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**(2004) 04 CAL CK 0052**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 702 of 2004**

Shaw Wallace and Co. Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 29-04-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226, 226(2)  
Income Tax Act, 1961 — Section 226(3)

**Citation :** (2004) 191 CTR 223 : (2004) 269 ITR 88

**Hon'ble Judges :** Kalyan Jyoti Sengupta, J

**Bench :** Single Bench

**Advocate :** Sarkar, for the Appellant; A.S.G., for the Respondent

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## Judgement

Kalyan Jyoti Sengupta J.

1. By this writ application the petitioner has challenged an order dated April 6, 2004, and the notice dated April 7, 2004, and the proceedings pending in relation thereto. By the aforesaid impugned order, the Tax Recovery Officer purported to have decided the matter in terms of the judgment and order of the appeal court dated January 15, 2004. Therefore, it would be proper for me to reproduce the exact language of the judgment hereunder :

"Therefore, the order impugned (annexure P 62 of the writ petition) is set aside with liberty to the Tax Recovery Officer to exercise his jurisdiction within the scope and ambit of Clause (vi) of Section 226(3) as discussed above, namely, with regard to the genuineness or the falsity of the objection raised without sitting in appeal on the merits of the objection itself after giving opportunity to SWCL.

The appeal thus stands allowed to the extent indicated above. The notices (annexures P 29 to P 34 of the writ petition) issued to APBCL and the other debetors of SWCL (respondents Nos. 9 to 18) u/s 226(3) and the order (annexure P 62 of the writ petition) passed by the Tax Recovery Officer on the

objection of SWCL under Clause (vi) of Section 226(3) are hereby quashed subject to the order passed above. Let a writ of certiorari do issue accordingly. The Tax Recovery Officer shall decide the objection of SWCL u/s 226(3) before proceeding u/s 226(3) against SWCL in the light of the observation made in hereinabove. Let a writ of mandamus do issue accordingly. The Tax Recovery Officer is restrained from proceeding with the proceedings u/s 226(3) against SWCL till the decree becomes executable and a fresh decision on the objection under Clause (vi) of Section 226(3) is taken. Let a writ of prohibition do issue to that extent."

2. Therefore, it is dear from the aforesaid impugned order that previously an order was passed u/s 226(3), Clause (vi), and the said order was, however, set aside by the hon"ble appeal court with the aforesaid direction.

3. It is an admitted position that the petitioners being the garnishee were served with several notices dated September 10, 2000, October 10, 2000, and October 24, 2000. It appears from the copies of the notices annexed, to the writ petition that these notices were served at Calcutta office and the same were received. It appears from the records that challenging the aforesaid notices the writ petitioner unsuccessfully moved a writ petition in this court. However, ultimately, the order was passed by the Tax Recovery Officer and pursuant to the notices as above, the said order was challenged in this court.

4. On the aforesaid factual background as narrated above, the learned Additional Solicitor General has taken the plea of jurisdiction submitting firstly that the effective respondent, namely, the Tax Recovery Officer, does not have his place of business within the territorial limit of this court in its writ jurisdiction. The impugned order has been passed at Delhi and even the impugned order was communicated to the petitioner at the Delhi office, not at Calcutta. Therefore, going by the cause title it cannot be said in order to maintain a writ petition that effective respondents do have place of business within the meaning of Article 226(2) of the Constitution of India. Consequently, he submits going by the averments and statement made in the writ petition, no intergral part of the cause of action is pleaded to have arisen within the territorial limit of this hon"ble court. His contention is that factum of passing of the order by the appeal court or filing the writ petition previously do not constitute any part of the cause of action. Therefore, this court should not entertain the writ petition and this should be dismissed in limine on this ground alone.

5. In answer to the plea of jurisdiction, Mr. Sarkar, learned senior counsel appearing for the petitioner, contends that this impugned order has got its origin in the notices u/s 226(3) of the Income Tax Act, which were served within the territorial limit of this court and the order was necessitated to be passed pursuant to the direction of the Division Bench of this court. Had there been no order of this court, perhaps the impugned order would not have been passed. He contends that receiving of notice u/s 226(3) and the order passed by this appeal court constitute the intergral part of the cause of action. Moreover, if this order is

allowed to operate then the effect thereof shall be felt by the petitioner at its place of business at Calcutta. He has drawn my attention to the averment and statement made in para. 62 of the petition.

