(1973) 11 AHC CK 0024

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2230 of 1973

Smt. Luxmi Devi APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 02-11-1973

Acts Referred:
Income Tax Act, 1961 — Section 64(iii)

Citation : (1973) 43 AWR 578

Hon'ble Judges : Satish Chandra, J;R.L. Gulati, J

Bench : Division Bench

Final Decision : Allowed

Judgement

R.L. Gulati, J.—The Petitioner holds a looker No. 471 in the Banaras State Bank Ltd. Varanasi. It is in her own name, even though she has authorised her husband to operate upon it. This looker was attached by the second Respondent, the Tax Recovery Officer, Varanasi, for realisation of income tax dues from a firm under the name and style of Agricultural Produce Grading Co. Varanasi, This attachment was later, on withdrawn and a fresh attachment order was issued on 24-3-1973. Tike bank informed the Petitioner about the attachment. This time the attachment was made for the recovery of the income tax dues from Sri Mahabir Prasad Gupta, the husband of the Petitioner, the notice of attachment served upon the Bank reads:

Whereas Sri Mahabir Prasad Gupta, Sheopur, Varanasi has not paid the arrears amounting to Ks, 1,47,580/-in respect of certificate No| 98, 106 and 107 dt.5-3-1973 forwarded by the income tax Officer, A ward, Circle II, Varanasi and the interim payable u/s 220(2) of the Income-talc Act, 1961 for the period commencing immediately after the, said date and the undersigned desires to attach sums of money and other property now in your custody.

Locker No. 471 in the name of Smt. Laxmi Devi as she is the wife of Sri Mahabir Prasad Gupta and the income and assets in her name have been included the total income of Sri Mahabir Prasad Gupta u/s 64(iii) of income tax Act, 1961.

I request that you mil hold the said money or property and any interest or dividend becoming payable thereon subject to the further order of the undersigned.

The Petitioner has challenged this notice in this petition Under Article 226 of the Constitution.

2. From a recital of the notice it is dear that the locker hat been attached because some income looming to the, Petitioner has been Included in the assessment of her husband u/s 64(iii) of the income tax Act, 1961. Under that provision any income arising to the wife from the assets transferred to her by the husband without adequate consideration is to be taxed in the hands of the husband. Section 65 then authorises the income tax Officer to recover any tax due from the husband from the assets transferred to the wife. It is thus clear that the tax due from the husband can be recovered from the assets transferred to the wife income from which has been added to the income of the husband and not from any other property of the wife. The impugned notice does not even state that the locker contains any assets which have been transferred by the husband to the Petitioner and income from which has been added to the come of the husband for purposes, of assessment Merely because some income of the wife has been assessed in the hands of the husband u/s 64(iii) does not entitle the, Tax Recovery Officer to attach any property of the wife in satisfaction of the tax due from the husband.

3. The impugned notice clearly shows that the Tax Recovery Officer issued the notice, of attachment, solely on the ground that some income of the wife arising from the assets transferred to her by the husband has been assessed in the Wads of the husband. This, clearly Is not enough to issue attachment against the locker which admittedly stands in the name of the wife.

4. We accordingly allow this petition and quash the impugned notice of attachment dt. 24-3-1973.

5. The Petitioner is entitled to the costs.

