
the existing incumbents shall be allowed to continue in the office so that work of Gram Panchayats may not be adversely affected.

R.N.R.

Before Ashok Bhan & N. K. Agrawal, JJ.

M/S ATMA TUBE PRODUCTS LIMITED,—Petitioner.

versus

UNION OF INDIA & OTHERS,—Respondents.

C.W.P. 4625 of 1995

19th August. 1996

Constitution of India. 1950—Arts. 226/227—Income Tax Act, 1961—S. 226(3)—No notice sent to petitioner under section 226(3)(1) of the Act—Bank account of petitioner attached on account that it owned money to a defaulter assessee-company—Proceedings under section 226(3) of the Act are in the nature of garnishee proceedings—Issuance of notice in writing to person from whom money is due or may become due to assessee to pay the same to Assessing Officer is sine qua non for initiating the proceedings under section 226(3)—In the absence of notice to concerned person there is no valid initiation of garnishee proceedings—Petitioner condemned unheard without following procedure laid down by law.

Held, that proceedings under section 226(3) of the Act are in the nature of garnishee proceedings i.e. attachment of a debt by means of which judgment—creditor is able to reach money due from the judgment—debtor which is in the hands of a third person. Issuance of a notice in writing to the person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the same to the Assessing Officer is a sine qua non for initiating the proceedings under Section 226(3) of the Act. In the absence of the notice to the concerned person, there is no valid initiation of garnishee proceedings. Under clause (vi) of Section 226(3) of the Act, a person to whom a notice under this sub-section is sent has a right to object to the notice by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee and, then, nothing contained in this sub-section would require such person to pay any money or part thereof, as the case may be. However, if the Assessing Officer or the Tax Recovery Officer discovers that such statement was false in any material particular, then the person concerned becomes personally liable to pay to the extent of his own liability to the assessee on the date of the notice.

(Para 10)

Further held, that Clause (x) of Section 226(3) of the Act provides that if a person to whom notice under Section 226(3) of the Act has been issued fails to make payment in pursuance thereof, only then he will be deemed to be an assessee in default. In the present case, no notice was sent to the petitioner under section 226(3)(i) of the Act and straightaway a notice was sent by the Assistant Commissioner of Income Tax, Investigation Circle II, Chandigarh, to the Bank attaching the amount of the petitioner lying in the Bank.

(Para 10)

Further held, that had the notice been sent to the petitioner under section 226(3)(i) of the Act, it would have had an opportunity to file its objections under section 226(3)(vi) of the Act, denying its liability to pay the amount as it did not owe money to the assessee in default. Petitioner could be declared an assessee in default only if a notice had been issued under this sub section. Petitioner has been condemned unheard and fastened with the liability to the tune of Rs. 5,53,920.00 without following the procedure laid down by law.

(Para 11)

R. K. Garg, Advocate, for the Petitioner.

R. P. Sawhney, Senior Advocate, with Sanjay Goyal, Advocate, for the Respondent.

JUDGMENT

Ashok Bhan, J.

(1) This order shall dispose of Civil Writ Petitions 4625 and 4626 of 1995, as they arise from the same set of facts giving rise to the same question of law. Facts are taken from C.W.P. 4625 of 1995.

(2) Challenge in this petition is to the notice, Annexure P-1, issued by the Assistant Commissioner of Income Tax, Investigation Circle-2, respondent No. 2 (hereinafter referred to as 'respondent No. 2') under Section 226(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') directing the Manager, Bank of Baroda, Sector 17, Chandigarh, respondent No. 3 (hereinafter referred to as 'the Bank') to pay forthwith any amount due from the Bank or held by it on account of the petitioner upto Rs. 5,53,920.00.

(3) Petitioner-company is an existing assessee with the Income Tax Department. No proceedings against the company are pending under the Act; nor is any amount due from the petitioner to the Department of Income Tax. Petitioner-company, on receiving

