IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 873 OF 2020

Mansukhlal Amritlal Modi, ... Petitioner.
Mumbai -400 071.

V/s.

The Income Tax Officer Ward - ... Respondents.
16(3) (1), Aaykar Bhavan,Mumbai
and Ors.

Mr. Dharan V. Gandhi, Advocate for the Petitioner.
Mr. Suresh Kumar, Advocate for the Respondents.

CORAM : UJJAL BHUYAN AND
MILIND N. JADHAV, JJ.

DATE : MARCH 19, 2020.

P.C. :

1 Heard Mr. Dharan Gandhi, learned counsel for the Petitioner and Mr. Suresh Kumar, learned standing counsel, Revenue, for the Respondents.

2 By filing this petition under Article 226 of the Constitution of India, Petitioner has assailed the legality

and correctness of impugned order dated 31.01.2020 passed by Respondent No. 1 - i.e. Income Tax Officer, Ward -16(3)(1), Mumbai, calling upon the Petitioner to pay 20% of the demand as a pre-condition for stay of the demand; failing which it was stated that the demand would be enforced and coercive measures would be taken to recover the demand.

3 Petitioner is an assessee under the Income Tax Act, 1961 (briefly “the Act” hereinafter). Assessment status of the Petitioner is that of a resident individual. Petitioner is under assessment jurisdiction of Respondent No.1. For the assessment year 2012-2013, it was found that the Petitioner did not file return of income. Taking the view that income of the Petitioner had escaped assessment, notice under section 148 of the Act was issued; where-after assessment order was passed on 23.12.2019 by Respondent No. 1 under section 143(3) read with section 147 of the Act.

4 In the assessment order, Assessing Officer noted that the Petitioner had sold agricultural land in Gujarat of which Petitioner was the co-owner. It was also noted that the amount received pursuant to the sale transaction of the said agricultural land was not disclosed by the Petitioner. Therefore, Assessing Officer treated the sale transaction amount of Rs. 2,62,05,343 as the unexplained income of the Petitioner under section 69-A of the Act and added the same to the income of the assessee.

5 Pursuant thereto a notice of demand under section 156 of the Act dated 23.12.2019 was issued by Respondent No.1 to the Petitioner, informing the Petitioner that an amount of Rs.1,57,19,310.00 was the demanded due which was required to be paid by the Petitioner.

6 Aggrieved by the impugned order of assessment, Petitioner preferred an appeal before the

Commissioner of Income Tax (Appeals)-7, Mumbai, also referred to as the first appellate authority, on 18.01.2020 for which acknowledgment number 293129600180120 was given.

7 In the meanwhile, Petitioner submitted an application dated 22.01.2020 before Respondent No. 1 for stay of demand which was received in the office of Respondent No.1 on 27.01.2020. Petitioner submitted that for the assessment year under consideration, he had in fact filed return of income under section 139 of the Act declaring total income of Rs. 3,52,945.00. Petitioner mentioned that against the decision to add the amount of Rs. 2,62,05,343.00 to his income as unexplained income under section 69-A of the Act, he has preferred an appeal before the first appellate authority. On merit also Petitioner stated that he was the co-owner of the agricultural property situated at Gujarat. In the course of assessment of the other two co-owners, namely, Smt. Atitiben Patel and Shri

Goswami Budhigir, the alleged sale proceeds were added to their income as on protective basis. In appeal before the first appellate authority by the co-owners, the first appellate authority set aside the addition by taking the view that no addition could have been made to the income of the appellants (co-owners) and the other co-owner meaning thereby the Petitioner. The first appellate authority, therefore, directed deletion of the addition made in the case of the other two co-owners. In the stay application, the Petitioner further stated that he is a senior citizen of about 87 years of age. Though he is an Advocate by profession, because of old age and ill health, he is no longer in legal practice. Because of frequent hospitalization and medical treatment his financial condition is not sound. That apart his bank account in the PMC Bank could not be operated because of the moratorium imposed on the bank for various reasons. In these circumstances, the Petitioner prayed for complete stay of the demand and not to take coercive action.

8 By order dated 31.01.2020, Respondent No. 1 called upon the Petitioner to pay 20% of the demand as per the instant CBDT Circular and to seek stay of the remaining demand from him on furnishing of evidence pertaining to payment of 20%. He was informed that if there was no compliance on or before 04.02.2020, the demand would be enforced and coercive measures would be taken to recover the same.

