

Raghuram Grah Pvt. Ltd. Vs Income Tax Officer VI(2), Commissioner of Income Tax, Additional Commissioner, Income Tax, Range 6 and Branch Manager, Union Bank of India

Court: Allahabad High Court

Date of Decision: Dec. 14, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 94B
Income Tax Act, 1961 â€" Section 132(1), 132(1A), 132(8), 132A, 142(1)

Citation: (2006) 201 CTR 268 : (2006) 281 ITR 147

Hon'ble Judges: Prakash Krishna, J; A.K. Yog, J

Bench: Division Bench

Advocate: Rakesh Kumar, for the Appellant; A.N. Mahajan, Sanjeev Singh and Govind Krishna and S.C., for the Respondent

Final Decision: Allowed

Judgement

Prakash Krishna, J.

In the present petition challenge is to the legality, validity and propriety of the order passed u/s 281B of the Income

Tax Act, 1961, hereinafter referred to as the Act, by means of which the petitioner's current Account No. 28430 with the Union Bank of India,

Banda Branch having balance as on 29th April, 2002 was Rs. 6,80,905/- and four DRCs (fixed deposit account nos. 7538 to 7541) in the

aforesaid Bank were attached under the impugned order dated 22.12.2004, passed by the Income Tax Officer- 6 (2) Kanpur, which is Annexure-

7 to the writ petition.

2. Briefly stated the facts giving rise to the present petition are as follows :-

Petitioner No. 1 (hereinafter called as the company) is a private limited company incorporated under the provisions of Companies Act, 1956, vide

certificate of incorporation, dated 9th December, 2001 with the Registrar of Companies U.P. and Uttaranchal to carry on the business in real

estate and petitioner No. 2 who is the Managing Director is also doing business of Kirana goods in the name and style of M/s Chandra Kamal

Agency. He is also the Managing Director of M/s Kanhe Media Pvt Ltd. which is engaged in publication of daily news paper known as "Sri India."

The case of the petitioners is that none of them are engaged in any manufacturing activities and as such the provisions of Central Excise Act, 1944,

are not applicable to them. The officials of the Central Excise Department searched the residential premises of the Managing Director of the

Company on 8th June, 2002 and seized certain documents, computer and cash. The company is having a current account No. 28430 with the

Union Bank of India in which the balance as on 29th April, 2002 was Rs. 680905.00 and also has four DRCs (fixed deposit account No. 7538 to

7541) in the aforesaid Bank amounting to Rs. 44 lacs. The pass book and the fixed deposit receipts were not seized by the officials of the Central

Excise Department, but in the Panchnama prepared at the time of search and seizure operation, the current account and the FDRs which are in the

name of the petitioner company finds place. It appears that the Branch Manager of the Union Bank of India, subsequently, through his

communication dated 29th July, 2002 informed the petitioner company about the order dated 10th July, 2002, passed by the Excise Department,

freezing the aforesaid accounts. Challenging the action of the officials of the Excise Department freezing the aforesaid Bank account, the petitioners

filed writ petition No. 1186 of 2004 before this court, which was ultimately allowed vide judgment and order dated 3rd December, 2004. The

operative portion of the judgment is reproduced below :-

As we find no provision nor any authority under which the bank account can be freezed pending investigation we are left with no option but to

quash the order dated 16th January, 2004 (Annexure 17 to the writ petition) and direct the respondent No. 1 to forthwith release Current Account

Nos. 28430 and DRCs Account Nos. 7538 to 7541 with the Union Bank of India, Banda Branch, Banda. As the action of the respondent in

freezing the bank accounts have been set aside the petitioner shall be entitled to operate them.

3. The Excise Department on 22nd December, 2004 in pursuance of the directions given by this Court informed the Union Bank of India, releasing

the freezed account No. 28430 as also the DCR account No. 7538 to 7541. On the same very day the Income Tax Officer-6 (2) Kanpur passed

the order dated 22nd December, 2004, exercising the powers conferred on him by virtue of Section 281B of the Act, impugned in the present writ

petition. The said order has been passed in order to protect the interest of Revenue as in the opinion of the assessing officer a substantial demand is

likely to arise against the assessee, as a result of the assessment proceedings u/s 153A, consequent to the search and seizure u/s 132A of the IT

Act, 1961. The order was passed with the approval of the Commissioner of Income Tax- II, Kanpur.

