BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.4999 of 2023
and
W.M.P.(MD) No.4667 of 2023

1.M.Jesurathnabai

2.S.M.Antony Thomas

3.A.S.Paul Winston

4.Bennet ... Petitioners

Vs.

1.The Tax Recovery Officer,
Income Tax Department,
No.6R, N Cotton Road,
Thoothukudi - 628 001.

2.The Income Tax Officer,
Aayakar Bhawan, 121,
M.G.Road, Nungambakkam,
Chennai - 600 0034.

3.The Sub Registrar,
Ettayapuram Sub Registrar Office,
23/7, Theppakulam Street Main Road,
Ettayapuram – 628 902,
Tuticorin District.

4.The Assistant Commissioner of Income Tax,
Central Circle III(5),
Chennai-34. ... Respondents

[R4 was *suo motu* impleaded *vide* order dated 12.07.2023]

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the attachment proceedings of the first respondent dated 22.08.2000 against the deceased Mr.Newton and set aside the same and consequently direct the first respondent to communicate the same to the third respondent.

For Petitioners : Mr.P.Jesu Moris Ravi

For R1, R2 & R4 : Mr.J.Parekh Kumar
Senior Standing Counsel

For R3 : Mr.B.Saravanan
Additional Government Pleader

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ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the attachment proceedings of the first respondent dated 22.08.2000 against the deceased Mr.Newton and set aside the same and consequently to direct the first respondent to communicate the same to the third respondent.

2. The specific case of the petitioners is that one A.S.K.Newton had suffered Block Assessment Order dated 28.09.1998. Pursuant to the said order, the properties of the said A.S.K.Newton were attached. It is further case of the petitioners that despite lapse of the period of limitation under Rule 68B of II Schedule [Procedure for Recovery of Tax] to the Income Tax Act, 1961, the properties still stand attached. It is submitted that only w.e.f. 01.09.2019 *vide* Finance Act No.2/2019, the period was extended by 7 years. It is submitted that sale could not have been made after lapse of 3 years from the date of impugned Attachment Order dated 22.08.2000.

3. On the other hand, the learned Senior Standing Counsel for the first, second and fourth respondents would submit that as against the Block Assessment Order dated 28.09.1998 passed under Section 158BD of the Income Tax Act, 1961 for the period between 01.04.1986 and 08.10.1996, the said A.S.K.Newton had preferred an appeal before the Income Tax Appellate Tribunal, Chennai Bench 'A', in I.T.(SS) A.No. 179/Mds/1998. The Tribunal had partly allowed the appeal *vide* its order dated 09.04.2009 and remitted the case back to the Assessing Officer to examine the case afresh.

4. It is submitted that after remanding, the Income Tax Authorities have taken steps to bring the properties attached to auction sale. However, the said proceedings was kept in abeyance pursuant to the orders of this Court dated 07.05.2014 in W.P.(MD) No.8073 of 2014 and dated 15.07.2014 in W.P.(MD) No.11503 of 2014 filed by the said A.S.K.Newton. It is submitted that but for the said reasons, the impugned Attachment Order cannot be quashed on the ground of limitation. The learned Senior Standing Counsel for the first, second and fourth respondents would therefore pray for dismissal of this Writ Petition.

5. I have considered the arguments advanced by the learned counsel for the petitioner, the learned Senior Standing Counsel for the first respondents and the learned Additional Government Pleader for the third respondent.

6. It is noticed that the appeal filed by A.S.K. Newton before the Income Tax Appellate Tribunal, Chennai Bench 'A', in I.T.(SS) A.No. 179/Mds/1998 was partly allowed on 09.04.2009, remanding the case back to the Assessing Officer for fresh examination.

7. It is also noticed that in the meantime, the said A.S.K.Newton had filed W.P.(MD) No.8073 of 2014 before this Court for issuance of a Writ of Mandamus to direct the Income Tax Department to provide him the copies of the material documents pertaining to the Tax Recovery Certificate No.105/CR.III 1999-2000 dated 04.10.200 for the block assessment period.

8. By an order dated 07.05.2014, this Court has disposed of the said Writ Petition by directing the Income Tax Department to furnish the documents and also stayed the sale proclamation notice dated 09.04.2014, till 28.06.2014.

9. Thereafter, the petitioner had W.P.(MD) No.11503 of 2014 for the following relief:-

> *For issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the Inspection and Valuation Order bearing No.EE(V)/MADU/TR-03/2013-14/255 dated 03.07.2014 on the file of fourth respondent, to quash the same and to consequently direct the Income Tax Officials not to initiate recovery proceedings against the petitioner in respect of assessment of block period ending 08.10.1996 without providing the copy of all*

the relevant materials and records including the concerned assessment order enabling the petitioner to file appeal or to initiate other proceedings.

10. The said Writ Petition was disposed of on 15.07.2014 with the following directions:-

> *6. Hence, there will be a direction to the petitioner to appear before the second respondent either in person or through his authorized representative, since it is stated that the petitioner has undergone a major surgery, would be unable to go down to Chennai. If the petitioner's authorized representative appears before the second respondent within a period of two weeks from the date of receipt of a copy of this order, the second respondent shall issue appropriate direction to furnish the copy of the assessment order for the block period ending 08.10.1996 within a period of three weeks thereafter. In the event, the original copy is not available, then it is open to the second respondent to furnish a certified copy of the block assessment order. On being furnished such copy, the petitioner is granted six weeks further time to work out his remedy under the provisions of the Act in the manner known to law and as stipulated under the provisions of the Income Tax. Till such period, the Impugned proceedings shall be kept in abeyance.*

11. It is noticed that requirements of the said order were complied with by the petitioner on 12.09.2014. Despite lapse of 10 years, no orders have been passed.

12. The provisions of Rule 68B of the II Schedule [Procedure for Recovery of Tax] to the Income Tax Act, 1961 mandate the time-bound manner for disposal or sale of the attached immovable properties. Therefore, the impugned Attachment Order is liable to be declared as ineffective and therefore is liable to be quashed.

13. However, liberty is given to the Income Tax Department to proceed with attachment of property in accordance with law. The Income Tax Department is also directed to complete the proceedings pursuant to the remand order dated 09.04.2009 passed by the Tribunal in I.T.(SS) A.No.179/Mds/1998 for the block assessment period between 01.04.1986 and 08.10.1996.

14. Accordingly, this Writ Petition stands allowed with the above liberty. No costs. Consequently, connected Miscellaneous Petition is closed.

16.07.2024
(1/3)

Index: Yes / No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

Copy To:

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C.SARAVANAN, J.

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