

(2010) 02 MAD CK 0075

In the Madras High Court

Case No : Writ Petition No. 6536 of 2003

Subashree

APPELLANT

Vs

Canara Bank and Another

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 132, 148, 158BC, 226(3), 251

Citation : (2010) 233 CTR 65 : (2010) 321 ITR 285

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : None, for the Appellant; G. Bharadwaj and Ramasami K., Sr. Special Public Prosecutor for Income Tax cases, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The petitioner has filed this writ petition praying for issuance of a writ of certiorari to call for the records relating to the

proceedings pursuant to the communication in No. MSPR: IT Attachment 2003 GVR dated February 18, 2003, of the first respondent and to

quash the same.

2. The petitioner is the wife of Thiru V. Baskaran. The first respondent/bank by its communication dated February 18, 2003, has informed the

petitioner that her fixed deposit for Rs. 10 lakhs lying with the bank was attached by the Income Tax Officer, Central CIR II(4), Chennai, in the

year 1997 as per Section 226(3) of the Income Tax Act, 1961 in lieu of arrears of Income Tax of her husband Baskaran and that the Income Tax

authorities have requested the first respondent/bank to remit the maturity proceeds of the fixed deposit to them and therefore a request has been

made to the petitioner by the bank to get the attachment order withdrawn on or before February 22, 2003, failing which they may have to remit the amount to the concerned authorities. This communication of the first respondent bank has driven the petitioner to approach this Court by means of filing of the present writ petition.

3. It transpires from the contents of the affidavit filed by the petitioner to the effect that the fixed deposit amount of Rs. 10 lakhs is under the attachment of the second respondent/income tax Department and that if the amount is remitted to the second respondent/income tax Department, then she will be put to hardship and prejudice and also that her husband has filed a writ petition in W. P. No. 10686 of 2001 and also that her husband approached the authorities in this regard and it is evident from the typed set of papers that the petitioner has addressed a letter dated February 21, 2003, to the second respondent-bank, inter alia, stating that her husband may have arrears of Income Tax and that it does not mean that she should settle his dues with the Department and there is no law in India making the wife responsible for paying any arrears of tax of the husband and therefore, the second respondent-bank is not authorised to pay the money to the Department and therefore, as demanded the first respondent/bank is to keep the deposit intact with it and that she is contemplating moving the appropriate authorities including the High Court in the matter in issue, etc.

4. It is to be noted that the petitioner's husband V. Baskaran has filed W. P. No. 10686 of 2001 praying for the relief of quashing the impugned orders in IT(SS) No. 238/Mds/98 dated August 7, 1998, and M. P. No. 13/MDS/2000 dated February 22, 2001 passed by the first respondent for the block assessment years 1987-88 to 1997-98 and consequently direct the Registry of the first respondent to list the appeal filed against the block assessment for hearing. The said writ petition has been dismissed by this Court as withdrawn without costs, in view of the endorsement made by the learned Counsel for the petitioner to that effect on April 10, 2007.

5. The learned Counsel for the second respondent/income tax Department submits before this Court that there was a search u/s 132 of Income Tax Act, 1961, in the case of the petitioner's husband V. Baskaran on September 24, 1996, and as such a notice as per Section 158BC was

served on December 28, 1996, and he had not filed the return in response to the notice within the due date and therefore, the assessment was

getting barred by limitation on September 30, 1997, and the petitioner's husband filed return on September 25, 1997, disclosing an income of Rs.

18,04,100 and the return submitted by him did not contain any basic details like undisclosed income assessment year-wise, nature of undisclosed

income, etc., and moreover during the period of search, it was found out by the Department that there was a deposit of Rs. 10 lakhs in the Sriram

group of companies standing in the name of the petitioner (wife of V. Baskaran), made on October 17, 1994, and therefore, Baskaran, viz., the

petitioner's husband was asked to explain the source of deposit as per the Assessing Officer's letter dated August 11, 1997 and at the time of

search, the petitioner's husband mentioned that the money would have been received by his wife at the time of marriage and later a sworn

statement was recorded from him on August 26, 1997 and on September 10, 1997 and as a matter of fact, the petitioner's husband had not

produced any evidence like the note book containing the gifts received by his wife at the time of marriage, notwithstanding the promise made by

him to produce the same and resultantly the deposit was considered as the income of the petitioner's husband V. Baskaran since the

petitioner/wife had no source of income and that the petitioner/wife has admitted that she was not an Income Tax assessee.

