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

\+ W.P.(C) 7910/2022

SWARAN CHOPRA ..... Petitioner

Through: Mr.Rachit Batra, Advocate.

versus

THE NAINITAL BANK LTD. & ANR. ..... Respondents

Through: Mr. M.S. Saluja with Mr. Nikhil Kumar, Advocates for R-1.
Mr.Kunal Sharma, Sr. Standing Counsel for Revenue with Ms.Zehra Khan &Mr.Shubhendu Bhattacharya, Advocates.

% Date of Decision: 28th September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present writ petition has been filed seeking a direction to the Respondent no.2, the Income Tax Department (‘Department’) to lift the attachment order dated 27th December, 2019, issued under Section 226(3) of the Income Tax Act, 1961, (‘the Act’) with respect to the fixed deposits held by the Petitioner herein with the Respondent no.1, the Nainital Bank Ltd. (‘Bank’).

2. The learned Counsel states that the Petitioner herein used her personal savings for opening fixed deposits with the Bank. He states that the petitioner is an 88 years old senior citizen and suffers from various old age related ailments and due to her advanced age, she was advised by the banker to make her son Sh. Ravi Chopra as a second holder in these fixed deposits, on an either or survivor mode, so that the fixed deposits can be liquidated by the petitioner in case of an medical emergency even if she is personally unable to operate her bank account. It is also emphasised that the Petitioner is the primary holder of the fixed deposits and that her son Sh. Ravi Chopra is only a secondary name that appears in the fixed deposits for the sole purpose as aforesaid. The details of the fixed deposits are:-

S. Nos.	FDR No.	Amount
1.	03835010184	2,58,000/-
2.	0383508443	23,40,670/-
3.	03835010322	2,34,943/-
4.	03835010212	4,90,000/-

2.1. He states that therefore, the entire amount held in the fixed deposits belongs to the Petitioner alone. In support of the said assertion, he submits that, in the return of income (ITR) filed by the Petitioner, the interest earned on the said fixed deposits has been regularly offered to tax. He states that it is a matter of record that Tax Deducted at Source ('TDS') on the interest earned on these fixed deposits is deducted by the Bank and credited to the PAN of the Petitioner, which further evidences that the said amount held in the fixed deposit belongs to the Petitioner alone. In this regard, he has drawn our attention to certificate dated 29th April, 2022, issued by the Bank confirming the TDS for these fixed deposits. He also relies on the assessment order dated 30th November, 2019, issued under Section 143(3) of the Act with respect to AY 2017-18, passed in the case of the Petitioner accepting the income, which is inclusive of the income from the interest received by the Petitioner from the Fixed Deposit Receipts (‘FDRs’).

2.2. Learned counsel states that on 22nd January, 2020, when the Petitioner approached the Bank for encashment of the fixed deposits the banker informed her that the Bank cannot permit encashment in view of the attachment order received from the Department. He states that the communication of the Department addressed to the Bank was initially not provided to the Petitioner. He states that the Petitioner was subsequently provided with the notice dated 27th December, 2019, issued by the Assessing Officer (‘AO’) of the Petitioner’s son Sh. Ravi Chopra.

2.3. Learned counsel states that the notice is with respect to the PAN of Sh. Ravi Chopra, and the Petitioner herein has no concern with the said notice. Thus, the said notice cannot operate with respect to the FDRs of the Petitioner as she is the primary holder of the said deposits.

3. Notice was issued to the Respondents on 23rd May, 2022.

4. Mr. Kunal Sharma, learned counsel for the Department states that he has received instructions from the AO of petitioner which states that the AO i.e., ITO Ward 54(1), New Delhi, has not issued the attachment order. Similarly, Sh. Ravi Chopra’s AO i.e., ITO Ward 61(1), New Delhi, has also instructed him that there is no record available with respect to the Petitioner in his record. He states that the notice dated 27th December, 2019, is with

respect to the bank accounts and FDRs held by Sh. Ravi Chopra.

5. Mr. M.S. Saluja, Advocate, has entered appearance on behalf of the Bank and he also states on instructions that the notice dated 27th December, 2019, is the sole basis for not permitting the petitioner to encash the fixed deposits. He confirms that as per records, TDS on the interest earned on the fixed deposits is credited to the PAN of the Petitioner herein, as she is the first holder of the FDRs.

6. We have heard the learned counsel for the parties and perused the record. The notice in this matter was issued on 23rd May, 2022, and thereafter, listed on four separate occasions to enable the learned counsel for the Department to obtain instructions on the contentions raised in the petition.

6.1. The learned counsel for the Department has not disputed the contentions of the Petitioner as regards filing of income tax returns and the assessment order, wherein it is stated that the interest income earned from the FDR has been disclosed as her personal income and offered to tax. He has also not disputed her contention that the amounts standing in the FDRs exclusively belonging to the Petitioner to the exclusion of Sh. Ravi Chopra.

6.2. It is also a matter of record that the Petitioner is an 88 year old senior citizen and her explanation that her son was joined as a second holder in the FDRs as an abundant caution to facilitate encashment in case of any unforeseen event appears plausible.

6.3. We also note that the notice dated 27th December, 2019, issued by the AO of Sh. Ravi Chopra and addressed to the Bank contains a specific direction for attachment of the bank accounts held by Sh. Ravi Chopra and the details of the bank account numbers are specifically stated therein. We are not concerned with the said bank accounts in the present proceedings. The notice thereafter contains a broad direction to the banker to remit amounts held by Sh. Ravi Chopra in the form of FDRs/Assets. The said direction with respect to FDRs is general in nature and no particulars of the FDRs have been enlisted in the said notice in contradistinction to the bank account numbers, which were enlisted. This fortifies the submission of the Petitioner that the FDRs are only disclosed in her ITR as her assets. There is no dispute that the said attachment order is not intended to operate against the Petitioner's assets.

6.4. We may also note that whereas the notice dated 27th December, 2019, directed the Bank to remit all amounts standing to the name Sh. Ravi Chopra to his AO, admittedly, the Bank had not remitted the amounts of the FDR standing in the name of the Petitioner herein to the AO, as possibly even the Bank does not consider the said FDRs as the asset of Sh. Ravi Chopra. It appears that the Bank out of abundant caution has held back on the Petitioner's FDRs and this further borne out from the letter dated 31stMarch, 2020, issued by the Bank to the AO seeking clarification with respect to the application of the attachment order to the Petitioner's FDRs. The AO did not respond to the said letter of the Bank seeking clarification, which shows apathy of the AO towards the plight of the Petitioner.

6.5. The Department has not shown any cause against the Petitioner. The counsel for the Bank has also clarified that the only reason for not allowing the Petitioner to encash her FDRs is due to the notice dated 27th December, 2019. The contentions of the Petitioner in the writ petition have remained undisputed. The counsel for the Department and the Bank have not disputed the contentions of the writ petition or made any submission which would disentitle the Petitioner to the reliefs sought in the writ petition.

7. We, therefore, hold that the attachment order dated 27th December, 2019, does not operate against the FDRs of the Petitioner held with the Bank and direct the Bank to permit the Petitioner to encash her fixed deposits forthwith, without any further delay. The present writ petition is accordingly disposed of.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER28, 2022/msh/kv