IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

Writ Petition Nos.30061 30067 & 30086 of 2018
and
W.M.P.Nos.35075, 35082 & 35099 of 2018

M/s.Bell Tower Enterprises LLP
A Limited Liability Partnership
Represented by its Partner
Mr.P.Anand
having its office at
No.87, Dr.Alagappa Road, A-3
Maruti Apartments, Purasaiwalkam
Chennai - 600084 ... Petitioner in W.P.Nos.30061 & 30067 of 2018

M/s. Sayso Exim Private Limited
A Private Limited Company
Represented by its Director
Mr.I.Prabhakaran
having its office at
56 A/1, Pilliyar koil street, Tondiarpet,
Chennai - 600081 ...Petitioner in W.P.No.30086 of 2018

vs.

1. The Deputy Director of Income Tax (Inv) -4(1)
Investigation Wing
46/108, Nungambakkam High Road
Chennai - 600034. ...1st Respondent in W.P.Nos.30061, 30067 & 30086 of 2018

2. M/s. HDFC Bank Ltd.
No.2, P.S.Sivaswamy Salai,
Chennai - 600004. ...2nd Respondent in W.P.No.30061 of 2018

3. M/s.IndusInd Bank Ltd.,
New No.5/6, Old No.3/2,
Swethambar Building,

Bazullah Road, T.Nagar,
Chennai - 600017. ...3rd Respondent in W.P.No.30061 & 2nd Respondent in W.P.No.30086 of 2018

4. M/s Karur Vysya Bank Ltd.,
Teynampet Branch
568, Ground Floor,
KVB Towers, Anna Salai,
Teynampet,
Chennai - 600018. ... 4th Respondent in W.P.No.30061 & 3rd Respondent in W.P.No.30086 of 2018

Prayer in W.P.No.30061/2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in F.No:DDIT/U-4(1)/SCL/132(9B)/2017-18/4 in issuing the warrant for attachment of properties under Section 132(9B) of the Income Tax Act, 1961 dated 07.02.2018 and quash the same as illegal, arbitrary and devoid of merit and consequently direct the first respondent to lift the attachment of the bank accounts of the petitioner lying with the second, third and fourth respondents.

Prayer in W.P.No.30067/2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in F.No:DDIT/U-4(1)/SCL-BTELLP/132(9B)/2017-18/1 in issuing the warrant for attachment of properties under Section 132(9B) of the Income Tax Act, 1961 dated 26.02.2018 and quash the same as illegal, arbitrary and devoid of merit and consequently direct the respondent to lift the attachment of the lands belonging to the petitioner.

Prayer in W.P.No.30086/2018: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in F.No:DDIT/U-4(1)/SCL/132(9B)/2017-18/1 in issuing the warrant for attachment of properties under Section 132(9B) of the Income Tax Act, 1961 dated 07.02.2018 and quash the same as illegal, arbitrary and devoid of merit and consequently direct the first respondent to lift the attachment of the bank accounts of the petitioner lying with the second and third respondents.

For Petitioners in all the W.Ps. : Mr.R.Sivaraman

For 1st Respondents in all the W.Ps. : Mr.A.P.Srinivas
Standing Counsel

For 2nd Respondent in W.P.No.30061/2018 : Mr.C.Mohan for King & Partridge
Standing Counsel

COMMON ORDER

All these writ petitions are filed challenging the attachment of properties under section 132(9B) of the Income Tax Act, 1961.

2. In W.P.No.30061/2018, the first respondent, by way of the impugned proceedings dated 07.02.2018, attached three bank accounts held by the petitioner. In W.P.No.30067 of 2018, the impugned order dated 26.02.2018 attached the immovable properties of the petitioner. In W.P.No.30086 of 2018, the impugned order dated 07.02.2018, attached the bank account held by the petitioner therein.

