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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.19161 of 2023

M/s.Advance Infradevelopers Pvt.Ltd.,
Represented by its Authorised Signatory,
Mr.S.Padmanabhan

. . . Petitioner

Vs.

The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.2, Ground Floor, "A Wing,
Income Tax Investigation Wing Building,
46, M.G.Road, Nungambakkam,
Chennai-600 034.

. . . Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ, direction or order in the nature of Mandamus or any other appropriate writ application or order under Article 226 of the Constitution of India to lift the attachment and release the property attached by the Respondent vide order dated 20.07.2018 passed u/s.24(4)(b)(i) of the Prohibition of Benami Property Transaction Act, 1988 pursuant to the order passed by the Appellate Tribunal dated 15.12.2022.

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For Petitioner : Mr.r.Sivaraman

For Respondent : Mr.M.Sheela,
Special Public Prosecutor
for Income Tax Department

ORDER

The petitioner has come up with this Writ Petition seeking for a direction to the respondent to lift the attachment of the property and release the same in terms of the order dated 15.12.2022 passed by the Appellate Authority.

2. It is the case of the petitioner that pursuant to the search conducted as per the provisions of the Income Tax Act, 1961 in the premises of the Marg Ltd., the petitioner was issued with show cause notice dated 26.04.2018 under section 24(1) of the PBPT Act by the respondent alleging that the petitioner is the “benamidar” of its parent company, Marg Limited which was arrayed as the beneficial owner of the lands purchased during the years 2009 and 2010. which resulted in attachment of the properties purchased during the said time u/s.24(4(b)(i) of the PBPT Act. Based on

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the reference made by the respondent, the Adjudicating Authorrity under the Prohibition of Benami Property Transaction Act, 1988, the petitioner was issued with notice u/s 26(1) of the Prohibition of Benami Property Transactions Act, 1988, hearings were conducted before the Authority on various dates and final order u/s 26(3) of the Act came to be passed, however the said order was not communicated to the petitioner for a considerable period of time.

3. Aggrieved by the above said order, the petitioner had filed a Writ Petition in W.P.No.35256 of 2019 questioning the order passed by the Respondent Authority and the same was allowed by this Court by way of a common order dated 09.04.2021. Aggrieved by the same, Writ Appeals were filed on behalf of the Respondent Authority before the Division Bench of this Court which were allowed against which, the petitioner preferred a Special Leave Petition before the Hon'ble Apex Court in SLP No.5631 of 2022 wherein liberty was granted to the petitioner to rely upon the judgement of the Hon'ble Apex Court in case of ***"Union of India Vs. Ganapati Dealcon (P) Ltd*** wherein, it was held that the provisions of the PBPT Act will not be retrospectively applicable. Pursuant to which, the

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petitioner preferred an appeal before the Appellate Tribunal for SAFEMA at New Delhi which was disposed of by way of a common order dated 15.12.2022 citing the observations made in the judgement cited *supra*. In the light of the order passed by the Appellate Tribunal, the petitioner made a representation dated 30.01.2023 to respondent, seeking to lift the attachment of the property under the Prohibition of Benami Property Transaction Act, 1988. Since, the said representation did not evoke any response, the petitioner is before this Court.

4. Though very many grounds have been raised, however, learned counsel for the petitioner submits that it would suffice if this Court issues a direction to the respondent to consider the petitioner's representation dated 30.01.2023 seeking to lift the attachment of the properties made under the Prohibition of Benami Transaction Act, 1988 in the light of the order passed by the Appellate Tribunal and pass orders on the same, within the time that may be stipulated by this Court.

5. On the above contention, this Court heard the learned Special Public Prosecutor appearing for the respondent.

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6. In view of the aforesaid submissions, this Court without going into the merits of the case, directs the Respondent to consider the representation dated 30.01.2023 made by the petitioner seeking to lift the attachment of the properties made under the Prohibition of Benami Transaction Act, 1988 in the light of the order passed by the Appellate Tribunal and pass appropriate orders on the same, after affording an opportunity of personal hearing to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

7. This Writ Petition stands disposed with the aforesaid direction. There shall be no order as to costs.

28.06.2023

Index : Yes / No
Internet : Yes / No
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Note to Office:

Issue order copy on 09.08.2023

M.DHANDAPANI, J

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To

The Deputy Commissioner of Income Tax (Benami Prohibition)
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