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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.(MD).No.10885 of 2011
and
M.P.(MD).Nos.1 and 2 of 2011

M/s.Agasthiya Holdings Private Limited,
Kochi through its Authorised Signatory S.S.Sarma
having its Branch Office at Tuticorin
at Door No 36/1, Second Street, Muniasamypuram,
Kamaraj Salai 680 003,Tuticorin. ...Petitioner

Vs.

1.The Commissioner of Income Tax-I (1/C),
2.V.P.Rathinasamy Nadar Road,
Bibikulam, Madurai-2.

2.The Tax Recovery Officer,
Income Tax Office,
WGC Road, Tuticorin.

3.The Secretary Commissioner Registration,
Government of Tamilnadu,
St.George, Chennai.

4.The Sub-Registrar Joint I,
District Registrar Office,
Tuticorin.

5.J.Vivekavathi
6.J.Jeyasekar
7.J.Sampathkumar
8.J.Subramanian
9.J.Prakash
10.J.Shankar
11.D.Kalaiselvi ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for records of the impugned order passed by the first respondent in C.No.TRC/CIT-I/2010-11 dated 03/03/2011 and consequential orders passed by second respondent in T.R.No.31003 to 31009/TTN/10-11 dated 09.08.2011 and quash the same.

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For Petitioner :Mr.P.S.Sundaram
For Respondents 1 & 2 :Mrs.S.Srimathy
For Respondents 3 & 4 :Mr.S.Satheesh Kumar
Additional Government PleaderFor
Respondents 5,7 & 8 :Mr.S.Archuna
For Respondents 6,9,10 & 11 : No appearance

ORDER

The challenge in this writ petition is to the order dated 09.08.2011 passed by the second respondent namely, the Tax Recovery Officer in T.R.No.31003 to 31009/TTN/10-11 in and by which, the Recovery Officer has declared the sale in favour of the petitioner in respect of property situate at Door No.27, Toovipuram, 5th Street, Tuticorin under sale deed 18.06.2008 by the alleged defaulters as null and void, in view of the fact that the said property has been attached by the department for the income-tax arrears of the vendors as early as on 06.01.1988.

2.The second schedule of the Income-tax Act, 1961 provides for procedure for recovery of tax. One of the modes of recovery of tax is by attachment and sale of the defaulter's immovable property as per Rule 4 of the second schedule. Rule 11 provides for adjudication of claims made to the attachment or sale of, any property in execution of a certificate, issued by the Tax Recovery Officer. Rule 16 provides where a notice has been served on a defaulter under rule 2, the defaulter or his representative interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer. Rule 16 (2) reads as follows.

".....(2)*Where an Attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment,* ***shall be void as against all claims enforceable under the attachment****.*"

3.Rule 48 provides for attachment of the immovable property and Rule 50 provides for proclamation of attachment. The impugned order has been passed by the Tax Recovery Officer under Rule 16 (1) and (2). A reading of Rule 16 (1) and (2) would show that the Tax Recovery Officer has no power to declare the alienation as null and void. Accordingly, the impugned order is liable to be quashed and it is quashed. However, it is made clear that the department is at liberty to proceed against the properties of the defaulters which according to the department have been attached on 06.01.1988. It is open to the petitioner to approach the Tax Recovery Officer under Rule 11(1) claiming that this property is not liable for attachment. Once such claim is

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preferred, it is for the Tax Recovery Officer to adjudicate the sale of the property under Rule 11. If the claim is rejected, the aggrieved party has got a right to move the Civil Court to establish his right. The writ petition is accordingly allowed. Rule nisi is made absolute. However, the right of the department to proceed against the property on the basis of the attachment made on 06.01.1988, is protected with liberty to the petitioner to move the Tax Recovery Officer under Rule 11 seeking adjudication of his claim. No costs. Consequently, M.P(MD)Nos.1 and 2 of 2011 are closed.

Sd/-
Assistant Registrar(CS-III)

/ True Copy /

Sub Assistant Registrar(C.S.)

To:

1.The Commissioner of Income Tax-I (1/C),
2.V.P.Rathinasamy Nadar Road,
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2.The Tax Recovery Officer,
Income Tax Office,
WGC Road, Tuticorin.

3.The Secretary Commissioner Registration,
Government of Tamilnadu,St.George, Chennai.

4.The Sub-Registrar Joint I,
District Registrar Office, Tuticorin.

+1cc to M/S.S.SRIMATHY, Advocate SR.No.62943

+1cc to M/S.G.ANBU SARAVANAN, Advocate SR.No.62793

+1cc to Special Government Pleader, SR.No.62843

rmi/vsg
MAS/MR-KKR/SAR1:19.07.2017:3P-8C

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