IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.14087 of 2017
and
W.M.P.No.15300 of 2017

K.S.Thirumalaivasan, Proprietor,
M/s.Maruthi Electrical Engineers,
No.B-6, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 32
running a Company M/s.Krishna Energy Pvt Ltd.,
184/2, SIDCO Industrial Estate,
Thirumuduvakkam, Chennai - 44
Rep.by his son T.Gokula Krishnan ... Petitioner

Vs

1. The Assistant Commissioner,
   Income Tax Business Circle -V (I/C)
   Chennai.

2. The Income Tax Recovery Officer-VIII,
   Range-V, Chennai - 34.

3. The Chairman, TANGEDCO (TNEB)
   No.144, Anna Salai, Chennai - 2.

4. The General Manager/Superintending Engineer,
   Tirunelveli Electricity Distribution Circle,
   TANGEDCO, Maharaja Nagar,
   Tirunelveli - 627 011

5. M/s.Babu Energy Private Limited,
   No.83 B, Nadu Street, Kanchipuram,
   Rep.by its Director A.B.Subramania Sah

6. M/s.Prakash Powers Private Limited,
   No.87, Gandhi Road, Kanchipuram,
   Rep.by its Director, K.T.Prakash Sah. ... Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Mandamus, directing the 1st and 2nd respondents to cancel and lift the Notices dated 30.04.2012 and 02.11.2012 respectively issued by them under

Section 226(3) of Income Tax Act, 1961 in respect of the petitioner's PAN/G.I.R.No.AAEPT1716C so as to enable the 3rd and 4th respondents to effect name transfer in respect of two windmills - 250KW WEGs of WINCON make assigned with WEG HT SC Nos.2455 & 2531 with infrastructure respectively situated in SF No.244/3(P) and SF No.244/4(P), Poigai Village, Thenkasi Taluk, Tirunelveli District and in SF No.246/2(P) & SF No.246/3(P) North West of Poigai Village, Thenkasi Taluk, Tirunelveli District in favour of 5th and 6th respondents along with consequential benefits.

For Petitioner	:	Mr.Palani Selvaraj
For Respondents R1 & R2	:	Mr.A.P.Srinivas Senior Standing counsel [For Income Tax]
R5 & R6	:	Mr.G.Baskar and Mr.M.P.Senthilkumar
R3 & R4	:	No appearance

ORDER

The relief sought for in the present writ petition is for a direction to direct 1st and 2nd respondents to cancel and lift the Notices dated 30.04.2012 and 02.11.2012 respectively issued by them under Section 226(3) of Income Tax Act, 1961 in respect of the petitioner's PAN/G.I.R.No.AAEPT1716C so as to enable the 3rd and 4th respondents to effect name transfer in respect of two windmills - 250KW WEGs of WINCON make assigned with WEG HT SC Nos.2455 & 2531 with infrastructure respectively situated in SF No.244/3(P) and SF No.244/4(P), Poigai Village, Thenkasi Taluk, Tirunelveli District and in SF No.246/2(P) & SF No.246/3(P) North West of Poigai Village, Thenkasi Taluk, Tirunelveli District in favour of 5th and 6th respondents along with consequential benefits.

2. The petitioner is the representative of the original assessee and admittedly, the original assessee is the tax defaulter. Search and seizure under Section 132 of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] was conducted.

3. The learned counsel for the petitioner made a submission that the reassessment proceedings were initiated under Section 153A of the Act and final order of reassessment was passed. The matter went up to Income Tax Appellate Tribunal [hereinafter referred to as 'ITAT'] and the ITAT considered the grounds

raised by the original assessee and set aside the order of reassessment and remitted the matter back to the Assessing authority for fresh consideration. Therefore, as of now, there is no demand and thus, the attachment notice is liable to set aside. The attachment may be effected only in the presence of tax demand and in the present case, the reassessment order was set aside with reference to the Assessment years 2008-09 and 2009-10 by the ITAT. Thus, as of now, there is no tax demand due and thus, the notice of attachment is liable to be set aside.

4. The learned counsel appearing on behalf of the respondents 5 and 6 states that the respondents 5 and 6 are the bonafide purchasers of the Wind Mills belonged to the original assessee, who was the tax defaulter and they have purchase the Wind Mills by way of public auction from the Bank concerned, who was the secured creditor. Therefore, the interest of the bonafide purchasers are to be protected.

5. In this regard, the learned counsel for the respondents 5 and 6 drawn the attention of this Court with reference to Schedule II Rule 4 of the Act, which contemplates Mode of Recovery. Accordingly, the Income Tax Department may appoint a receiver for the Management of defaulters movable and immovable properties as the Wind Mill is the running business. In support of the petitioners, they have contended by stating that the assessment orders were quashed by the ITAT and as of now, there is no demand of tax. Thus, the attachment notice issued cannot be sustained, in view of order of attachment issued to the garnishee, cannot be sustained as the procedures contemplated under Schedule II Rule 4 of the Act for appointing a receiver has not been followed.