8.1 According to the Petitioner, this order dated 31.01.2020 was received by him on 07.02.2020.

9 Learned counsel for the Petitioner submits that before the impugned order dated 31.01.2020 was received by the Petitioner on 07.02.2020, Respondent No. 1 had already initiated coercive steps by attaching the bank accounts of the Petitioner on 06.02.2020, more particularly the bank account held by the Petitioner in in HDFC Bank, Chembur, Mumbai, bearing Account No. 4251570000839. It is submitted that the

entire available balance in the said account has been withdrawn by Respondent No. 1.

10 Mr. Gandhi submits that after the order dated 31.01.2020 was passed, he had approached Respondent No.2 i.e. Principal Commissioner of Income Tax -16, Mumbai on 07.02.2020 with an application for stay of the demand. However, Respondent No. 2 rejected the said application on 03.03.2020, by calling upon the Petitioner to pay 20% of the demand.

11 Mr. Suresh Kumar, learned standing counsel, revenue, appearing for the Respondents, however, supports the stand taken by the Respondents. According to him the demand being very high, Respondents have been reasonable in insisting payment of only 20% of the demand. He further submits that regarding claim of Petitioner on merit the same will be dealt-with by the first appellate authority in the appeal proceeding. He, therefore, submits that

there may not be any blanket stay on the entire demand raised by the Revenue.

12 We have considered the submissions made by learned counsel for the parties and given our due consideration.

13 This court in **UTI Mutual Fund vs. Income Tax Officer,** 345 ITR 71, had laid down a series of guidelines for the revenue authorities to follow while considering applications for stay of demand. This court referred to the earlier guidelines issued by this court in **KEC International Limited vs. BR Balakrishnan** - 251 ITR 158 - and thereafter, directed that the following guidelines should be borne in mind while effecting recovery :

1. No recovery of tax should be made pending
   (a) Expiry of the time limit for filing an appeal;
   (b) Disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a

higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated.

2. The stay application, if any, moved by the assessee should be disposed of after hearing the assessee and bearing in mind the guidelines in KEC International Ltd. (supra);

3. If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay;

4. When a bank account has been attached, before withdrawing any amount therefrom, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse to a remedy in law;

5. In exercising the power of stay, the Income Tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the

> public duty of protecting the interest of the Revenue while at the same time balancing the need to mitigate hardship of the assessee. Though the assessing officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order : the matter must be considered from all its facets, balancing the interest of the assessee with the protection of the Revenue."

14 Without expressing any opinion on merit, we find that Respondent No. 1 while passing the impugned order dated 31.01.2020 did not at all consider the various issues raised by the Petitioner in his stay application and merely called upon the Petitioner to pay 20% of the demand. This court in **UTI Mutual Fund** (supra) has made it abundantly clear that the assessing authority while considering the stay application has to act as a quasi judicial authority, which means that he has to apply his mind to all relevant factors and thereafter, take a decision which is just, fair and reasonable. This court had highlighted

that though the Assessing Officer had made the assessment, nonetheless at the time of deciding stay of the demand, he must objectively decide the application for stay considering that an appeal lies against the order which in fact has been filed in the present case. We find that the order dated 31.01.2020 is devoid of any reasons which reflects non-application of mind and therefore, cannot be sustained. Consequentially, the action of attaching the bank account of the Petitioner in the HDFC Bank, Chembur, Mumbai cannot also be justified.

15 Accordingly, the impugned order dated 31.01.2020 is hereby set aside and quashed. Further, the attachment of the bank account of the Petitioner being Account No. 4251570000839 in HDFC Bank, Chembur, Mumbai, is also set aside.

16 In view of the above, subsequent order dated 03.03.2020 passed by Respondent No. 2 would also stand set aside and quashed.

17 The matter is remanded back to Respondent No. 1 for a fresh consideration of the stay application of the Petitioner dated 22.01.2020 in accordance with law, keeping in mind the discussion made above.

18 Let the stay application be decided within a period of six weeks from today.

19 During this period, no coercive steps shall be taken against the Petitioner and as indicated above, the attached bank account shall now be de-attached to enable the Petitioner to operate the same.

20 Writ Petition is disposed of.

(MILIND N. JADHAV, J.) (UJJAL BHUYAN, J.)

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