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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition Nos.5196 & 5199 of 2020

Mr.Mohamed Abdul Majid,
S/o. Abdul Majid Ahmed ...Petitioner in W.P.No.5196/2020

Mr.Faheem Moosa
S/o.Moosa Ahmed ...Petitioner in W.P.No.5199/2020

Vs.

1. The Commissioner of Income Tax-B,
BSNL Building (Tower II),
Greams Road,
Chennai – 600 006.

2. The Assistant Commissioner of Income Tax,
Non-Corporate Circle – 12,
BSNL Building (Tower II),
Greams Road,
Chennai – 600 006.

3. The Tax Recovery Officer,
Room No.209, 2nd Floor,
BSNL Building (Tower II),
Greams Road, Chennai – 600 006.. ... Respondents in both W.Ps.

Common Prayer: Writ Petitions filed under Section 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned attachment

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proceedings of the 3rd respondent in TRC No.5/TRO-8/CHE/2017-18 dated 03.06.2019 and 06.06.2019 in Form No. ITCP.16 and quash the same and further direct the respondents to remove the charge and lift the attachment created in respect of the petitioner share in the immovable property at No.1, Cathedral Garden Road, Nungambakkam, Chennai – 600 034 and at No.16, Cenotaph 2nd Lane, Teynampet, Chennai – 600 018 respectively marking a copy to the Joint Sub Registrar – II, Thousand Lights, Central Madras, No.5/9, K.B.Dasan Road, Chennai – 18 and Joint Sub Registrar – I, Thousand Lights, Central Madras, Chennai – 14 respectively.

For Petitioner : Mr.Ramasamy Meyyappan
[in both W.Ps.]

For Respondent : Mrs.Hema Muralikrishnan
[in both W.Ps.] Senior Standing Counsel

COMMON ORDER

Since the issue in both the writ petitions is common, with the consent of learned counsel appearing for both sides, these writ petitions are heard together and are disposed of by this common order.

2. In respect of Assessment Year 2015-2016, orders of assessment were passed on 29.12.2017 by the Revenue under the provisions of the Income Tax Act, 1961 [in short, "the Act"].

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3. Those orders, when were challenged before this Court, the said Assessment Orders were set aside and the matter was remitted back to the Assessing Authority for reconsideration, by the orders of this Court dated 22.04.2021.

4. However in the meanwhile on 03.06.2019, pursuant to the demand of payment of tax and as a part of the recovery proceedings, the Revenue has issued the orders of attachment, under which, the immovable property belongs to the petitioners were sought to be attached. Challenging those attachment orders, the present writ petitions have been filed.

5. Heard Mr.Ramasamy Meyyappan, learned counsel appearing for the petitioner, who pointed out that, when the very Assessment Orders itself were set aside on 22.04.2021, the present attachment orders, which are impugned herein will not stand in the legal scrutiny. Therefore on that ground itself, those orders of attachment are liable to be set aside.

6. However, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents/Revenue would submit that, even

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though the earlier orders were set aside by the orders of this Court dated 22.04.2021, pursuant to the remand made in this regard, after completing the re-exercise of assessment, the Revenue passed Assessment Orders once again on 25.03.2022. This time the quantum of tax due is comparatively huge i.e., more than 24 Crores, therefore, there is a every justification on the part of the Revenue to retain or sustain the attachment order dated 03.06.2019 otherwise, if the attachment is lifted for the aforestated reasons as projected by the petitioners' side, the petitioners may encumber the properties belongs to them, which is subject matter of the attachment proceedings. The purpose of attaching the property for recovering the tax due from the point of Revenue would be defeated. Therefore, learned Senior Standing Counsel seeks indulgence of this Court, not to interfere with the impugned order.

7. I have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

8. As has been pointed out by the learned counsel appearing for the petitioner, the Assessment Orders dated 29.09.2017 for whatever reasons were set aside by the orders of this Court dated 22.04.2021, thereafter

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pursuant to the remand order, the Assessing Authority once again process the assessment and only now i.e., 25.03.2022, fresh Assessment Orders have been passed.

9. However, in the meanwhile on 03.06.2019, itself the impugned attachment orders have been passed of-course pursuant to the Assessment Order dated 29.12.2017 as part of the recovery proceedings. The moment the original Assessment Orders were set aside by the orders of this Court dated 22.04.2021, this Court feel that, the impugned attachment orders will have no independent legs to stand, as it is only a consequential proceedings for recovering the tax due pursuant to the Assessment Orders.

10. In that view of the matter, this Court feels that insofar as these impugned attachment orders are concerned, which are liable to be interfered with and the same can be set aside on the afore-stated reasons, i.e., the setting aside of the earlier Assessment Orders by the orders of this Court dated 22.04.2021.

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11. No doubt subsequently on 25.03.2022, re-assessment orders were issued. However, pursuant to the present Assessment Orders, it is open to the Revenue to invoke the recovery proceedings by issuing similar attachment against the same property or any other property belong to the petitioners, but that will not give raise to retain the present impugned orders as a continuous recovery mechanism. Therefore, this Court has no hesitation to hold that the impugned orders are liable to be set aside.

12. In that view of the matter, this Court is inclined to pass the following orders:

- The impugned orders are set aside. However, setting aside of these orders will not preclude the Revenue to proceed with the recovery of tax due pursuant to the latest re-assessment orders dated 25.03.2022 and in this context, it is further open to the Revenue to proceed with the recovery, if they are advised to do so, for which, the attachment proceedings as that of the present one dated 03.06.2019 can very will be issued against the petitioners in respect of the same properties or any other property belong to them.

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13. With these observations and directions, both these writ petitions are disposed of. No costs.

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Index : Yes/No
Internet : Yes/No
mp

To

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