IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2023

CORAM

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

W.P.Nos.25295, 25301, 25303, 25305, 25307 and 25309 of 2022
and
W.M.P.Nos.24262, 24264, 24266, 24267, 24268, 24269, 24270, 24272, 24273, 24275,24276, 24278, 24279, 24280, 24281, 24282, 24283, 24284, 34095, 34101, 34086, 34097, 34092 and 34099 of 2022

W.P.No.25295 of 2022:-

M/s.Shri Rathna Akshaya Estates Pvt Ltd,
Rep. by its Managing Director,
Shir.S.Saravana Arul,
No.58 A, Thiruparankundram Main Road,
Madurai. ...Petitioner

Vs

1.The Principal Director of Income Tax (Investigation),
Office of the Principal Director of Income Tax,
New No.46, Old No.108,
Nungambakkam High Road,
Chennai – 600 034.

2.The Deputy Director of Income Tax (Investigation)
Office of the Deputy Commissioner of Income Tax,
Unit-4(4), Room No.114, New Building (First Floor),
New No.46, Old No.108, Nungambakkam High Road,
Chennai – 600 034.

3.The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
DC/AC Central CIR 1(2), 3rd Floor,
Investigation Building,
Old No.46, New No. 108, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

4.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, R.A.Puram,
Chennai - 600 028.

5.The Sub Registrar,
Madurai South Joint 4 Sub Registrar Office,
No. 50 Visalam VMR Complex,
2nd Floor, By-pass road,
Madurai – 3. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of the 3rd respondent in DIN & Order No:ITBA/COM/F/17/2022-23/1044866111(1) dated 23.08.2022 and quash the same.

For Petitioner (in all W.Ps)	:	Mr.G.Karthikeyan Senior Counsel for Ms.A.Jagadeeswari
For Respondents (in all W.Ps)	:	Mr.A.P.Srinivas Senior Standing Counsel Mr.A.N.R.Jayaprathap Junior Standing Counsel for R1 to R3 Mr.J.C.Durairaj Additional Government Pleader for R4 and R5

COMMON ORDER

The petitioner is aggrieved by the impugned order of attachment dated 23.08.2022 issued by the 3rd respondent under Section 281B of the Income Tax Act, 1961, seeking to attach the assets of the petitioner along with the personal assets of its Directors bearing DIN & Order No: ITBA/COM/F/17/2022-23/1044866111(1).

2.Relevant portion of the impugned order reads as under:

"Sir/ Madam/ M/s,

Subject: Proceedings under section 281B - Order for provisional attachment

1. Whereas I am the opinion that for the purpose of protecting the interest of the Revenue, it is necessary to attach provisionally, the immovable property mentioned hereunder as per provisions of section 281B of the Income Tax Act, 1961 belonging to **M/s. Shri Rathna Akshaya Estates Pvt. Ltd (PAN No. AAVCS4243B)**. The said property is, therefore attached u/s 281B of the Income Tax Act, 1961.

2. The aforesaid person is, therefore prohibited from transferring, creating any charge on, or part with possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) in favor of any other person in respect of the property mentioned hereunder until further order of the undersigned.

The Sub Registrar is requested to take this on record and make entry creating encumbrance on Income Tax Department in relevant register.

Details of immovable properties:

S. No.	Details of asset	Address	Sub-Registrar Address
1.	Retail Store at Madurai, Patta No.: S.No.409/5, 411/5 & 411/6, 412/2B, 412/6 (Land Area 99,438.52 sq.ft) (Building Area 1,18,924 sq.ft.)	Saravana Selvarathnam Stores at No.58A, Thiruparankundram Main Road (TPK Road), Pazhaganathan, Madurai – 625 004.	The Sub Registrar, Madurai South Joint-4, Sub Registrar Office, No.50, Visalam VMR Complex, 2nd Floor, By-Pass Road, Madurai – 625 003

