

(1997) 11 AHC CK 0015

In the Allahabad High Court

Case No : C.M.W.P. No. 729 of 1997 22 November 1997

MITTAL COAL ENTERPRISES

APPELLANT

Vs

ASSISTANT COMMISSIONER OF INCOME TAX

RESPONDENT

Date of Decision : 22-11-1997

Acts Referred:

Income Tax Act, 1961 — Section 158BC, 158BD, 222, 223, 224

Citation : (1998) 149 CTR 462

Hon'ble Judges : R.K. Gulati, J;M.C. Agarwal, J

Bench : Full Bench

Advocate : C.S. Agarwal, for the Revenue and Bharat Ji Agarwal, for the Assessee, for the Appellant;

Judgement

The petitioner was assessed to tax by an assessment order dated 30-9-1997 (block assessment) u/s 158BC of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). As a result of that assessment, a demand of Rs. 4,56,20,628 had fallen due against the petitioner. It is not disputed that the assessment order is not the subject-matter of challenge in this writ petition against which an appeal has been preferred and is pending adjudication before the Tribunal at Delhi.

2. The challenge before this court was confined to the notice dated 6-11-1997, issued u/s 226(3) of the Act addressed to Synthetics & Chemicals Ltd., Bareilly, The impugned notice, inter alia, recites that the block assessment u/s 158BC, read with section 158BD, of the Act has been made on 30-9- 1997 in the case of the petitioner and the demand of Income Tax was created at Rs. 4,56,20,628. The notice of demand has been duly served upon the petitioner on 4-10-1997. Thus, the demand of Income Tax was payable on 4-11-1997, after the expiry of 30 days from the service of notice of demand. Paragraphs 2 and 3 of that notice read as under:

"2. You have intimated by your letter dated 11-8-1997, that total amount of Rs. 99,31,688 is payable to the assessee AOP Mittal Coal Enterprises against its coal

supply to the Company. Out of this amount, Rs. 67,14,731 has been seized in the form of post-dated cheques which were deposited in the personal deposit account of the Commissioner of Income Tax, Lucknow, The remaining amount of Rs. 32,16,966 is also payable to the assessee which has been attached provisionally u/s 281B of the Act, and has duly been intimated to you.

3. Notice u/s 226(3) of the Act, is issued to you for depositing the amount of Rs. 32,16,966 in the Central Government Account forthwith. The necessary challan is enclosed herewith for this purpose. You are, therefore, requested to deposit the said amount immediately after the receipt of this letter. In case of failure in this regard I shall be constrained to take action against you in accordance with the provisions of sections 222 to 225 of the Act."

3. We have heard Shri C.S. Agarwal, the learned counsel for the petitioner, and Shri Bharat Ji Agarwal, the learned counsel for the respondents.

4. For the petitioner, two-fold contentions were made. Firstly, that the petitioner had made an application dated 7-11-1997, before the Commissioner, Central, Kanpur, requesting for the withdrawal of the impugned notice dated 6-11-1997 for the reasons set out in that application. It was urged that no orders on that application have been passed by the Commissioner, and, therefore, this court may interfere and direct that the impugned garnishee order be not "be" given effect to. The second contention of the petitioner was that although the petitioner could approach the Tribunal for stay of the recovery proceedings pending decision of the appeal before it, but that remedy was not efficacious and was futile, for, the Tribunal would not decide the stay application so long as the matter was pending before the Commissioner, Central, Kanpur, in pursuance of the application made by the petitioner referred hereinabove.

5. We have considered these submissions carefully, but no case for interference has been made out. In the application dated 7- 11-1997 addressed to the Commissioner, Central, Kanpur (Annexure- 6 to the writ petition), it is averred, inter alia, that the notice u/s 226(3) of the Act be withdrawn because an entity, called Goodluck Coal Co., in its application dated 4-10- 1996, filed u/s 245D before the Settlement Commission has owned all the transactions of the petitioner with Synthetics & Chemicals Ltd., Bareilly and that application has been admitted by an order dated 30-4-1997, of the Settlement Commission. Further, the amount of Rs. 32,16,966 outstanding in the account books of Synthetics & Chemicals Ltd. as due to the petitioner belong to Goodluck Coal Co. Thus, the same cannot be recovered against the demand due from the petitioner, i.e., Mittal Coal Enterprises.

6. Now the fact that the petitioner has approached the Commissioner for withdrawal of the notice u/s 226(3) on certain allegations in our opinion, is no good ground on which this court should interfere in the matter. It is not for this court to enter into the factual controversy stated by the petitioner, namely, as to whom does the amount of Rs. 32,16,966 belong, which is sought to be recovered

under the impugned garnishee order. Suffice it to say that the assessing authority has not accepted the case set up by the petitioner and a definite finding to the contrary has been recorded in the assessment order.

7. Insofar as the second submission is concerned, it is equally untenable. As already observed, an appeal against the assessment order is pending before the Tribunal. The Tribunal has ample power in given case to grant an interim protection to an appellant during the pendency of an appeal before it, if an application is made in that behalf and a case is made out for an interference. The petitioner on its own showing has not adopted that course so far. What would be the reaction of the Tribunal if such an application is made by the petitioner, is not for this court to speculate and to proceed on that basis. It is only after the petitioner has approached the Tribunal that a question might arise about the validity of the order that may be passed by it. No such situation arises for the present. As the petitioner has an alternative remedy to seek redress of its grievances before such forum, as the petitioner may be advised in the matter, we see no justification to interfere with the impugned notice dated 6-11-1997.

8. For what has been stated above, the writ petition is rejected in limine.