IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.15318, 15319, 17143 & 17144 of 2015

T.M.Ramalingam .. Petitioner in W.P.Nos.15318 & 17143 of 2015

M/s Bharaneedhars
Refineries Pvt. Ltd.,
represented by its Managing
Director T.M.Ramalingam
No.113, Palani Road
Ganapathipalayam South
Kolinjivadi Post
Dharapuram 638 673
Thirupur District, Tamil Nadu .. Petitioner in W.P.No.15319 of 2015

M/s Bharaneedhars
Refineries Pvt.Ltd.,
represented by its Director
T.M.Ramalingam
No.113, Palani Road
Ganapathipalayam South
Kolinjivadi Post
Dharapuram 638 673
Thirupur District, Tamil Nadu .. Petitioner in W.P.No.17144 of 2015

-vs-

1. The Deputy Commissioner
of Income Tax
Central Circle-II
63, Race Course Road
Coimbatore 641 018 .. 1st Respondent in W.P.Nos.15318 & 15319 of 2015 & sole Respondent in W.P.Nos.17143 & 17144 of 2015

2. The Commissioner of
Income Tax (Appeals)-18
Mahatma Gandhi Road
Nungambakkam
Chennai .. 2nd Respondent in W.P.Nos.15318 & 15319 of 2015

W.P.No.15318 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pursuant to the impugned Notice vide recovery proceedings File reference PAN: ADOPR7424C/CC-2/CBE/2015-16 dated 06.05.2015, passed by the first respondent and quash the same as illegal and arbitrary and consequently direct the second respondent to complete the appeal process in File reference PAN: ADOPR7424C/CC-2/CBE/2015-16 dated 06.05.2015 in a reasonable stipulated time frame.

W.P.No.15319 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pursuant to the impugned Notice vide recovery proceedings File reference PAN: AAECB3359A/CC-2/CBE/2015-16 dated 06.05.2015, passed by the first respondent and quash the same as illegal and arbitrary and consequently direct the second respondent to complete the appeal process in File reference PAN: AAECB3359A/CC-2/CBE/2015-16 dated 06.05.2015 in a reasonable stipulated time frame.

W.P.No.17143 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the file of the respondent and quash the Provisional Attachment orders vide in Proceedings No.ADOPR7424C/CC-2/CBE/2014-15 dated 25.02.2015.

W.P.No.17144 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records on the file of the respondent and quash the Provisional Attachment orders vide in Proceedings No.ADOPR7424C/CC-2/CBE/2014-15 dated 25.02.2015.

For Petitioners :: Mr.S.Feroz Khan

For Respondents :: Mr.T.Pramod Kumar Chopda
Senior Standing Counsel

ORDER

Mr.T.M.Ramalingam and M/s Bharaneedhars Refineries Private Limited represented by its Managing Director/Director Mr.T.M.Ramalingam are the petitioners in these four writ petitions. Writ Petition Nos.15318 & 15319 of 2015 have been filed challenging the impugned notices dated 6.5.2015 passed under Section 221(1) of the Income Tax Act, 1961 and Writ Petition Nos.17143 & 17144 of 2015 have been filed challenging the provisional attachment orders dated 25.2.2015 passed under Section 281B of the Income Tax Act, 1961 against both the individual and the company. Now it is represented that as against the original orders of assessment, the petitioners have filed nine appeals before the appellate authority viz., Commissioner of Income Tax (Appeals)-18, Chennai and that the department has also realized a sum of Rs.1,33,86,909/-, leaving the balance of Rs.23,87,948/-, in the meanwhile, pending disposal of the appeals.

2. The main grievance of the petitioners, while challenging the provisional attachment orders dated 25.2.2015 passed under Section 281B of the Income Tax Act, as advocated by the learned counsel for the petitioners, shows that immediately after conducting a search and survey at the premises on 31.12.2012, after seizing all the documents, the provisional attachment orders were issued by the income tax officials on the same day in respect of the bank accounts, at the first instance for sixty days. Subsequently, on 28.2.2013, the orders of attachment were extended for another six months. Again on the third occasion on 26.8.2013, the orders of attachment were extended for further six months. Again on 26.2.2014, the orders of attachment were extended for another one year. Yet again on 25.2.2015, the orders of attachment were extended for another 60 days. Totally, the provisional attachment orders were made to be in force for a period of 28 moths, namely, 2 years and 4 months, which is totally running contrary to Section 281B of the Income Tax Act. Therefore, the first contention of the petitioners is that a mere reading of Section 281B does not permit the income tax officials to continue the provisional attachment orders beyond a period of two years. Adding further, he has submitted that when the petitioners have been making number of representations to various income tax officials including the Commissioner of Income Tax, Central-II in Chennai to complete the assessments, as they had already filed the income tax returns in order to regularise the account, their efforts went in vain. On the other hand, the officials are showing more keenness to extend only the provisional attachment orders, as a result, the petitioner and his family are not in a position to operate the bank account, thereby the petitioner along with family members have been put to great prejudice and hardship. Again challenging the action taken by the assessing officer, he further submitted that questioning the correctness of the assessment orders passed on 31.3.2015, the petitioners have filed nine appeals before the Commissioner of Income Tax (Appeals)-18, namely, seven appeals by the individual Mr.T.M.Ramalingam in I.T.A.Nos.225/15-16 to 231/15-16 for the assessment years 2007-08 to 2013-14 and two appeals by the company in I.T.A.Nos.232/15-16 and 233/15-16 for the assessment years 2011-12 & 2012-13 respectively along with the stay applications for grant of stay of operation of the assessment orders. But the assessing officer, instead of following the various guidelines/instructions issued by the department not to proceed forcibly or coercively against the assessee during the pendency of the appeals, unmindful of the circular issued by the department, is keeping on extending the provisional attachment orders again and again violating Section 281B of the Act. Concluding his arguments,

