IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM :
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.562 of 2019
and W.M.P.No.570 & 571 of 2019

M/s.Shantiniketan Ashraya,
Represented by Prabhat Kamal Gupta,
Partner,
No.1, City Link Road,
Adambakkam,
Chennai 600 088. ... Petitioner

Vs.

1.Principal Commissioner of Income Tax - 10
121, M.G.Road,
Nungambakkam,
Chennai 600 034.

2.Assistant Commissioner of Income Tax,
Non-Corporate Circle - 14 (1)
Room No.606, 6th Floor,
Annex Building,
121, M.G.Road,
Nungambakkam,
Chennai 600 034. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the Second Respondent contained in its order bearing NCC-14(1)/ACIT/281B/2018-19 issued under Section 281B of the Income Tax Act, 1961, for PAN:ABWFS7833A, for assessment year 2016-17, dated 28.12.2018 and all proceedings in furtherance thereof, and to quash the same.

For Petitioner : Mr.Suhrith Parthasarathy

For Respondents: Mr.J.Narayanasamy,
Senior standing counsel

O R D E R

This Writ Petition is taken up for final hearing even at the stage of admission, on the joint request of Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner and Mr.J.Narayanasamy, learned senior standing counsel for the Revenue.

2. The Writ Petitioner is a partnership firm engaged in the business of development of Real Estate. In respect of assessment year 2016-2017, the petitioner filed a return of income and thereafter, revised return of income claiming deduction under Section 40(a)(i a) of the Income Tax Act, 1961 (in short the 'Act'). The return was taken up for detailed scrutiny and after exchange of notices and explanations, the assessment was completed by order dated 28.12.2018, passed under Section 143(3) of Income Tax Act, 1961 by the 2nd respondent. The assessment raises a demand of Rs.1,63,37,841/- towards tax Rs.19,60,541/- towards surcharge; Rs.5,48,951/- towards Cess; Rs.58,46,907/- towards interest on the default in payment of advance payment under section 234B and Rs.32,895/- towards interest under section 234D and has been challenged by way of appeal filed on 25.01.19 before the Commissioner of Income Tax (Appeals).

3. While this is so, the petitioner is in receipt of an order under Section 281 B of the Act also dated 28.12.2018, attaching immovable property admeasuring (1)10454 sq.ft. in S.No.269 (2)34373 sq.ft. in S.No.274/1(part), (3)37991 sq. ft. in S.No.271/2(part), (4)9148 sq. ft. in S.No.317, (5)8278 sq. ft. in S.No.318/1, (6)4356 sq. ft. in S.No.318/2A and (7)30928 sq. ft. in S.No.318/2B in all totaling 135528 sq.ft at Thaiyur Village, Chengalpet Taluk, Kancheepuram District, at No.1, City Link Road, Adambakkam, Chennai 600 028 for a period of six months from 28.12.2018 to 27.06.2019. The petitioner is a builder and the property attached comprises its stock-in-trade. The attachment of the building project has, according to the petitioner, caused it severe hardship and prejudice and thus the petitioner has approached this Court praying for issuance of a Writ of Certiorari calling for the records of the Second Respondent contained in its order bearing NCC-14(1)/ ACIT/281B/2018-19 issued under Section 281B of the Income Tax Act, 1961, for PAN:ABWFS7833A, for assessment year 2016-17, dated 28.12.2018 and all proceedings in furtherance thereof, and to quash the same.

4.The learned counsel for the petitioner has assailed the impugned order on various grounds. He submits that the ingredients of Section 281 B require a notice to be issued to the assessee prior to the attachment. In any event, the provision is itself liable to be invoked only in a case where the department is able to establish that the assessee will thwart the collection of the demand. In the present case, there is absolutely no material available with the department to indicate or to lead them to such a conclusion. In such circumstances, the impugned order of attachment is contrary to law and liable to be reversed immediately. He relies, in this connection, on a decision of the Division Bench of the Bombay High Court in the case of Gandhi Trading Vs. Assistant Commissioner of Income Tax and others ((1999) 239 ITR 337).

5. The Revenue has filed a brief counter affidavit dated 19.01.2019 to the effect that the Writ Petition is misconceived and only in the event of the petitioner paying the entire dues can the provisional attachment be raised, as the assessee does not have any other asset or valuables to recover the dues of the Revenue.

6. Thus, according to the department, the provisional attachment has been made to protect the interests of the revenue and, as such, would have to continue till such time the petitioner has made good the disputed income tax demand. Moreover, the petitioner has itself filed letter dated 25.01.2019 before the Assessing Officer requesting that the impugned attachment be lifted to facilitate its business operations and undertaking to deposit a sum of Rs.49,47,745/-, being 20% of the disputed tax demand within a period three working days.

7. Learned standing counsel for the revenue points out specifically that the petitioner has stated in the letter that it has issued instructions to their Advocate to withdraw the present Writ Petition notwithstanding which, the petitioner is before this Court pursuing the same.

8. Heard learned counsel for both parties. Section 281 B of the Act is a provision that is intended to protect the interests of the Income tax Department and is to be invoked in the course of assessment proceedings. In the present case, both the impugned order under section 281 B as well as the order of assessment itself, are dated 28.12.2018. Mr.Narayanaswamy states, in this regard, that the impugned order was passed a few hours prior to the finalization of the order of assessment, on the same day. I let that rest, at that.

