* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **<u>CS(OS) No.713/2006</u>**

% **20th October, 2015**

VISHWANATH KHANNA ..... Plaintiff

Through: Mr. C.S. Gupta, Advocate with Ms. Kritika, Advocate

versus

CHIEF COMMISSIONER OF INCOME TAX-DELHI VIII & ANR. ..... Defendants

Through: Mr. Ashok Manchanda, Advocate with Mr. Judy James, Standing Counsels

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

<u>VALMIKI J. MEHTA, J (ORAL)</u>

1. This suit is filed by the plaintiff for recovery of Rs.29,22,692/- from the defendants with interest. The defendants are Departments of Income Tax. The cause of action which is pleaded in the plaint is that a search and seizure operation was carried out on 4.2.1995 by the defendants in the office and business premises of the plaintiff, who is the proprietor of

his firm M/s Foto Traders. In terms of the search and seizure operation, total silver of 7003.859 kgs (222 bars) was seized from the plaintiff alongwith cash of Rs.49,86,500/-. The seized silver was valued at Rs.4,44,66,395/- at that time and since the value of silver which was seized by the Income Tax Department would fluctuate during the pendency of assessment proceedings to be taken, hence, plaintiff had filed a writ petition in this Court being CWP No. 4767/1998 for return of the silver bars, and in this writ petition by an Order dated 08.10.1998, this Court directed the defendants to release the seized silver to the plaintiff on plaintiff making payment of the value of the seized silver. Plaintiff further pleads that accordingly he kept on making payments of different amounts in different installments to the defendants and consequently plaintiff got released the seized silver from the defendants. The dispute in the present suit pertains to payment of interest on the amounts of three pay orders of the value of Rs.30,50,000/- deposited by the plaintiff with the defendants on 05.04.2000 but which were not encashed by the defendants and hence the principal amount of Rs.30,50,000/- remained dormant in the suspense accounts of the banks without interest accruing thereon. Details of the three pay orders in question are stated in para 6 of the plaint.

2. Plaintiff states that he remained under an impression that these pay orders were encashed by the defendants to cover the payment of silver but plaintiff was shocked to know when he received a letter dated 12.09.2003 from the Indian Overseas Bank which had issued one DD of Rs.10 lacs that the said pay order is not encashed. Plaintiff pleads that on further enquiries he found that the two other pay orders totaling to Rs.20,50,000/- given on 05.04.2000 were also not encashed by the defendants and amounts of all the three pay orders were lying dormant in the suspense accounts with the bank. These three pay orders were got enchased by the plaintiff in June, 2004/August, 2004, and therefore, this suit is filed claiming interest on this amount of Rs.30,50,000/- from the date of deposit of pay orders with the defendants on 05.04.2000 till the dates of their encashment in June, 2004/August, 2004.

3. The defendants appeared and contested the suit and the following issues were framed in this suit on 14.08.2008:-

> "1. Whether the plaintiff is entitled for interest on the amount claimed along with future interest and on what rate and from what date. OPP.
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> 2. Whether the plaintiff is entitled for decree of the sum as prayed in suit against the defendants jointly and severally?
>
> 3. Relief."

4. During the course of final hearing, a legal issue arose which goes to the root of the matter with respect to whether or not this Court has jurisdiction to try the present suit in view of the bar contained in Section 293 of the Income Tax Act, 1961. Though such an issue was not framed because no such defence was taken up in the written statement, however, since this issue goes to the root of the matter as to whether this Court has inherent jurisdiction to try the present suit, plaintiff was put to notice of this aspect on 17.8.2015. Attention of the plaintiff was also drawn to the judgment of the Supreme Court in the case of ***Commissioner of Income Tax, Bhubaneswar and Another Vs. Parmeshwari Devi Sultania and Others (1998) 3 SCC 481*** which pronounces upon Section 293 of the Income Tax Act by observing that no civil suit lies against the Income Tax Department with respect to any dues claimed from the Income Tax Department if such dues are/can be the subject matter of proceedings under the Income Tax Act.

5. I have heard the counsel for the parties yesterday and today also. The neat issue in the present case is that whether this Court has inherent jurisdiction to try the present suit in view of the bar contained in

Section 293 of the Income Tax Act. Section 293 of the Income Tax Act reads as under:-

> "293. *Bar of suits in civil courts*.—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."