S. No.	Details of asset	Address	Sub-Registrar Address
2.	Piece and Parce of land in Patta No.185, 187, 157 185(4-3), 187(4-4P) 157(11,13,14-1A1C, 14-1A1A, 14-1A12, 14-1B, 14-2A, 14-3, 14-4, 14-5, 15-2, 16-1, 19-1, 19-3, 20, 21-2, 22, 28, 29, 30, 31, 32, 33-1, 34-1, 36, 38-1) (Land Area 41 Acres & 50 cents)	Kaduvetti, Veeraraghavapuram Village, Sriperumbuthu Taluk, Kancheepuram District- 602 105.	The Sub Registrar Avadi, Sub Registrar, No.1, 1st Floor, New Military Road, Avadi Chennai – 600 054.
3.	Retail Showroom at Coimbatore, Patta No.1350, 1351/1, 1351/2, 1352, 1355 Block-14, Ward No.06 (Land Area 26,581.25 sq.ft) (Building Area 78,233 Sq.ft)	Saravana Selvarathnam Stores at Door No.195, 196, 197, 198, 199, 200, 201, 202, 203, Oppanakkara Street, Coimbatore – 641 001.	The Sub Registrar Coimbatore Joint -1 Sub Registrar Office, No.102, State Bank Road, District Collector Office Campus, Coimbatore – 641 018.
4.	Retail Store at Mothilal Street, T.Nagar Patta No: S.No.156/2, 156/3 (Land Area 4,500 sq.ft)	Saravana Selvarathnam stores at No 75, North Usman Road, T.Nagar, Chennai – 600 017	The Sub Registrar Thiyagaraya Nagar, Sub Registrar Office, No.27/14, Vetnari Hospital Road, Pernpet, Nandanam, Chennai – 600 035.
5.	S3 Mall, Zamin	S-3 Mall, M/s.	The Sub Registrar

S. No.	Details of asset	Address	Sub-Registrar Address
	Pallavaram Patta No:39/10-1B, 11, 42/1, 2, 43/1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 46/2, 3, 6-3, 10-2, Old No.263/1, 2A, 2B, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 264/2, 3, 5A, 6, 270/1, 2, 278/1B and 12B (Land Area 502.17 cents) (Building Area 9,03,584.6 sq.ft)	Saravana Selvarathnam Group, 200 ft Radial Road, Pallavaram, Chennai – 600 043.	Pallavaram, Sub Registrar Office, 7th Main Road, New Colony, Chrompet, Jammen Pallavaram, Chennai – 600 044.
6.	Retail showroom at Thirunelveli Patta No:S.R.No.558/C1, 558/6A2A, S.R.No.558/3C(part), T.S.No.45, S.R.No.558/3A2, 558/A3, 558/4C(part), T.S.No.33/1, 38 and 41 (Land Area 52,100 sq.ft) (Building Area 1,51,356 sq.ft)	Saravana Selvarathnam Stores at No.241, South Bypass, Thirunelveli – 627 005	The Sub Registrar Melappalayam Sub Registrar Office, No.35/13 B, Beruthus Complex, 1st Floor, Ambal Road, Melappalayam, Thirunelveli – 627 005.

This order is being issued with the prior approval of the Principal Commissioner of

Income Tax, Central-1, Chennai vide his order in C.No.:1571A/PCIT/C-1/2022-23 dated 22.08.2022. **This order comes into force with immediate effect.**

Kindly send the acknowledgement for receipt of this order and furnish the latest EC for the above property."

3. The specific case of the petitioner is that the petitioner was subjected to search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 01.12.2021, following which the order of attachment was made on 28.02.2022 under Section 132(9B) of the Act. The aforesaid order was in force for a limited period and came to end on 27.08.2022. Thereafter, the respondents have once again attached the property of the petitioner vide impugned orders dated 23.08.2022 under Section 281B of the Act.

4. The learned counsel for the petitioner would submit that although the aforesaid order is also for a limited period, yet the respondents have not sent suitable intimation to Sub Registrar Office stating that the order has no validity, as a result of which, the attachment appears in the records before the Sub Registrar Office and is reflected in encumbrance certificate.

5. It is further submitted that the petitioner has suffered assessment orders dated 31.12.2022 for the assessment year 2020-2021 and 2021-2022.

6. It is submitted that as per proviso to Section 281B(2) of the Act, such an attachment order can be extended for a period of two years by the officers mentioned therein. However, no such order has been passed so far.

7. It is submitted that after the Assessment Order was passed on 31.12.2022 the attachment order should have come to an end at the end on 28.02.2023 under the proviso to Sub-Section (2) to Section 281B.

