06.02.2023.
p.b.
Sl. No.33.

WPA 21019 of 2018

Chinta Devi Shaw
Vs.
Tax Recovery Officer-16, Kolkata & Ors.

Mr. Anil Kr. Dugar,
Mr. R. Chatterjee,
Mr. Gobinda Dey.
.......for the petitioner.
Mr. S. Roychowdhury..
........for the respondents.

Heard learned advocates appearing for the parties.

By this writ petition, petitioner has challenged the impugned proceeding initiated against the petitioner, under Section 226(3) of the Income Tax Act, 1961, for realization of the tax dues of the assessee in default, which the petitioner, under the law, was bound to make payment to the respondent income tax authority after receiving such notice under Section 226(3) of the Act, which the petitioner failed. Defence of the petitioner is that before receiving any such garnishee notice, petitioner had already handed over the money to the assessee in default.

Learned advocate appearing for the respondents income tax authority has annexed the document of confirmation of service of such notice upon the assessee petitioner with supporting documents from the postal department with regard to proof of delivery of the aforesaid notice. It appears from letter dated 23rd July, 2018, issued by the postal department addressed to the respondent Tax Recovery Officer (TRO) concerned confirming of delivery of such notice to the addressee/petitioner on 14th July, 2017.

Mr. Roychowdhury, learned advocate appearing for the respondent also produced the record before this Court particularly a copy of the letter dated 30th July, 2018 addressed to the assessee/petitioner with enclosure of the report of the delivery, issued by the postal department.

In view of such a highly disputed question of fact and re-appreciation of evidence, this writ court under Article 226 of the Constitution of India cannot act as a trial forum and take evidence of the parties on such highly disputed question of facts based on evidence relating to service of notice.

The copies of the relevant record produced by the respondents through their advocate relating to establishing the service of the garnishee notice in question be kept with the record.

The interim order dated 15th November, 2018 passed in the matter, on the ground of the learned advocate failing to produce the relevant record or instruction, is vacated.

In view of the discussions made above, this writ petition being WPA 21019 of 2018 is dismissed.

(Md. Nizamuddin, J.)