IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

WP(C).No. 31563 of 2015 (U)
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PETITIONERS :
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1. N.P. SUBAIR, AGED 51 YEARS,
   MELAKAM, BISMILLA ROAD, MANJERI-676123
   MALAPPURAM.

2. M/S. A.K.FOOD PRODUCTS
   EAST MOOZHIKKAL, CHELAVOOR P.O., KOZHIKODE.

3. M/S. OJIN BAKES AND RESTAURANTS
   HAPPY TOWER, MEENCHANDA, KOZHIKODE.

4. M/S. OJIN BAKES
   NEAR MEDICAL COLLEGE, KOZHIKODE.

5. M/S.OJIN FOODS PVT.LTD.
   CONVENT ROAD, KOZHIKODE.

BY ADVS.SRI.ANIL D. NAIR
SRI.R.SREEJITH
SMT.O.A.NURIYA
SMT.ROSIE ATHULYA JOSEPH
KUM.SOUMYA PRAKASH
KUM.MEKHALA M.BENNY

RESPONDENTS :
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1. THE INCOME TAX OFFICER, WARD-1(1),
   AYYAKAR BHAVAN, KOZHIKODE-673001.

2. PRINCIPAL COMMISSIONER OF INCOME TAX,
   AYYAKAR BHAVAN, KOZHIKODE-673001.

BY ADV. SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT
BY ADV. SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07-12-2015, ALONG WITH WPC. 31573/2015, WPC. 31579/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

bp

**WP(C).No. 31563 of 2015 (U)**
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**
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| **EXHIBIT-P1:** | **TRUE COPY OF THE PROVISIONAL ATTACHMENT ORDER DATED 01.04.2015 ISSUED TO THE PETITIONER BY THE FIRST RESPONDENT FOR THE ASSESSMENT YEARS 2012-13, 2013-14 AND 2014-15.** |
| **EXHIBIT-P2:** | **COPY OF THE ORDER DT 28/9/2015 ISSUED TO THE PETITIONER BY THE R1 FOR THE ASSESSMENT YEAR 2012-13,2013-14 AND 2014-15.** |
| **EXHIBIT-P3:** | **COPY OF THE INSTRUCTION NO. 8/2004 OF THE TAXMAN.** |
| **EXHIBIT-P4:** | **COPY OF THE INSTRUCTION NO. 404/22/2004-ITCC DT 5/11/2004 OF THE CENTRAL BOARD OF DIRECT TAXES, NEW DELHI.** |

**RESPONDENT(S)' EXHIBITS :**
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| **EXT.R2(a):** | **COPY F THE NOTE FILE EVIDENCING THE RECORDING OF REASON BY THE R2.** |
| **EXT.R2(b):** | **STATEMENT OF ESTIMATED UNDISCLOSED INCOME.** |

**//TRUE COPY//**

**P.S. TO JUDGE**

**bp**

**A.K.JAYASANKARAN NAMBIAR, J.**
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**W.P.(C).NOS.31563, 31573 & 31579 OF 2015**
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**Dated this the 7th day of December, 2015**

**J U D G M E N T**

The challenge in these writ petitions is essentially against the extension of a provisional attachment that was made in respect of the properties of the petitioners pending the completion of assessment under the Income Tax Act, hereinafter referred to as the 'IT Act', for the assessment years 2012-13, 2013-14 and 2014-15. The grievance of the petitioners in the writ petitions is that, while the properties belonging to them were attached in terms of Section 281B of the IT Act, the initial period of six months of attachment of the property had since expired, and the proceedings initiated against the petitioners under the IT Act had still not been completed. It is pointed out that thereafter, the petitioners were informed that the provisional attachment was continued for a further period of six months in terms of Section 281B (2) of the IT Act and the proviso thereto. The petitioners challenge the said action of the respondents, in extending the provisional attachment beyond the initial period of six months on the ground that the said extension was not preceded by an order of the Commissioner of Income Tax furnishing reasons in writing.

2. I have heard the learned counsel for the petitioners as also the learned Standing counsel for the respondents.

3. The learned Standing counsel for the respondents has filed a statement, wherein, he has produced as Ext.R2(a), a proposal that was placed before the Principal Commissioner of Income Tax by the Assessing Officer, wherein, the Assessing Officer, after narrating the facts that necessitated an extension of the provisional attachment initially made of the properties belonging to the petitioners, sought for the Commissioner's order approving the extension of the provisional attachment for a further period of six months. Below the said proposal made by the Assessing Officer, there is an endorsement by the Principal Commissioner which states that “in view of the above facts provisional attachment may be continued for another six months in order to safeguard the interest of revenue”. It is the stand of the respondents that the said endorsement by the Principal Commissioner would answer to the requirement of the proviso to Section 281B (2) of the IT Act.

On a consideration of the facts and circumstances of the case as also the submissions made across the bar, I note that there are decisions of the Gujarat High Court in **Ilaben Ramanlal Zariwala v. Union of India and Others -[(1979) 118 ITR 852]**, the Madras High Court in **Seshasayee Paper and Boards Ltd. v. Commissioner of Income-Tax and Others - [(2003) 261 ITR 63]** and the Delhi High Court in **Nimitya Properties Ltd. v. Commissioner of Income-Tax and Others - [(2010) 322 ITR 668 (Del)],** which considered the issue of the nature of the orders that have to be passed by the Principal Commissioner in terms of the proviso to Section 281B (2) of the IT Act. Although the factual situation in the aforesaid cases are different, I find that in the decision of the Delhi High Court, the request made by the Assessing Officer to the Principal Commissioner of Income Tax was more or less on the same lines as in the instant case, and there also, the Commissioner had given his approval to the proposal for extension of the period of provisional attachment by stating “I have gone through the proposal of the Assessing Officer. In view of the facts mentioned in the proposal, I am satisfied that this is a fit case to extend the provisional attachment up to July 31, 2010. The Assessing Officer shall make efforts to complete the assessments as early as possible." The Delhi High Court found that the said endorsement of the Commissioner on the proposal submitted by the Assessing Officer was sufficient compliance with the requirements of the proviso to Section 281B (2) of the IT Act. Taking cue from the said judgment of the Delhi High Court, with the reasoning in which I agree, I am of the view that in the instant case also, the endorsement by the Principal Commissioner of Income Tax on the report submitted by the Assessing officer can be seen as sufficient compliance with the requirements of the first proviso to Section 281B (2) of the IT Act. Resultantly, I see no reason to interfere with the extension of the provisional attachment in respect of the properties of the petitioners in these writ petitions. The writ petitions fail, and are accordingly dismissed.

**A.K.JAYASANKARAN NAMBIAR**
**JUDGE**

prp/7/12/15