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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 11440/2016

AXIS BANK LIMITED ..... Petitioner

Through: MKr. Abhinav Vasisht, Sr. Adv. with Ms. Diya Kapur and Ms. Manjira Dasgupta, Advs.

Versus

COMMISSIONER OF INCOME TAX & ORS. ..... Respondent

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel with Mr. Puneet Rai, Jr. Standing Counsel for R-1
Ms. Anuradha Dutt, Ms. Fereshte D. Sethna, Mr. Sachit Jolly, Mr. Gautam Swarup and Mr. Aamaya Pant, Advs. for R-4.
Mr. Ankur Sainghal, Adv. for R-5

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 30.01.2017

1. This Court had issued notice on 02.12.2016 recording as follows:

> *"3. Issue notice. Mr Ruchir Bhatia accepts notice on behalf of the Revenue – first respondent, Mr Ankur Saigal accepts notice on behalf of the respondent no. 5, i.e., Jaypee Sports International Limited.*
> *4. Issue notice to respondent no. 2, 3 and 4, returnable on 21.12.2016. In addition, service shall also be effected through e-mail by the court.*
> *5. The petitioner claims a direction to the revenue, i.e. the Commissioner of Income Tax forthwith to*

withdraw an order dated 29th/ 30th November, 2016 issued in the wake of the judgment of this Court in certain writ petitions, the drawings of Standby Letters of Credit (SBLC) has been restricted to the respondents' liability to deduct tax, from the amounts payable to M/s. Formula One World Championship Ltd. (FOWC). It is also stated that provisional attachment was issued on 01.12.2016. This order states as follows:

> *"13. The Axis Bank Ltd. has informed vide its letter Ref. No. AXIS/Noida/Jaypee/LC Extension/2 dated 26.05.2016 that the expiry date of the SBLCs has been extended as per the following details:*

S. No.	*SBLC No.*	*Amount in USD Million*	*New Date of Expiry*
1.	*0022FBG1 40003*	*15.45*	*1 Dec, 2016*
2.	*0022FBG1 30007*	*5.00*	*1 Dec, 2016*
1.	*0022FBG1 30006*	*10.00*	*1 Dec, 2016*
1.	*0022FBG1 30008*	*20.90*	*1 Dec, 2016*

> *14. In the given peculiar situation arising as a consequence of the reversal of the order of the Hon'ble AAR by the Hon'ble Delhi High Court by giving clear directions as to the taxability in India of the amounts received by FOWC from JSIL and in view of the efforts being made by FOWC to encash the above mentioned SBLCs and to thus alienate the only assets available in India to recover the eventual tax demand in the case of FOWC, I find it necessary and expedient to pass order*

u/s 281B of the Income Tax Act, 1961provisionally attaching the above consideration payable by the host (JSIL now amalgamated with M/s. Jayprakash Associates Ltd.) to the assessee (FOWC) till 31.05.2017 to safe guard the interest of Revenue in the matter as provided in the Second Schedule for which prior approval has been accorded by the Ld. Commissioner of Income Tax, International Taxation-3, New Delhi vide her office letter F.No. CIT(IT)-3/281B/2016-17/1379 dated 01.12.2016. It is further to clarify that the amount payable to FOWC through the above mentioned four SBLCs or any other financial instruments is provisionally attached as per provisions of Section 281B in the manner as provided in the Second Schedule of Income Tax Act during the operation of this order."

6. The Court is of the opinion that in the light of the judgment delivered on 30.11.2016 in WP(C) 9509/2016, WP(C) 10307/2016 and WP(C) 10145/2016, the order impugned and the attachment appear to be prima facie warranted in law. In the light of this order, the Court is of the opinion that the petitioner's bank is obliged to honour the direction of attachment by the Revenue and not to release any amount pursuant to the SBLCs as well as any consequential instruments and acts which would effectuate the commitments there under pending crystallization of the actual amounts by the revenue, till further orders. Directed accordingly.

> *7. Counsel for the revenue states that the actual amounts would be indicated in an appropriate consequential order within two weeks under Section 195 of the Income Tax Act, 1961 and till further orders in these proceedings.*
> *8. List on 21.12.2016.*
> *9. Dasti, under the signature of the Court Master."*

2. Later proceedings indicate that the Income Tax authorities had stated that they would require some more time to decide the issue under Section 195(2) of the Income Tax Act, 1961 (' the Act'). This Court is informed by Mr. Ruchir Bhatia that proceedings under Section 195(2) of the Act were completed on 27.01.2017 by an order which has determined that a sum of USD 13.65 millions is payable as TDS. It is also stated that a draft assessment order has been made in respect of other income in the hands of FOWC and the amount so quantified is USD 31.69 millions.

3. Learned counsel for the parties submit that the FOWC, the Revenue and J.P. Associates have filed SLP before the Supreme Court which were listed today (against the judgment of this Court dated 30.11.2016).

4. Mr. Vashisht, the learned counsel for the petitioner urged that the order under Section 281B, which is the subject matter of the present proceedings, cannot be sustained. It is stated that the amounts payable under the SLBCs arose in the course of an independent

contract which has no relationship with the *inter se* transaction between the FOWC and J.P. Associates, and therefore the impugned order cannot sustain. He relied upon the ruling - *Power Curber International Ltd. v. National Bank of Kuwait S.a.k.* [1981] 1 W.L.R. 1233. In the present case, the orders impugned by the petitioner – dated 29.11.2016 and 01.12.2016 were made by the Income Tax authorities by invoking Section 281B of the Act which reads as follows:

> *"281B. Provisional attachment to protect revenue in certain cases*
>
> *(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 Chief Commissioner or Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.*
>
> *(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 Chief Commissioner or Commissioner 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 provided further that where an application for settlement under section 245C is made, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of Section 245 D is made shall be excluded from the period specified in the preceding proviso."*

5. In the present case, while it is true that the petitioner bank might possibly be liable to pay the amounts on demand to the foreign banker, i.e., the Correspondent Bank, at the same time, Section 281B empowers the Revenue to make a provisional determination for attachment of property, in order to protect its interests. The injunction of a Local Court enjoining the issuing bank from release of amount by letter of credit to the Correspondent Bank, was an issue considered by the judgment of the Court of Appeal, on which the petitioner relies. The Court of Appeal in that case held that the primary liability of the issuing bank to honour its commitment under the Letter of Credit, could not be undermined. In the present case, however, Section 281B is in the nature of a garnishee order which authorises the Revenue to protect its interest and ensure that amounts which are payable otherwise to parties but which might also fall to use to satisfy the Revenue's liabilities, are secured. In these circumstances, having regard to the fact that the AO has made his determination under Section 195(2) and also indicated a draft assessment order, and more importantly having regard to the fact that entire matter is seized of by the Supreme Court, this Court is of the opinion that no further order or proceedings would be appropriate.

6. The writ petition is accordingly dismissed.

7. All rights and contentions of the parties in respect of the order made by the AO are, obviously reserved.

S. RAVINDRA BHAT, J

JANUARY 30, 2017/acm **NAJMI WAZIRI, J**