Department.

Counsel for the appellant submits that there is no question of the Income Tax Department playing any fraud or appropriating any property belonging to Nachhattar Singh. The Income Tax Department in order to recover arrears of income tax, attached money belonging to M/s Janta Janta Scheme (Regd.). The fact that Nachhattar Singh may or may not have deposited money with M/s Janta Janta Scheme (Regd.) or may have been defrauded by M/s Janta Janta Scheme (Regd.) is irrelevant and, therefore, cannot be the basis of a claim against the Income Tax Department or confer jurisdiction upon Civil Courts to decree the suit. Section 293 of the Income Tax Act is categoric in its intent that jurisdiction of a Civil Courts is barred.

Counsel for Nachhattar Singh submits that as proved Nachhattar Singh was induced by fradulent means to deposit money with M/s Janta Janta Scheme (Regd.). The amount has been appropriated by the Income Tax Department. This money belongs to Nachhattar Singh and as it has been appropriated without any demand against Nachhattar Singh, the jurisdiction of Civil Courts is not barred.

I have heard counsel for the parties and perused the impugned orders.

The substantial question of law that arises for adjudication is "Whether in the facts and circumstances of the case, the civil suit filed by the plaintiff/respondent was not barred under Section 293 of the Income Tax Act?"

A perusal of the facts reveals that M/s Janta Janta Scheme (Regd.) was a defaulter of the Income Tax Department. The Income Tax Department raided the premises of M/s Janta Janta Scheme (Regd.) and attached its goods and money to satisfy arrears of income tax. Nachhattar Singh plaintiff/respondent No.1 filed a civil suit alleging that his money deposited with M/s Janta Janta Scheme (Regd.) had been illegally appropriated, by the Income Tax Department and should, therefore, be returned. Nachhattar Singh also pleaded that he had been fraudulently induced by M/s Janta Janta Scheme (Regd.) to deposit these amounts.

The trial Court as well as the first appellate Court have decreed the suit by holding that jurisdiction of Civil Courts is not barred as money was received by M/s Janta Janta Scheme (Regd.) by playing a fraud.

Section 293 of the Income Tax Act reads as follows:-

> *"293. No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act; and no prosecution, suit or other proceeding shall lie*

> *against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act."*

A perusal of Section 293 of the Income Tax Act reveals that no suit shall be brought in any Civil Court to set aside or modify any proceeding taken or order made under the Income Tax Act thereby leaving no ambiguity that a Civil Court is prohibited from entertaining a suit to set aside or modify any order or proceedings initiated under the Income Tax Act. An exception, would obviously be available where the order passed or proceedings initiated are vitiated by fraud and then also if the fraudulent act is attributed to an officer exercising power under the Income Tax Act. The plaintiff/respondent No.1 does not allege any fraud by or at the behest of the Income Tax Department. The courts below have held that the fraud was perpetuated by M/s Janta Janta Scheme (Regd.) but have not returned a finding of fraud against the department.

The plaintiff/respondent No.1 was competent to file a suit for recovery against M/s Janta Janta Scheme (Regd.) but in absence of any allegation of fraud against the department, could not maintain a suit against the Income Tax Department. The substantial question of law is consequently answered in favour of the appellant by holding that in the facts and circumstances of the present case, the jurisdiction of Civil

Courts, to entertain the suit, against the Income Tax Department, was barred by Section 293 of the Income Tax Act.

As a consequence of the answer of the substantial question of law in favour of the appellant, it is held that the suit filed by plaintiff/respondent No.1 Nachhattar Singh was not maintainable against the Income Tax Department. The judgments and decrees passed by the Courts below, against the Income Tax Department are modified by dismissing the suit against the Income Tax Department. No order as to costs. Decree sheet be drawn up accordingly.

29.04.2015 **[RAJIVE BHALLA]**
Vinay **JUDGE**