BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.07.2024

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.5000 of 2023
and
W.M.P.(MD) No.4673 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,
Rehmat Nagar East,
Kamaraj Nagar,
Tirunelveli - 627002.

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. ... Respondents

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 order of the first respondent dated 15.02.2001 in Reference No.T.R.X.No.29005/NGL against the deceased Mr.Silvester and quash 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	: 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 order of the first respondent dated 15.02.2001 bearing reference No.T.R.X.No.29005/NGL against the deceased Mr.Silvester and quash 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.Silvester had suffered Block Assessment Order dated 27.11.1998. Pursuant to the said order, the properties of the said A.Silvester 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 15.02.2001.

3. On the other hand, the learned Senior Standing Counsel for the first and second respondents would submit that as against the Block Assessment Order dated 27.11.1998 passed under Section 158BD of the Income Tax Act, 1961 for the period between 01.04.1986 and 08.10.1996, the said A.Silvester had preferred an appeal before the Income Tax Appellate Tribunal, Bench 'D' Chennai, in I.T.(SS) A.No.3/Mds/1999. The Tribunal has dismissed the appeal for non-prosecution *vide* its order dated 19.05.2010.

4. It is submitted that thereafter, the Income Tax Authorities have taken steps to bring the properties attached to auction sale. It is submitted that in the meantime, the said A.Silvester has filed M.P.No.120/2013 before the Tribunal to set aside the default order dated 19.05.2009 and restore the appeal. The Tribunal *vide* its order dated 17.07.2013 has recalled the order dated 19.05.2009 and posted the appeal on 17.10.2013 for hearing. It is submitted that since the said A.Silvester sent a representation dated 02.09.2013 requesting the authorities to keep the proceedings in abeyance till the disposal of the said appeal, the authorities have not proceeded further with the auction sale.

5. It is therefore submitted that the impugned Attachment Order cannot be quashed on the ground of limitation. The learned Senior Standing Counsel for the first and second respondents would therefore pray for dismissal of this Writ Petition.

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

7. It is noticed that the appeal filed by the said A.Silvester before the Tribunal in I.T.(SS) A.No.3/Mds/1999 which was dismissed for non-prosecution on 19.05.2010 and was later recalled on 17.07.2013 was dismissed on merits on 26.11.2015. Despite lapse of 9 years, no orders have been passed.

8. 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 quashed.

9. 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 in view of the dismissal of the appeal of the said A.Silvester in I.T.(SS) A.No. 3/Mds/1999 on 26.11.2015 for the block assessment period between 01.04.1986 and 08.10.1996.

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

16.07.2024
(2/3)

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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