(1996) 05 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 3066 of 1996

Darshan Kumar — APPELLANT

Vs

Commissioner of Income Tax and Others — RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 179, 222

Citation : (1996) 222 ITR 608 : (1998) 99 TAXMAN 524

Hon'ble Judges : S.S. Sudhalkar, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : R.P. Sawhney and Sanjay Goyal, for respondent Nos. 1 to 3, for the appearing parties; None for respondent Nos. 4 and 5, for the Respondent

Judgement

G.S.Singhvi, J.—This petition has been filed to quash annexures "P-1", "P-2" and "P-7" issued respectively by the Tax Recovery Officer-I, Jalandhar, General Manager, Punjab Roadways, Amritsar-I, and the Assistant Commissioner of Income Tax, Circle 1(1), Jalandhar.

2. The brief facts :

3. The petitioner is working as a conductor with the Punjab Roadways at Depot No. 1, Amritsar. He was a director in Maini Finance (P.) Ltd., a company floated by his brother, Rakesh Kumar Maini. As per annexure "P-4", the petitioner resigned from directorship of the company with effect from March 31, 1993.

4. For the assessment year 1990-91, tax and interest amounting to Rs. 5,89,990 was found due against Maini Finance (P.) Ltd. and as the authorities of the Income Tax Department could not effect recovery of the outstanding dues from the company, proceedings were initiated u/s 179(1) of the Income Tax Act, 1961 (for short, "the Act"). Notice issued by the competent authority u/s 179 of the Act was served upon the petitioner directly as well as through his employer, namely, General Manager, Punjab Roadways, Depot-I, Amritsar. This fact is

revealed from the office letter No. 2749 dated April 21, 1995, written by respondent No. 4 to respondent No. 2. The petitioner did not pay the amount and, therefore, respondent No. 3 wrote annexure "P-l" dated January 22, 1996, to respondent No. 4 calling upon him to attach the salary of the petitioner for the purpose of recovery of arrears. In compliance with this direction, respondent No. 4 passed order annexure "P-2" dated January 31, 1996, and attached the salary payable to the petitioner and further directed that the same shall be deposited in the Central Government account for the purpose of recovery of Income Tax. The petitioner represented before respondent No. 3 for withdrawal of the order of recovery by making representation annexure "P-3". In his letter, the petitioner pleaded that he had no other source of income and, therefore'', the order for attachment may be got vacated. This request of the petitioner has not been accepted by respondent No. 3 and, therefore, the petitioner has sought the intervention of the High Court for quashing of the impugned orders. His case is that after having resigned from the directorship with effect from March 31, 1993, he cannot be held liable to pay arrears of Income Tax found due against Maini Finance (P.) Ltd. Another plea of the petitioner is that proceedings initiated against him are contrary to Section 226(2) of the Act read with Section 60 of the Code of Civil Procedure. Yet another plea of the petitioner is that against the order of assessment dated March 17, 1994, a revision petition filed by Rakesh Kumar Maini, ex-managing director of the defaulting company is still pending and, therefore, there is no justification to proceed against him, i.e., the petitioner.

5. In reply, respondents Nos. 1 to 3 have pleaded that being director of the company during the year, 1991, the petitioner is jointly and severally liable to pay arrears of Income Tax found due against Maini Finance (P.) Ltd. These respondents have pleaded that the order of attachment annexure "R-1" has been passed on January 18, 1996, and this order clearly shows that it is subject to Rule 29 of Schedule II to the Act. The respondents have further stated that after receipt of the representation made by the petitioner, respondent No. 3 wrote to the general manager on March 6/7, 1996, that attachment of the salary of the petitioner is subject to the proviso to Section 226(2) of the Act and respondent No. 4 was requested to leave the exempted portion of the salary as provided u/s 60 of the Code of Civil Procedure. It has also been pleaded by the respondents that service of notice u/s 179(1) of the Act was effected on the petitioner and in order to ensure compliance with the principles of natural justice, another notice dated February 13, 1995, was served upon the petitioner on March 30, 1995, before order annexure "P-7" was passed.

6. The first contention of Shri Mittal, learned counsel for the petitioner, is that order annexure "P-7" is void on account of non-compliance with the principles of natural justice inasmuch as no notice was served upon the petitioner u/s 179(1) of the Act. Shri Sawhney countered this submission by pointing out that notice was personally served upon the petitioner and he had filed a reply on April 4, 1995, and after considering the same, order annexure "P-7" was passed by the competent authority. A perusal of annexure-"P-7" together with the averments

made in paragraph 4(c) of the reply of respondents Nos. 1 to 3, which have remained uncontroverted, shows that notice for taking action u/s 179(1) of the Act was not only served upon the petitioner but he filed a reply to the same and pleaded that the demand be kept pending because the company had filed a revision petition u/s 264 of the Act against the order of assessment. The failure of the petitioner to rebut the contents of annexure "P-7" regarding service of notice as well as the averments made in paragraph 4(c) of the reply, shows that the argument of Shri Mittal regarding violation of the principles of natural justice is wholly untenable. If the petitioner had not been served with notice for proceedings u/s 179(1), he could not have filed a reply to the same or made a request for keeping the demand pending till the Commissioner of Income Tax, Jalandhar, decided the revision petition. We, therefore, do not find any substance in the argument of Shri Mittal that order annexure "P-7" and subsequent orders passed by respondents Nos. 1 to 3 are liable to be voided due to the violation of the rule of audi alteram partem.

7. The second argument of Shri Mittal is that the petitioner cannot be held liable to pay arrears after his resignation from the directorship of the company. This argument proceeds on an assumption that the resignation from the directorship of the company ipso facto absolves the petitioner of all the liabilities which he incurred during the period he was a director of the company. A bare reading of Section 179 of the Act shows that every person who was a director of the private company at any time during the relevant previous year of the assessment shall be jointly and severally liable for the payment of tax found due against the company for the relevant previous year. The tax found due in this case relates to the assessment year 1991-92 when the petitioner was very much a director of the company. Therefore, he cannot escape his liability to pay the arrears after the competent authority found that it was impossible to recover the amount from Maini Finance (P.) Ltd.

8. The third contention of Shri Mittal is that during the pendency of the revision petition filed by the company by its ex-managing director, the petitioner cannot be made to pay the amount of arrears. This argument is misconceived. The filing of a revision petition by the company or its exmanaging director does not ipso facto operate as a stay against the recovery proceedings and, therefore, the mere pendency of the revision petition cannot be made a ground for issue of a direction to stop making recovery of the tax which is admittedly due against the company and payment of which is the liability of the petitioner and other directors of the company.

9. Lastly, Shri Mittal argued that the entire salary of the petitioner has been attached and this action of the respondents is contrary to Section 60 of the Code of Civil Procedure. Shri Sawhney pointed out that respondent No. 3 has issued clarification to respondent No. 4 to take into consideration the exempted portion of the salary while making recovery pursuant to annexure "R-2" read with annexure "P-I". In our opinion, annexure "R-2" completely negates the

submission of Shri Mittal that the proceedings are contrary to Section 60 of the Code of Civil Procedure.

10. In view of the above discussion, we hold that the challenge to the recovery by the respondents from the salary of the petitioner is untenable and the writ petition is liable to be dismissed. Ordered accordingly.