information from its banker regarding notice, Annexure P-1, immediately represented to respondent No. 2 and submitted a letter dated 27th March, 1995, Annexure P-2. In this letter, petitioner-company clearly stated that no proceedings are pending against them nor any sum under the Act is due against them and that the notice, Annexure P-1, being illegal, be withdrawn. However, during the course of discussion, petitioner-company was informed by respondent No. 2 that a sum of Rs. 16 lacs is due from S. K. Gupta C/o Standard Carriers, S.C.O. 43, Sector 7, Chandigarh on account of arrears of Income Tax and a company known as Transholding Private Limited, S.C.O. 457-58, Sector 35-C, Chandigarh, owes some money to the said S. K. Gupta of Standard Carriers. Since, Transholding Private Limited had failed to deposit the said amount in pursuance of notice under section 226(3) of the Act issued to the said company, the impugned notice, Annexure P-1, has been issued to the petitioner-company on the ground that it is a sister concern of M/s Transholding Private Limited. Representatives of the petitioner-company immediately clarified the position to respondent No. 2 that the petitioner-company has nothing to do with M/s Transholding Private Limited as the petitioner-company is a separate legal entity, managed by a separate Board of Directors and that it owes nothing to S. K. Gupta, the defaulter assessee. It has been averred that the notice, Annexure P-1, issued under Section 226(3) of the Act is illegal, unjustified, without jurisdiction and against the provisions of the Act, having been issued without notice to the petitioner and, therefore, liable to be quashed; that the Assessing Officer or the Tax Recovery Officer can issue notice to a person from whom money is due to the defaulting assessee. As there was no money due from the petitioner to S. K. Gupta, defaulting assessee, no recovery could be made from it.

(4) In the written statement filed, the stand taken by the respondents is that a sum of Rs. 16 lacs was due from S. K. Gupta of Standard Carriers who had given a letter dated 22nd February, 1995, Annexure R-1, stating that a sum of Rs. 5,53,920.00 is recoverable by him from M/s Transholding Private Limited. Accordingly, notice under section 226(3) of the Act was issued to Transholding Private Limited. It has also been stated that Transholding Private Limited and the petitioner are the units of M/s Atma Group of Industries under the same management.

(5) In the replication filed, the averments made in the written statement have been denied. It has been re-asserted that the petitioner has no connection with Transholding Private Limited and

both the companies are two different units under two different managements. It has, however, been admitted that it owes a sum of Rs. 92,982.00 to Transholding Private Limited.

(6) Apart from saying in the written statement that Transholding Private Limited is the sister concern of the petitioner, no material has been placed on the record by the Department of Income Tax to substantiate the plea that the petitioner is a sister concern of Transholding Private Limited. In the petition as well as in the replication filed by the petitioner, it has been stated that it is a separate legal entity managed by its own Board of Directors and has nothing to do with Transholding Private Limited. Petitioner-company is not a debtor of S. K. Gupta, the assessee in default. Only a sum of Rs. 92,982.00 is due from it to Transholding Private Limited to whom a notice under Section 226(3) of the Act was issued. No notice under Section 226(3) of the Act was issued to the petitioner.

(7) Mode of collection and recovery of tax is provided under Chapter XVII, starting with Section 190 of the Act. Scheme of the Act is to treat the assessee, failing to pay the tax due within the period prescribed, as a defaulter. Section 220 of the Act deals with when a tax becomes payable and when an assessee is deemed to be in default. Sub Section (1) of this Section provides that if any amount, otherwise than by way of advance tax, specified as payable in the notice of demand under Section 156 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice. This period can be extended by the Assessing Officer on an application made by the assessee before the expiry of the due date for payment of tax or he may allow payment by instalments, subject to such conditions as the Assessing Officer may think fit to impose in the circumstances of the case. Under Section 220(4) of the Act, if the amount is not paid within the time limited under sub-section (2) or extended under sub-section (3), of Section 220 of the Act, as the case may be, then the assessee shall be deemed to be in default.

(8) With effect from 1st April, 1988, the Tax Recovery Officer may, where the assessee is found to be in default, draw up under his signatures a certificate in Form No. 57 specifying the amount of arrears due from the assessee. The amount due may be recovered by resort to any one or more of the four modes prescribed under Section 222 of the Act. If the defaulter fails to comply with the

notice issued by the Tax Recovery Officer requiring the defaulter to pay the amount within fifteen days from the date of service of the notice, proceedings for recovery may be taken against the assessee.

(9) Other modes of recovery are specified under Section 226 of the Act. Where no certificate has been drawn up under Section 222 of the Act, the Assessing Officer may recover the tax by any one or more of the modes provided under Section 226 of the Act. Sub Section (3) of Section 226 of the Act, which is the relevant provision dealing with the controversy raised in this petition reads as under :—

“(3)(i) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, by notice in writing require any person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee, to pay to the Assessing Officer or Tax Recovery Officer either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due by the assessee in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the assessee jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the assessee at his last address known to the Assessing Officer or Tax Recovery Officer, and in the case of a joint account to all the joint-holders at their last addresses known to the Assessing Officer or Tax Recovery Officer.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement

or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary.

