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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2022**

CORAM:

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P. (MD) No.7268 of 2014

and

M.P. (MD) No.1 of 2014

S.Sebastine

... Petitioner

/vs./

1.The Commissioner of Income Tax,
Madurai.

2.The Joint Commissioner of Income Tax,
Income Tax Office, 3rd Floor,
19-A, West Great Cotton Road,
Thoothukudi 628 001.

3.The Tax Recovery Officer,
Income Tax Office,
Thoothukudi.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned sale proclamation notice issued by the 3rd respondent dated 28.03.2014 and the consequential auction sale notice published on 21.04.2014 and quash the same.

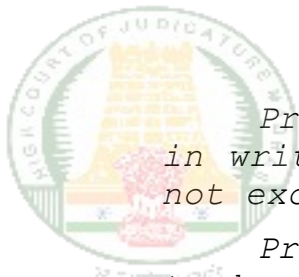
For Petitioner : Mr.Lakshmi Gopinathan
for M/s.Polax Legal Solutions

For Respondents : Mr.M.Swaminathan
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned auction notice dated 21.04.2014 on the strength of Rule 68B of the IInd Schedule to the Income Tax Act, 1961. Rule 68B of the IInd Schedule to the Income Tax Act, 1961 reads as under:-

"68B.1) No sale of immovable property shall be made under this Part after the expiry of three years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has become conclusive under the provisions of section 245-T or, as the case may be, final in terms of the provisions of Chapter XX:



Provided that the Board may for reasons to be recorded in writing extend the aforesaid period for a further period not exceeding three years

Provided that where the immovable property is required to be re-sold due to the amount of highest bid being less than the reserve price or under the circumstances mentioned in rule 57 or rule 58 or where the sale is set aside under rule 61, the aforesaid period of limitation for the sale of the immovable property shall stand extended by one year.

(2) In computing the period of limitation under sub-rule (1), the period

(i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

(ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided,

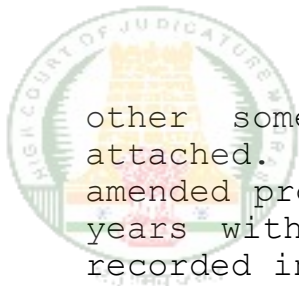
shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation for the sale of the immovable property is less than 180 days, such remaining period shall be extended to 180 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(3) Where any immovable property has been attached under this Part before the 1st day of June, 1992, and the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached, has also become conclusive or final before the said date, that date shall be deemed to be the date on which the said order has become conclusive or, as the case may be, final.

(4) Where the sale of immovable property is not made in accordance with the provisions of sub-rule (1), the attachment order in relation to the said property shall be deemed to have been vacated on the expiry of the time of limitation specified under this rule."

2. At that time, when the cause of action arose, there was a limitation of three years within which sale of immovable property was to be made from the end of the financial year, in which the order giving rise to demand of any tax, interest, fine, penalty or



other some for recovery of each immovable property had been attached. This provision has been subsequently amended. As per the amended provision, the period of 3 years has been now enhanced to 7 years with a further grace period of 3 years for reasons to be recorded in writing by the Board.

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3.The facts of the case are that there was a survey on 07.07.1999 in the business premises of the petitioner and the petitioner's father, which culminated in a block assessment order dated 27.06.2011. As per the block assessment order dated 27.06.2011, the petitioner along with his father and the partnership firm were due for a sum of Rs.6,03,842/- as detailed below:-

"The above defaulters are in tax arrears as under:-

T.R.No.31016 S.Sebastin Rs.6,03,842/-

T.R.No.32011 M/S Prabhat Chamber Bricks Works Rs.7,82,134/-

T.R.No.32010 Late.C.Sudalaimani Nadar Rs.13,50,761/- "

4.The petitioner also appears to have paid a substantial amount of the tax due as detailed below:-

1	Name of the assessee	S.Sebastin, Tuticorin
2	Assessment Year	Block Period Ended 07.07.1999
3	Amount of Arrear	Rs.2,88,802/-
4	Tax paid	Rs.1,00,000/-
5	Period on which interest is charged	01.03.2022 to 30.11.2013
6	Amount of interest charged	Rs.4,15,040/-

5.As per the proceedings of the 3rd respondent/the Tax Recovery Officer dated 20.11.2013 bearing Ref.T.R.No.31016/TRO/TTN, the petitioner has paid the substantial amount of the tax that was due from the petitioner. However, the petitioner was liable to pay interest in terms of sub-Section 2 of Section 220 of the Income Tax Act, 1961.