9. In the present case, the demand raised pursuant to the order of assessment dated 28.12.2018 is challenged in appeal before the Commissioner of income tax (Appeals) vide appeal filed on 25.01.2019. The petitioner has also filed a letter on 25.01.2019 before the assessing officer the contents of which are as follows:

> 'With reference to the above, we hereby request for a stay on payment of taxes demanded vide assessment order

u/s 143(3) dated 28/12/2018 for the above assessment year and for the provisional attachment order as referred to above.

1. We bring to you notice and place on record that due to the provisional attachment u/s 281B our business has come to a standstill and we are under severe pressure from apartment owners who are demanding registration of the property. Besides we are unable to sell any space to potential buyers due to inability to grant registration of UDS. As it is we are battling recessionary conditions and this handicap will strangle our business. We request you to take a sympathetic view and grant a stay of recovery proceedings.

2. We shall be filing the appeal against the said order of assessment before the Commissioner of Income Tax - Appeals, Chennai on 25.01.2019. Our attempt to file the same got delayed due to system error, however the Fee of Rs.1,000/- has been paid (filed on 25/1/19).

3. We have issued instructions to our advocates to withdraw the Writ Petition filed in High Court of Madras, copy enclosed.

4. We are arranging to deposit a sum of Rs.49,47,745 being 20 per cent of the total tax demand within 3 working days.

We request you to consider our petition for stay favourably and also lift the attachment of the Land vide order under Sec.281B dated 28.12.2018, at the earliest.'

Both learned counsel concur on the position that though arguments have been raised on behalf of the petitioner as well as the respondent on the legality or otherwise of the impugned order under section 281, a quietus may be given to the matter by directing the petitioner to remit some portion of the disputed dues to sufficiently protect the interests of the revenue, pending disposal of the first appeal filed by the petitioner before the Commissioner of Income tax (Appeals).

11. As per the Schedule, the impugned provisional attachment covers the property situated at No.1, City Link Road, Adambakkam, Chennai, under the name and style of 'Shantiniketan Altair' comprising 414 apartments. 362 apartments have been sold and 52 remained unsold. As against the number of apartments remaining unsold, the petitioner has, as on date, confirmed the sales of nine (9) apartments that are pending registration. According to the learned counsel for the Petitioner, the value of the nine apartments as aforesaid is approximately Rs.1.2

crores in total. Each apartment thus is valued at a sum of approximately, Rs.13.5 lakhs. Mr.Narayanaswamy does not dispute this valuation.

12. A list of twenty (20) apartments containing details such as (i) the apartment number (ii) value of the apartment (iii) provision for registration and stamp duty and (iv)area of the apartment has been circulated in respect of the forty three (43) apartments remaining unsold as below:

No. of Apts.	Apt #	Area	Apt. Value @ Rs.3100 Psft	Prov. For Regn. & Stamp Duty @ Rs.350 Psft	Total value @ Rs.3450 Psft
1	A-208	488	1,512,800	170,800	1,683,600
2	A-227	488	1,512,800	170,800	1,683,600
3	A-327	488	1,512,800	170,800	1,683,600
4	A-402	544	1,686,400	190,400	1,876,800
5	A-404	544	1,686,400	190,400	1,876,800
6	A-406	488	1,512,800	170,800	1,683,600
7	A-428	488	1,512,800	170,800	1,683,600
8	A-429	488	1,512,800	170,800	1,683,600
9	A-436	544	1,686,400	190,400	1,876,800
10	A-442	488	1,512,800	170,800	1,683,600
11	A-444	488	1,512,800	170,800	1,683,600
12	A-446	488	1,512,800	170,800	1,683,600
13	A-448	488	1,512,800	170,800	1,683,600
14	A-450	488	1,512,800	170,800	1,683,600
15	B-113	636	1,971,600	222,600	2,194,200
16	B-134	636	1,971,600	222,600	2,194,200
17	B-142	488	1,512,800	170,800	1,683,600
18	B-213	636	1,971,600	222,600	2,194,200
19	B-231	544	1,686,400	190,400	1,876,800
20	B-234	636	1,971,600	222,600	2,194,200

13. Upon concurrence expressed by both learned counsels under instructions from their respective clients, and without

adverting to the legal contentions raised by the parties, the following directions are issued:

(i) The petitioner will deposit a sum of Rs.50,00,000/- (Rupees fifty lakhs only) to the department.

(ii) Upon receipt of the sum of Rs.50,00,000/- as above, the Department will restrict the present attachment under section 281 B to the flats in S.Nos.1 to 20 of the tabulation set out in paragraph 12 above along with the undivided share of land in relation thereto.

14.Upon satisfaction of the above conditions, there shall be no further proceedings for recovery undertaken by the income tax department till the disposal of the petitioners' first appeal.

15.The Writ Petition is disposed of in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sai

To

1.The Principal Commissioner of Income Tax - 10
121, M.G.Road, Nungambakkam,
Chennai 600 034.

2.The Assistant Commissioner of Income Tax,
Non-Corporate Circle - 14 (1)
Room No.606, 6th Floor, Annex Building,
121, M.G.Road, Nungambakkam,
Chennai 600 034.

+1cc to Mr.Arun Karthik Mohan, Advocate, S.R.No.16329
+1cc to Mr.J.Narayanaswamy, Advocate, S.R.No.17177

W.P. No.562 of 2019

JP(CO)

rrs 01/03/2019