(2001) 05 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 4130 of 2000 30 May 2001

Tek Chand APPELLANT

Vs

ITO RESPONDENT

Date of Decision : 30-05-2001

Acts Referred:

Income Tax Act, 1961 — Section 132, 148, 281B
Land Acquisition Act, 1894 — Section 18

Citation : (2001) 169 CTR 204

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

Bench : Full Bench

Advocate : Sachin Mittal, for the Assessee R.P. Sawhney with Rajesh Bindal, for the Revenue, for the Appellant;

Judgement

G.S. Singhvi, J.

This petition is directed against order Annexure P. 2 dated 1-12-1998, passed by the Income Tax Officer, Ward-2, Gurgaon, u/s 281B of the Income Tax Act, 1961 (hereinafter referred to as ''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 Oriental Bank of Commerce, Gurgaon.

2. A perusal of the record shows that by an award dated 23-3-1993, 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 (hereinafter referred to as ''the 1894 Act''). 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 sq. yd. The petitioner and the State Government challenged the award passed by the reference court by filing separate regular first appeal 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 remaining 50 per cent without

such security. The petitioner deposited the amount released by the State Government in fixed deposit with the Oriental Bank of Commerce. The same has been provisionally attached by the respondent.

The petitioner has questioned authority of the respondent to pass order u/s 281B on the ground that as on 1-12-1998, proceedings for the assessment or reassessment of his income were not pending before any of the authorities constituted under the Act.

3. We have heard learned counsel for the parties and perused the record.

4. Sec. 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 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, 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 the 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 (i) of section 245D is made shall be excluded from the period specified in the preceding proviso."

5. 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 order. However, under 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.

6. In the present case, the order of provisional attachment was passed on 1-12-1998, and in terms of section 281B(2) the same could remain effective only upto 31-5-1999. No order extending the period of provisional attachment appears to have been passed by the competent authority under 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 31-5-2001. 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 31-5-2001.

Hence, 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 31-5-2001. 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 remedy, if any, availed by the petitioner against such order.