6. Even under Section 226 of the Act, the attachment notice issued cannot survive as there is no demand as of now and therefore, the writ petition is to be allowed.

7. At the outset, it is contended that the respondents 5 and 6 are innocent buyers and their interest is to be protected.

8. The learned Senior Standing counsel appearing on behalf of the Income Tax Department, objected the contentions raised both by the petitioner as well as by the respondents 5 and 6 and referred the additional counter affidavit filed by the Assistant Commissioner of Income Tax, Central Circle (1), Chennai - 34. The first respondent has clearly stated that there was a search operation in the case of Shri.K.S.Thirumalaivasan on 11.10.2012. Accordingly, 153A, assessments were initiated for the A.Ys.2007-08 to 2012-13 on 22.11.2013 and Notice under Section 143(2) of the IT Act was issued on 29.09.2014 for the A.Y.2013-14, being the search year. The assessee had filed a writ petition before

the Hon'ble High Court in W.P.No.41407 of 2016, seeking stay of the assessment proceedings and restoration of the assessments with Settlement Commission. The Hon'ble High Court had earlier stayed the assessment proceedings vide order dated 25.11.2016. The order dated 17.04.2021, the Hon'ble High Court had dismissed the writ petition of the assessee and accordingly, assessment proceedings were re-initiated for all the seven assessment years involved. For the A.Y.2013-14, the search assessment was completed on 28.06.2021, computing a taxable income of Rs.31,85,43,486/- and a consequential demand of Rs.20,58,49,118/-. For the A.Ys 2008-09 and 2009-10, the ITAT set-aside assessments had merged with the 153A assessments and the same are also on the verge of completion along with the A.Ys 2007-08 and 2010-11 to 2012-13. ITAT had not deleted the additions for the A.Ys 2008-09 and 2009-10 in order to term as “No demands” are outstanding. The assessee had sought further time to submit certain details, in connection with the pending 153A assessments and the same is awaited. Demands are also likely to be raised for the balance assessment years 2007-08 to 2012-13.

9. Relying on the above facts and circumstances, the learned Senior Standing counsel reiterated that the proceedings are pending before the authority competent and the ITAT passed the order, remitting the matter back for considering the issues afresh and pass orders. Therefore, the issues have not reached finality and it is stated that the documents are also likely to be raised for the balance AYs 2007-08 to 2012-13.

10. The learned counsel for the respondents 5 and 6 raised a point that the property attached is a running Wind Mill and the Wind Mill will incur expenditures for generation of electricity. Therefore, the Income Tax Department ought to have invoke the provisions of Schedule II Rule 4 of the Act. However, in the present case, no such receiver has been appointed.

11. This Court is of the considered opinion that ITAT set aside the order of assessment and remitted the matter back. Subsequently, the proceedings are in progress. The additional counter affidavit filed by the first respondent would reveal that the assessee had sought for further time to submit certain details in connection with the pending 153A proceedings and the same is awaited. Therefore, the petitioner assessee has to submit certain details for the purpose of completion of proceedings and further, stated that the demands are likely to be raised for the balance Assessment Years. Thus, the proceedings are yet to complete and in progress and the Income Tax Department is awaiting for the details to be submitted by the assessee as per his request. Under these circumstances, if necessary, the first respondent has to consider, invoking

Schedule II Rule 4 of the Act for the purpose of appointing a Commissioner. The necessity or otherwise are also to be considered in the interest of the assessee as well as the third party buyers namely the respondents 5 and 6.

12. As far as the relief sought for in the present writ petition is concerned, though the respondents 5 and 6 claims that their interests is to be protected, the writ petition is filed by the tax defaulter to quash the attachment notice and therefore, no relief needs to be granted for the respondents 5 and 6. As far as the petitioner is concerned, admittedly, he is a tax defaulter and the reassessment proceedings are pending and the petitioner had sought for to submit certain details in connection with the 153A of the Act. Therefore, in a writ petition filed by a tax defaulter, against whom, Section 153A proceedings are pending, the Court cannot grant the said relief. As far as the respondents 5 and 6 are concerned, it is for them to seek appropriate remedy in the manner known to law.

13. In this view of the fact, the petitioner is not entitled for the relief as such sought for in the present writ petition and the petitioner has to participate in the reassessment proceedings in progress under Section 153A of the Act and should co-operate with the Assessing authority for early completion, in order to resolve the issues by availing the opportunities to be provided.

14. With this liberty, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner,
   Income Tax Business Circle -V (I/C)
   Chennai.

2. The Income Tax Recovery Officer-VIII,
   Range-V, Chennai - 34.

3. The Chairman, TANGEDCO (TNEB)
   No.144, Anna Salai, Chennai - 2.

4. The General Manager/Superintending Engineer,
Tirunelveli Electricity Distribution Circle,
TANGEDCO, Maharaja Nagar,
Tirunelveli - 627 011

+1cc to Mr.Palani Selvaraj, Advocate, S.R.No.38213
+2ccs to Mr.G.Baskar, Advocate, S.R.No.38159
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.37664

W.P.No.14087 of 2017

CA(CO)
HS(31/08/2021)