6. Later, the petitioner's husband V. Baskaran preferred an appeal before the Income Tax Appellate Tribunal and the appeal was dismissed by

the Tribunal inasmuch as he had not paid the taxes on the disclosed income. Since the tax as per the assessment which was affirmed in appeal

before the Income Tax Appellate Tribunal was not paid, the Assessing Officer attached the deposit which was transferred to the first

respondent/Canara Bank by means of an issuance of notice as per Section 226(3) of the Income Tax Act, 1961, dated December 1, 1997, and

the notice was served on the bank on December 3, 1997, by means of a registered post/acknowledgment due. Moreover, the notice was not in

force in view of the interim stay granted by this Court.

7. Also, the stand of the second respondent/income tax Department is that the second respondent is not a proper party and the proper party is a

Commissioner of Income Tax, Central Circle-II(4) Chennai, is the Assessing Officer, who has issued the notice as per Section 226(3) of the Income Tax Act.

8. At this stage, the learned Counsel for the second respondent/income tax Department submits that the present writ petition filed by the petitioner is not maintainable because of the fact that the first respondent has only sent an intimation to the petitioner requesting her to get attachment order withdrawn on or before February 22, 2003, etc., and in fact the petitioner has got a viable, alternative, effective, efficacious remedy of approaching the Income Tax authorities, firstly, by way of filing first appeal before the Commissioner of Income Tax (Appeals) as per Section 251 of the Income Tax Act and later to prefer an appeal as per Section 253 of the said Act before the Income Tax Appellate Tribunal and also she has got a remedy by way of appeal before the Tax Bench of this Court as per Section 260A of the said Act and when the petitioner has not exhausted any of these remedies then she is estopped from approaching this Court by means of writ proceedings.

9. In support of his contention, the learned Counsel appearing for the second respondent cites on the decision of the honourable Supreme Court in GKN Driveshafts (India) Ltd. v. TTO [2003] 259 ITR 19 wherein it is held as follows (headnote):

When a notice u/s 148 of the Income Tax Act, 1961, is issued, the proper course of action for the noticee is to file the return and, if he so desires, to seek reasons for issuing the notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.

10. He also submits that when an alternative and equally efficacious remedy is open to a party under the Income Tax Act, 1961, then he/she should pursue only that remedy and not to invoke the special jurisdiction of this Court and in support of the said submission, he relies on the decision in Dr. K. Nedunchezian Vs. The Deputy Commissioner of Income Tax and The Commissioner of Income Tax, wherein and whereunder this Court has held that ""when an alternative and equally efficacious remedy open to a litigant, he should be required to pursue that remedy and not

invoke the special jurisdiction of the High Court to issue a prerogative writ. It will be a sound exercise of discretion to refuse to interfere in a petition under Article 226 of the Constitution unless there are good grounds to do otherwise"".

11. As far as the present case is concerned, when the petitioner's husband is the assessee in default and when the Assessing Officer of the Income Tax as per Section 226(3) of the Act has attached the fixed deposit of Rs. 10 lakhs and moreover, when the petitioner has, in law, an effective and efficacious remedy by approaching the tax authorities concerned under the Income Tax Act, 1961, to redress her grievance in the manner known to law, then, this Court is of the considered view that the petitioner is to approach the forum created under the Income Tax Act and it is not open to the petitioner to shake or shackle the procedural wrangle under the scheme and teeth of the Income Tax Act and added further, the letter dated February 18, 2003, of the first respondent-bank address to the petitioner cannot provide a cementing platform to the petitioner so as to give rise to the cause of action to approach this Court under Article 226 of the Constitution of India and viewed in that perspective, the writ petition is sans merits and consequently, the same fails.

12. In the result, this writ petition is dismissed leaving the parties to bear their own costs. Liberty is given to the petitioner to approach the concerned Income Tax authorities for seeking redressal of her grievance, if any, if so advised in the manner known to law.