6. In the case of ***Parmeshwari Devi Sultania (supra)***, considering this very provision, the Supreme Court has made relevant observations and laid down the following ratio:-

> "**6.** In view of the proceedings conducted under Section 132 of the Act and order having been passed under sub-section (5) of Section 132 thereof and seized assets including the gold ornaments, subject matter of the suit ordered to be retained, the Revenue objected to the maintainability of the suit and said, that it was clearly barred by Section 293 of the Act and a civil court had no jurisdiction to try such a suit under Section 9 of the CPC. Section 9 of the Code imparts jurisdiction on a civil court to try of suits of the civil nature excepting suit of which their cognizance is either expressly or impliedly barred.
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> xxxxx
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> xxxxx
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> **11.** In *Raleigh Investment Co., Ltd. v. Governor-General in Council: AIR 1947 PC 78*, a suit was filed by Raleigh Investment Company Ltd. claiming repayment of Rs. 4,35,295, part of a larger sum paid by it under an assessment of Income-tax made upon it. The basis of this claim was that in the computation of assessable income, effect had been given to a provision of the Income-tax Act, 1922 which in the submission of the plaintiff was ultra vires the legislature and that the assessment was, therefore, wrong. One of the contention raised was that the suit was barred by reason of Section 67 of the Income Tax Act, 1922. Section 67 contained bar of suits in civil court. Section 67 provided as under:

> "67. *Bar of suits in civil court.*—No suit shall be brought in any Civil Court to set aside or modify any assessment made under this Act, and no prosecution suit or other proceeding shall lie against any officer of the Government for anything in good faith done or intended to be done under this Act."

The Court held that though in form the relief claimed did not profess to modify or set aside the assessment, in substance the suit was directed exclusively to a modification of the assessment and was barred by Section 67 of the Indian Income-tax Act. In *Kamala Mills Ltd. v. State of Bombay: AIR 1965 SC 1942*, plaintiff, the appellant filed a suit claiming to recover certain amount paid as sales tax on the ground that it had been illegally levied against it. One of the questions for consideration was if Section 20 of the Bombay Sales Tax Act, 1946 contained a bar against the suit. Section 20 is as under:

> "Save as is provided in section 23, no assessment made and no order passed under this Act of the rules made thereunder by the Commissioner or any person appointed under section 3 to assist him shall be called into question in any civil court, and save as is provided in sections 21 and 22, no appeal or application for revision shall lie against any such assessment or order."

12. It was contended by the plaintiff that Section 20 had no application because the order of assessment which the plaintiff sought to challenge had been made by the relevant Sales Tax Authorities without jurisdiction. This Court repelled this argument and said that an assessment based on an erroneous finding about the character of the transaction was not an assessment made without jurisdiction and was not outside the purview of Section 20 and that words in that section were wide enough to take within its sweep even erroneous orders of assessment and would be entitled to claim protection against the institution of a civil suit. The court then observed:

> "The jurisdiction of a civil court can be excluded even without an express provision. In every case, the question about the exclusion of the jurisdiction of civil courts either expressly or by necessary implication must be considered in the light of the words used in the statutory provision on which the plea is rested, the scheme of the relevant provisions, their object and their purpose."

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16. Principles of law are, therefore, well settled where a civil court will not assume jurisdiction. In *Dulhabhai etc. v. State of M.P.: (1968) 3 SCR 662*, this Court laid 7 principles for the courts to see if the suit was barred under Section 9 of the Code or not. It is not necessary to set out all the 7 principles as we find that the present suit would be barred under the second principle laid by this Court which we reproduce as under:

> "(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.
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> Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not."

17. We have seen above that the scope of Section 293 of the Act has been widened now even to include any proceeding under the Act and it is not merely confined merely to set aside or modify any order. Form of suit is not relevant. It is the substance which is to be seen. When the statute prescribed certain procedure and proceedings thereunder are held and order passed, it is difficult to accept a contention that the proceeding and order can be modified or set aside in a civil suit filed by a third party. Section 293 is specific and does not admit filing of a suit which has the effect of even indirectly setting aside or modifying any proceeding taken under the Act or order made thereunder. In the present case, search and seizure were effected as per the provisions of the Act, assets and documents seized and statement of Babulal recorded under sub-section (4) of Section 132 of the Act wherein he admitted that the gold was acquired from his and his brother's undisclosed income which he was even prepared to surrender to tax. It was thereafter in the course of further enquiry that he came up with a version that the gold ornaments in question belonged to his step-mother who bequeathed the same for the benefit of children of the

> plaintiff and other children that would be born to the second wife of his father. This version did not find favour with the Income-tax Officer and he was not satisfied that gold ornaments in question did not belong to Babulal. It was, therefore, not necessary for him to issue any notice under sub-section (7) of Section 132 of the Act to the plaintiff. In any case, the plaintiff was well aware of the proceedings before the Income-tax Officer and she could have also filed objection to the order made by the Income-tax Officer under Section 132(5) of the Act to the Chief Commissioner or Commissioner under Section (11) thereof which remedy she did not avail. Considering the whole gravamen of the plaintiff in the suit and the law on the subject, we are of the opinion that the Subordinate Judge and the High Court were not correct in rejecting the contention of the Revenue and holding that the suit was not barred under Section 293 of the Act."
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> (underlining added)

