

AO couldn't pass attachment order if assessee had filed appeal against such order alongwith stay application

Summary – The High Court of Madras in a recent case of M. Kannabiran, (the Assessee) held that where assessee filed an appeal challenging order of assessment within time period prescribed under section 246 alongwith a stay application, Assessing Officer could not pass an order of attachment in terms of section 281B during pendency of said appeal

Facts

- The assessee, who was a retired employee, was served with summons by the department to explain the sources of income for the house property allotted to him by the State Government.
- The assessee, on receipt of the summons, explained that he had invested the above amount by way of jewellery loan, his savings and from the contributions by his friends and father-in-law.
- The Assessing Officer did not agree with the *explanation* and finally, passed an order of assessment holding his sources of income as 'unexplained income'.
- The assessee preferred an appeal before the Commissioner (Appeals) under section 246 along with a stay application.
- In spite of the fact that the assessee filed an appeal under section 246 within 30 days as stipulated under the Act, by ignoring their own departmental circular, mandating the Income-tax Officers to keep in abeyance the collection of tax until disposal of the statutory appeal by the appellate authority, an order of attachment, in terms of section 281B, attaching about six items including his saving bank account, house property etc., was issued.
- The assessee thus filed instant writ petition seeking issuance of a writ of mandamus directing the Assessing Officer to keep his Notice of Demand in abeyance by not recovering the tax amount till the disposal of the statutory appeal by the Commissioner (Appeals).

Held

- From the guidelines issued by the Central Board of Direct Taxes (CBDT), it could be seen that, where the income assessed is huge in nature, the collection of tax shall be kept in abeyance till the final disposal of statutory appeal by the appellate authority. Very clearly, the Instruction No. 96, dated 21-8-1969, has been issued in this regard.
- That being so, one is not able to find any justification whatsoever as to how the respondent could ignore their own departmental guidelines and pass the attachment order during pendency of the statutory appeal. It is the established proposition of law that departmental circular/guidelines are binding on the revenue authorities even though they may not be binding on the assessee concerned.
- While advertent to the aspect that the department cannot go contrary to their own circular or guidelines which ordain the authorities to keep in abeyance the collection of tax until statutory

appeal preferred by the assessee before the appellate authority is disposed of, it is quite relevant to refer the ratio laid down by the Apex Court in (*Radhey Shyam Gupta v. Punjab National Bank* AIR 2009 SC 930) making it succinctly clear that pension/gratuity would not be liable to attachment even for satisfaction of a Court decree.

- Inasmuch as the assessee's only source of livelihood viz., pension cannot be attached even for satisfaction of a court decree and, more particularly, when the assessee's statutory appeal filed under section 246 alongwith the stay application was pending, impugned order of attachment could not be legally sustained and hence, the assessee is entitled for the relief sought for.
- In the result, the writ petition is allowed.