6.The case of the petitioner is that the property was attached on 17.02.2004 and therefore, the sale of the attached property should have been made within three years from the date specified in Rule 68b of the IInd schedule to the Act, whereas the impugned attachment order is dated 28.03.2014 in ITCP-13. In this connection, the learned counsel for the petitioner has placed reliance on the decision of this Court in the case of **T.Subramanian Vs. Tax Recovery Officer, Ward-I (3), Tuticorin** reported in **(2017) 83 taxmann.com 229 (Madras)**.



7.The learned Senior Standing Counsel for the respondents submits that during the interregnum, the petitioner had the golden opportunity to settle the case under the Vivad Se Vishwas Scheme, 2020. However, the petitioner failed to take advantage of the same and therefore, the petitioner is bound to pay interest.

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8.The learned Senior Standing Counsel for the respondents relies on the same decision, wherein this Court has also observed that even if the Department cannot proceed with the attachment notice, which was impugned therein, the petitioner therein was still liable to pay tax and therefore, the rights of the Income Tax Department to recover the tax from the defaulting assessee by any other notes cannot be curtailed.

9.The learned Senior Standing Counsel for the respondents submits that in the reply affidavit filed in support of the present writ petition also, the petitioner has undertaken to pay the tax ie., due from the petitioner. Therefore, there is no bar under the Income Tax Act, 1961 on the Department from issuing a fresh order of attachment in terms of Rules 4 and 48 of the IInd Schedule to the Income Tax Act, 1961. It is further submitted that there is no embargo placed on the respondents from initiating fresh proceedings for recovery of arrears of tax due from the petitioner. In this connection, a reference was made to Rule 4 of the IInd Schedule to the Income Tax Act, 1961.

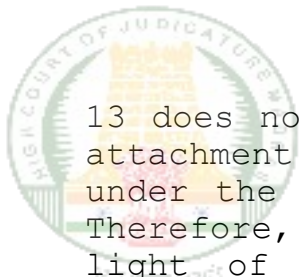
10.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

11.The facts are not in dispute. The property which was sought to be attached is the property, which has come in the hands of the petitioner pursuant to a partition deed dated 23.10.2000. This was after the search on 07.07.1999. The tax that was demanded from the petitioner is for the block assessment period ie., from 08.07.1999 to 23.10.2000.

12.Rule 4 of the IInd Schedule to the Income Tax Act, 1961 makes it clear one of the alternate method for recovering the tax. Apart from attaching the property and bringing the property for sale, the Department can also arrest the defaulters and detain such person in prison or appoint a Receiver for the management of the defaulter's property both movable and immovable property. The tax liability of the petitioner does not get effaced by efflux of time. The Department can attach the property under Rule 48 r/w Rule 60 and bring the same property for sale in terms of the provisions of the IInd schedule to the Income Tax Act, 1961.

13.Even if Rule 68(b) contemplates no sale beyond the period of limitation specified therein ie., 3 years during the period when the intimation of sale was issued on 28.03.2014 in Form ITCP-

<https://hcmrportal.gov.in/cse/verif>



13 does not mean that the Department cannot issue a fresh order of attachment of the property. There are also other methods available under the Rules for recovering the tax due together with interest. Therefore, while I am inclined to allow this writ petition in the light of the limitation prescribed in Rule 68(b) of the IInd schedule to the Income Tax Act, 1961, while giving liberty to the respondents to initiate proceedings to recover the tax due and the interest thereon from the petitioner in terms of the other provisions of the aforesaid Rules including a fresh proceeding for attaching the subject property.

14.The writ petition stands allowed, in terms of the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2022

Sub Assistant Registrar(CS)

mm

To

1.The Commissioner of Income Tax,
Madurai.

2.The Joint Commissioner of Income Tax,
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19-A, West Great Cotton Road,
Thoothukudi 628 001.

3.The Tax Recovery Officer,
Income Tax Office,
Thoothukudi.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-20646[F] dated
22/04/2022)

W.P. (MD) No.7268 of 2014
22.04.2022

RK(16/05/2022) 5P 5C