

House given to wife for inadequate consideration could be attached to recover tax dues of husband

Summary – The High Court of Kerala in a recent case of T.S. Sujatha, (the Assessee) held that where assessee's husband transferred a property to her for inadequate consideration during block period for which search was carried out against him, in case of failure of assessee to pay tax demand determined in block assessment proceedings, department could proceed against aforesaid property of assessee under Explanation to section 222(1)

Facts

- A search was conducted in the residential premises of the assessee and her husband on 24-9-1996. Pursuant to the search, on the basis of the materials seized, notice was issued to the assessee's husband and assessment was completed for the block period 1986-87 to 1995-96.
- The assessee's husband was served with a demand notice, which stood unpaid.
- The TRO noticed that during the relevant block period, the assessee had transferred an immovable property to his wife for inadequate consideration.
- Thus, on the department being unable to recover any amount from the assessee's husband for reason of there being no property in his name, it proceeded against the aforesaid property of the assessee under the *Explanation* to section 222(1).
- The assessee filed instant petition contending that without a demand notice, she could not be deemed to be an assessee-in-default and proceeded against for recovery of debts due from another assessee. It was further contended that the Assessing Officer could not proceed against the assessee's property for recovery of dues of another without filing a suit for declaration of the conveyance as *void*.
- As regards merits, the assessee submitted that she herself was running a business, namely a hotel, from which sufficient income was generated to purchase the property in question.

Held

- The *Explanation* to section 222(1) deems any property transferred directly or indirectly on or after the 1-6-1973 by the assessee to his spouse or minor child or son's wife or son's minor child otherwise than for adequate consideration and which is held by the aforesaid persons; to be the assessee's movable or immovable property; which can be proceeded against under sub-section (1) of section 222. Hence, the property, which stands in the name of the assessee, has not been proceeded with for any default committed by the assessee herself. The property was conveyed to the assessee by title deed on 6-5-1991 and which are within the block period taken up for assessment.
- The conveyance was made during the period in which suppression was found against the assessee's husband and he along with the inadequate consideration paid, makes it liable to proceedings for

recovery deeming it to be the assessee's property itself. There is, hence, no necessity to serve a notice of demand on the assessee and declare her to be an assessee-in-default.

- Section 222(1), read with the Explanation enables recovery of arrears due from an assessee by proceeding against any movable or immovable property of the assessee, and a property which stood transferred directly or indirectly to his spouse or minor child or son's wife or son's minor child. By sub-section (2), the Tax Recovery Officer is specifically empowered to proceed against such property, which is deemed to be included in the assessee's movable and immovable property, for recovering any arrears due from the assessee.
- The assessee is the wife of the assessee-in-default who has been proceeded against for the dues for the block period 1986-87 to 1995-96. The transfer has been made on 6-5-1991; within the block period and during which period the assessee's husband is said to have practised suppression and evasion. The act of the assessee's husband who practised suppression and to avoid recovery, on such suppression being detected, by transferring the movable and immovable assets to his near relatives, to defeat the revenue, was what was sought to be averted by the *Explanation* to section 220(1) read with rule 11 of Schedule II of the Income-tax Act. The Tax Recovery Officer having proceeded against such property under the *Explanation* to section 222(1) it was for the assessee to initiate a suit, if at all such recovery is to be interdicted.
- The next contention is with respect to the limitation as provided under rule 68B of Schedule II of the Income-tax Act. It is the submission of the assessee that the block assessment against her husband attained finality on 3-11-2008 by the order of the Tribunal; from which no further proceedings were taken either by the revenue or the assessee. There is nothing to evidence this date, but for argument sake, assuming it to be correct, going by rule 68B, the limitation commences from 31-3-2009 and expires only three years from that date, *i.e.*, on 31-3-2012. Sub-rule (2) of rule 68B also provides for exclusion of any period commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under the Second Schedule and ending on the day the appeal is decided.
- The order impugned herein was passed on 9-3-2010 and no appeal was filed. The present writ petition was initiated on 18-3-2010, well within the limitation period. In such circumstances, as per the proviso to sub-rule (2) of rule 68B, the period shall stand extended to 180 days since the proceeding initiated here, under article 226, challenged the order passed by the Tax Recovery Officer. It is also pertinent that *Explanation* to section 222(1) specifically speaks of proceeding against the transferred movable or immovable assets of the assessee-in-default only in circumstances of the consideration being inadequate.
- The contention of the assessee that the property did not have a proper access and, hence, was not of value but for the assessee who has the adjoining land, cannot be countenanced for two reasons. The title deed in its Schedule shows a pathway on one of the boundaries. Then there is nothing produced to show that the adjoining property belongs to the assessee. The boundary shown in the Schedule also does not indicate a property belonging to the assessee to be adjoining to the subject

property. Be that as it may, the question of under-valuation having not been specifically considered the same would have to be considered. The assessee would appear before the Tax Recovery Officer.

- For the above reasons, the writ petition would stand disposed of rejecting all the grounds raised by the assessee; but, however, directing the consideration of the question of under-valuation by the respondent-authority as directed hereinabove.