7. In the present case, it is seen that there is no dispute that what are the dues of the plaintiff towards the defendants that stood determined in terms of the Order dated 7.7.2003 passed by the Income Tax Settlement Commission, and which Settlement Commission was approached by the plaintiff for settlement of the disputes and determination of the entitlement of the defendants with respect to the amounts on account of tax pursuant to the search and seizure of the plaintiff's premises on 4.2.1995. Pursuant to the order of the Settlement Commission, the computation of income of the plaintiff was to be done and this computation of income was done by the Income Tax Officer under Section 245(D)(6) of the Income Tax Act vide Order dated 20.9.2005. It is this order which crystallized/assessed the amount payable by the plaintiff to the defendants and the amounts; including

interest; which were to be refunded by the defendants to the plaintiff. Since this entire order would be relevant, I reproduce the same as under:-

"CALCULATION OF AMOUNT DUE TO THE ASSESSEE

Name & address of assessee	Sh. Vishwa Nath Khanna Prop. Foto Traders, S-105, GK-II, New Delhi,
PAN No.	AAIPK2689M
Income as per Order dated 7.7.03 of Settlement Commission U/s 245 D(4) for the Asstt. Year 95-96 (S.A.No.2/9/98/1-IT)	**Rs.43,69,020.00**
Tax on the above	Rs.17,22,608.00
Less : Tax paid U/s 143(1)(a)	Rs. 5,85,506.00

Balance	Rs.11,37,102.00
Demand U/s 143(1)(a)	Rs. 8,60,977.00

Demand for Asstt Year 1995-96	Rs.19,98,079.00

Add : Demand Outstanding for the

Previous Asstt. Years

Avs	DEMAND	Interest u/s 220(2)	
1990-91	10,876.00		Rs. 10,876.00
1991-92	1,474.00		Rs. 1,474.00
1999-2000	15,86,347.00	3,70,798.00	Rs.19,57,145.00
2000-2001	22,75,638.00	5,31,927.00	Rs.28,07,565.00
2001-2002 u/S 143(3)	11,54,322.00	57,720.00	Rs.12,12,042.00
2001-2001 u/S 143(a)(a)	8,30,476.00	30,105.00	Rs. 8,60,581.00
2003-04	2,04,197.00	15,310.00	Rs. 2,19,507.00

(A) **TOTAL OUTSTANDING DEMAND**			Rs. 90,67,274.00

(B) Amount paid by the assessee:-

Sl.No.	Amount	Date of Payment	Period of Intt	Interest u/s 244A
1.	Rs.2,05,86,500	31.03.99	1.8.99 – 31.5.01 @ 1% p.m. for 22 months 1.6.01 – 31.5.02 @ 0.75% p.m. for 12 months 1.6.02 – 31.8.04 @ 2/3% p.m. for 27 months	Rs.45,29,030.00 Rs.18,52,785.00 Rs. 36,68,514.00
2.	Rs.1,44,00,000	18.12.99	18.12.99 – 31.5.01 @ 1% p.m. for 18 months 1.6.01 – 31.5.02 @ 0.75% p.m. for 12 months 1.6.02 – 31.8.04 @ 2/3% p.m. for 27 months	Rs.25,92,000.00 Rs.12,96,000.00 Rs.25,66,080.00
3.	Rs. 37,08,667	29.01.2000	29.1.2000 – 31.5.01 @ 1% p.m. for 5 months 1.6.01 – 31.5.02 @ 0.75% p.m. for 12 months 1.6.02 – 31.8.04 @ 0.66% p.m. for 27 months	Rs.1,85,433.00 Rs.3,33,780.00 Rs.6,66,884.00
4.	Rs, 52,96,733	05.03.04	5.3.04 – 31.8.04 @ 0.66% p.m. for 6 months	Rs.2,09,750.00
TOTAL	Rs.4,39,91,900			Rs.1,78,04,256.00
Excess amount paid by the Assessee: 4,39,91,900 – 90,67,264				Rs.3,49,24,636.00
Interest U/s 244-A				Rs.1,78,94,256.00
TOTAL REFUND DUE TO THE ASSESSEE				**Rs.5,28,18,892.00**

The above amount is calculated as per the information available in the records and subject to the verification of the payment made by the assessee.

