



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 14.09.2012

+ **W.P.(C) 868/2012, C.M. APPL. 1928/2012**

KAPIL DEV

..... Petitioner

Through : Sh. O.S. Bajpai, Sr. Advocate with Sh.  
Rajesh Dureja, Ms. Manasvini Bajpai and Sh.  
Shashwat Bajpai, Advocates.

versus

COMMISSIONER OF INCOME TAX

..... Respondents

Through : Ms. Rashmi Chopra, Sr. Standing  
Counsel.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

**MR. JUSTICE R.V. EASWAR**

**MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)**

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1. The petitioner is aggrieved by two notices under Section 226(3) of the Income Tax Act, which in effect, amounts to garnishee; they were issued on 03.11.2011 and 08.12.2011. Briefly the facts are that the petitioner's brother, one Raj Kumar was assessed to tax for 1996-97 and a demand in the sum of Rs. 24.74 lakhs was issued. Subsequently, notice under Section 271(1)(c) was issued to the said assessee. While the matter stood thus, the two impugned notices were issued to the petitioner in respect of deposits in accounts held by him in Canara Bank, Oriental Bank of Commerce, Central Bank of India and the Union Bank of India. This had the effect of attachment of his accounts. The petitioner claims that the impugned notices



are illegal and contrary to law. It was urged that the income tax authorities initially were of the opinion that the petitioner ought to be treated as legal representative of his brother Raj Kumar and had, therefore, invoked the provisions of Section 159. Reliance is placed upon the letters dated 06.02.2012 and 14.02.2012. It is stated that subsequently the income tax authorities withdrew the letter and later even sought to resile from the withdrawal letter. Ultimately, the respondent/income tax authorities, despite the petitioner's persuasion, continued with the garnishee notices/orders dated 03.11.2011 and 08.12.2011.

2. Learned senior counsel for the writ petitioner reiterated the grounds urged in support of the petition. It is submitted that by no stretch of the imagination could the respondent treat the income earned over the years by the petitioner – which had itself been subjected to tax and thereafter being kept in Fixed Deposits as belonging to or owed to his brother, so as to attract provisions of Section 226 (3).

3. Learned counsel emphasized that even though the writ petitioner had personally supplied enough material for the Income Tax authorities to conclude that the garnishee proceedings of the kind envisaged by them does not exist, they persisted in their demands. Learned counsel for the Revenue sought to rely on the averments in the counter-affidavit and stated that the Income Tax authorities have sufficient materials to conclude that the monies ostensibly belonging to the writ petitioner and kept in various banks were held on behalf of Raj Kumar and payable to him. It was held that even though for the present, the respondent is not treated as legal representative of his brother, there could yet be circumstances warranting his treatment as representative assessee.



4. This Court, at the initial stage, when the petition was entertained, granted interim orders on 13.02.2012 and 01.03.2012 that no further amount will be remitted by the bank to the TRO till orders are made in the writ petition. It was also directed to maintain *status quo* and not make payments of FDRs in question and that they could be renewed, if required. The Court had further clarified that the orders made by it would not affect the proceedings initiated by the AO under Section 160 and 163 of the IT Act.

5. After hearing learned counsel for the parties, this Court is of the opinion that the proceedings pending before the TRO should be concluded after involving the writ petitioner and making available to him such material as the tax authorities choose to rely against him in support of their position that the monies and deposits which are said to be the subject matter of judgment under Section 226(3) do not belong to him but to the assessee, Sh. Raj Kumar. Copies of such materials, if in the possession of the TRO shall be made available within two weeks to the petitioner, who shall thereafter make written representation within a week thereafter, setting-out the grounds or reasons why the course of action proposed in attaching the amounts is not feasible or legal. The TRO shall consider the representation and also grant the petitioner a hearing within two weeks thereafter and proceed to pass an order, citing the reasons for his conclusions, in any case, within eight weeks from today. The interim arrangement subsisting and binding the parties whereby the amounts lying in deposit are not to be withdrawn by the Income Tax authorities and also binding the petitioner not to withdraw the amounts from the said deposits shall continue to bind the parties till the reasoned order is made by the TRO. The concerned bank officer or Manager shall ensure that if during this period, any or all of FDRs



are likely to mature, they are renewed, as in the past. All rights and contentions of the parties are reserved. The observations made in this order shall not be deemed to be reflection on the merits of the case. The writ petition is disposed of in the above terms.

**S. RAVINDRA BHAT**  
**(JUDGE)**

**R.V.EASWAR**  
**(JUDGE)**

**SEPTEMBER 14, 2012**  
**‘ajk’**