4. The contention of the petitioners is that the exercise of power u/s 281B is wholly unwarranted, illegal and arbitrary. The impugned order has

been passed without their being any material in possession of the department to form an opinion that there is likelihood of a substantial demand

against the petitioners. The aforesaid two accounts belonged to the petitioner company. The department has allotted a Permanent Account

Number to the petitioner company, vide annexure- 8 to the writ petition. The petitioner company has filed its return of income for the assessment

year 2002-03 which was accepted by the department. For the assessment year 2003-04 assessment proceedings were completed u/s 143(1) of

the Act and a sum of Rs. 35231.00 was refunded on account of the excess deduction of tax at source.

5. Further, the case is that the amount in the aforesaid accounts is the share application money received by the petitioner company. The two

brothers of the petitioner No. 2 are doing separate business of manufacturing Gutakha and none of the petitioners have any concern with their

business. No warrant of authorization, requisition was served upon the petitioner No. 2 namely, Chandra Mohan Sahu. The documents seized by

the officials of the Central Excise Department do not relate to the petitioners and that is the reason that the Income Tax officials in exercise of

powers conferred u/s 132A of the Act have called for the reply from (i) M/s Chandra Kamal Corporation Pvt. Ltd.; (ii) M/s Chandra Kamla

Agency; (iii) M/s Chandra Kamal Group (iv) M/s Virath Overseas Pvt. Ltd; (v) M/s Rohit International ; (vi) M/s K.S. Traders; (vii) M/s Sewak

International and (viii) Kalas Traders, for the period 1997-98 to 2002-03. It was submitted vide para 23 of the writ petition that the documents

seized by the officials of the Central Excise Department and requisitioned u/s 132A of the Act do not pertain to the petitioner company.

6. Counter affidavit has been filed by Sri Sadhu Yadav, the assessing officer on behalf of the contesting respondents 1,2 and 3. In the counter

affidavit it is not denied that petitioner No. 1 is not a registered company or its assessment has not been completed up to assessment year 2003-

2004. It is also not denied that the seized Bank accounts stand in the name of the petitioner company. It has been stated that warrant of

authorization u/s 132A of the Act was issued on 7th August, 2003, to require the Joint Commissioner of (Preventive) Central Excise, Allahabad

(hereinafter referred to as the Delivering Authority) in the case of M/s Chandra Kamal Corporation, M/s Virath Overseas Pvt. Ltd. Banda and

others to deliver the seized assets, books of account and other documents relating thereto from the custody of the Joint Commissioner (Preventive)

Central Excise, Allahabad to the Requisitioning Authority and there is enough material for invoking the provisions of Section 153A read with

Section 153C of the Income Tax Act in the name of the petitioner company. Further averment is that some gifts were received by Sri Chandra

Mohan Sahu, petitioner No. 2 and in this connection warrant of authorization was issued. The nature and source of the FDRs mentioned in the

Panchnama dated 8.5.2002 are required/examined for which purpose copy of the bank account of the petitioner No.1 was called vide letter dated

3rd March, 2004.

7. During the course of pendency of writ petition, a supplementary affidavit along with application dated 7.9.2005 was filed by the petitioner stating

therein that after passing of the impugned order dated 22.12.2004 no notice whatsoever was served or tendered upon the petitioners. It has been

further stated that since no notice or order extending the period of attachment has been served on the petitioners, they believe that no order

extending the period of provisional attachment of bank account has been passed by the Commissioner of Income Tax. In reply to the

supplementary affidavit a counter affidavit affirmed by Shri Durga Prasad Agnihotri has been filed, annexing copies of two letters dated 8th June,

2005 and 7th June, annexure - 1 and 2 where under the Assessing Officer has been informed that the Commissioner of Income Tax - 2 Kanpur

has been pleased to extend the provisional attachment u/s 281B for a further period of six months that is up to 21.12.2005. But copy of the actual

order extending the period has not been enclosed.

8. Heard Shri Rakesh Kumar, learned counsel for the petitioners and Shri Govind Krishna, learned standing counsel for the contesting respondents

No. 1,2 and 3.

