(2013) 02 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12153 of 2012

Virender Singh Shekhawat APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Citation : (2013) 216 TAXMAN 236

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : Suresh Ojha, for the Appellant;

Judgement

Dr. Vineet Kothari, J.—The learned counsel for the petitioner submitted that despite this Court''s judgment in the case of Maharana Shri Bhagwat Singhji of Mewar (Late his Highness) Vs. Income Tax Appellate Tribunal, Jaipur Bench and Others, and Maheshwari Agro Industries v. Union of India [2012] 206 Taxman 375/17 taxmann.com 68 (Raj.) cited before the learned Commissioner of income tax, Bikaner and also the Assessing Authority wherein it has been held that if demand of tax raised by the Assessing Authority is more than twice the admitted tax liability, then recovery of difference of tax has to be kept in abeyance during pendency by first appeal before the CIT (Appeals) as per the CBDT instructions which are binding on the authorities, both these authorities by the impugned orders have merely stayed 50/60% of the disputed demand and have asked the petitioner a practising income tax practitioner in the same department to make the payment of 40% of the disputed demand, i.e., Rs. 4,07,400/- in the two instalments. The learned counsel for the petitioner submitted that the impugned additions of income in the hands of a practising advocate are absolutely uncalled for and unjustified and said additions were made in the declared income of the practising advocate in the Department out of vengeance and mala fide reasons on the part of the Assessing Authority and therefore the impugned assessment order as well as interim stay orders with the aforesaid conditions of deposit of 40% of the disputed demand are liable to be quashed. The matter requires consideration.

2. Issue show cause notice to the respondents copy of this order may also sent to the respondents along with the notice.

3. Rule is made returnable within three weeks "Dasti" Direct services permitted.

4. Counsel to file proof of service on the respondents and not merely proof of despatch of notices before the next date positively. In the alternative affidavit of the counsel/party of compliance to the extent made be filed.

5. The respondents are expected to file reply to the writ petition also before the next date.

6. In the meanwhile the recovery of disputed demand from the petitioner shall remain stayed and the bank account of the petitioner if attached in this regard shall be released forthwith. Mr. M.K. Singh, Income tax Officer, Suratgarh, who passed the impugned order is directed to remain present before the Court on the next day of hearing.

