IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.06.2019

DATE OF DECISION : 28.06.2019

CORAM
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.Nos.9435 and 9439 of 2019
and
W.M.P.Nos.10013 and 10018 of 2019

M/s.Ram Krishan Kulwant Rai Holdings Pvt. Ltd.,
A Private Limited Company,
represented by its Director,
Mrs.Rupal Rai,
having its office at
6/13, North Avenue,
Kesava Perumalpuram,
Chennai-600 028. ..Petitioner in both writ petitions

Vs.

1.The Tax Recovery Officer,
Central-2,
121, Mahatma Gandhi Road,
Chennai-600 034.

2.The Assistant Commissioner of Income Tax,
Central Circle-2(3),
Chennai-600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle-2(3),
Chennai-600 034.

4.Principal Commissioner of Income Tax, Central-2,
Income Tax Department, 3rd Floor,
46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ..Respondents in both writ petitions

W.P.No.9435 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus or any appropriate writ calling for the records on the file of the 1st respondent in issuing Form No.ITCP 16 in T.R.C.No.79/CR-2/2017-18 dated 28.11.2017 relating to the

Assessment Year 2009-10 and quash the same as arbitrary, illegal and devoid of any merit and consequently direct the first respondent to lift the order of the attachment of the immovable properties of the petitioner and pass further or other orders as this Court may deem fit and necessary.

W.P.No.9439 of 2019 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified mandamus or any appropriate writ calling for the records on the file of the first respondent in issuing Form No.ITCP 16 in TR No.79/CR-2/2017-18 & 8 to 14/C-2/2016-17 dated 9.3.2017 relating to the assessment years 2007-08 to 2013-14 and quash the same as arbitrary, illegal and devoid of any merit and consequently direct the first respondent to lift the order of attachment of immovable properties of the petitioner and pass further or other orders as this Court may deem fit and necessary.

For Petitioner : Mr.R.Sivaraman in both W.Ps

For Respondents : Mr.A.N.R.Jaya Prathap,
Junior Standing Counsel
in both W.Ps.

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COMMON ORDER

This common order will dispose of both these writ petitions.

2 Mr.R.Sivaraman, learned counsel on record for writ petitioner in both these writ petitions and Mr.A.N.R.Jaya Prathap, Junior Standing Counsel (Income Tax) on behalf of all the four respondents in both these writ petitions are before this Court.

3 With consent of learned counsel for both sides, main writ petitions were taken up, heard out and the same are being disposed of.

4 Before this court sets out the facts, it is deemed pertinent to make it clear that this common order is a consent order. In other words, both learned counsel, i.e., counsel for writ petitioner and Revenue counsel submitted in unison that these two writ petitions may please be disposed of by passing a workable via media order without hammering out the legal issues that arise in these two writ petitions. Therefore, in this common order, this court will not be dealing with the legal issues that arise in the cases on hand and returning findings on the same.

5 Owing to this being a consent order, short facts shorn of elaboration, particulars and details will suffice. In other words, factual matrix in a nutshell imperative for appreciating this consent order will suffice and the same runs as follows :

(a) Both these writ petitions arise under the 'Income Tax Act, 1961' ('IT Act' for brevity).

(b) Assessment year which forms subject matter of these two writ petitions is 2009-10 and the same shall be referred to as 'said AY' for the sake of brevity, clarity and convenience. Writ petitioner in both these writ petitions is the same and it is a private limited company incorporated in India. In other words, writ petitioner is a juristic person.

(c) On 30.06.2016, the Assessing Officer passed an assessment order under Section 143 of IT Act. This assessment order for the writ petitioner Assessee is for said AY.

(d) Dissatisfied with the assessment order, writ petitioner filed a statutory appeal under IT Act to the Income Tax Commissioner (Appeals) and the appellate authority dismissed writ petitioner's appeal vide order dated 11.01.2018.

(e) Writ petitioner carried the matter further by way of a further statutory appeal to 'Income Tax Appellate Tribunal' ('ITAT' for brevity).

(f) ITAT vide order dated 29.10.2018 allowed the writ petitioner's appeal. In other words, the ITAT passed an order in favour of writ petitioner qua said AY and this order of ITAT is dated 29.10.2018.

(g) In the interregnum, i.e., between aforesaid assessment order dated 30.06.2016 and dismissal of appeal by first appellate authority on 11.01.2018, first respondent in these writ petitions, i.e., jurisdictional Tax Recovery Officer issued a notice dated 28.11.2017 bearing reference T.R.C.No.79/CR-2/2017-18 (hereinafter 'impugned order' for brevity).

(h) Suffice to say that impugned order was passed by first respondent under Rule 48 of the Second Schedule to the IT Act by treating the writ petitioner as an Assessee in default within the meaning of section 220(2) of IT Act.

