
(2005) 05 DEL CK 0076

In the Delhi High Court

Case No : Regular First Appeal 41 of 2005

Prem Kumar and Sons (HUF) and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2
Income Tax Act, 1961 — Section 132, 132(11), 132A, 132B(4), 264

Citation : (2005) 198 CTR 512 : (2005) 120 DLT 554 : (2005) 83 DRJ 461 :
(2006) 280 ITR 152 : (2005) 148 TAXMAN 103

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Vandana Bhatnagar, for the Appellant; R.D. Jolly and Vishnu Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Mukundakam Sharma, J.—The present appeal is directed against the judgment and decree dated 27th September, 2004 passed by the learned Additional District Judge Delhi in Suit No.121/2003 whereby the said suit was dismissed as barred under the provisions of Section 293 of the Income Tax Act.

2. The aforesaid suit was filed by the appellant herein for recovery of an amount of Rs.5,62,000/-, stated to be a part of the financial loss which the appellant has allegedly suffered as loss of interest on the maturity value of the NSCs and UTI Units for period between 21st October 1989 to 27th November 1992.

3. The appellant herein was the plaintiff who was also an assessed. A search and seizure operation was conducted at the residential and business premises of Shri Prem Kumar under the directions of the Director of Income Tax, Hyderabad. Shri Prem Kumar also happened to be the "Karta" of the appellant at the relevant time. During the aforesaid search UTI units and NSCs belonging to the HUF were seized on 12th June 1989 by the Assistant Director of Income Tax, Bangalore. The appellant/plaintiff, however, after the search and seizure operation, lodged a

protest and sought for release of all those assets which were seized by the Income Tax Department. As the same were not released, the plaintiff filed a writ petition in this court which was registered as CWP 3050/1989 wherein challenge was made to the action of the Department in retaining the aforesaid UTI units and NSCs. The said writ petition was disposed on 26th October 1989 holding that the plaintiff HUF should first avail of the alternative remedy i.e., to file an appropriate application under sub-section (11) of Section 132 of the Income Tax Act. In terms of the aforesaid order, the appellant herein filed a written representation before the Income Tax authorities requesting for release of the aforesaid UTI units and NSCs, contending, inter alia, that the same cannot be retained by the Department. Even thereafter neither any order was passed on the written request of the plaintiff/appellant nor the said assets were released and, Therefore, the appellant/plaintiff again filed a writ petition in this Court which was registered as WP(C) 330/1992. However, before the said writ petition could be disposed of, the respondent Department released the said UTI units and NSCs in favor of the appellant on 27th November 1992. Since the said assets were released, the writ petition was disposed of as it had become infructuous.

4. Subsequent thereto, a suit was filed by the appellant-plaintiff in this Court seeking for the aforesaid reliefs . The said suit was contested by the respondents wherein, amongst other objections taken both on maintainability as also on merit, an objection was also raised regarding the maintainability of the suit under the provisions of Section 293 of the Income Tax Act. On the basis of the pleading of the parties in the suit, several issues were framed, including issue No.3 which was to the following effect:

"Whether the suit is barred under the provisions of Section 293 of Income Tax Act ?".

As the aforesaid issue goes to the root of the suit, Therefore, the Court observed that the said issue should be heard as a preliminary issue. Subsequent thereto the suit was transferred to the District Court in view of increase in the pecuniary jurisdiction of the District Court. The parties were heard on the aforesaid issue and by its judgment and decree the Trial Court held that the suit is not maintainable as the same is barred under the provisions of Section 293 of the Income Tax Act. It is further held that the Civil Court is not competent to proceed further to give findings on the other issues framed. The suit was accordingly dismissed but without any costs. The aforesaid judgment and decree is under challenge in this appeal, on which we have heard learned counsel for the parties.

5. It is pointed out by the learned counsel appearing for the appellant that it was incumbent and necessary for the learned trial Court to deal with all the issues and aforesaid issue No.3 could not have been taken up as the preliminary issue and decided independently of other issues. It is also submitted before us that the appellant herein is a third party, unconnected with the incident of search and seizure and, Therefore, the suit filed by the appellant should have been held to be maintainable. It is also submitted that since the issue relates to payment of

interest on the aforesaid UTI units and NSCs, a civil suit is always maintainable, more so when the appellant is a third party unconnected with the raid.

6. The aforesaid submissions of the counsel appearing for the appellant are refuted by Mr. R.D. Jolly, learned counsel appearing for the Income Tax Department. He has drawn our attention to various provisions of the Income Tax Act particularly the provisions of Sections 132 and 293 and on the basis thereof he has submitted that the civil court would not have jurisdiction to entertain the suit and the same was rightly dismissed by the learned trial court. In support of his contention, he has relied upon a decision of the Supreme Court in Commissioner of Income Tax, Bhubaneshwar and Another Vs. Parmeshwari Devi Sultania and Others, and in Union of India and Another Vs. Natwerlal M. Badiani, which is a full bench decision of the Gujarat High Court.

