IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5330 OF 2018

Xrbia Hinjewadi Developers Pvt. Ltd.
Through its authorized representative .. **Petitioner**
VERSUS
Union of India through its Secretary & Ors. .. **Respondents**

WITH
WRIT PETITION NO. 5331 OF 2018

Xrbia Developers Ltd. Through
its authorized representative. .. **Petitioner**
VERSUS
Union of India through its Secretary
& Ors .. **Respondents**

....

Mr. Akshay Petkar for petitioner.
Mr. Sham Walve for respondent Nos. 2 & 3.
Ms. Saloni Kapadia I/b Cyril Amarchand Mangaldas, for respondent No. 4.

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CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, JJ.
DATE : 29 JUNE, 2018

P.C. :-

On 22nd June, 2018 we passed the following common order in both the petitions:-

"1. Both these petitions under Article 226 of the Constitution of India challenge the two independent orders both dated 30th January, 2018 passed by the respondent no. 2 – Joint

Commissioner of Income Tax under Section 132(9B) of the Income Tax Act, 1961 (the Act). The two impugned orders, inter alia, provisionally attach the petitioner's fixed deposits with banks and investments in mutual funds. This for the purposes of protecting the interest of the Revenue, consequent to a search operation.

2. The grievance of the petitioner on merits of the reasons recorded, leading to the two impugned orders passed under Section 132(9B) of the Act, we were at this stage prima facie not inclined to interfere, bearing in mind it is made at the investigation stage and is subject to consideration during assessment proceedings. However, we find substance in the petitioner's alternate grievance that inspite of their making an offer to secure the Revenue by substituting the fixed deposit receipts and its mutual fund investment with unencumbered immovable property, the Respondents are refusing to accept the same. It is the case of the petitioner that the fixed deposit receipts and the mutual funds investments are liquid assets and required for the day to day running of its business. Mr. Godbole, learned Counsel appearing for the petitioner pointed out that the value of immovable property which is being offered for attachment is much more than the aggregate of fixed deposit receipts and the mutual fund investments which have been attached by the Revenue.

3. Mr. Godbole, learned Counsel appearing in support of the petition also invites out attention to the decision of this Court in Gandhi Trading Vs. Commissioner of Income Tax, 239 ITR 337 wherein while interpreting Section 281B of the Act, which is *pari materia / similar to Section 132(9B) of the Act had held that a provisional attachment to protect the interest of the Revenue pending assessment should ideally be as far as possible of immovable properties and not a fixed deposits and bank accounts. The Court also observed that the power of attachment is a drastic power and where the interest of the Revenue can be protected by attaching immovable property, attachment of bank accounts and trading assets should not be resorted to. The Court observed that attachment under Section 281B of the Act should not be equated with attachment in the Course of the recovery proceedings. We are of the, prima facie, view that the observations made by our Court in Gandhi Trading (supra) would apply with equal force to Section 132(9B) of the Act.*

4. Mr. Walve, learned Counsel appearing for the Revenue seeks time to take instructions. This in view of the binding decision of this Court in Gandhi Trading (supra).

5. Parties are put to notice that it is likely that the Petition may itself be disposed of finally at the stage of admission.

6. Stand over to 28th June, 2018."

2. Mr. Walve learned Counsel appearing for the revenue on instructions states that, the revenue would refer the petitioner's fixed deposits with banks and investment in Mutual Fund provisionally attached under Section 132 (9B) of the Income Tax Act, 1961 as the same is being substituted by attachment of

immovable properties offered by the petitioners.

3. Learned Counsel for the parties states that, the petitioner had submitted a proposal dated 28th June, 2018 to the respondents setting out immovable properties to be substituted for the fixed deposits with the banks and investment in Mutual Fund. Mr. Walve on instructions informs us that the above proposal dated 28th June, 2018 has been accepted by revenue. The copies of the proposals dated 28th June, 2018 filed by the petitioner's and which has been accepted by the revenue is taken on record and marked 'A-1' and 'A-2' for identification (one for each of the two petitions).

4. In view of the statement made on behalf of the revenue, Mr. Petkar learned Counsel appearing for the petitioner's withdraws the two petitions.

[SANDEEP K. SHINDE, J.] **[M.S. SANKLECHA, J.]**

Shubham