8. On the other hand, the learned Standing Counsel for the respondents would submit that subsequent orders have been passed under Sub-Section (2) to Section 281B of the Act and therefore, there is no merits in the present Writ Petitions.

9. It is submitted that the Writ Petitions have become infructuous as the impugned order was in operation for limited period with a validity period of six months only.

10. The learned counsel for the respondent would submit that although these impugned proceedings have come to an end after expiry of six months from the date of issue on 23.08.2022. The attachment was continued by a separate orders, in respect of each of the petitioners on 17.02.2023 in terms of proviso to Sub-Section (2) to Section 281B of the Income Tax Act, 1961. He would further submit that the writ petitions have become infructuous and therefore liable to be dismissed.

11. The learned counsel for the petitioners submits that in view of the above subsequent development and due to efflux of time, instead closing these writ petitions, it may be observed that the impugned orders have ceased to operate against the petitioners.

12. I have considered the arguments advanced by the learned counsel for the petitioners and the respective learned counsel for the respondents.

13. The language of Section 281B (1) and (2) of the Income Tax Act, 1961 are clear and categorical. The order of attachment is to initially remain in force for a period of six months from the date of attachment provided other criteria in Sub-Section (1) are satisfied. In these cases, circumstances and criteria specified in Sub-Section (1) to Section 281B of the Income Tax Act, 1961 are satisfied.

14. However, since the respondents have issued subsequent orders/warrant of attachment of the same immovable properties by separate orders all dated 17.02.2023, nothing further remains to be adjudicated in these writ petitions. As such these writ petitions have become infructuous.

15. As per proviso to sub-section (2) to Section 281 B of the Income Tax Act, 1961, 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 of attachment by such further period or periods as he thinks fit. However, the total period of extension cannot exceed two years or 60 days after the date of order of assessment or reassessment, whichever is later.

16. In these cases, the first orders of attachment were under Section 281B of the Income Tax Act, 1961 made on 28.02.2022. It comes to an end on 27.08.2022. Assessment orders were passed on 31.12.2022. Fresh attachment orders were passed on 17.02.2023. These orders also would have come to an end on 16.08.2023. The remedy in these Writ petitions have worked out due to efflux of time. Thus, nothing survives for adjudication in these writ petitions.

17. However, even before 27.08.2022, impugned order dated 23.08.2022 was passed. The order would have come to an end on

22.02.2023, meanwhile, liberty is however given to the petitioners to challenge the subsequent orders dated 17.02.2023, in accordance with law.

18. These writ petitions are closed with the above observations. No costs. Consequently, connected writ miscellaneous petitions are closed.

14.08.2023

Index: Yes/ No
Internet : Yes/No
Speaking/Non-speaking Order
Neutral Citation : Yes/No
jas

To

1.The Principal Director of Income Tax (Investigation),
Office of the Principal Director of Income Tax,
New No.46, Old No.108,
Nungambakkam High Road,
Chennai – 600 034.

2.The Deputy Director of Income Tax (Investigation)
Office of the Deputy Commissioner of Income Tax,
Unit-4(4), Room No.114, New Building (First Floor),
New No.46, Old No.108, Nungambakkam High Road,
Chennai – 600 034.

3.The Assistant Commissioner of Income Tax,
Office of the Assistant Commissioner of Income Tax,
DC/AC Central CIR 1(2), 3rd Floor,
Investigation Building,
Old No.46, New No. 108, Mahatma Gandhi Road,
Nungambakkam, Chennai - 34.

4.The Inspector General of Registration,
100, Santhome High Road, Mullima Nagar,
Mandavelipakkam, R.A.Puram,
Chennai - 600 028.

5.The Sub Registrar,
Madurai South Joint 4 Sub Registrar Office,
No. 50 Visalam VMR Complex,
2nd Floor, By-pass road,
Madurai – 3.

C.SARAVANAN,J.
jas

W.P.Nos.25295, 25301, 25305, 25303,
25307 and 25309 of 2022
and
W.M.P.Nos.24262, 24264, 24266, 24267, 24268,
24269, 24275, 24276, 24278, 24270,24272,
24273, 14279, 24280, 24281, 24283, 24284,
34097, 34101, 34095, 24095, 34099, 34086 & 34092 of 2022

14.08.2023