IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

MONDAY, THE 3RD DAY OF AUGUST 2015/12TH SRAVANA, 1937

WP(C).No. 11057 of 2013 (F)

PETITIONER(S):

B. VINOD,
MANAGING PARTNER, PONNAMKULAM BROTHERS,
REGISTERED OFFICE AT T.J.R.S. 184, NANDANAM,
PIPPINMOODU, SASTHAMANGALAM, THIRUVANANTHAPURAM.

BY ADVS.SRI.T.K.ANANDA KRISHNAN,
SRI.SANOJ R. NAIR,
SRI.B.S.SHAJI,
SRI.G.BIJU (VELLANAD),
SRI.U.JAYACHANDRAN.

RESPONDENT(S):
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1. THE SECRETARY,
   DEPARTMENT OF FINANCE, GOVERNMENT OF INDIA.

2. THE COMMISSIONER OF INCOME TAX,
   DEPARTMENT OF INCOME TAX, AYAKAR BHAVAN,
   KOWDIAR, THIRUVANANTHAPURAM.

3. THE TAX RECOVERY OFFICER,
   DEPARTMENT OF INCOME TAX, AYAKAR BHAVAN,
   KAWDIAR, THIRUVANANTHAPURAM.

4. REGISTRAR OF FIRMS,
   OFFICE OF THE REGISTRAR OF FIRMS,
   THIRUVANANTHAPURAM.

R1 TO R3 BY SRI.P.K.R.MENON, SSENIOR COUNSEL.
ADV. SRI.JOSE JOSEPH, SC.
R4 BY GOVT. PLEADER SRI.R. RANJITH.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 11057 of 2013 (F)

APPENDIX

PETITIONER'S EXHIBITS:-

EXHIBIT P1: TRUE COPY OF THE PARTNERSHIP DEED.

EXHIBIT P2: TRUE COPY OF THE NEWS ITEM PUBLISHED IN KERALA KAWMUDI DAILY.

EXHIBIT P3: TRUE COPY OF THE LETTER ISSUED BY 4TH RESPONDENT DATED 19.10.2012.

EXHIBIT P4: TRUE COPY OF THE REGISTER OF FIRM IN FORM A ISSUED BY THE 4TH RESPONDENT.

EXHIBIT P5: TRUE COPY OF THE INCOME TAX RETURN OF THE FIRM FOR THE YEAR 2010-11.

EXHIBIT P6: TRUE COPY OF THE INCOME TAX RETURN OF THE FIRM FOR THE YEAR 2011-12.

EXHIBIT P7: TRUE COPY OF THE INCOME TAX RETURN OF THE FIRM FOR THE YEAR 2012-13.

EXHIBIT P8: TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT ATTACHING THE PROPERTY OF THE PARTNERSHIP FIRM.

EXHIBIT P9: TRUE COPY OF THE ENCUMBRANCE CERTIFICATE ISSUED FROM THE SUB REGISTRAR OFFICE, THIRUVANANTHAPURAM.

EXHIBIT P10: TRUE COPY OF THE LEASE DEED.

EXHIBIT P11: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER TO THE EXT.P8.

EXHIBIT P12: TRUE COPY OF THE ORDER ISSUED BY THE 3RD RESPONDENT DATED 15.01.2013.

RESPONDENT'S ANNEXURE:

ANNEXURE R4A COPY OF THE APPLICATION IN FORM V FILED BY THE PETITIONER.

//TRUE COPY//

P.A. TO JUDGE

rs.

A.MUHAMED MUSTAQUE, J.

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W.P.(C) No.11057 of 2013

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Dated this the 3rd day of August, 2015

JUDGMENT

The petitioner is the Managing Partner of the Partnership Firm by name 'Ponnamkulam Brothers'. The petitioner has approached this Court challenging recovery proceedings initiated to recover the income tax dues from Sri.B.Vijayan, a former partner of the above partnership firm.

2. The partnership firm was formed in the year 2009 and registered on 22.12.2009. Originally, there were nine partners. One of the partners, namely, Sri.B.Vijayan retired on 22.1.2010. The Income Tax Authorities have now proceeded to recover the amount due from Sri.B.Vijayan from the assets belong to the partnership firm.

3. The partnership firm was formed with object to carry on business in trading as well as in purchase and acquiring commercial lands, buildings etc.

4. By virtue of the partnership firm, Sri.B.Vijayan also acquired in the share of the assets of the partnership firm along with others.

5. As seen from the impugned order, it is a block assessment based on a search conducted in the year 2008 and the assessment was crystalized on 31.12.2010.

6. The learned counsel for the petitioner would urge that since Sri.B.Vijayan had retired from the firm much before the assessment, the liability cannot be fastened on the share of Sri.B.Vijayan which was released to the other partners before the assessment. It is also submitted that the recovery of any amount due from Sri.B.Vijayan, the entire property of the firm cannot be attached. The learned counsel also relies on the judgment of the Hon'ble Supreme Court in **Addanki Narayanappa and another v. Bhaskara Krishtappa and 13 others** **[1966 AIR 1300],** wherein it was held that the retiring partner is only entitled to receive the money value of his share in the net partnership assets as on the date of dissolution or retirement after the deduction of liabilities and prior charges.

7. Learned Standing Counsel points out to Section 281 and 282 of the Income Tax Act, wherein certain transfers are declared as void. This transfer was effected during the pendency of

proceedings initiated under the Act. Therefore, it is argued that since this was commenced in the year 2008, any transfer as far as the Department is void. It is also submitted that the Department only proceeded against the share of Sri.B.Vijayan, the defaulter and not against the entire property as such.

8. The judgment relied by the petitioner in **Addanki Narayanappa**'s case (*supra*) has no relevance in this matter. The dictum in the above judgment would clearly indicate that the right of the partner in the partnership firm, in respect of the immovable property is to receive monetary value and not as a share of the immovable property. This was taking into account of the fact that the partnership firm owns immovable property and any retirement of the partners cannot result in disruption of the right over the immovable property by other partners.

9. Therefore, the question is whether Section 281(2) of the Income Tax Act would come into operation or not. There is no doubt that the proceedings were initiated in the year, 2008 and the proceedings were pending while release of the share was obtained. The attachment in fact is effected to obtain the money value of the

share. Going by the judgment relied by the petitioner, the Department would be entitled for the money value of the share held by the partner. Therefore, this Court is of the view that the petitioner would be entitled for release of the attachment on payment of the money value of the share held by the defaulter at the time of retirement. Therefore, following directions are issued:

i. The petitioner shall make available all the records relating to the release including intimation given before the Authority at the time of release of the share of Sri.B.Vijayan from the partnership firm.

ii. Thereafter, after determining the share of the defaulter and assessing the value of the share held by Sri.B.Vijayan at the time of release with the assistance of approved valuer, shall intimate the same to the petitioner.

iii. On remitting the amount as demanded by the respondents, necessary steps shall be taken by the respondents to release the attachment.

iv. The petitioner has to make a request with all the details furnishing the share of the defaulter at the time of release within one month.

v. Thereupon, the entire exercise shall be completed for determination of the value within two months and the petitioner shall be given a further period of two months to deposit the value of the defaulter.

vi. On payment of the above, the attachment shall be released.

vii. However, if the petitioner fails to comply with any of the above directions, the respondents are free to proceed for recovery of the amount by sale of the share of the defaulter in accordance with law.

The writ petition is disposed of as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

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