IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.10.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.Nos.24176 & 24180 of 2021 and
WMP.Nos.25503, 25505, 25506, 25509, 25513, 25515 & 25517 of 2021
and WMP.Nos.25042 & 25045 of 2022

M/s.Aadhi Enterprises Private Limited,
Represented by its Director,
Mr.Maneesh Parmar,
1-30, Perambur Barracks Road,
Pattalam, Pattallam Road,
Chennai-600 112. ... Petitioner in both WPs

Vs

1.Principal Commissioner of Income Tax,
Central-1,
Chennai-600 034.

2.Assistant Commissioner of Income Tax,
Central Circle 3(1), Chennai,
3rd Floor, Investigation Building,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... R1 & R2 in both WPs

3.Additional/Joint Commissioner of Income Tax,
Central Range-3,
New No.46, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

4.M/s.Kotak Mahindra Bank,
Represented by its Branch Manager,
Kilpauk Branch,
Door No.127, 1-A, Balfour Jade Tower 27,
Chennai-600 010.

5.Commissioner of Income Tax (Appeals)-18,
3rd Floor, Investigation Building,
No.46 (Old NO.108), Mahatma Gandhi Road,
Chennai-600 034. ... R3 to R5 in WP.No.24176 of 2021

6.The Sub-Registrar,
No.100, Santhome High Road,
Chennai 600 004. ... R3 in WP.No.24180 of 2021

PRAYER in WP.No.24176 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd Respondent DIN: ITBA/COM/F/17/2021-22/1036294005(1) in issuing the impugned notice under Section 226(3) of the Income Tax Act, 1961 dated 11.10.2021 for the AY 2016-17 as illegal, arbitrary and devoid of merit and consequentially direct the 2nd Respondent to refund the amount appropriated from the Petitioner's fixed deposits to the extent of Rs.15,93,21,138/- being over and above 20% of the total disputed tax demand pending disposal of the stay petition before the 1st Respondent.

PRAYER in WP.No.24180 of 2021: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent contained in DIN:ITBA/COM/F/17/2020-21/1030721149(1) in issuing the impugned order under Section 281B of the Income Tax Act, 1961 (hereinafter referred to as the Áct') dated 17.02.2021 for the AY 2016-17 as illegal, arbitrary and devoid of merit and consequentially direct the 2nd respondent to lift the attachment u/s 281 B of the Act dated 17.02.2021.

(In both WPs)
For Petitioner : Ms.Vandanavyas
For Respondents : Mr.ANR.Jayaprathap
Junior Standing Counsel

COMMON ORDER

Since WMP.Nos.25042 and 25045 of 2022 alone are listed today, the main Writ Petitions are directed to be listed under a special list, since, upon hearing the parties, it appears clear that the Writ Petitions could itself be disposed.

2. In W.P.No.24176 of 2021, the petitioner has challenged the attachment of Fixed Deposits to the tune of Rs.15,93,21,139/-. Admittedly, the petitioner has challenged an order of assessment dated 19.08.2021 passed under the provisions of the Income Tax Act, 1961 (in short 'Act') before the Commissioner of Income Tax (Appeals). A stay application is stated to have been filed before the Principal Commissioner of Income Tax/R1 on 14.09.2021. The stay application and the appeal are yet pending.

3. A compilation of documents has been filed by Mr.Jayaprathap, learned Junior Standing Counsel for the Department, to state that the stay application filed on 14.09.2021 has, in fact, been disposed by R1 on 12.10.2021 directing the petitioner to move the Assessing Authority by way of a stay

application. The order has been uploaded in the website and hence, the petitioner does not appear to be aware of the same.

4. In light of letter dated 12.10.2021, the petitoner is permitted to move the stay application before the Assessing Authority and such stay application if and when filed, shall be disposed by the Assessing Authority, after hearing the petitioner and in accordance with law.

5. With this, W.P.No.24176 of 2021 stands disposed. It is made clear that the attachment of the Fixed Deposits shall continue.

6. As far as W.P.No.24180 of 2021 is concerned, the petitioner challenges attachment under Section 281 B of the Income Tax Act, 1961 of the property by name 'FIRHAVEN' comprised in R.S.Nos.4279 and 4284 admeasuring 40 grounds situated at Door Nos.78, 79, 80 and 81, Santhome High Road (Old Door Nos.57,58,59 and 60 South Beach Road), Chennai – 600 028.

7. The thrust of Section 281B is to protect the interests of the revenue pending proceedings for assessment, and Section 281B(2) states that 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. However, the proviso to Section 281B(2) extends the time limit to two years pending assessment or 60 days after the date of order of assessment or reassessment, whichever is later.

9. In the intersts of clarity, Section 281B is extracted below:

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 or for imposition of penalty under section 271AAD where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds two crore rupees, the Assessing Officer is 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 order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.*

Explanation.—[***]

(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) :

Provided *that the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.*

10. In this case, the order of assessment has been passed on 19.08.2021 and thus the period of 60 days after the date of order of assessment, as per the proviso, would expire on 19.10.2021. There can be no further extension of time in terms of Section 281B and the impugned attachment dated 17.02.2021 has thus elapsed, pending Writ Petition.

11. In light of the above, W.P.No.24180 of 2021 is allowed. No costs. Connected Miscellaneous Petitions are closed.

10.10.2022

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Index : Yes / No
Speaking Order / Non Speaking Order

To

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Chennai-600 034.

DR.ANITA SUMANTH,J.

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