IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision : 2.12.2019

CM-18138-2019 in/and CWP-31069-2019 (O&M)

Vera Developers Pvt.Ltd. ...Petitioner

vs.

Central Board of Direct Taxes, North Block, New Delhi and others ...Respondents

CM-18134-2019 in/and CWP-32683-2019 (O&M)

Rakesh Kumar and ors. ...... Petitioners

vs.

Central Board of Direct Taxes, North Block, New Delhi and others ...Respondents

CM-18143-2019 in/and CWP-32702-2019 (O&M)

M/s. R.K.City Developers Pvt. Ltd. ...Petitioner

vs.

Central Board of Direct Taxes, North Block, New Delhi and others ...Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Pankaj Jain, Sr. Advocate with
Mr. Sachin Bhardwaj, Advocate
for the petitioner.

Mr. Rajesh Katoch, Sr. Standing counsel with
Ms. Pridhi Jaswinder Sandhu, Advocate
for the applicants-respondent(s).

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AJAY TEWARI, J. (Oral)

CM-18132-2019 in CWP-32683-2019

This is an application seeking exemption from filing certified copy of Annexure R-1 and permission to file true copy thereof.

For the reasons recorded in the application, the same is allowed.

CM-18137-2019 in CWP-31069-2019

This is an application seeking exemption from filing certified copy of Annexure R-6 and permission to file true copy thereof.

For the reasons recorded in the application, the same is allowed.

CM-18141-2019 in CWP-32702-2019

This is an application seeking exemption from filing certified copy of Annexure R-1 and permission to file true copy thereof.

For the reasons recorded in the application, the same is allowed.

CM-18134-2019 in CWP-32683-2019
CM-18138-2019 in CWP-31069-2019
CM-18143-2019 in CWP-32702-2019

These application have been filed seeking exemption of the

Pr. Commissioner of Income Tax (Central), Ludhiana from personal appearance before this Court on 2.12.2019 as directed vide order dated 16.11.2019.

For the reasons recorded in the applications, the same are allowed.

Main cases

On the last date the following order was passed :-

*"**CWP-32683-2019 and CWP-32702-2019***

Notice of motion to the respondent No.9 at this stage.

On the asking of the Court, Ms. Preeti Jaswinder Sandhu, Jr. Standing counsel accepts notice on behalf of respondent No.9

Counsel for the petitioners undertakes to supply a copy of the paper book to the opposite counsel during the course of the day.

Main cases

By these three petitions (pertaining to the same group) the petitioners have challenged the provisional attachment of 1300 flats by the Revenue. On 25.10.2018 a search under Section 132 of the Income Tax Act, 1961, was conducted in the business premises of the petitioners (i.e. almost 375 days ago) and after analysing of seized documents alongwith findings of search detailed in appraisal report which was received in the office of Deputy Commissioner of Income Tax, Central Circle-2, Ludhiana, the impugned provisional attachment of property was sought. As per the proposal for provisional attachment the Deputy Commissioner Income Tax mentioned that a sum of Rs. 22 crores odd was unaccounted under different heads (in all the three petitions).

The precise grievance of the petitioners is that on this material its entire stock in trade of 1300 flats which are in various stages of the development could not be provisionally attached

However, by the provisional attachment order great prejudice has been caused to the petitioners. Even those flats which were fully paid cannot be transferred; those allottees who were paying installments have stopped paying the same; some allottees have dragged the petitioners to Real Estate Regulatory Authority (RERA); some have initiated insolvency proceedings; and because of the complete gridlock in the business the lenders are proposing to initiate proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

On the other hand, the contention of the learned counsel for the respondent No.9 is:-

1. *Firstly, the statute empowers provisional attachment.*
2. *Secondly, the assessment has to be completed by 30.9..2020 and therefore the Revenue cannot be arm twisted for speeding up the procedure.*
3. *Thirdly, the figures mentioned in the provisional attachment may vary.*

He has relied upon the judgment of High Court of Delhi passed in ***Nimitya Properties Ltd. vs. Commissioner of Income Tax and other*** *reported as* ***(2010) 322 ITR 0688*** *whereas per him, in a similar case provisional attachment of stock in trade was upheld.*

We find that the facts are completely dis-similar. In that case one property each of the two petitioners was attached and not their entire stock in trade.

On the last date, we had requested the learned counsel for the respondent No.9 to indicate whether after this more than one year, the Revenue can give us a ball park figure or at least the maximum figure which it may ultimately feel that it would have to recover, but beyond relying upon the abovesaid three arguments, he states that it is not possible for the Revenue to quantify the figures before completion of the assessment.

In our opinion, it is a stark case. Is the Revenue ultimately going to end up killing the goose which may lay a *golden egg ? By the time the Revenue in its own leisurely manner and its own leisurely pace finalize the assessment, there is a strong possibility that all the assets may become compromised. There may be different orders passed by the RERA, by the Insolvency Court and under the Securitization provisions; and all because even after one year and the material mentioned above the Revenue is not able to quantify even the tentative amount which may be involved. We are inclined to allow these petitions on these grounds but we deem it appropriate to give 10 days more time to Revenue to work out some figures so that some reasonable attachment can be made. It may be mentioned here that the counsel for the petitioners has repeatedly stated that the petitioners are willing to suffer provisional attachment of any reasonable amount but its entire business can not be hamstrung in this manner.*

Adjourned to 2.12.2019.

Let the Principal Commissioner of Income Tax, (Central) Ludhiana appear in person on that date.

A photocopy of this order be placed on the files of other connected case(s)."

Today again learned counsel for the respondents seeks an adjournment. Even the PCIT (Central) Ludhiana has sought and been granted exemptions from appearance. We find this situation intolerable. In the circumstances, the petitions are disposed of with a direction that the provisional attachment would be to the extent of Rs.45 crores (as against the proposals for provisional attachment where it was mentioned that a sum of Rs.22 crores odd was unaccounted under different heads (in all three petitions)).

Since the main cases have been decided, the pending application if any also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

2.12.2019
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No