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(2016) 04 MP CK 0006

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1451 of 2016

Municipal Council, Dabra APPELLANT

Vs

Recovery Officer and others RESPONDENT

Date of Decision : 04-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 7A

Citation : (2016) 3 CLR 135 : (2016) 150 FLR 115 : (2016) LabLR 1208

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Shri D.K. Agrawal, Advocate, for the Appellant; Shri R.K. Goyal, Advocate and Shri M.P. Agrawal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Rohit Arya, J.—This writ petition by Municipal Council, Dabra under Article 226/227 of the Constitution of India is directed against the impugned order dated 5/2/2016 attaching the back accounts of the petitioner/Council pursuant to the order passed under Section 7-A of the Employees'' Provident Fund & Miscellaneous Provisions Act, 1952 (hereinafter referred to as'' the Act of 1952'').

2. This Court while issuing notice had stayed the effect and operation of the impugned order. On notice, respondents have entered appearance. During the course of hearing it has transpired that the petitioner/Council has already preferred an appeal vide ATA No.320(8)2016 before the Employees Provident Fund Appellate Tribunal against the order passed under Section 7-A of the Act of 1952 dated 18/1/2016. The appellate authority while issuing notice on the appeal, as an interim measure, has stayed the operation of the impugned order subject to condition that the petitioner shall deposit 20% of the assessed amount within 60 days from the date of the order.

3. Learned counsel for the petitioner contends that the impugned order of attachment was vulnerable on the premise that before expiry of limitation for

filing the appeal within a period of 60 days, the attachment order was passed and, therefore, the order is highly prejudicial and detrimental to the rights and interests of the petitioner, as unless the period of limitation for filing the appeal had expired, there was no occasion for the assessing authority-Assistant Provident Fund Commissioner to take recourse to coercive measure of attachment of accounts towards realisation of amount found due in the order passed under Section 7-A of the Act of 1952. In any case, since the impugned order has already been stayed by the appellate authority, the impugned attachment order has lost its efficacy and validity, therefore, it is prayed that this writ petition may be allowed setting aside the impugned order, however, recovery, if any, may be made subject to the orders of the appellate authority.

4. Per contra learned counsel for respondents no.1 to 3/EPF contends that there was no illegality in the order of attachment, as notice itself reflected that in the event the amount found due under Section 7-A if not deposited within fifteen days, coercive measures shall be taken.

5. Heard the counsel for the parties.

6. As per the scheme of the Act of 1952, against the assessment order passed by the competent authority, the assessee has a right of appeal before the appellate tribunal. The period prescribed therefor is 60 days. The tribunal also has power to issue interim order. The measures for recovery including coercive measures can be taken recourse to if the assessee without filing the appeal avoids payment thereof and the authority is left with no option than to ensure recovery through such measures. In the instant case, admittedly the period of limitation for filing the appeal had not expired while impugned attachment order was passed. Thereafter, appeal was filed within limitation and interim order has been passed (supra). Therefore expiry of the period of limitation taking recourse to coercive measures by the Assessing Officer, in the opinion of this Court, is not in accordance with law and in fact and in effect tantamounts to an arbitrary exercise of power lacking bona fides. Therefore, in the opinion of this Court, the impugned attachment order cannot withstand the test of reasonableness under Article 14 of the Constitution of India, therefore, the same deserves to be and is accordingly quashed. However, assessment order under Section 7-A of the Act of 1952 since is subject matter of appeal, the petitioner shall abide by the orders passed by the appellate authority.

7. With the aforesaid, writ petition stands allowed.

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