30.07.2025
Court No.13
Item Nos.13 & 14
pk

MAT 1659 of 2016
With
CAN 3 of 2025
With
CAN 4 of 2025
Nadia District Agricultural Dealers Association & Ors.
Vs.
Commissioner of Income Tax & Ors.

With

FMA 1301 of 2018
With
With
CAN 2 of 2023
With
CAN 3 of 2023
Shukla Modak & Ors.
Vs.
Union of India & Ors.

Mr. Subir Sanyal, Ld. Sr. Adv
Mr. Sankar Halder
... for the appellants in MAT 1659 of 2016.

Mr. Abhrotosh Majumder, Ld. Sr. Adv.
Mr. Nilay Sengupta,
Mr. P. Jhunjhunwala,
Ms. Sruti Datta,
Ms. Sunanda Samanta
..for the Appellants in FMA 1301 of 2018
and Respondents in MAT 1659 of 2016.

Mr. Vipul Kundalia, Ld. Sr. Adv.
Mr. Amit Sharma
... for the Income Tax Department.

1. Recall is sought of this Court's order dated 9th June, 2025 whereby the Court had directed handing over of possession of an immovable property to the appellants/auction purchasers represented by Mr. Sanyal, learned advocate.

2. It is submitted that the aforesaid MAT 1659 of 2016 was tagged and to be heard along with FMA 1301

of 2018 (MAT 1571 of 2017). The said FMA 1301 of 2018 was against an order dated 26th July, 2017 filed by the legal heirs of one Tapan Kumar Modak, the original assessee, since deceased.

3. The Single Bench in the said appeal in its order dated 26th July, 2017 found that the writ petitioners, legal heirs of Tapan Kumar Modak, could not point out any specific discrepancies in the original assessment order or even the demand raised pursuant thereto.

4. Failure on the part of the writ petitioners was noted both in the writ petition and also in course of hearing of the writ petition where documents were produced by the Income Tax Department as regards the assessment made and the demand raised.

5. It is in that view that the writ petition was dismissed with costs assessed at Rs.2,00,000/-. The Single Bench went on to further find that there was a collusion between the legal heirs of Tapan Kumar Modak in WP 6387 of 2017 and the legal heirs of his brother Biman Kumar Modak, who had filed another writ petition being WP 5269(w) of 2006 (Biman Kumar Modak Vs. T.R.O., Nadia). In the said case, by an order dated 30th June, 2016 the legal heirs of the deceased, Biman Kumar Modak were able to demonstrate discrepancies in the assessment order as well as the demand.

6. For reasons far to obvious the writ petitioners in the two writ petitions were not parties to the other proceedings. The assessment orders and demands were obviously different.

7. The property attached, however, is a single building portions whereof were equally divided between late Tapan Kumar Modak and his brother Biman Kumar Modak.

8. This Court is complete agreement with the findings of the Single Bench dated 26th July, 2017.

9. The appellants in FMA 1301 of 2018 (MAT 1571 of 2017) are trying to frustrate recovery proceedings of the Income Tax Department on one pretext of the other. They have also successfully resisted execution of the Court's order dated 9th June, 2025. It is surprising to note that even the BL&LRO, who was present in the meeting to handover possession of the property purchased by the appellants in MAT 1659 of 2016 could not affect any appropriate demarcation. The auction purchaser is seriously aggrieved.

10. In view of the findings recorded hereinabove, this Court finds no merit in FMA 1301 of 2018 (MAT 1571 of 2017) and the same is hereby dismissed. Interim orders passed in the matter shall stand vacated.

11. However, any application made under the DTVSV Scheme by the appellants in FMA 1301 of 2018 shall

be treated by the Income Tax Department in accordance with law.

12. The Income Tax Department has not been able to deliver possession of the property to the auction purchaser/appellant, namely, Nadia District Agricultural Association despite a lapse of 21 years (From 16.03.2006 when auction price was paid by the appellant in MAT 1659 of 2016). The appellants in MAT 1659 of 2016 are seriously prejudiced. They have parted with sum of Rs.10,41,500/- and have not received property. They have been deprived of user of the property and also user of the money.

13. In those circumstances, this Court directs the Income Tax Department specially the Commissioner of Income Tax concerned and/or the jurisdictional CIT to refund the aforesaid sum of Rs.10,41,500/- together with interest @ 9 per cent per annum from the date of payment i.e. 16.03.2006 till the date of actual payment.

14. The aforesaid rate is fixed considering the average FDR rates of public financial institutions in this country between 2006 and 2025.

15. It is directed that the aforesaid payment shall be made by the jurisdictional CIT within a period of one month from the date, failing which the rate of interest will enhance to 11 per cent per annum.

16. The order dated 9th June, 2025 shall stand modified accordingly.

17. With the aforesaid observations, CAN 3 of 2025 and CAN 4 of 2025 are, therefore, disposed of.

18. There will be no order as to costs.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)