

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 710 OF 2016

Khandelwal Laboratories Pvt. Ltd.

.. Petitioner

v/s.

Deputy Commissioner of Income-Tax-
6(3)(2), Mumbai & Ors.

.. Respondents

Mr. J.D. Mistri, Senior Counsel a/w Madhur Agarwal, Atul Jasani for
the petitioner

Mr. A.R. Malhotra a/w N.A. Kazi for the respondents

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 17th MARCH, 2016.

PC.

1. Heard. At the request of the Counsel, the petition is taken up
for final disposal at the stage of admission.

2. This petition filed under Article 226 of the Constitution of India
challenges the attachment of the petitioners' bank accounts under
Section 226(3) of the Income Tax Act, 1961 (the Act) in Punjab
National Bank, Nariman Point, Mumbai, Axis Bank, Dadar, Mumbai ,
HDFC, Fort, Mumbai, Dena Bank Amli, and State Bank of India,
Byculla, Mumbai. The petitioners have also made a grievance that

after attachment an amount of Rs.7,59,185/- from HDFC Bank, Fort, Mumbai and Rs. 34,265/- from State Bank of India, Byculla, Mumbai have been withdrawn without giving any notice to the petitioner before withdrawal in defiance of the law laid down by this Court in ***UTI Mutual Fund Vs. Income Tax Officer, 345 ITR 71.***

3. The Assessing Officer on 27th March, 2015 passed an order under Section 143(3) r/w Section 263 of the Income Tax Act, 1961 (the Act) for Assessment Year 2009-10 determining the tax payable at Rs.46.23 crores. Being aggrieved, the petitioners have filed an appeal against the order dated 27th March, 2015 of the Assessing Officer to the Commissioner of Income Tax (Appeals), which is at Exh.D. to the petition. The petitioners have also filed an application on 14th April, 2015 to the Assessing Officer seeking rectification of the order dated 27th March, 2015 as well as seeking a stay of the demand *inter alia* on the ground that the issue arising in this case is concluded in its favour by a decision of the Tribunal in its own case for the A.Y. 2000-01.

4. The Assessing Officer by a letter dated 20th August, 2015 disposed of the petitioners' Rectification Application under Section 154

of the Act. The order reads thus :-

“ORDER UNDER SECTION 154 OF THE I.T. ACT, 1961

In this case, the assessment order completed u/s 143(3) r.w.s. 263 of the I.T. Act, 1961 on 27.03.2015 determining the total income at Rs.1,17,10,64,977/-. The assessee's representative filed a rectification application dated 14.04.2015 requesting to rectify the mistake u/s 154 of the I.T. Act, 1961.

2. On verification of the case records as well as the application of the assessee, it is found that all the issues raised by the assessee for rectification were already discussed in the assessment order dated 27.03.2015. In the said order dated 27.03.2015, the additions were made after proper examination and also the same were discussed in details. Hence, there is no mistake apparent from record. Therefore, the application of rectification u/s 154 of the assessee is hereby rejected.

3. The assessee is requested to pay the entire demand within 5 days from the receipt of this letter.”

5. The petitioners state that a communication dated 8th March, 2016 from the Assessing Officer to the Punjab National Bank indicating the attachment of the petitioners' bank account under Section 226(3) of the Act was forwarded to it by Punjab National Bank. It appears that similar communications have been sent to other bankers also. Thereafter, on 14th March, 2016, the petitioners received a communication dated 10th March, 2016 from the HDFC Bank, Fort,

Mumbai to the effect that the an amount of Rs.7,59,185/- had been withdrawn by the Revenue from the petitioners' bank accounts. Similarly, the petitioners have now learnt that an amount of Rs.34,265/- to the credit of its account with State Bank of India was also withdrawn by the Revenue.

6. The Scheme of the Act provides that on passing of an assessment order under Section 143(3) of the Act, any sum is payable as tax, penalty or fine, then the Revenue would issues a notice of demand under Section 156 of the Act. Section 220 of the Act provides that within a period of 30 days from the date of the service of the demand notice under Section 156 of the Act, the assessee concerned has to make necessary payment to the person and place mentioned in the Notice of demand. In case, the assessee fails to make the payment in terms of the notice of demand, he would be considered to be an assessee in default, enabling the Revenue to adopt coercive measures for recovery of the amount due. However, Section 220(6) of the Act provides that where an assessee has filed an appeal against the assessment order to the Commissioner of Income Tax (Appeals) then, an assessee is entitled to file an application to the Assessing Officer to treat the assessee as not being an assessee in default, consequent to the

notice under Section 156 of the Act, till such time as its appeal filed before the Commissioner of Income Tax (Appeals) is disposed of. This right to file an application under Section 220(6) of the Act is a statutory right available to an assessee, if he chooses to so exercise.

7. In this case, the petitioners' application for stay dated 14th April 2015 under Section 220(6) is still pending disposal before the Assessing Officer. This is so as the order dated 20th August, 2015 as reproduced hereinabove of the Assessing Officer has only dealt with the petitioners' Rectification Application and not with the petitioners' Application for Stay. Although, Mr. Malhotra learned Counsel for the Revenue submits that the third paragraph in that order calling upon the petitioners to pay the entire demand within five days, is a communication rejecting the stay application filed by the petitioner. We do not read it as such. In any case, it has been repeatedly held by this Court beginning with ***KEC Vs. Balkrishna, 251 ITR 158*** and also later decision in ***UTI Mutual Fund Vs. Income Tax Officer, 345 ITR 71***, that the stay application must give some *prima facie* reasons in the context of the submission for stay made by the petitioner while disposing it. The order dated 20th August, 2015 is bereft of any consideration of the

petitioners' primary contention that the issue arising in its appeal before the CIT (Appeals) is concluded in its favour by virtue of Tribunal's order for Assessment Year 2000-01 in the petitioners' own case. Thus, according to us, the application for stay filed on 14th April, 2015 filed jointly with the Rectification Application is not yet been disposed of by the Assessing Officer. The order dated 20th August, 2015 has only disposed of the petitioners' Rectification Application.

8. Thus, any action to recover taxes adopting coercive means is not permissible till the petitioner's application for stay under Section 220(6) of the Act is disposed of.

9. Therefore, the action of the Assessing Officer in attaching the petitioners' bank accounts under Section 226(3) of the Act as well as subsequent withdrawal of the attached amounts from the bank accounts is without jurisdiction and bad in law. The petitioners have a statutory right to its stay application being heard and disposed of before the Revenue can adopt any coercive proceedings on the basis of the Notice of demand under Section 156 of the Act issued to the assessee. This action on the part of the Assessing Officer, if permitted, would lead Section 220(6) of the Act becoming redundant.

10. In the above view, the Notice under Section 226(3) of the Act issued by the Assessing Officer to the petitioners' bankers are quashed and set aside. Further, the Assessing Officer is directed to deposit the amount of Rs.7,59,185/- in HDFC Bank, Fort, Mumbai and Rs.34,265/- in State Bank of India, Byculla, Mumbai within a period of one week from today. The Assessing Officer to dispose of the petitioners' pending stay application in accordance with law.

11. The Writ Petition is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)