- (v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.
- (vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, whichever is less.
- (vii) The Assessing Officer or Tax Recovery Officer may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.
- (viii) The Assessing Officer or Tax Recovery Officer shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the assessee to the extent of the amount so paid.
- (ix) Any person discharging any liability to the assessee after receipt of a notice under this sub-section shall be personally liable to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee so discharged or to the extent of the assessee's liability for any sum due under this Act, whichever is less.
- (x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be deemed to be an assessee in default in respect of the

amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear of tax due from him; in the manner provided in sections 222 to 225 and the notice shall have the same effect as an attachment of a debt by the Tax Recovery Officer in exercise of his powers under section 222."

(10) Proceedings under section 226(3) of the Act are in the nature of garnishee proceedings i.e. attachment of a debt by means of which judgment-creditor is able to reach money due from the judgement-debtor which is in the hands of a third person. Issuance of a notice in writing to the person from whom money is due or may become due to the assessee or any person who holds or may subsequently hold money for or on account of the assessee to pay the same to the Assessing Officer is a *sine qua non* for initiating the proceedings under Section 226(3) of the Act. In the absence of the notice to the concerned person; there is no valid initiation of garnishee proceedings. Under Clause (vi) of Section 226(3) of the Act, a person to whom a notice under this sub-section is sent has a right to object to the notice by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or account of the assessee and; then, nothing contained in this sub-section would require such person to pay any money or part thereof, as the case may be. However, if the Assessing Officer or the Tax Recovery Officer discovers that such statement was false in any material particular, then the person concerned becomes personally liable to pay to the extent of his own liability to the assessee on the date of the notice. After the person concerned objects by filing a statement on oath that the sum demanded or any part thereof is not due from him to the assessee then, recovery cannot be effected from him unless the Assessing Officer or the Tax Recovery Officer holds a further inquiry in which the concerned person is associated. On holding of the inquiry, if it is found that the statement made by the person concerned was false, then he becomes liable to pay the amount personally to the extent of his liability. In other words, after the statement on oath is filed by the concerned person that the sum demanded is not due from him to the assessee, then, the burden shifts on the Department to prove that the statement filed by that person is false and that some amount is due from the concerned person to the assessee. Clause (x) of Section 226(3) of the Act provides that if a person to whom notice under Section 226(3) of the Act has been issued fails to make payment in pursuance thereof, only then he will be deemed to be an

assessee in default. In the present case, no notice was sent to the petitioner under Section 226(3)(i) of the Act and straightaway a notice was sent by the Assistant Commissioner of Income-Tax, Investigation Circle-II, Chandigarh, to the Bank attaching the amount of the petitioner lying in the Bank.

(11) Had the notice been sent to the petitioner under Section 226(3) (i) of the Act, it would have had an opportunity to file, its objections under section 226(3) (vi) of the Act, denying its liability to pay the amount as it did not owe money to the assessee in default. Petitioner could be declared an assessee in default only if a notice had been issued under this sub section. Petitioner has been condemned unheard and fastened with the liability to the tune of Rs. 5,53,920.00 without following the procedure laid down by law.

(12) The proceedings being without any jurisdiction have resulted in harrasment to the petitioner as the recovery was sought to be made without issuing notice to the petitioner. It is elementary that issuance of notice under Section 226(3) of the Act is a *sine qua non* for initiating the proceedings. Assessing Officer should have known this elementary fact. Petitioner was deprived use of his money to the extent of Rs. 5,53,920.00 during all this period for no fault of his, for which we solely hold the Department to be responsible.

(13) This writ petition is accepted with costs. Notice, Annexure P-1, is quashed. Costs are quantified at Rs. 5,000 in each petition.

J.S.T.

Before Ashok Bhan & N. K. Agrawal, JJ.

BIRMATI & OTHERS,—Petitioners.

versus

STATE OF HARYANA & OTHERS,—Respondents.

C.W.P. No. 13210 of 1995

23rd August, 1996

Constitution of India, 1950—Arts. 21 & 226—Code of Criminal Procedure, 1973—S. 357—Punjab Jail Manual—Paras 399, 566, 567 &