

R. Vijayakumar Vs. Assistant Commissioner of Income-tax

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Court : Chennai

Decided On : Jul-19-1990

Reported in : [1991]190ITR245(Mad)

Judge : Kanakaraj, J.

Acts : [Income Tax Act, 1961](#) - Sections 230A and 281B; [Constitution of India](#) - Article 226

Appeal No. : Writ Petition No. 5569 of 1990

Appellant : R. Vijayakumar

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : Nalini Chidambaram, Adv. for ;C.V. Rajan, Adv. for respondent Nos. 1 to 3 and ;None for respondent No. 4

Advocate for Pet/Ap. : S. Elamurugan, Adv.

Judgement :

Kanakaraj, J.

1. The petitioner had filed an application under Section 230A of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), for the grant of a certificate to enable him to transfer the property bearing door No. 5, Lake Area,

Nungambakkam, Madras, on December 10, 1987. On February 18, 1988, the first respondent wrote to the petitioner that there were arrears to the tune of Rs. 3,330 in respect of the assessment year 1977-78 and further the assessment proceedings for the years 1984-85 to 1986-87 were pending on account of the non-production of the profit and loss account arising out of the production of the picture called 'Kai Kodukkum Kai'. Therefore, a difficulty was expressed in the issue of a certificate under Section 230A of the Act and the petitioner was called upon to pay the tax arrears and co-operate with the Department in the completion of the pending assessments. On February 24, 1988, the petitioner caused a letter to be sent to the first respondent purporting to co-operate with the Department in respect of the pending assessments. On February 24, 1988, an order of provisional attachment was made against the properties of the petitioner under Section 281B of the Act. This attachment covers the property sought to be transferred and for which a certificate under Section 230A was applied for. On February 28, 1988, the petitioner paid a sum of Rs. 3,330 demanded under the letter dated February 18, 1988. On August 24, 1988, there was another order of attachment made under Section 281B of the Act. On February 13, 1989, a third order of provisional attachment was made under Section 281B of the Act. On June 14, 1989, the petitioner made a fresh application under Section 230A of the Act. Thereafter, the petitioner was knocking at the doors of the respondents for getting the certificate under Section 230A of the Act. On February 9, 1990, notices were issued to the petitioner in respect of the pending assessments. On March 30, 1990, orders of assessments were made by the first respondent in respect of the assessment years 1984-85, 1985-86 and 1987-88 and the same were served on the petitioner on the very same day. As per these assessments orders, the total liability of the petitioner is Rs. 49,77,340.

2. On the face of the above facts, the petitioner has come forward with this writ petition to declare that the application of the petitioner under Section 230A of the Act submitted before the first respondent on June 14, 1989, be deemed to have been granted.

3. On notice of motion being sent to the respondents, a counter-affidavit has been filed by the first respondent for which a reply affidavit has also been filed by the

petitioner.

4. The argument of learned counsel for the petitioner is that under Rule 44B, there is an obligation cast on the Assessing Officer to pass orders within 60 days from the date of receipt of the application and if he refuses to grant the certificate, the reasons therefor should be recorded. Under Section 281B of the Act, the Assessing Officer is enabled to pass an order of attachment. Under Section 281B(2) such provisional attachment shall cease to have effect after the expiry of six months from the date of the order. With the said provisions in the background, the argument is that the application which is the subject-matter of this writ petition, namely, the application dated June 14, 1989, should have been considered and orders passed thereon on or before August 13, 1989. The last of the attachment orders, viz., the one on February 13, 1989, was valid till August 13, 1989, according to the petitioner and till August 23, 1989, according to the respondents. Learned counsel for the petitioner contends that the application dated June 14, 1989, should be considered on the facts and circumstances prevailing on that date or during the period of 60 days from June 14, 1989. The argument is that if so considered, there was no impediment for the grant of certificate under Section 230A of the Act. This argument cannot be accepted. Both on the date of application, viz., June 14, 1989 and during the period from June 14, 1989, to August 13, 1989, there was an order of attachment subsisting and alive as per Section 281B of the Act. The order of attachment dated February 13, 1989, which, according to learned counsel for the respondents, was issued only on February 23, 1989 was subsisting till August 23, 1989. Therefore, even accepting the argument of learned counsel for the petitioner, during the relevant period, the application dated June 14, 1989 could not have been granted. I am not deciding the question whether the state of affairs on the date of the application under Section 230A or the state of affairs on the date of grant of certificate should be taken into consideration for the purpose of finding out whether the applicant is eligible for the grant of the certificate. This is because, on the facts of the present case, on both dates the order of attachment was subsisting.

5. Learned counsel for the petitioner then argues that the provisional order of attachment cannot be an impediment to the grant of a certificate under Section

230A of the Act. For meeting this argument, one has to look into Section 281B which enables the authorities to pass an order of provisional attachment. It is clear from a reading of this section that the provisional attachment is made for the purpose of protecting the interests of the Revenue and it is made during the pendency of any proceedings for assessment of any income. In this case, it is not disputed that the assessment proceedings for the years 1984-85, 1985-86 and 1987-88 were pending on the date of the provisional attachment and in fact, subsequently, on March 30, 1990, assessments have been completed. Section 230A of the Act is very wide to cover a situation of this kind because, in granting a certificate under Section 230A, the Assessing Officer has to certify that the applicant has either paid or made satisfactory provisions for payment of all the existing liabilities under this Act. Secondly, he has also to satisfy himself that the registration of the document will not prejudicially affect the recovery of any existing liability under the Income-tax Act or any other Acts mentioned in that section. The argument, apparently, is that the applicant has to make satisfactory provision for payment of 'existing liabilities.' On the date of application under Section 230A, there was no 'existing liability,' according to the petitioner, because assessments were completed only in March, 1990. I am of the opinion that when a provisional attachment is made under Section 281B of the Act, there is a liability to the extent that the applicant, under Section 230A, cannot transfer his properties. In other words, the provisional attachment is made with a view to safeguard the Revenue when assessment orders are likely to be passed. It is more like an order of attachment before judgment under the Code of Civil Procedure. The order of attachment itself is a liability. The Officer, having issued an order of attachment against the transfer of property, cannot be expected to give a certificate under Section 230A authorising the transfer of the very property.

6. Leaving all technicalities aside, if we examine the question whether the applicant is entitled to the certificate as on today, we are faced with the assessment orders completed on March 30, 1990, wherein tax liabilities to the tune of nearly rupees 50 lakhs have been imposed. Any enactment, much more a fiscal enactment, should be interpreted in a manner that there is no loss of revenue to the State. The petitioner did not come to this court immediately after the expiry of 60 days from June 14, 1989. He has allowed the assessments to be

completed on March 30, 1990 and has filed this writ petition only on April 26, 1990. There is no deeming provision in Rule 44B of the Rules. Therefore, on the date of the writ petition, certainly, the petitioner had no right to get a certificate under Section 230A of the Act. Looked at from any angle, I am unable to grant any relief to the petitioner. Hence, this writ petition fails and is dismissed. No costs.

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