(2001) 05 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4130 of 2000

Tek Chand APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Income Tax Act, 1961 — Section 132(5), 148, 245C, 245D(1), 281B
Land Acquisition Act, 1894 — Section 18

Citation : (2001) 252 ITR 799 : (2002) 125 TAXMAN 349

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Sachin Mittal, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Judgement

G.S. Singhvi, J.—This petition is directed against an order annexure P-2 dated December 1, 1998, passed by the Income Tax Officer,

Ward-2, Gurgaon, u/s 281B of the Income Tax Act, 1961 (for short ""the 1961 Act""), read with Rules 20, 22 and 26 of the Second Schedule

appended to the Act for provisionally attaching the petitioner''s FDR account in the Oriental Bank of Commerce, Gurgaon.

2. A perusal of the record shows that by an award dated March 23, 1993, the Land Acquisition Collector determined the amount of

compensation payable to the petitioner in lieu of the acquisition of his land under the Land Acquisition Act, 1894 (for short ""the 1894 Act""). The

reference application filed by him u/s 18 of the 1894 Act was disposed of by the Additional District Judge, Gurgaon, by awarding compensation at

the rate of Rs. 265 per square yard. The petitioner and the State Government challenged the award passed by the reference court by filing separate regular first appeals which are pending before this court. During the pendency of the appeals, this court directed the State Government to

release 50 per cent, of the enhanced compensation to the petitioner on his furnishing adequate security and the remaining 50 per cent, without such

security. The petitioner deposited the amount released by the State Government in a fixed deposit with the Oriental Bank of Commerce. The same

has been provisionally attached by the respondent.

3. The petitioner has questioned the authority of the respondent to pass the order u/s 281B on the ground that as on December 1, 1998,

proceedings for the assessment or reassessment of his income were not pending before any of the authorities constituted under the Act.

4. The respondent has justified the invoking of Section 281B by asserting that the proceedings initiated u/s 148 of the Act were pending on the

date of provisional attachment.

5. We have heard learned counsel for the parties and perused the record. Section 281B of the Act which provides for provisional attachment

reads as under :

Provisional attachment to protect revenue in certain cases.--(1) Where, during the pendency of any proceeding for the assessment of any income

or for the assessment or reassessment of any income which had escaped assessment, the Assessing Officer is of the opinion that for the purpose of

protecting the interests of the Revenue it is necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner,

Director-General or Director, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second

Schedule.

Explanation.--For the purposes of this sub-section, proceedings under Sub-section (5) of Section 132 shall be deemed to be proceedings for the

assessment of any income or for the assessment or reassessment of any income which has escaped assessment.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under

Sub-section (1):

Provided that the Chief Commissioner, Commissioner, Director-General or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two

years :

Provided further that where an application for settlement u/s 245C is made, the period commencing from the date on which such application is

made and ending with the date on which an order under Sub-section (1) of Section 245D is made shall be excluded from the period specified in

the preceding proviso.

6. A reading of the provisions quoted above shows that an order of provisional attachment passed u/s 281B(1) ceases to operate after the expiry

of six months from the date of the order. However, under the first proviso to Section 281B(2), the Chief Commissioner, Commissioner, Director-

General or Director can extend that period by such further period or periods as he may think fit, but the total period of extension cannot exceed

beyond two years. In other words, the maximum period for which an order of provisional attachment can remain effective is two years and six

months.

7. In the present case, the order of provisional attachment was passed on December 1,1998, and in terms of Section 281B(2), the same could

remain effective only up to May 31, 1999. No order extending the period of provisional attachment appears to have been passed by the

competent authority under the first proviso to Section 281B(2), but even if such an order is deemed to have been made, the provisional attachment

would finally come to an end on May 31, 2001. Therefore, no useful purpose would be served by going into the merits of the petitioner''s challenge

to the impugned order and we feel that the ends of justice would be served by granting a declaration that the order of provisional attachment will

cease to operate with effect from May 31, 2001.

8. Hence, the writ petition is disposed of with a declaration that the provisional attachment of the FDR account of the petitioner will cease to

operate with effect from May 51, 2001. However, this will be subject to the order, if any, passed by the competent authority in pursuance of

notice issued u/s 148 of the Act and the remedy, if any, availed of by the petitioner against such order.