9. Learned counsel for the petitioners submitted that exercise of power u/s 281B by the Assessing Officer is wholly arbitrary and unwarranted in

law. He submitted that there is no material in possession of the department to form an opinion that the petitioner company which was incorporated

in Dec. 9,2001 in whose name the bank accounts and fixed deposit receipts stand would not pay the income tax dues which would be ultimately

found due. Elaborating the argument it was submitted that assessment up to the assessment years 2003-04 has already been completed and there

is no existing liability of the petitioners to pay any dues. The power conferred upon the authority concerned is in the nature of attachment before the

judgment as provided u/s 94B of the CPC 1908. Sweeping and wide power conferred on the Assessing Officer has to be exercised, not casually

or in routine manner, but sparingly with due caution. The "opinion" of the Assessing Officer should not depend upon "gossip" or "hearsay" in

corridors.

10. In reply, Respondents submit that petitioner No. 2 has received certain gifts and the nature and source of the gift is to be enquired into. The

impugned order was passed in accordance with law after obtaining approval of the concerned Commissioner of Income Tax, who has also

extended the provisional attachment for -7 further period of six months that is up to 21st December, 2005. In this facts situation the Court should

not interfere with the impugned order.

11. We have given our careful consideration to the respective submissions of the learned counsel for the parties. The facts which are not in dispute,

are that the bank accounts provisionally attached by the impugned order stand in the name of petitioner company; the income tax assessment

proceeding relating to the petitioner company up to the assessment year 2003-04 has already been completed; the petitioner company is engaged

in the business of real estate and is not carrying on any manufacturing activity; the officers of the Central Excise Department seized bank accounts

which were released in pursuance of the judgment passed by this Court in writ petition No. 1186 of 2004. The proceedings against the petitioner

company has been initiated u/s 153A read with Section 153C by issuing notice on 22.12.2004.

12. For a proper adjudication of the issues involved in the present petition, we consider it appropriate to reproduce Section 281B of the Act,

which is as follows :-

281-B (1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income

which has escaped assessment, the (Assessing) Officer is of the opinion that for the purpose of protecting the interests of the revenue it is

necessary so to do, he may, with the previous approval of the (Chief Commissioner, Commissioner, Director General or Director) by order in

writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under

sub Section (1) :

Provided that the (Chief Commissioner, Commissioner, Director General or Director) may, for reasons to be recorded in writing, extend the

aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two

years :

Provided further that where an application for settlement u/s 245C is made, the period commencing from the date on which such application is

made and ending with the date on which an order under sub Section (1) of Section 245D is made shall be excluded from the period specified in

the preceding proviso.

13. A bare perusal of the Section 281B would show that two conditions are necessary for invoking it. Firstly, the existence of "opinion" of the

Assessing Officer that for the purpose of protecting the interest of the Revenue it is necessary to provisionally attach any property belonging to the

assessee; and secondly the previous approval of the Higher Authority concerned has been obtained before passing any order. Section 281B of the

Act gives very wide power to the Assessing Officer enabling him to provisionally attach any property belonging to the assessee with the previous

approval of the Commissioner of Income Tax if the Assessing Officer is of the opinion that for the purpose of protecting the interest of Revenue it

is necessary to do so.

14. The Delhi High Court in the case of V.L.S. Finance Limited v. CIT (2000) 246 ITR 707 has held that opinion means something more than

mere retaining of "gossip" or "hearsay", it means the judgment of belief that is a belief or conviction resulting from what one thinks on a particular

question. It has placed reliance upon a Judgment of Supreme Court in the case of Dolgobinda Paricha Vs. Nimai Charan Misra and Others,

15. So far as the question of opinion of Assessing Officer is concerned, we find that it is lacking in the present case. The counter affidavit sworn by

Shri Sadhu Yadav, I.T.O. 6 (2) Kanpur does not disclose any material on which requisite opinion to invoke the power u/s 281B could be formed.