3. The petitioner in W.P.Nos.30061 and 30067 of 2018 is one and the same, whereas the petitioner in W.P.No.30086 of 2018, is a different person. Since these writ petitions are filed challenging the provisional order of attachment made under section 132(9B) of the Income Tax Act,1961, passed by the first respondent, without seeking any relief against the other respondents/Banks and considering the fact that these writ petitions can be disposed of, based on the pleadings raised by the petitioner and the contesting first respondent alone, more particularly, when the other respondents/banks are arrayed only as formal parties, notice to those respondents are dispensed with.

4. The case of the petitioners is that the impugned attachment proceedings are illegal and liable to be quashed as they do not have legs to stand after the expiry of a period of six months from the date of the order, as contemplated under sub-clause 9C of Section 132 of the Income Tax Act, 1961. Therefore, it is contended by Mr.Sivaraman, learned counsel for the petitioner that the impugned orders are liable to be set aside, since the Bank officials are not allowing the petitioners to operate the respective bank accounts and to deal with the immovable properties, which are the subject matter of attachment in W.P.Nos.30061, 30067 and 30086 of 2018. Learned counsel for the petitioner, after inviting this Court's attention to section 132(9B) and (9C) of the Income Tax Act, thus, submitted that the impugned orders are to be declared illegal.

5. A separate counter affidavit is filed in each case. Though the counter affidavit has dealt with in detail as to the circumstances under which the impugned order of attachment came to be passed, this Court is not inclined to refer to those contentions, for the simple reason that point to be considered in these writ petitions is as to whether these impugned provisional attachment orders have any life after the period of

six months from the date of the order, in view of the specific period of its effectiveness as provided under section 132(9C). Answer to the above question raised by the petitioners is available in the counter by stating that the provisional attachment of the bank accounts and on the properties referred therein under section 132(9B) ceased to have effect after a period of six months which was on 07.08.2018 and 25.08.2018 respectively and thus, no action is required to be taken as the given section does not mandate issue of any certificate and the provision of Income Tax Act, 1961 are in the public domain.

6. Per contra, the learned counsel appearing for the first respondent submitted that since sub-section 9C of Section 132 is in clear and categorical terms refers that every provisional attachment made under sub section 9B of section 132, shall cease to have effect after the period of six months from the date of the order, the very prayer sought for in these writ petitions have become infructuous.

7. Heard both sides.

8. Though these writ petitions are filed to quash the impugned provisional attachment orders made under Section 132 (9B) of the Income Tax Act, 1961, as illegal, arbitrary and devoid of merits with the consequential prayer for a direction to the first respondent to lift the attachment of the bank accounts, this Court is not inclined to go into the merits of the impugned attachment and find out as to whether such attachment was validly made or not, for the simple reason that considering such question does not arise now, since, as on today, the very impugned attachment itself ceased to have effect after the expiry of a period of six months from the date of the said order in view of Section 132(9C), which reads as follows:

> (9C)Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B).

9. It is admitted by the learned counsel appearing for the first respondent that so far no fresh attachment is made under any other provision of Income Tax Act in pursuant to the impugned attachment proceedings. When such being the factual position, the fact remains that the impugned attachment proceedings have already become infructuous, as the time for its existence namely six months has already expired on 07.08.2018 and 25.08.2018, as admitted by the first respondent himself in the counter.

10. Therefore, without expressing any view on the

correctness or otherwise of the order impugned in these writ petitions, these writ petitions are disposed of by observing that the impugned attachment proceedings ceased to have any effect on and from 07.08.2018 and 25.08.2018 respectively as contemplated under section 132(9C) of the Income Tax Act, 1961. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

vsi/sni

To

1. The Deputy Director of Income Tax (Inv) -4(1)
Investigation Wing
46/108, Nungambakkam High Road
Chennai - 600034.

+3cc to Mr.R.Sivaraman, Advocate SR.No.83597

+1cc to Mr.King & Partridge, Advocate SR.No.82722

+1cc to Mr.A.P.Srinivas, Advocate SR.No.82668

W.P.No.30061, 30067 & 30086 of 2018

GMY(14/12/2018)