(i) Vide impugned order, three immovable properties belonging to writ petitioner were attached. In other words, writ petitioner was prohibited / restrained from transferring or creating any charge qua three immovable properties. To be noted, a perusal of the impugned order reveals that there are two items of properties, i.e., item No.1 and item No.2, but item No.2 is in two parts, i.e., Part-I and Part-II and therefore, this Court refers to the properties covered under the impugned order as three immovable properties. Prior to the impugned order, first respondent had passed another order under the same set of provisions with regard to one immovable property belonging to writ petitioner and the same is situate in Tiruvotriyur. This order is dated 09.03.2017, it refers to assessment years from 2007-08 to 2013-14 and it refers to a sum of Rs.64,50,76,086.00.

(j) There is no disputation before this Court that Tiruvotriyur property also belongs to writ petitioner, but there is no liability qua writ petitioner in a sum of Rs.65,50,76,086/- for assessment years 2007-08, 2008-09 and 2010-11 to 2013-14. To be noted, said AY is 2009-10. This was clarified and respondents also accept the position that this attachment of Tiruvotriyur property is incorrect as aforesaid Rs.64,50,76,086.00 said to be payable for assessment year 2007-08 to 2013-14 pertains to another juristic person, i.e., another entity, which goes by the name 'RKKR Holding P. Ltd'.

(k) To be noted, three immovable properties which have been attached under impugned order are situate in Mylapore and therefore, the same shall be referred to as 'Mylapore properties' and the immovable property which has been attached under aforesaid order dated 09.03.2017 is situate in Tiruvotriyur and therefore, the same shall be referred to as 'Tiruvotriyur property'. This is for the sake of convenience and clarity.

(l) It is also not in dispute that the assessment qua said AY which was ultimately held in favour of writ petitioner assessee by ITAT is one where the tax liability is about Rs.37 Crores.

(m) This Court is informed that the value of Mylapore property is in the region of Rs.300 Crores and the value of Tiruvotriyur property is in the region of Rs.100 Crores.



6 Having set out necessary facts, as already mentioned supra, this being a consent order, it will suffice to capture the trajectory of the hearing in a nutshell.

7 Learned counsel for writ petitioner contended that respondents have statutory obligation under the IT Act to give effect to the ITAT order and therefore, both the attachments,

i.e., attachment of Mylapore properties under impugned order and attachment of Tiruvotriyur property are liable to be set aside. Case laws were also pressed into service, but this Court is not adverting to the same as this is a consent order.

8 Per contra, Revenue counsel submitted that the Revenue has filed a statutory appeal in this court (against ITAT order) on 09.04.2019 vide SR.No.49495/2019.

9 This Court also notices that instant writ petitions have been filed on 25.03.2019 and this Court has issued notice on 01.04.2019. In other words, the statutory appeal has been filed by Revenue in this court after filing of these two writ petitions and after this court had issued notice on 01.04.2019. Be that as it may, it is not necessary to delve further into these aspects in the light of this being a consent order.

10 Though obvious, for the purpose of clarity, it is set out that statutory appeal filed by Revenue in this court is under Section 260A of IT Act.

11 In reply, learned counsel for writ petitioner, adverting to case laws that were pressed into service, submitted that this court has held that even if the Tax Case Appeal had been numbered and entertained, that by itself would not make the petitioner Assessee in default on account of fact that the entire tax liability stands wiped out by order of ITAT.

12 For the limited purpose of capturing the hearing, it is deemed appropriate to set out a case law pressed into service by writ petitioner, i.e., Coromandel Oils (P.) Ltd. Vs. Tax Recovery Officer-1, Co. Range-1, Chennai reported in (2016) 74 taxmann.com 32 (Madras).

13 As already mentioned supra, this Court is not embarking upon the exercise of any discussion of case laws as this is a consent order. In other words, no view is expressed and no finding is returned on these rival submissions in this order.

14 After some hearing on aforesaid lines, both learned counsel agreed for a via media consent order and the same is as follows :

(a) Impugned order being T.R.C.No.79/CR-2/2017-18, dated 28.11.2017 is set aside and attachment qua Mylapore properties stands lifted.

(b) Attachment of Tiruvotriyur property vide notice dated 09.03.2017 bearing reference T.R.C.No.79/CR-2/2017-18 & 8 to 14/C-2/2016-17 will continue to operate.

(c) Revenue shall take steps to process tax case appeal filed vide SR No.49495/2019 dated 09.04.2019, get the same numbered and bring it on board for admission, as expeditiously as possible.

(d) Though obvious, it is made clear that attachment of Tiruvotriyur property by 09.03.2017 order will depend on finality of tax case appeal vide SR.No.49495/2019 dated 09.04.2019.

(e) It is open to writ petitioner to approach the respondents with a request to lift attachment qua Tiruvotriyur property also even before finality of tax case appeal by providing adequate alternate security, which will cover the tax liability of Rs.37 Crores with other attendant accumulations thus far. If writ petitioner approaches the respondents with such request, Revenue counsel, on instructions, submits that the same will be considered by adopting a pragmatic approach. In other words, this order will not impede the petitioner taking action in this direction and respondents doing the needful in this regard.

15 Both these writ petitions stand disposed of on above terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Tax Recovery Officer,
Central-2,
121, Mahatma Gandhi Road,
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46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.54567

W.P.Nos.9435 and 9439 of 2019

CNR(CO)

RRS(13/08/2019)