he further submitted that as a result of the wrong provisional attachment orders passed repeatedly infringing the aforesaid provision of law, a sum of Rs.1,33,00,000/- has been realized. Ultimately, even if all the appeals are allowed, the hardship underwent by the petitioner together with family cannot be answered by the respondents. Hence, the approach adopted by the respondents for passing the assessment orders dated 31.3.2015 is fully untenable and unacceptable. Therefore, the officials are not right in realizing a huge sum of Rs.1,33,00,000/- from his bank account, thereby the entire provisional attachment orders repeatedly passed against the petitioner and his company should be set at naught with a further direction to the respondents to refund the money whatever realized till now to the petitioners.

3. In reply to the above contentions, Mr.T.Pramod Kumar Chopda, learned senior standing counsel for the respondents, urging this Court to dismiss the writ petitions, relying heavily on Section 281B, submitted that the proviso to the said section clearly answers the prayer against the petitioners that the Principal Chief Commissioner or the Chief Commissioner may, for the reasons to be recorded in writing, extend the period of provisional attachment, as he thinks fit, however, the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later. In the case on hand, when the assessment orders have been passed on 31.3.2015 by the respondent-assessing officer, the writ petitions questioning the validity of the provisional attachment orders cannot stand to any reason. Therefore, the contention made by the petitioners that the provisional attachment orders extending beyond the period of two years shall not be allowed to continue, is far from acceptance.

4. This Court finds merit in the submissions made by the learned senior standing counsel for the respondents. In this context, it is necessary to extract Section 281B of the Income Tax Act, as follows:-

> ''Provisional attachment to protect revenue in certain cases.
>
> 281B.(1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

Explanation.--For the purposes of this sub-section, proceedings under sub-section (5) of section 132 shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.''

5. A mere reading of the aforesaid proviso clearly shows that the submission made by the learned counsel for the petitioners does not carry any merit. Indeed, the proviso says that the period of extension of provisional attachment shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later. Since the provision of sixty days period after the order of assessment or reassessment whichever is later has been introduced by virtue of the amendment with effect from 1.10.2014, this Court is not able to find fault with the provisional attachment orders passed by the respondent-assessing officer. However, the learned senior standing counsel for the respondents also fairly submitted before this Court that when the department had already realized a sum of Rs.1,33,86,909/- leaving only the balance of Rs.23,87,948/- and since the petitioners also had already filed appeals along with the stay applications before the appellate authority, till the result of the appeals and stay applications, in all fairness, the respondents will not further proceed with regard to the realization of the balance amount. He has also further submitted that it may take at least a minimum of six months for the appellate authority to dispose of the appeals filed by the petitioners, as they were all filed only on 30.4.2015.

6. In reply, the learned counsel for the petitioners has requested this Court to expedite the hearing of the appeals filed by the petitioners and to dispose of the same as early as possible, for the reason that the maturity proceeds of the fixed deposits in the name of the company and individual have been completely adjusted towards the outstanding demand, as a result, the petitioner is not able to practically do any business.

7. That apart, as per Instruction No.1914 dated 2.12.93, the stay application filed before the assessing officer should be disposed of within a period of two weeks from the date of filing of the petition by the tax payer. But it appears that the petitioners have filed the stay applications only before the appellate authority. Even the guideline B(iii) of the Instruction No.1914 also states that the decision in the matter of stay of demand should normally be taken by the assessing officer and his immediate superior, therefore, the stay applications filed by the petitioners deserve to be taken up for hearing and disposed of within a period of two weeks from the date of receipt of a copy of this order. In view of the above, this Court, taking into account that a sum of Rs.1,33,86,909/- had been realized by the respondents during the pendency of the appeals along with the stay applications, hereby directs the appellate authority viz., the Commissioner of Income Tax (Appeals)-18, Chennai, the second respondent herein to take up the pending appeals in I.T.A.Nos.225/15-16 to 233/15-16 for final hearing and dispose of the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. It is made clear that since the stay applications are also pending, the respondents need not resort to any coercive proceedings against the petitioners including the realization of the balance amount of Rs.23,87,948/- till then. With the above direction, all the writ petitions are dismissed. Consequently, M.P.Nos.1 to 4 of 2015 are also dismissed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Commissioner
of Income Tax
Central Circle-II
63, Race Course Road
Coimbatore 641 018

2. The Commissioner of
Income Tax (Appeals)-18
Mahatma Gandhi Road
Nungambakkam
Chennai

+2 ccs to Mr.S.Ferozkhan, Advocate sr.30467

aa13/07/2015