Only this much has been stated that FDRs valuing Rs. 44 lacs were found as mentioned in the Panchnama dated 8.6.2002. The nature and source

of acquisition of these FDRs are required to be examined. The case of the petitioner is that the aforesaid amount represents share application

money received by the company. It may be placed on record that after filing of the counter affidavit two more affidavits were also filed on behalf of

the department. But in none of those affidavits any material or relevant circumstance has been mentioned on the basis of which it can be said that

the petitioner would not fulfill its obligation, namely, payment of demand of any tax which would be levied on it subsequently. Seized documents,

account books etc. by the Officers of the Central Excise Department do not belong to the petitioner company nor do they relate to the business

activities of the petitioner company. There is not a whisper even in any of the counter affidavits that these documents belong to the petitioner. Such

an averment is absent in the pleading of the department. The documents thus seized by the Central Excise Department and also requisitioned by the

Income Tax Department do not relate to the business activities of either of the petitioners. As a matter of fact the enquiries on the basis of these

documents are directed by the department against certain persons other than the petitioners.

16. It may be noted here that the case was partly heard on 30.11.2005 and on that day it was ordered to be put up tomorrow i.e. on 1st

December, 2005. On 1st December, 2005, the learned Standing counsel for the Department has filed second supplementary affidavit sworn by Sri

Ram Singh, Income Tax Inspector of ITO-6 (2), annexing therewith copy of order sheet relating to assessment year 2002-03 and 2003-04, with

respect to the petitioner company (Annexure-1 to the supplementary affidavit). From perusal of the order sheet it is clear that notice u/s 153A read

with Section 153C was issued on 22.12.2004 and return for the assessment year 2002-03 was filed on 27.1.2005. The return for the assessment

year 2003-04 was filed on 31st March, 2004. Thereafter no date was fixed by the Assessing Officer. The contention of the petitioner which can

not be said to be wholly irrelevant, is that when he filed supplementary affidavit along with the application dated 7.9.2005, before this Court

referred to above, after serving the copies to the learned Standing Counsel, notice u/s 143(2) and 142(1) fixing 29th September, 2005 was issued

on 13th September, 2005. Nothing was done for a period of eight months after filing of the return for the assessment year 2002-03. On

September 30, 2005. the petitioner sought adjournment for one month and 2nd November, 2005 was the next date fixed. According to the

petitioner he appeared before the authorities concerned on 2nd November, 2005, which was the next day of Deepwali. On that day the Assessing

Officer was not present. Few Class III & IV employees were present in the office. It has been incorrectly mentioned in the order sheet dated 2nd

November, 2005 that the assessee neither appeared nor made compliance and thereafter a notice was ordered to be issued fixing some date in the

month of January, 2006. The order sheet does not show what is the date fixed in the month of January, 2006. The attention of learned standing

counsel was drawn to this fact, but he could not give any reply. He submitted that the Income tax Inspector who was present yesterday left

Allahabad after swearing the supplementary affidavit. This itself shows the casual approach of the department and the treatment given by it to the

petitioner whose accounts have been provisionally attached, since December 22, 2004.

17. In Sukhpal Singh (HUF) Vs. Commissioner of Income Tax and Another, Punjab and Haryana High Court has held that there is no material on

record to show that the Income Tax Officer had formed an opinion on the basis of some material and it was necessary to attach the property in

order to protect the interest of the Revenue. The order u/s 281B of the Act is unsustainable.

18. In Society for Integrated Development in Urban and Rural Areas Vs. Commissioner of Income Tax and Another, it has been held that

attachment ""for the purpose of protecting the interest of Revenue"" in Section 281B of the Act is very wide in its meaning. For that reason as a

safeguard, the prior approval of higher authority like Chief Commissioner etc. has been made as a pre condition. Further the orders of attachment

must be in writing. It has been held thereafter that ""there must be some material on record to show that the assessing authority had formed an

opinion on the basis thereof that it was necessary to attach the property in order to protect the interest of the Revenue. Provisional attachment

provided u/s 281B of the Act is more like an attachment before the judgment under the Code of Civil Procedure. It is a liability on the property.

However, the power conferred upon the assessing authority is very drastic, far reaching power and that the power has to be used sparingly and

only on the substantive weighty grounds and reasons. One thing is clear that this power should be exercised by assessing officer only if there is

reasonable apprehension ""that the assessee may default the ultimate collection of the demand i.e. likely to be raised on completion of the

assessment, it should, therefore, be exercised with extreme care and caution. It should not be exercised unless there is sufficient and relevant

material on record to justify the satisfaction that the assessee is about to dispose of the whole or any part of the property with a view to thwarting

the ultimate collection of the demand. Moreover, the attachment should be made of the properties and to the extent it is required to be achieved

the above object.

