BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.03.2019
CORAM
THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD) No.1268 of 2014
and
M.P.(MD).Nos.1 & 2 of 2014

1.The Commissioner of Income Tax-1,
Income Tax Office,
No.44, Williams Road,
Cantonment, Trichirappalli-01.

2.The Income Tax Officer,
Ward-I(2), No.16B
Chinna Andal Koil Road, Karur. ... Appellants/Respondents

-vs-

T.Senthil Kumar ... Respondent/Writ petitioner

PRAYER: Appeal is filed under Clause 15 of Letters Patent, to set aside the order dated 25.06.2014 in W.P.(MD)No.1455 of 2014 on the file of this Court.

Prayer in WP(MD)No. 1455/ 2014 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus call for the records of the 2nd respondent in P.A.No.AVQPS22344J/I(2)/KRR dated 26/11/2013 corrigendum order issued on 2.12.2013 quash the same and further direct the respondents to lift the attachment order made U/s.281 B of the Income-Tax Act.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.N.Shanmugaselvam

JUDGEMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

The Revenue has filed this writ appeal against the order of the learned Single Judge dated 25.06.2014, whereby, the learned Single Judge allowed the writ petition filed by the Assessee against the provisional attachment of the property, namely residential flats, in which, the Assessee was carrying on his business.

2. The provisional attachment order under Section 281B of the Income Tax Act, 1961 (hereinafter referred as "the Act") was issued on 29.10.2013, soon after the notices under Sections 147 and 148 of the Act for the Assessment Years 2011-12 and 2012-13 were issued. The said provisional attachment of the property was challenged by the Assessee on the ground that neither any notice was issued under Section 143(2) of the Act nor an assessment order was passed raising any demand.

3. Mr.N.Dilip Kumar, learned counsel for the appellant submitted that Section 281B of the Act provides for provisional attachment of the property of an Assessee against whom order has been issued in order to protect the interest of the revenue and such provision permits the provisional attachment of the property even before the assessment is framed. He further submitted that once the notice for reassessment was issued to the Assessee on 24.10.2013, the provisional attachment order was issued immediately, namely on 29.10.2013 and therefore, the learned Single Judge has erred in quashing the same.

4. The learned counsel for the respondent, Mr.N.Shanmugaselvam, submitted that the Tax Recovery Officer was not justified in issuing the provisional order of attachment of the residential flats, as the Assessee, who was engaged in the business of real estate, was completely crippled due to the attachment order, which was passed without raising any demand against the assessee as on that date and therefore, the provisional attachment was bad in law. He further submitted that after the writ petition was allowed by the learned Single Judge, the Assessee had sold all the residential flats in question and the reassessment orders were also passed by the Commissioner of Income Tax for three assessment years, out of which, notices were issued for the assessment years 2011-12 and 2012-13 on 25.10.2013 and notice was issued for the assessment year 2013-14, on 31.03.2015, against which, the Assessee has preferred appeals and the same are pending before the Commissioner of Income Tax (Appeals).

5. The learned counsel for the appellant does not dispute the facts of subsequent reassessment orders passed by the learned Commissioner of Income Tax dated 31.10.2015 for the three assessment years in question and he further submitted that huge demands have been made against the assessee and against these demands dated 31.10.2015, appeals have been filed by the assessee and they are also pending before the Commissioner of Income Tax (Appeals).

6. We have heard the learned counsel on both sides and also perused the records.

7. Section 281B of the Act is quoted below for ready reference:

"Provisional attachment to protect revenue in certain cases:

> ***281B:*** *(1)Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the [Assessing] Officer if of the opinion that for the purpose of protecting the interests of the revenue, it is necessary so to do, he may, with the previous approval of the [Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director], by the manner provided in the Second Schedule.*
>
> *(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section(1)."*

8. A bare perusal of the provision of Section 281B of the Act would reveal that it provides for a provisional attachment of the property of the Assessee to protect the interest of the revenue, during the pendency of other proceedings for assessment or reassessment. The requirement of passing of the final order or reassessment order before issuing attachment under this provision is not envisaged in this section. Section 281B of the Income Tax Act, 1961 is akin to attachment before judgment provided under Order 38 of the Civil Procedure Code, where an attachment of the property of the defendant can be made even at any stage of suit, in order to protect the interest of a decree holder, when such decree is passed, later on.

9. The Provisions contained under Sections 220 to 232 of the Act, are different from the provisions in Chapter XXIII of the Income Tax Act, 1961, which deals with 'Miscellaneous' in Sections 281 to 298. The provisions in Chapter XXIII under the head 'Miscellaneous' assist in the effective implementation of the other provisions of the Act. Therefore, the learned Singe Judge, with great respect, appears to have erred in holding that provisional attachment under Section 281B of the Act also could not be made without serving a Notice for Demand under Section 156 of the Act. To this extent, the contention of the learned counsel for the appellant/Revenue deserves to be accepted and the order under appeal deserves to be set aside.

10. As far as the recovery of dues from the Assessee is concerned, since reassessment orders have already been passed by the Assistant Commissioner of Income Tax on 25.10.2013 and 31.03.2015 against which, first appeals are also pending before the Commissioner of Income Tax (Appeals), the parties are left free to have their respective course in those proceedings and the same is not required to be interfered with in any manner by this Court.

11. Therefore, the writ appeal filed by the revenue/Income Tax Department is partly allowed only to the extent indicated above. There shall no order as to costs.

Sd/-

Assistant Registrar (AS)

/ True Copy /

Sub Assistant Registrar(CS)

+1 CC to M/s.N.DILIP KUMAR, Advocate(SR-57539[F] dated 28/03/2019)

+1 CC to M/s.N.SHANMUGA SELVAM,Advocate(SR-57904[F]dated 29/03/2019)

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VS / kpl
ES/SP/26.04.2019/4P/3C