6. Mr. Sarkar on the merits submits that the Tax Recovery Officer in gross breach of the direction and mandate given by the appeal court failed and neglected to give any opportunity meaning thereby no notice of hearing was given to the petitioner. No opportunity was given to file the statement on oath, as required u/s 226(3) of the Income Tax Act. Therefore, he contends that existence of alternative remedy in this case will not be applicable as it is a question of violation of the principle of natural justice without affording any chance or opportunity to the petitioner, not only in breach of the provisions of the aforesaid section but also in terms of the judgment and the order of this court.

7. He submits further that the Tax Recovery Officer should not have gone into the merits without giving a notice of hearing. His client wanted hearing and asked for time and without giving such time the order was passed ex parte.

8. The learned Additional Solicitor General submits that the Tax Recovery Officer has had no alternative but to proceed in this matter strictly in consonance with the direction given by the appeal court. The Tax Recovery Officer served a notice making his intention clear and asking for information as to whether in terms of the court's order the bank guarantee has been furnished in the civil proceedings since it was one of the conditions that after the decree became executable the Tax Recovery Officer would be proceeding in this matter. Instead of giving reply to the queries made by the Tax Recovery Officer the writ petitioner avoided the real issue and did not file any statement on oath, as required u/s 226(3). The writ petitioner's past conduct is such that to avoid the tax dues they have deducted huge amount of tax at source on account of their creditor. Accordingly, the writ petitioner has become a defaulter assessee and this proceeding has been continuing since 2000. On the merits the Tax Recovery Officer dealt with this aspect of the matter. The petitioner has got alternative remedy by way of revision and they can easily proceed under the appropriate provision. Therefore, the writ petition is also not maintainable under the aforesaid provisions of the law.

9. On the merits he contends that since no statement of objection on oath has been filed and the letter of M/s. Khaitan and Co. being advocate-on-record cannot be the substitute of such statement on oath and submits that the aforesaid letter of objection is not the requirement of the aforesaid provisions of law. The statement on oath has to be filed and in the absence of the same it is always open for the officer concerned to proceed. In support of this portion of his argument he has relied on two decisions, namely, Life Insurance Corporation of India and another Vs. Gangadhar Vishwanath Ranade (Dead) by LRs., and another decision of the Division Bench of the Allahabad High Court reported in [1991] 190 ITR 733.

10. Having heard the respective contentions of learned counsel for the parties, at this stage the court is to decide the question of jurisdiction before entering into the merits of this matter. It is the settled position of the law that the jurisdiction of a writ petition is decided not in relation to the place of business and/or office of the respondents alone.

11. This plea is examined in the text of the averment and the statement relating to the cause of action as well, irrespective of the place of business and office of the effective respondents. This has been made clear under Article 226, Clause (2) itself. Thus it would be apposite to set out the aforesaid portion of the Constitution :

"The power conferred by Clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories."

12. The language of Clause (2) is very clear with the non obstante clause. In this context now it has to be examined that whether the writ petitioner has been able to make out a prima facie case of the jurisdictional fact. The jurisdictional fact depends upon each and every individual case and having regard to the nature of action being taken. It is settled position of law that the cause of action are the facts or the bundle of facts if traversed the respondents and/or the defendants are to prove the same for getting the relief. Therefore, what is the relief sought for by the suitor is material in order to examine the cause of action. Here the writ petitioner wants to challenge the impugned order with a background of the notices u/s 226(3) of the Income Tax Act which has got the genesis of these proceedings and which has culminated into the order impugned. But this order has not been passed as a matter of course and automatically in exercise of the jurisdiction under the aforesaid section, but in terms of the direction of this appeal court. It is an admitted position that the impugned notices u/s 226 were served previously within the territorial limit of this court at the office of the writ petitioners. This order was necessitated to be passed in terms of the order or direction of this hon'ble court. Therefore, I am of the view that as stated and averred in the writ petition in paragraph 62 the petitioner has been able to make out a prima facie jurisdictional fact partly in order to get relief in this matter. I am of the further view that this court has jurisdiction based on cause of action not in relation to the places of business of the respondents as it is permissible under Article 226(2) of the Constitution of India.