19. The foremost legal requirement is that the power under Statute has to be exercised for the purpose of the statute in a judicious manner. It is

trite law that statutory power should be exercised bona fide, reasonably and without negligence and for the purpose for which they are conferred.

(Halsbury's Laws of England, third edition, Vol. 30, page 688, paragraph 1327). It is also settled that the powers vested with any authority under

various provisions of law can be exercised only for the stated purpose and for no other purpose. The Bombay High Court in Gandhi Trading Vs.

Assistant Commissioner of Income Tax and Others, has observed as follows :-

It is clear from a plain reading of the above Section that it is intended to empower the Assessing Officer to make a provisional attachment of any

property of the assessee during the pendency of any proceedings or assessment or reassessment of any income, even though there is no demand

outstanding against the assessee, if he is of the opinion that it is necessary to do so to protect the interests of the Revenue. To ensure that this

power is not misused, a number of safeguards have been provided in the Section itself It is not necessary for us, at this stage to examine the same.

One thing is clear that this power should be exercised by the Assessing Officer only if there is a reasonable apprehension that the assessee may

thwart the ultimate collection of the demand that is likely to be raised on completion of assessment. We do not appreciate this stand of the Revenue

which according to us, is unreasonable and unfair. The object of Section 281B is to enable the concerned officers to take suitable measures to

protect the Revenue. It is in the nature of attachment before judgment. It should be applied only to achieve that object.

20. In view of above discussion, we find that the impugned order passed u/s 281B of the Act provisionally attaching the accounts of the petitioner

company is wholly unwarranted and arbitrary. Learned Standing counsel for the Department could not show us any material either from the

counter affidavit or from the supplementary affidavits to justify the action of the assessing authority u/s 281B of the Act. Only this much was

submitted by him that certain enquiries with regard to the nature and source of gifts in favour of the petitioner No. 2 is to be enquired into. This is

the only ground which was stated in the counter affidavit and was urged by the learned Standing Counsel. In our opinion this ground is wholly

insufficient to invoke Section 281B of the Act, the reason is simple. In every case where the assessment has to take place it is bounden duty of the

assessing officer to make such enquiries as are necessary to complete the assessment apart from the above the petitioner company is newly born

assessee on the file of the Income Tax Department as it was incorporated only on December 9, 2001 and indisputably it filed returns of income up

to the assessment year 2003-04, which was finalized by the department There is no history of the petitioner company to show that on any occasion

earlier it failed to discharge its liability. Apart from the above as has been held by the Bombay High Court in the case of Gandhi Trading Vs.

Assistant Commissioner of Income Tax and Others, that the attachment of the bank accounts is the last resort. The department if it is of the opinion

that the assessee is likely to dispose of its property to thwart the payment of income tax dues, the department should provisionally attach the

immovable property of such assessee first. Resort to blanket attachment of the entire bank accounts of an assessee has serious consequence on its

rights to carry on the business. The action of the department in such circumstances should not give an impression to any body that it has indulged in

any manner to hamper the business activities of the assessee. Power has been conferred under the said Section to protect the interest of the

Revenue. Only so much asset or amount which would satisfy the future demand should be provisionally attached u/s 281B of the Act, leaving other

assets including the amount standing in the bank account to enable the assessee to carry on the business. The passing of the impugned order in the

present case, we are of the opinion amounts stopping the business activities of the petitioner, which instead of advancing the purpose of Section

281B of the Act frustrates the interest of the Revenue.

21. Even assuming that the Assessing Officer had power to attach the bank accounts provisionally it does not give license to conduct assessment

proceedings at his leisure when the department was so apprehensive as to resort its power u/s 281B of the Act which is to be used sparingly. It is

expected in such matter from the department to conclude the assessment proceedings within a reasonable period. It is difficult to approve the

callous approach of the Assessing Officer in such matters not to conclude the assessment proceedings within a reasonable period of time.

