

(2007) 10 BOM CK 0109

Bombay High Court

Case No: None

Ashish Himmatlal
Goradia

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Oct. 23, 2007

Acts Referred:

- Income Tax Act, 1961 - Section 263(3)

Hon'ble Judges: J.P. Devadhar, J; F.I. Rebello, J

Bench: Division Bench

Judgement

1. Rule. Heard forthwith.

2. The respondent No. 2 had served a notice on the petitioner u/s 226(3) of the Income Tax Act on 25-10-2000 seeking recovery of the sum set out therein. The petitioner herein with reference to subsequent notice dated 14-2-2001 filed reply dated 16-2-2001 giving reasons as to why he should not be treated as in default. It appears that there has been exchange of correspondence and subsequently on 17-11-2006 the respondent No. 2 proceeded on the basis that the petitioner herein is a deemed defaulter and consequently the bank accounts of the petitioner in HDFC bank have been attached. The savings account number is 24010000594565. This account is with HDFC Bank, Santoz House, Worli, Mumbai. Similarly there are two other accounts with the same bank at its Mharshi Karve Road Branch, Opp. to Charni Road Station being account No. 351000012543 and account No. 356100001253. These accounts stand attached. It is pursuant to this that the petitioner has moved this Court.

3. We have heard the learned Counsel. Considering the provisions of Section 226(3)(vi) a party desirous of opposing the notice has to file an affidavit on oath raising his objections. This apparently was not done though the objections were

filed by the petitioner. Apart from that the respondent No. 2 after objections are received will have to pass an order accepting or rejecting the objections and in the event he rejected the application then to proceed to treat the petitioner as a deemed defaulter. Considering the above in our opinion the ends of justice will be met if the following order is passed:

(i) The impugned order dated 17-11-2006 is quashed and set aside. The petitioner herein to file his objections on oath by affidavit within 15 days from today before the respondent No. 2. The respondent No. 2 thereafter to consider the same and pass appropriate order according to law in terms of what we have set out earlier.

(ii) On the facts and circumstances of the case the order of attachment of the three bank accounts mentioned above will continue till such time the respondent No. 2 passes a fresh order. That order to be passed in any way within three weeks from receiving the objections.

(iii) rule made absolute accordingly. No order as to costs.