220 **IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**

****

CWP-26246-2019
DECIDED ON:FEBRUARY 18, 2020

RITU RAJ GARG

PETITIONER

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX

RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Ms. Radhika Suri, Sr. Advocate with
Mr. M.S. Kanda, Advocate
for the petitioner.

Mr. Tajender K. Joshi, Sr. Standing Counsel
for the respondent.

****

AJAY TEWARI, J (Oral):

By this petition, petitioner has challenged the provisional attachment of the property.

2. The facts are that originally the property in question was in the joint names of the petitioner and her husband. On 17.01.2018 the husband of the petitioner transferred his 50% share of the property in the name of the petitioner. On 06.06.2018, a search was conducted and at that time the property was provisionally attached as per the original ownership of 50:50 (½ in the name of the petitioner and ½ in the name of her husband).

3. The first argument of the learned Senior counsel for the petitioner is that once it was admitted that the property was transferred much before the search it could not have been attached in the name of the previous owner.

4. Learned counsel for the revenue sought to argue that the transfer was fraudulent but has accepted that no proceedings have been initiated under Section 281 of the Income Tax Act, 1961 (for short 'Act'). In the circumstances the stand cannot be accepted and it has to be held that at the time of search the property was in the ownership of the petitioner and, therefore, its provisional attachment is deemed to be in the hands of the petitioner.

5 Learned Senior Counsel has further argued that once the issue of ownership of the property and in whose hands it could be provisionally attached has been clarified, the fact is that subsequently the assessment has been finalized and consequently the provisional attachment cannot continue. Learned counsel for the revenue is not in a position to deny this factual aspect also.

6. Consequently, the writ petition is allowed and it is directed that first property be treated to have been provisionally attached in the name of the petitioner and secondly provisional attachment has come to an end after the passing of the assessment order, while giving liberty to the respondent to proceed under Section 281 of the Act, if so advised.

[AJAY TEWARI]
JUDGE

[AVNEESH JHINGAN]
JUDGE

FEBRUARY 18, 2020
sham

1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No