22. Learned counsel for the petitioners submitted that no opportunity of hearing was given by the Commissioner of Income Tax before extending

the period by six months up to 21st December, 2005 and a copy of the order has not been supplied to it nor the reasons have been disclosed. The

proviso to sub Section (2) of Section 281B provides that the Chief Commissioner, Commissioner, Director General and the Director, may for the

reasons to be recorded in writing, extend the aforesaid period by such further period/periods as he thinks fit, so, however, that the total period of

extension shall not in any case exceed two years. It was expected from the department while filing supplementary counter affidavit to annex

reasons which were recorded by the Commissioner of the Income Tax for granting extension of period. The department in its counter affidavit filed

in reply to the supplementary affidavit has annexed the letter of the Income Tax Officer, informing that Commissioner of Income Tax has been

pleased to extend the provisional attachment up to 21st December, 2005. It is not sufficient. The department was required to place on record

before the Court the reasons recorded by the Commissioner of Income Tax for granting approval for extension of the order passed u/s 281B of

the Act. The disclosure of reasons recorded by the Commissioner of Income Tax would have thrown some light on the controversy i.e. it is a case

of gossip or hearsay or something more than that. An adverse inference should be drawn against the department for withholding the reasons, if any,

recorded by the Commissioner of Income Tax.

23. It is not out of place to refer a case of the Apex Court, strongly relied upon by the petitioners, in a some what similar statutory set up while

interpreting, see 132 (8) of the Act, wherein it was held as follows :-

132 (8) The books of account or other documents seized under sub Section (1) or Sub-section (1A) shall not be retained by the authorized officer

for a period exceeding one hundred and eighty days from the date of seizure unless the reasons for retaining the same are recorded by him in

writing and the approval of the Commissioner for such retention is obtained :

Provided that the Commissioner shall not authorise the retention of the books of account and other documents for a period exceeding thirty days

after all the proceedings under the Indian Income tax Act, 1922 (XI of 1922), or this Act in respect of the years for which the books of account or

other documents are relevant are completed. (See Commissioner of Income Tax, West Bengal III and Others Vs. Oriental Rubber Works,

24. Having noticed the legal proposition and factual background of the case and after consideration of the respective submissions of the learned

counsel for the parties, we are of the opinion that the action of the department in provisionally attaching the bank accounts of the petitioner u/s

281B of the Act by the impugned order and period of its extension by the Commissioner of Income Tax is unwarranted in law and are liable to be

quashed. However, this is not the end of the matter. Learned Counsel for the petitioner very fairly submitted that the petitioner is prepared to give

security of amount which the department may indicate within the period of 15 days in order to protect the interest of the Revenue. We appreciate

the gesture shown by the petitioner. It is expected from the department to indicate the demand which is likely to be raised against the petitioner in

respect of the petitioner for the period in question. The department should estimate the demand on some reasonable basis. It is needless to say it

should not be fanciful or arbitrary. In this connection it is apt to quote the following observations of the Supreme Court in the case of Raghavendra

Sherrigal v. Asstt. Commissioner of Commercial Taxes (2005) 142 STC 153.

While it is true that collection of revenue is a serious matter for the State and the bounden duty of the authorities functioning under the Act is to

implement the provisions of the Act. There should be safety and assurance to an honest tax payer. An honest tax payer should not be subjected to

unnecessary harassment and an action not warranted in law, which can be of very serious consequence to the tax payer if is allowed to remain

without correction, such harassment and brow beating of an honest tax payer will otherwise drive even such honest tax payer to become cynical

and lead to a situation where tax payers will get a feeling that paying taxes honestly is not worthwhile exercise; that the tax authorities are a menace

to the society rather than simply being representatives of the State for enforcing the tax provisions (2005) 142 STC 153, Raghavendra Sherrigal v.

Assistant Commissioner of Commercial Taxes.

25. The writ petition is allowed. The impugned order dated 22.12.2004, Annexure-7 to the writ petition, passed by the Income Tax Officer-6

(2)/Respondent No.I and its subsequent extension by the Commissioner of Income Tax up to 21st December, 2005 is hereby quashed with liberty

to the department that it may indicate a reasonable sum which is likely to be due against the petitioner within the period of fortnight from today. If

the department so indicates the amount the petitioner shall furnish a security other than cash or bank guarantee of the aforesaid demand within a

period of one month thereafter, to the satisfaction of the Assessing Officer.

26. The petitioner is entitled to cost of this writ petition, which we assess at Rs. 5000/-