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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.09.2024
Pronounced On	02.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.27919 of 2021
and
W.M.P.No.29471 of 2021

Maniyan Sureshkumar
S/o.K.P.Maniyan ... Petitioner

Vs.

The Tax Recovery Officer-1,
Coimbatore-Main Building,
No.63, Race Course Road,
Coimbatore – 641 018. ... Respondent

Prayer**:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the respondent dated 24.11.2021 DIN and Letter No.ITBA/COM/F/17/2021-2022/1037186280(1) and quash the same as illegal and direct the respondent to lift the order of attachment in the residential flat at No.3B, May Flower Brooke Fields Apartments, Krishnasamy Road, Coimbatore – 641 002 made by the respondent vide Form No.I.T.C.P.16 dated 27.01.2015 in TR No.14/P15/2013-2014/TRO-1/CBE and Form No.I.T.C.P.16 dated 10.02.2021 having DIN and Document No.ITBA/RCV/S/316/2020-2021/1030502671(1).

For Petitioner : Mr.S.Anandh

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for Mr.Ravi Kannan

For Respondent : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

The petitioner is before this Court against the Impugned Order passed by the respondent / Tax Recovery Officer-1, Coimbatore dated 24.11.2021 for the Assessment Year 2009-2010.

2. Relevant portion of the Impugned Order dated 24.11.2021 reads as under:-

> "2. As requested by you the copy of extension of time limit as per Proviso to Rule 68B(1) by the competent authority is herewith enclosed.
>
> 3. The claim made by you in your letter cited above in respect of exemption from attachment as per Rule 10 of the Second Schedule is rejected as it is apparent from the records submitted by yourself to the department claiming that you are doing business in gold jewellery in the name and style M/s Lakshmi Jewellery, Coimbatore. The evidence available with this office is enclosed herewith for your information and noting.
>
> 4. As per the notice issued on 17.11.2021 you were directed to inform the encumbrances, charges etc., on or before 24.11.2021 on the attached property which you have not complied. Therefore this office is compelled to proceed with the public auction of your property to recover the tax arrears.
>
> 5. If you wish to avoid public auction of your property, you are directed to pay the tax arrears of Rs.46,72,041/- and interest thereupon without any further delay and co operate with the recovery proceedings.

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Your petition dated 22.11.2021 stands disposed."

3. An Assessment Order was passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 on 07.12.2011 in response to a Return of Income filed on 24.07.2009. No appeal was filed by the petitioner against the Assessment Order dated 07.12.2011 under Section 246A of the Income Tax Act, 1961. The Assessment Order dated 07.12.2011 attained finality as no appeal was filed. The petitioner was also issued with a Penalty Order dated 29.06.2012 under Section 271(1)(c) of the Income Tax Act, 1961.

4. Aggrieved by the same, the petitioner has filed an appeal before the Commissioner of Income Tax (Appeals)-I, Coimbatore. Vide order dated 16.09.2013, the said appeal was also dismissed by the Commissioner of Income Tax (Appeals)-I. No further appeal has been filed against the said order dated 16.09.2013 of the Commissioner of Income Tax (Appeals)-I, Coimbatore.

5. Thus, both the orders of the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 16.09.2013 and the order of the Assessing Officer dated 07.12.2011 and 29.06.2012 have attained finality and liability against the

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petitioner stood confirmed.

6. Since the amount that was assessed to be paid by the petitioner had remained unpaid, the petitioner's property was attached on 27.01.2015. However, no sale was made pursuant to the aforesaid Attachment Order dated 27.01.2015.

7. A Second Attachment Order came to be passed on 10.02.2021. In response to the same, the petitioner filed an application before the respondent with a prayer to drop the proceedings in the light of limitation under Rule 68(B) of the Second Schedule to the Income Tax Act, 1961.

8. The learned counsel for the petitioner submits that the last date of the Financial Year in which the proceedings were completed was 31.03.2013 and 31.03.2014 and therefore the limitation expired on 31.03.2015 and 31.03.2017 as per the unamended Rule 68B of the 2nd Schedule to the Income Tax Act, 1961.

9. It is submitted that since the proceedings were initiated for attaching

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the property for the second time on 10.02.2021, the period of limitation under Rule 68(B) to the 2nd Schedule of the Income Tax Act, 1961 stood expired on 31.03.2022.

10. It is submitted that the prior period was later substituted with effect from 01.09.2019 and therefore even if the period of limitation is reckoned from 31.03.2012 and 31.03.2014, the limitation would have expired on 31.03.2019 and on 31.03.2021. It is therefore submitted that there is no scope for bringing the property of the petitioner for sale pursuant to the Impugned Attachment Notices.

11. That apart, it is submitted that the petitioner is a labourer and therefore in terms of Rule 10 of the 2nd schedule to the Income Tax Act, 1961 read with Section 60 of the C.P.C. dwelling house of assessee in default cannot be brought to the sale, it is expected from attachment and sale in Execution of the decree of the Civil Court and therefore exemption in terms of Rule 10 of the aforesaid Rule.

12. It is further submitted that the petitioner was running a jewellery

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business in the name of proprietor concerned as “Sri Lakshmi Jewellery Shop”. The petitioner suffered huge loss and therefore is working as a labour with other proprietor concerned engaged in gold business. It is therefore submitted that on this count, the proceedings is liable to be quashed.

