
(2013) 04 MP CK 0063

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5044 of 2013

Sanjay Kumar Sahu

APPELLANT

Vs

Income Tax Officer and Another

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Income Tax Act, 1961 — Section 220, 220(6), 246, 246A, 250

Citation : (2013) 354 ITR 177

Hon'ble Judges : Krishn Kumar Lahoti, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Sanjay Mishra, for the Appellant; Sanjay Lal, for the Respondent

Judgement

1. In view of the request made by the parties, this matter is heard and is being disposed of finally. The petitioner has sought following reliefs:-

1. To direct the respondent No. 1 to decide the appeal of the petitioner within a period of two months.

2. That the Hon. Court be pleased to stay the recovery proceedings initiated and direct the respondents not to initiate coercive measures for recovery of tax till the decision of appeal.

3. That the Hon. Court pleased to direct the Commissioner of Income Tax (Appeals) Jabalpur to decide the application (Annexure P-6).

4. That any other order, direction, writ or relief which this Hon. Court may deem fit in the facts and circumstances of the case may also be issue.

2. The case of the petitioner is short one. Against the order of Assessing Officer, the petitioner herein has preferred an appeal before the Commissioner Income Tax (Appeals), Jabalpur on 6.1.2010. The aforesaid appeal has been filed u/s 250 of the Income Tax Act. After filing of the appeal, petitioner herein had moved an application for stay against the recovery proceedings on 27.4.2011, Annexure P-5. Thereafter another applications was filed by the petitioner on 29.3.2012

Annexure P-6. It is stated that both the applications are still pending before the respondent No. 2 without any adjudication but respondent No. 1 initiated proceedings for recovery and by taking coercive action, attached the bank account of the petitioner of Punjab National Bank and the total amount Rs. 2,12,000/- has been transmitted by the Revenue to its account.

3. It is submitted by the petitioner that (i) u/s 250(6)(A) of the Income Tax Act, an appeal preferred by the appellant ought to have been decided within a period of one year. (ii) That u/s 220 of the Income Tax Act, the petitioner who has already preferred an appeal could not have been treated as defaulter and the recovery proceedings initiated by the respondent No. 1 may be stayed. (iii) That the bank account of the petitioner may be released forthwith and the respondent No. 2 may be directed to decide the appeal expeditiously.

4. Learned counsel appearing for the Revenue has no objection if this petition is finally disposed of in the light of the reliefs prayed by the petitioner.

5. See Section 220 (6) of the Income Tax Act, reads thus.

220. When tax payable and when assessee deemed in default.-

...

(6) Where an assessee has presented an appeal u/s 246 or section 246A the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

Section 250 (6A) reads thus:-

250. Procedure in appeal.-

...

(6A) In every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A.

6. The aforesaid provisions specifically provides that during the pendency of this petition, the Assessee should not be treated as defaulter and apparently the action has been taken by the respondent No. 1 for recovery of the dues against the petitioner during the pendency of the appeal. So far as Section 250(6A) of the Act is concerned, it provides that the appellate authority shall make an endeavour to decide the appeal within a period of one year from the end of the financial year in which such appeal was filed. The aforesaid provision also put an obligation on respondent No. 2 to decide the appeal expeditiously.

7. In view of the aforesaid, we find it appropriate to allow the prayer of the petitioner and dispose of the matter on following terms:-

1. Petitioner shall move an application before the respondent No. 2 to decide the appeal expeditiously and also to consider the applications filed by the petitioner for staying the recovery.
2. The respondent No. 2 on filing of such an application shall consider and decide the application for stay expeditiously as far as possible within a period of 30 days from the date of filing of such an application and shall further make an endeavour to decide the appeal itself as far as possible within a period of 6 months from the date of filing of such an application.
3. Respondent No. 1 shall not take any coercive action and shall await the decision of respondent No. 2 on the stay application and during this period, the respondent No. 1 shall release the Bank account of the petitioner and the amount transmitted to the Revenue, shall be subject to decision of appeal by the respondent No. 2.
8. It is made clear that this Court has not expressed any opinion on the merits of the case and the respondent No. 2 shall be free to decide the appeal and the stay application in accordance with law. No order as to costs.