IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.09.2019

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THE HONOURNABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.14023 of 2019
and
W.M.P.Nos.14078 & 14080 of 2019

6th Sense Infrastructure Pvt.Ltd.,
represented by its Director, N.Nandakumar
No.6, Dr.TV Naidu Road, Chetpet,
Chennai - 600 031. ...Petitioner

Vs.

1. The Director General of Income Tax(INV),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai - 600 034.

2. The Principal Director of Income tax (INV)
The Director General of Income Tax(INV),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai - 600 034.

3. The Additional Deputy Director of Income Tax (INV)
Unit-4, New No.46, Old No.108,
Nungambakkam High Road,
Chennai - 600 034.

4. The Deputy Director of Income Tax (INV)
Unit-4(1), Investigation Wing (Room No.115, 1st Floor)
New No.46, Old No.108,
Nungambakkam High Road,
Chennai - 600 034.

5. The Deputy Commissioner of Income Tax,
Central Circle-2(3), Room No.126,
Investigation Building,
46, Mahatama Gandhi Road,
Nungambakkam,
Chennai - 600 034.
(5th respondent impleaded as
per order of this Court in WMP.No.22997/2019
dated 13.09.2019) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the respondents culminating in the order of the 4th respondent bearing No.F.No.DDIT/U-4(1)/SCL-BTELLP/132(9B)/2017-18/1 dated 26.02.2018 and quash the same as illegal, arbitrary.

For Petitioner : Mr.L.Maithili

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel for Income Tax

O R D E R

Heard both sides.

2. This Writ Petition is filed challenging the order of the 4th respondent dated 26.02.2018 and for a direction to the respondents to return the seized documents.

3. The order impugned is warrant for attachment of properties under section 132(9B) of the Income Tax Act, 1961.

4. The case of the petitioner in short is as follows:

The State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) allotted 11.12 acres of land situated at New Plot No.H3, Old Plot No.D1-D5, D25, D26 comprised in S.F.No.76 Part of Egattur Village, Kanchipuram District and given the same on 99 years lease under Lease Deed dated 11.05.2005 for the purpose of Software Development, Health Care Record Management and Knowledge Process Outsourcing. On 02.08.2005, the petitioner took possession of the premises and constructed a building complex. During the year 2016, the petitioner Company was unable to commercially exploit the subject property and a group of shareholders of the petitioner Company belonging to the family of one Dinesh Chand Surana wanted to exist the business and offered their shares to the remaining shareholders. He took temporary custody of the Original Lease Deed, Share Certificates and other documents to find suitable buyers for total exit by all shareholders. The petitioner received summon dated 13.02.2018 under section 131 of Income Tax Act, 1961 to appear in person before the 4th respondent. On 22.02.2018, the petitioner appeared before the 4th respondent wherein the petitioner was informed that the following documents were seized from the premises of third party.

a. Lease deed in Original vide document number 4729 dated 11.5.2005 registered with SRO, Thiruporur;

b. Allotment letter dated 16.2.2004 issued by SIPCOT in favour of 6th Sense Infrastructure Pvt.Ltd;

c. Possession handing over document dated 2.8.2005 executed by SIPCOT in favour of 6th Sense Infrastructure Pvt.Ltd.

d. Original Share Certificates issued by the Company in favour of its sharesholders;

e. Undated, incomplete, signed MOU.

The fourth respondent directed the petitioner to produce the details of the shareholders of the Company. The very next day, the petitioner handed over those details. However, the impugned order of attachment dated 26.02.2018 was issued by the 4th respondent without putting the petitioner on notice. The petitioner through letter dated 15.04.2019 requested to revoke the attachment and return the seized documents. Since the said request was not considered, the present writ petition is filed.

5. The 4th respondent filed a counter affidavit.

6. Though several facts and circumstances are narrated in the affidavit filed in support of the writ petition which has culminated into issuance of warrant for attachment of properties, I am not inclined to go into any of those contentions and express any view for the simple reason that the very impugned order of attachment, as admitted by the 4th respondent in his counter affidavit, ceased to have effect after the period of six months which was on 25.08.2018. In other words, as per section 132(9C) of the said Act, the provisional attachment made under Section 132(9B) of the said Act automatically ceased to have effect after the expiry of a period of six months from the date of the order referred to in sub-section 9B. Therefore, it is admitted by the 4th respondent that the order of attachment, impugned in this writ petition, ceased to have effect after 25.08.2018. When such being the factual and legal position, I am of the view that the first limb of the prayer in this writ petition has become infructuous.

7. While coming to the other limb of the prayer, namely for return of the seized documents, it is the case of the respondents that those documents were not seized from the hands of the petitioner and on the other hand, they were seized during the course of search in the case of one V.K.Sasikala and others and therefore, the petitioner is not entitled to seek return of those documents. It is also contended by the learned Senior Standing Counsel for the respondents that the assessment proceedings is still going on and therefore, the prayer sought for in this writ petition for return of the documents cannot be considered.

8. It is not the case of the petitioner that the documents sought to be returned have been recovered from the premises of the petitioner and on the other hand, it is the case of the Revenue that they were recovered from the premises of one

V.K.Sasikala and others during search operation. Therefore, this Court is of the view that the petitioner is not entitled to seek for return of those documents which are not seized from its premises, more particularly, when it is stated that the assessment proceedings are still going on and not completed.

9. Considering the above stated facts and circumstances, this Court is of the view that the petitioner is also not entitled to the other limb of the prayer made in this writ petition. Accordingly, the Writ Petition is dismissed on the reason that the period of the impugned order of attachment has already expired on 25.08.2018 and that the petitioner is not entitled for return all the seized documents when the assessment proceedings is still going on. No costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi

To

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+1cc to M/s.L.Maithili Associates, Advocate Sr.79548
+1cc to Mr.A.P.Srinivas, Advocate Sr.78902

W.P.No.14023 of 2019

vd[co]
srg 30/09/2019