Sd/-
(Sanjay Gosain)
Income Tax Officer,
Ward 23(2), N. Delhi

NAME & ADDRESS OF THE ASSESSEE	Sh. Vishwa Nath Khanna Prop. Foto Traders, S-105, G.K. II, New Delhi.
Asstt. Year	1995-96
PAN No.	AAIPK2689M
Date of Order	27.09.04

ORDER UNDER SECTION 245D(6) OF THE I.T. ACT

In this case, a search and seizure operation was carried on the premises of the assessee on 4.2.95. During the search, cash amounting to Rs.49,86,500.00 and silver bars numbering 222 were seized. The assessee got the silver bars released from the department, as per the directions of the Hon'ble High Court, after depositing 4,39,91,900.00 with the department. The Hon'ble Settlement Commission vide its order dated 7.7.03 U/s 245D(4) of the Income Tax Act in Settlement Application No.S.A. 2/9/98/1-II assessed the income as follows:-

Returned Income loss	(-)	1,78,430.00
Income Offered in Original SOF		35,47,453.00
Income offered at the time of hearing U/s 245D(4) in revised SOF		10,00,000.00
TOTAL		43,96,023.00

Assessed at Rs.43,69,023.00. Issue necessary forms.

Sd/-
(Sanjay Gosain)
Income Tax Officer,
Ward 23(2), N. Delhi

Copy to : The Assessee.

O/c

Sd/-
(Sanjay Gosain)
Income Tax Officer,
Ward 23(2), N. Delhi."

8. It is not disputed before me on behalf of the plaintiff that when this Order was passed on 20.9.2005 (or even on 27.9.2004 as argued on behalf of the plaintiff), plaintiff was aware of the fact that the three bank drafts totaling to Rs.30,50,000/- were not encashed by the defendants and plaintiff had a right to claim interest on these bank drafts in the proceedings under Section 245(D)(6) of the Income Tax Act, inasmuch as, by June/August 2004, plaintiff had encashed the pay orders totaling to the amount of Rs.30,50,000/-. I have deliberately reproduced the entire Order dated 20.9.2005 (or 27.9.2004) above inasmuch as, the computation being done of amounts; payable for and against the plaintiff; and for and against the defendants, very much had to be and was the subject matter of the Order dated 20.9.2005 (or 27.9.2004) and all these were aspects with respect to the recovery from the plaintiff of the Income Tax dues payable by the plaintiff pursuant to the search and seizure operations in the premises of the plaintiff on 4.2.1995 and refund to the plaintiff on account of excess amount lying with the defendants. The plaintiff thus ought to have raised but did not raise the claim of the amount which is the subject matter of the present suit before the Income Tax Officer who passed the computation vide Order dated 20.9.2005/27.9.2004 or if the plaintiff did make the claim with respect to interest payable on three drafts, then the same stood denied in terms of the

aforesaid Order dated 20.9.2005/27.9.2004. I asked the counsel for the plaintiff a specific question, as to whether the plaintiff had raised this claim which is the subject matter of the present suit being the interest payable on account of monies of the plaintiff lying dormant in suspense accounts with the banks as the three bank drafts/pay orders were not encashed by the defendants, but counsel for the plaintiff could not answer this query of the Court one way or the other in spite of taking instructions from the plaintiff. Therefore, looking at the matter from any angle, if this issue was raised and the claim was denied by the ITO or the issue was not raised at all, the claim of the plaintiff definitely stood merged in the Order dated 20.9.2005/27.9.2004 being the claim of the plaintiff with respect to interest on the amount of Rs.30,50,000/-. If the case of the plaintiff is that the Order dated 20.9.2005/27.9.2004 wrongly disallows the claim, then plaintiff had appropriate remedy to challenge the said order in an appeal but the plaintiff failed to do so. This suit in view of Section 293 of the Income Tax Act however is not the remedy and the only remedy of the plaintiff was to challenge the Order dated 20.9.2005/27.9.2004 in the appropriate forum and which the plaintiff failed to do. The ratio of the judgment of the Supreme Court in the case of ***Parmeshwari Devi Sultania (supra)*** clearly applies that with respect to any claim which is made in a civil suit against the Income

Tax department which will result in modification of proceedings under the Income Tax Act, then the cognizance of such a civil suit cannot be taken by a civil court in view of the categorical bar contained in Section 293 of the Income Tax Act. In ***Parmeshwari Devi Sultania***'s case ***(supra)***, the Supreme Court has referred to a judgment of the Privy Council in ***Raleigh Investment Co. Ltd. Vs. Governor General-in Council, AIR 1947 PC 78*** wherein a similar issue was decided. It is settled law that under Section 9 of the Code of Civil Procedure, 1908 a suit is not maintainable once there is an express or implied bar to the suit. Section 293 of the Income Tax Act in my opinion is an express bar to the present suit in view of the judgment of the Supreme Court in the case of ***Parmeshwari Devi Sultania (supra)***.

9. In view of the above, since this Court has no inherent jurisdiction to try this suit in view of the bar contained in Section 293 of the Income Tax Act, the suit is therefore dismissed, leaving the parties to bear their own costs.

OCTOBER 20, 2015 **VALMIKI J. MEHTA, J**
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