IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 178 OF 2015
WITH
WRIT PETITION NO. 185 OF 2015
WITH
WRIT PETITIN NO.221 OF 2015

WRIT PETITION NO. 178 OF 2015

Sociedade de Fomento Industrial Pvt. Ltd.,
Vila Flores Da Silva,
Erasmo Carvalho Street,
Margao, Goa – 403601. ….. Petitioner

V e r s u s

1. The Assistant Commissioner of Income-Tax,
   Circle -1, 3rd Floor, Blessing Pioneer Complex,
   Opp. District & session Court, Margao-Goa.

2. The Commissioner of Income-Tax,
   Aayakar Bhavan, EDC Commercial,
   Complex, Patto Plaza, Panaji-Goa.

3. The Union of India,
   Through the Secretary,
   Department of Revenue,
   Ministry of Finance, Government of India,
   North Block, New Delhi-110 001. …. Respondents

WRIT PETITION NO. 185 OF 2015

Sociedade de Fomento Industrial Pvt. Ltd.,
Vila Flores Da Silva,
Erasmo Carvalho Street,
Margao, Goa – 403601. ….. Petitioner

V e r s u s

1. The Assistant Commissioner of Income-Tax,
   Circle -1, 3rd Floor, Blessing Pioneer Complex,
   Opp. District & session Court, Margao-Goa.

2. The Commissioner of Income-Tax,
   Aayakar Bhavan, EDC Commercial,
   Complex, Patto Plaza, Panaji-Goa.

3. The Union of India,
   Through the Secretary,
   Department of Revenue,
   Ministry of Finance, Government of India,
   North Block, New Delhi-110 001. …. Respondents

WRIT PETITIN NO.221 OF 2015

Sociedade de Fomento Industrial Pvt. Ltd.,
Vila Flores Da Silva,
Erasmo Carvalho Street,
Margao, Goa – 403601. ….. Petitioner

V e r s u s

1. The Assistant Commissioner of Income-Tax,
   Circle -1, 3rd Floor, Blessing Pioneer Complex,
   Opp. District & session Court, Margao-Goa.

2. The Commissioner of Income-Tax,
   Aayakar Bhavan, EDC Commercial,
   Complex, Patto Plaza, Panaji-Goa.

3. The Union of India,
   Through the Secretary,
   Department of Revenue,
   Ministry of Finance, Government of India,
   North Block, New Delhi-110 001. …. Respondents

Mr. P. J. Pardiwalla, Senior Advocate with Nishant Thakkar and Ms. Vinitta Palyekar, Advocates for the Petitioners.

Mrs. Asha Desai, Advocate for the Respondents.

CORAM: F. M. REIS, &
M. S. SANKLECHA, JJ.

DATE: 8th MAY, 2015.

ORAL JUDGMENT: (Per M. S. Sanklecha, J.)

Rule.

Returnable forthwith.

2. Mrs. Asha Desai, learned counsel for the Respondent/Revenue waives service.

3. At the request of the learned counsel the petition is taken up for final disposal.

4. All these three petitions assail three orders dated 19/12/2014 issued under Section 281B of the Income Tax Act, 1961. The first of the three impugned orders dated 19/12/2014 seeks to attach a refund of Rs.29,01,56,762/- due to the petitioner for the Assessment year 2007-2008. The second of these impugned order dated 19/12/2014 seeks to attach

refund of Rs.51,30,88,859/- due to the petitioner for the year 2008-09 and the third of the impugned order dated 19/12/2014 seeks to attach refund of Rs.25,62,58,769 due to the petitioner for the Assessment year 2009-2010.

5. We have heard Mr. Pardiwalla, learned Senior Counsel for the petitioner at some length yesterday in respect of the above three petitions. The petitioner had made a grievance of the manner in which the respondent has dealt with the petitioner in these proceedings and particularly the fact that the Affidavits which were filed on 24/12/2014 in response of the petitioner’s writ petition being Nos.679/2014 and 680/2014 seeking direction that the respondent gave effect to the order of the Tribunal. At that time the respondent/revenue filed an affidavit and assured the Court that effect is being given to the order of the tribunal. However, proceedings for attachment had already commenced and sanction on 12/12/2014 also obtained, from the Commissioner to the attachment of refunds due to the petitioner, yet the same was not pointed out either to the petitioner or to the Court. This issue could have otherwise been resolved at that time itself.

6. We find that the petitioner is justified in making a grievance with regard to the Respondents/Revenue's failure to disclose all facts in

its affidavit filed on 24/12/2014. We expect the Respondents/Revenue to be fair in its dealing with the Assessee and also to this Court. This attitude is not expected of the State. At this stage except for making the aforesaid observations which we trust that the Revenue would bear in mind and ensure this does not happen in future, we let the matter rest for the present.

7. The petitioner's grievance is that the total refund which has to be adjusted for the assessment years 2007-08 to 2009-10 amounts to Rs.1059504390/-. They are undergoing grave liquidity problems and are therefore in need of the funds which are legitimately due to them today. However, to allay the fears of the Respondent/Revenue being without any security as and when the orders on reassessment proceedings for the assessment year 2008-09 to 2011 -2012 are passed, they were willing to replace the security by making available immovable properties free from encumbrances for attachment by the Revenue. However, thereafter the petitioner submitted that they would secure the Revenue by a Bank Guarantee for 100% of the refund attached i.e. Rs.105,95,04,390/-

8. Mrs. Asha Desai, learned counsel for the Respondent/Revenue on instructions states that she has no objection to the Revenue being secured by a Bank Guarantee.

9. In view of the above, as the petitioner is furnishing a Bank Guarantee of a Nationalized Bank for an amount of Rs.105,95,04,390/- to the satisfaction of the Commissioner of Income Tax, the respondents would vacate the attachment of the refund of Rs.105,95,04,390/- done under Section 281B of the Act. The Bank Guarantee furnished by the petitioner will be kept alive till the final disposal of the reassessment notices for the Assessment year 2008-2009 to 2011-2012 and for eight weeks thereafter. Once the Bank Guarantee in the above terms is furnished to the satisfaction of the Commissioner of Income Tax, Panaji, the Respondents/Revenue will hand over the three refund amounts aggregating to Rs. 105,95,04,390/- to the petitioner within one week thereafter.

10. Rule made absolute in the above terms.

11. Parties to act on an authenticated copy of this order.

M. S. SANKLECHA, J. F. M. REIS, J.

Ap/-