(1997) 05 MP CK 0036

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1115 of 1987

Narendra Kumar APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 05-05-1997

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

Citation : (1999) 155 CTR 113 : (1998) 234 ITR 475

Hon'ble Judges : Nirmal Kumar Jain, J

Bench : Single Bench

Advocate : S.M. Dagaonkar, for the Appellant; V.K. Jain, for the Respondent

Judgement

N.K. Jain, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks quashment of the notice, annexure-"B", issued by respondent No. 1 u/s 226(3) of the Income Tax Act, 1961.

2. The petitioner has deposited Rs. 4,79,000 against various fixed deposit receipts with respondent No. 2-bank as per details, annexure-A. Respondent No. 1-income tax Officer, D-Ward, Indore, by notice dated October 21, 1987 (annexure-R1-F), issued u/s 226(5) of the Income Tax Act, 1961, has required respondent No. 2-bank to pay Rs. 2,06,659 towards Income Tax due against Binodiram Balchand, out of the said amount deposited in the name of the petitioner. It is this notice which is under challenge.

3. According to the petitioner, the said Binodiram Balchand is a business concern of the Hindu undivided family consisting of his brothers, uncles, etc., but with whom he does not have any connection for the last over 10 years. The amount deposited with respondent No. 2-bank is from his own acquisition and gains of learning.

4. The respondent have filed separate returns in oppugnation. Respondent No. 1 has contested the petition on the ground that the assessee is not a Hindu

undivided family business concern but a partnership firm of which the petitioner is a partner and he is, therefore, liable to pay tax jointly and severally. The said notice has been duly issued and is not amenable to interference by this court in writ jurisdiction.

5. At the outset, I have to observe that this petition involves disputed questions of fact inasmuch as, according to the petitioner, the assessee is a Hindu undivided family business concern with which he has no connection while, on the other hand, the contention of respondent No. 1 is that the assessee is a partnership firm of which the petitioner is a partner liable to pay tax. Such disputed questions of fact cannot be gone into or adjudicated upon in writ jurisdiction, This petition, therefore, must fail on this ground alone and the petitioner should be left to agitate the matter at the appropriate forum.

6. Respondent No. 1 has filed a number of documents, annexures R-1--AE to R-1--E, to show that Binodiram Balchand is a partnership firm of which the petitioner is a partner. If that is so, then the petitioner would be liable jointly with other partners and also severally to pay the tax and respondent No. 1-Department would be justified u/s 226(3) of the Income Tax Act to issue notice to respondent No. 2-bank to pay off the amount of tax out of the deposits standing in the name of the petitioner, partner. However, as all these facts are disputed, I decline to enter into their merits and dismiss the petition as not tenable with liberty to the petitioner to resort to such remedy as may be available to him in law.

7. There shall be no order as to the costs of this petition and the security deposit, if any, shall be refunded to the petitioner after due verification.