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(1993) 07 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14988 of 1991

Mohan Singh — APPELLANT

Vs

Commissioner of Income Tax and Another — RESPONDENT

Date of Decision : 28-07-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Income Tax Act, 1961 — Section 226(3)

Citation : (1993) 115 CTR 170 : (1993) 204 ITR 571 : (1994) 73 TAXMAN 88

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant; R.P. Sawhney, for the Respondent

Judgement

V.K. Bali, J.—Mohan Singh, holding a general power of attorney for one Shri Karnail Singh, son of Harnam Singh, has filed this petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus directing respondent No. 2, Income Tax Officer, to refund the amount of Rs. 57,527 along with interest thereon which, as stated, was illegally recovered from him out of F. D. R. No. 228 of 1981 for Rs. 82,300 with Punjab National Bank, Nakodar Branch. The relief aforesaid stems from out of the following facts. Karnail Singh had an F.D.R. No. 228 of 1981 dated March 27, 1981, for Rs. 82,300 with Punjab National Bank, Nakodar Branch. The aforesaid F. D. R. was to mature on June 26, 1988. Karnail Singh ever since is living in England but when he arrived in India on January 21, 1990, and approached the bank, he was surprised to find that a sum of Rs. 57,527 had since already been recovered by the Income Tax Officer, Jalandhar, in March, 1982, u/s 226(3) of the Income Tax Act, 1961. The case of the petitioner is that, under the provisions of the Income Tax Act, a demand for tax or penalty has only to be raised after initiating proceedings under the said Act, which necessarily involves an opportunity of being heard. Karnail Singh who was a non-resident Indian, it is stated, was never issued any notice of any kind at any stage whatsoever. Karnail Singh approached the Income Tax Officer by way of a representation letter dated February 22,

1990. He enquired the nature of demand and also requested that a copy of the order passed against him be supplied to him. His demand in the letter forwarded is said to have evoked no response from respondent No. 2, thus compelling him to send reminders on April 20, 1990, May 18, 1990, and June 20, 1990. It is also stated that all these reminders were duly received, vide various receipts. These reminders also failed to evoke any response. Karnail Singh moved the higher authorities, i.e., the Commissioner of Income Tax, who is stated to be the administrative head of the Income Tax Department and has also a grievance cell to redress the problems of the assessees expeditiously. A petition was moved before him on January 22, 1991, wherein the facts were stated in detail and a request was made that he be apprised of the kind of proceedings that were initiated against him. When nothing was heard from the Commissioner of Income Tax, he sent another reminder dated May 16, 1991, but with no result. The reminders given by Karnail Singh also likewise never received any attention on the part of the Income Tax Commissioner. In the wake of the circumstances aforesaid, the petitioner approached this court for the relief as stated in the earlier part of this order.

2. Notice of motion was issued in this case on October 21, 1991, and the case was adjourned to October 21, 1991. Counsel appearing for the respondent prayed for adjournment and consequently the case was adjourned to November 25, 1991. On the adjourned date, i.e., November 25, 1991, as well, no return was filed and a request for postponement of the case was repeated. The case was thus adjourned to January 27, 1992. On the adjourned date as well, the respondents sought for another date on the plea that the record of the case was not traceable. This request was also accepted and the case was postponed to February 24, 1992. On the adjourned date, i.e., February 24, 1992, the respondent sought yet another opportunity to file a reply and the case was adjourned to April 26, 1992. The writ petition was, however, ultimately, admitted on May 11, 1992, and was ordered to be posted for hearing within six months. Till date, no reply has been filed in this case.

3. Mr. Sawhney, counsel appearing for the respondent, requests for yet another opportunity to file the reply by still saying that the file is not traceable even now. In view of the repeated adjournments that have been given in this case as also in view of the fact that no return had been filed even though the case was ordered to be heard within six months, no useful purpose will be served in granting another opportunity to the respondent on the ground that the file is not traceable.

4. In view of the uncontroverted facts that have been detailed above, it has to be held that the respondents, without issuing any notice to the petitioner, without raising any demand and without hearing him in the matter, proceeded to attach the F. D. R. of Karnail Singh and recovered an amount of Rs. 57,527. This course was not at all permissible as it is an admitted position that, under the provisions of the Income Tax Act, while raising a demand for recovery, the concerned assessee has to be issued a notice and it is only after hearing him that an

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appropriate order can be passed. Nothing of the kind was done in this case. In the circumstances of the case, there is thus no option but to allow this, petition and direct the respondents to refund the amount of Rs. 57,527, which was illegally recovered by attaching the F. D. R. of Karnail Singh. Since no justification has been pleaded by the respondents for the impugned action, they are directed to refund the amount with 15 per cent. interest. Let the refund be given to Karnail Singh or his attorney, Mohan Singh, through whom the present petition has been filed, within a period of one month. This petition is allowed with costs which are assessed at Rs. 1,000.

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