

WP No. 911 of 2014
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

M/s. P. C. Chandra & sons (India) Pvt. Ltd. & Anr.
Versus
Deputy Commissioner of Income Tax
Officer, Circle – I, Kolkata & Ors.

Before:
The Hon'ble Justice I. P. MUKERJI
Date: 18th September 2014

Appearance:
Mr. J. P. Khaitan, Sr. Advocate
Mr. G. S. Gupta, Advocate
Ms. Sweta Ghatak, Advocate
for the petitioners
Mrs. Smita Das De, Advocate
for the respondents

The Court: The concerned assessment order is 2011-2012. There is a demand from the Income Tax Department upon the assessee-writ petitioner for a sum of Rs.12,11,86,487/-.

Against the assessment order in question the assessee's appeal before the Commissioner of Income Tax (Appeals) is pending.

By an order dated 17th July 2014 passed under Section 220(6) of the Income Tax Act, 1961 the assessee was required to pay 50% of the total demand in the following manner:

Rs. 2.10 crores i.e. 10% of the above demand immediately and the balance 40% i.e. Rs.8.40 crores in six monthly installments of Rs.1.40 crores each, starting from the end of July, 2014.

Although in the said order the assessee has been asked to pay 50% of the demand, a mere look at the demand would show that the assessee was asked to deposit 100% of the demand.

Being aggrieved the assessee approached the Commissioner of Income Tax, Kolkata – I. However, by his decision dated 4th September 2014 the request of the assessee for staying the demand was rejected.

A further approach has been made before the Principal Commissioner of Income Tax regarding which there is no response till date.

On 10th September 2014 the order dated 17th July 2014 was “annulled”.

Mr. J. P. Khaitan, learned senior advocate for the petitioner tries to unfold the prima facie case of the assessee to show that the demand ex facie is unjust. To a substantial extent he has been able to establish such prima facie case.

On a reading of paragraph 10 of the assessment order it shows that a sum of Rs.26,35,09,093/- has been added to the income of the assessee. The ground on which this income has been added is that the quantity of pure gold as declared was mixed with alloy bringing down the proportion of pure gold in the product from 24 carats to 22 carats. An excess quantity than what was declared was produced and sold in the market for the “added back” amount. This, according to Mr. Khaitan, and I accept Mr. Khaitan’s contention, is not quite correct. According to the summary of stock which is annexed to the writ petition at page 177 thereof and is also part of the writ petitioner’s audited accounts, the quantity of gold of 24 carats which was said to have been converted to 22 carats upon addition of alloy was in fact of only 22 carats. It is nobody’s case that that particular quantity of gold was further converted to gold of lesser carat value. The addition of Rs. 26,35,09,093/- made on the said basis is prima facie erroneous.

Therefore, in my opinion, the writ petitioner has a substantial case to be tried before the Commissioner (Appeals). After filing of the petitioner’s

application before the Principal Commissioner of Income Tax the banks accounts including the cash credit accounts of the writ petitioner have been attached by the income tax authorities.

In my opinion, the petitioner should be relieved of some of the rigours of this attachment.

I discharge the attachment with regard to the cash credit account of the petitioner with Allahabad Bank, Bowbazar Branch. In this I am supported by a decision of the Madras High Court in *K. M. Adam vs. Income-Tax Officer, II Additional II Circle, Madras* reported in 33 ITR 26 which opines that a loan fund cannot said to be a debt of the bank to the customer nor could it be said to be money on account of the customer. Hence it cannot be attached.

I direct the Commissioner of Income Tax (Appeals) to dispose of the appeal by 31st December 2014. Other bank accounts of the writ petitioner with Union Bank of India, Sealdah Branch and Bank of India, Bowbazar Branch will continue to remain attached with a rider that the department will not be able to appropriate any sum therefrom till the disposal of the appeal before the Commissioner (Appeals).

The continuance of attachment and operation of bank accounts will abide by the order to be passed by Commissioner (Appeals).

Nothing remains of this application.

It is disposed of by this order.

Allegations contained in the writ petition are deemed not to be admitted.

Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I. P. MUKERJI, J.)