IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 14318 of 2017
Date of decision: 06.7.2017

Sh. Gurcharan Singh

……Petitioner

Vs.

Principal Commissioner of Income Tax-1 and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajiv Joshi, Advocate for the petitioner.

Ajay Kumar Mittal,J.

1. Prayer in this petition filed under Article 226 of the Constitution of India is for quashing the attachment order dated 06.02.2017, Annexure P.9 read with letter dated 15.03.2017, Annexure P.10 whereby pension account of the petitioner has been attached and recovery of alleged tax liability has been ordered against Protective Assessment vide order dated 28.03.2016, Annexure P.1/D. Further prayer has been made for quashing the order dated 20.06.2016 and order dated 15.12.2016 passed by respondent Nos.2 and 1 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner/assessee was a bank employee during the financial year 2007-08 relevant to the assessment year 2008-09. He filed his return at the relevant time with the Income Tax Office at the place of his employment. The petitioner was having family agricultural income

from his ancestral agricultural land. The petitioner along with other persons entered into an agreement to sell dated 5.5.2005 with one Sh. Gurdial Singh, resident of Jalandhar, who himself and as GPA of his family members, agreed for the sale of a piece of Agricultural land measuring 787 Kanal 6 Marlas for a total consideration of ₹ 2.74 crores. An advance money of ₹ 10 lacs was paid to the vendor. The land was intended to be purchased along with agricultural implements, irrigation system, Haveli etc for agricultural purposes only. The vendor resiled from the agreement as he entered into an agreement with another person for a better sale consideration. The petitioner had to file a civil suit to protect his interest. The suit was decreed and individual sale deeds were got executed as ordered by civil court in the suit for specific performance. Respondent No.2 issued notice to the petitioner under Section 148 of the Income Tax Act, 1961 (in short, "the Act") dated 20.03.2015, Annexure P.1/C without recording any reasons. According to the petitioner, the proceedings under Section 147 by issue of notice under Section 148 of the Act are prima facie wrong in view of the fact that he was only an employee at the relevant time and he could not engage himself in any business of profit. The petitioner filed return under protest declaring income of ₹ 2,34,075/- against the notice issued under Section 148/142 (1) of the Act. Respondent No.2 passed the assessment order dated 28.03.2016 whereby the net taxable income was assessed and computed wrongly as ₹ 1,39,64,325/-. Respondent No.2 proceeded to pass this order as protective assessment. The petitioner asserts that he was only purchaser of the land for a consideration of ₹ 7 lacs. Besides the inter se dispute between the parties and the judgment and decree of the civil suit against the petitioner, in another civil suit, the petitioner had to refund a sum of ₹ 60 lacs to Lakhvir Singh, which had also been ignored to make a hypothetical addition of the said amount to the income of the petitioner from other sources. There was nothing on record to suggest that the purchase of land in question was not for agricultural purposes and for self cultivation. The petitioner filed an application under Section 220(3)/(6) of the Act before Income Tax Officer, Hoshiarpur, praying for stay of the demand. Vide order dated 20.06.2016, Annexure P.3, the application was disposed of in terms of order dated 20.06.2016 passed by the Income Tax Officer, Hoshiarpur. Vide order dated 20.6.2016, an onerous demand was raised to pay 15% of the demand relatable to the addition substantively made in the case of the petitioner. Thereafter, the petitioner filed an application for stay before the Commissioner of Income Tax, Jalandhar. Vide order dated 15.12.2016, the Commissioner of Income Tax upheld the order of the Assessing Officer dated 20.06.2016. An assessment order in the case of AOP named as AOP comprising Sh. Gurcharan Singh and Tehal Singh through Shri Gurcharan Singh son of Sh. Ram Singh was passed substantively vide order dated 22.03.2016. According to the petitioner, the orders of protective assessment are passed only with a view to shield the taxation authorities from the laws of limitation, so that tax recovery may not be time barred due to the pendency of some civil case or any other reasons. However, being a protective assessment and a high pitched assessment under the Act, such an order ought to have been stayed for the recovery of demand by the Assessing Officer himself. The petitioner availed of his statutory remedy of appeal before the jurisdictional authority. In revision of the order passed by the

Assessing Officer, the jurisdictional authority i.e. Principal Commissioner of Income Tax failed to appreciate that the assessment in this case being a highly pitched assessment and protective assessment, the same was liable to be stayed for its recovery. Subsequent to the order dated 28.03.2016 passed by the Assessing Officer, the latter wrote to the Branch Manager, Punjab and Sind Bank, Garshankar on 06.02.2017 whereby he attached the bank account of the petitioner for the recovery of ₹ 1,28,98,710/- and respondent No.3 was directed under Section 226 (3) of the Act to make payments of the amount due on account of the income tax, penalty etc from the pension account of the petitioner directly to respondent No.2. The petitioner received a letter dated 15.03.2017(Annexure P.10) from respondent No.3 whereby he was apprised about the withholding/attachment of the pension account. Hence, the instant petition before this Court by the petitioner.

3. We have heard learned counsel for the petitioner

4. According to the petitioner, the action of respondent No.2 in attaching his account for making recovery of amount is illegal, arbitrary and is liable to be quashed as attachment of the pension account is violative of provisions of Section 11 of the Pensions Act, 1871 (in short, "the Pensions Act").

5. Learned counsel for the petitioner had relied upon Section 11 of the Pensions Act to submit that pension account could not be attached for recovery of tax. Section 11 of the Pensions Act reads thus:-

> "No pension granted or continued by Government on political considerations, or on account of past services or present infirmities or as a compassionate allowance, and no money due or to become due on account of any such pension or allowance, shall be liable to seizure, attachment or sequestration by process of any court at the instance of a creditor, for any demand against the pensioner, or in satisfaction of Decree or Order of any such court.
>
> This Section applies to pensions granted or continued after the separation of Burma from India, by the Government of Burma."

6. A perusal of the above provisions clearly spells out that no pension granted or continued by Government on political considerations or on account of past services or present infirmities or as a compassionate allowance shall be liable to seizure, attachment or sequestration by process of any court at the instance of the creditor for any demand against the pensioner or in satisfaction of decree or order of any such court. The present is a case of sovereign dues which would not fall in any of the categories enumerated therein which are free from attachment. In other words, the attachment with which we are concerned in the present case was neither by a creditor nor founded upon a decree or order of the Court. It is thus, not of the nature contemplated by Section 11 of the Pensions Act. Learned counsel for the petitioner has not been able to show as to how his case is covered by the above provision. Further, the Assessing Officer vide order dated 20.6.2016 (Annexure P.3) and the Commissioner of Income Tax vide order dated 15.12.2016 (Annexure P.5) have stayed the demand relatable to additions made to income of the petitioner on protective

basis and directed the recovery of 15% of the amount due on the addition made to the income on substantive basis as per the provisions of the Act.

7. Learned counsel for the petitioner has not been able to point out any error in the impugned order passed by the respondent authorities on the stay application or to substantiate his claim that his case is covered by Section 11 of the Pensions Act. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

July 06, 2017
'gs'

(Amit Rawal)
Judge

Whether speaking/reasoned **Yes**
Whether reportable **Yes**