13. Now coming to the maintainability of the writ petition on the plea of alternative remedy the learned Additional Solicitor General has reminded me of the provision of revision for assailing this nature of the order. It is true the alternative remedy is there, but it is settled position of law that existence of such remedy is not a bar and it is for the writ court as more often it is spelt out by the

Supreme Court, to exercise such discretion by entertaining the writ petition in the case of breach of the principle of natural justice and also in the case of breach of fundamental right. The petitioner here has complained that without giving any hearing or without affording any opportunity in terms of the appeal court judgment the impugned order has been passed. It is true also that the officer concerned has dealt with the matter on the merits but admittedly the order was passed without hearing the writ petitioner. Therefore, I hold that this writ petition should be entertained by this court, by reason of the fact that the appeal court has asked the Tax Recovery Officer to hear the writ petitioner and to give him an opportunity. From the records I do not find that the Tax Recovery Officer had given any notice for hearing of this matter. The notice served which has been annexed to the petition shows that he wanted information from the writ petitioner whether the decree had become executable or not. This notice does not make any whisper about his intention to hear the matter in terms of the appeal court's judgment.

14. The learned Additional Solicitor General contends that pointing out the recording of the Tax Recovery Officer that there was no statement on oath taking objection as required u/s 226(3), Clause (vi), so consideration of objection was not at all warranted. I am of the prima facie view that such recording of the Tax Recovery Officer is patently wrong on the face of the appeal court's findings that the statement on oath had already been filed and on the basis of that statement on oath the previous order was passed which was set aside."

15. Therefore, the Tax Recovery Officer at least should have considered the statement on oath already on record and that was not done and he has passed the impugned order without giving any hearing at all. In my prima facie view, the Tax Recovery Officer should have at least served a notice of hearing to the petitioner expressing an intention to proceed with the matter in terms of the appeal court's judgment and order and that was not done. Without complying with the direction and the order of the appeal court, the impugned order has been passed. Therefore, under these circumstances, I am of the view that the petitioner should be protected by the interim order but such interim order shall not be passed unconditionally having regard to the past conduct of the writ petitioner with regard to the merits and the proceedings of this matter. Therefore, no further statement on oath is required to be filed because the same has already been filed. The appeal court set aside the order merely but did not reject that statement on oath. The Tax Recovery Officer shall give at least prior to 48 hours notice of hearing to the petitioner with regard to the objection and this shall be fixed on any day within ten days from the date as per convenience and suitability of the Tax Recovery Officer. I merely stay operation of the impugned order. After hearing the writ petitioner if the Tax Recovery Officer finds any reason or ground to recall or set aside or modify his impugned order, he may do so and if he does not find any reason after hearing, then he may retain the same order. However, in that case he must pass a speaking order. No adjournment shall be granted or shall not be prayed for by the petitioner under

any circumstances.

16. The observation of mine, as aforesaid, on the merits, if any, should not be taken into consideration by the Tax Recovery Officer, This matter will be heard on affidavits.

17. Let the affidavit-in-opposition be filed within three weeks after summer vacation ; reply be filed two weeks thereafter. Matter shall appear six weeks hence.

18. After the order is passed by the Tax Recovery Officer, it would be open for the petitioner to take action in accordance with law. In the event despite service of notice of hearing by the Tax Recovery Officer the petitioner does not appear, then the impugned order will revive.

19. This order and direction has been heard by learned counsel and their learned advocates-on-record. The learned junior to the learned Additional Solicitor General shall intimate to the Tax Recovery Officer about this order and on the basis of this intimation he shall serve notice upon the learned advocate-on-record of the writ petitioner and that will be sufficient compliance of this order so far the service of notice is concerned.

20. Let signed copy of the operative portion of this dictated order be made available to the parties.

21. All parties concerned are to act on a xeroxed certified copy of this dictated order on the usual undertaking.