7. We have carefully perused the aforesaid provisions of the Income Tax Act as also the aforesaid two decisions. We have also carefully perused the record placed before us and examined the same in the context of the submissions raised by the counsel appearing for the parties.

8. So far as the plea of deciding all the issues is concerned, no such ground is raised in the memorandum of appeal. No such plea was also raised before the learned trial court. The said plea has been raised for the first time only at the stage of arguments in the appeal. In any case the plea has no merit as Order XIV Rule-2 of the CPC empowers the Court to dispose of a suit on an issue of law without disposing of all the other issues if that issue relates to the jurisdiction of the Court or relates to a bar to the suit created by any law for the time being in force. The issue with regard to maintainability of the suit u/s 293 of the Income Tax Act clearly falls in the above excepted category of Order XIV Rule-2 and, Therefore, could be decided without deciding the other issues. Therefore, the said plea raised cannot be entertained.

9. The next plea that the appellant was a third party and, Therefore, could not have invoked the remedy under the Act is also without merit as the appellant is seeking to establish its right within the parameters of the Income Act. The relevant section is Section 132B and it talks of the assets seized irrespective of whom they belong to. The interest could, Therefore, be claimed by the appellant in terms of the said Section if the assets belonged to it.

10. Consequently, we proceed to deal with the pleas raised with regard to merit of the decision appealed against. The aforesaid UTI units and NSCs were seized by the Income Tax Department from the residence of Prem Kumar who was the Karta of the appellant/plaintiff during the search and seizure operation conducted in the said residential premises. For release of the same, the appellant approached this Court in a writ petition in which an order was passed that it should first exhaust the alternative remedy that is available to the appellant under the provisions of the Income Tax Act. Pursuant to the said order, the appellant took recourse to the alternative remedy that is available namely, the

provisions of sub-section (11) of Section 132 of the Income Tax Act. When no order was passed by the competent authority of the Income Tax Department on the said application, again a fresh writ petition was filed in this Court contending, inter alia, that the application filed by the appellant under the provisions of sub-section (11) of Section 132 was still pending with the Department and, Therefore, there should be a direction to dispose of the same. However, before the writ could be disposed of an order was passed by the Competent Authority of the Income Tax Department for release of the said UTI units and NSCs. The writ, Therefore, became infructuous.

11. Section 132B of the Income Tax Act provides that the Central Government shall pay simple interest at the rate of six per cent per annum on the amount by which the aggregate amount of money seized u/s 132 or requisitioned u/s 132A, as reduced by the amount of money, if any, released under the first proviso to clause (i) of sub-section (1), and of the proceeds, if any, of the assets sold towards the discharge of the existing liability referred to in clause (i) of sub-section (1), exceeds the aggregate of the amount required to meet the liabilities referred to in clause (i) of sub-section (1) of this Section. The appellant, we feel, could have effectively invoked the said provision of the Income Tax Act for claiming interest on the assets and could have asked for payment of interest on the amount of loss, if any, that was caused to it. Such a relief could not be claimed by filing a civil suit as Section 293 of the said Act creates a bar in bringing a civil suit against an order made under the Income Tax Act. The appellant, Therefore, could have demanded payment of interest in terms of Section 132B and in case of non-payment of the same, it could have appropriately moved the Commissioner in revision u/s 264 of the Income Tax Act. The appellant could also make a similar prayer in the writ petition which apparently was not done.

12. In the facts and circumstances of the case and in the light of the aforesaid provisions of Section 293 of the Income Tax Act, we agree with the findings recorded by the learned trial court that a civil suit of the nature, which is filed by the appellant herein, is not maintainable. In coming to the aforesaid conclusion, we also derive support from the aforesaid decisions of the Supreme Court and the Gujarat High Court which are directly on the point which is raised herein. The Full Bench of the Gujarat High Court in the case of Union of India v. Natwerlal M. Badiani (supra), relying on the decision of the Supreme Court in Parmeshwari Devi Sultania (supra) held that the suits are clearly barred by the provisions of Section 293 of the Act and the Civil Court has no jurisdiction to entertain the suit against proceeding for search and seizure, which are taken u/s 132 of the Income Tax Act. Therefore, the decision of the learned trial court in the present case is in consonance with the aforesaid legal position. We, Therefore, find no infirmity in the impugned judgment. There is no merit in this appeal and the same is dismissed but without any cost.