13. The learned counsel for the petitioner would submit that the pursuant to the Order passed by this Court on 23.02.2021 by depositing Rs.10,00,000/-, the petitioner insofar as deposited a sum of Rs.70,000/- at the rate of Rs.10,000/- p.m. few months thereafter. It is submitted that in the Impugned Order dated 24.11.2021, the petitioner may be given a temporary relief to discharging tax liability.

14. In support of the relief, the learned counsel for the petitioner has placed reliance on the following decisions:-

i) **Sapana Charudatt Ranadive Vs. Assistant Commissioner of Income Tax 17(3), Mumbai**, [2019] 108 taxmann.com 384 (Bombay);

ii) **Gauravbhai Hargovindhai Dave vs. Tax Recovery Officer,** (2019) 110 taxmann, com33 (Gujarat).

15. Opposing the prayer, the learned Senior Standing Counsel for the

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respondent would submit that the Income Tax Department has obtained information negativing that the petitioner is not a labourer, he was a gold trader and therefore the exemption under Rule 10 of the 2nd Schedule to the Income Tax Act, 1961 read with Section 60 of the C.P.C. would not come to the benefit of the petitioner.

16. That apart, it is submitted that as far as limitation is concerned in Paragraph No.18 of the affidavit filed in support of the present writ petition filed by the petitioner, a reference was also made to Paragraph Nos.18 to 20 and 24 of the Counter Affidavit read as under:-

> 18. In response to the petitioner's contention regarding the expiration of the time limit for recovery proceedings under Rule 68B, it is imperative to scrutinize the veracity of their claims. The provided dates of assessment orders (17/12/2011 and 20/06/2012) and finalization of tax/penalty orders (31/03/2012 and 31/03/2014), meticulously examined against the regulatory framework, indicate no deviation from the prescribed timeline. As the penalty demand was confirmed/finalized in the FY 2013-14. The time limit for the attachment and sale of immovable property extends to 31.03.2021 as admitted by the petitioner himself in the para no. 18. It is pertinent to mention here that Uunder second Proviso to Rule 68B, the period shall be extended by one year in case the property is required to be resold due to amount of highest bid being less than the reserve price. The petitioner himself has accepted in the para 11 that there were no bidders in the public auction

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conducted on 25.03.2021. Therefore, the time limit got extended by one year up to 31.03.2022 as per proviso to the Rule 68B. Thus, the provisions of Rule 68B(1) concerning the time limit for the sale of attached immovable property are deemed applicable in this scenario.

19. Regarding the petitioner's assertion concerning the applicability of Section 60 of the Code of Civil Procedure to tax recovery matters it is submitted that Exemption under Section 60 of the Code of Civil Procedure, 1908 is not applicable to the petitioner as he was a Gold Trader and not an agriculturist or labourer during the AY 2009-10, The fact that he was a Gold Trader, has been confirmed by the petitioner hinsself in para 2 of the affidavit.

20. In response to the petitioner's communication dated 15/11/2021, wherein they were apprised of the extension of the time limit due to the absence of bidders in the public auction held on 25/03/2021, it is essential to clarify that this extension was necessitated by procedural considerations to ensure fairness in the auction process. The subsequent issuance of a notice for settling a sale proclamation in Form No. ITCP-17 on 17/11/2021, as indicated by DIN & Letter No. ITBA/COM/F/17/2021-22/1037014674(1), was undertaken in conformity with regulatory requirements to uphold transparency and compliance with statutory obligations.

24. The petitioner's contention regarding Rule 10(2) of the Second Schedule to the Income Tax Act 1961 is acknowledged However, it's crucial to note that while Rule 10(2) implies the conclusiveness of the Tax Recovery Officer's (TRO) decision, Section 246(2) of the Income Tax Act, 1961, grants the right of appeal to aggrieved parties against certain orders, including those akin to rectifications made by the TRO. This provision allows taxpayers to challenge decisions they deem erroneous or unjust through the appellate process Therefore, despite the appearance

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of conclusiveness under Rule 10(2), the statutory framework provides avenues for appeal, ensuring procedural faimess and the protection of taxpayer rights.

"246. (2) Notwithstanding anything contained in sub-section (1), any assessee aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) before the Ist day of June, 2000 against such order"

In light of the judgment by High Court of Calcutta in the case of Rakesh Kumar Shaw v. Commissioner of Income-tax, it is evident that the High Court's jurisdiction to entertain writ petitions is discretionary, especially when alternative remedies are available. The judgment emphasizes that while the court may possess jurisdiction, the existence of an alternative remedy influences the exercise of discretion. The court may decline to invoke its jurisdiction if adequate alternative remedies are deemed more efficacious, particularly when disputed questions of fact are involved. Moreover, the judgment underscores the importance of securing the ends of justice and ensuring that alternative remedies remain open and effective. Therefore, in the present case, where the petitioner seeks relief through a writ petition, despite the availability of an alternative remedy in the form of an appeal before the Tribunal, the court may decline to exercise its jurisdiction. Instead, it may pass appropriate orders to secure the ends of justice while ensuring that the alternative remedy remains open to the petitioner. As quoted by the Hon'ble court:

"The proposition of law with regard to alternative remedy is now a settled

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> principle. It is not an absolute bar. But where the alternative remedy is adequate and efficacious and the issues to be determined involve elements of facts, which are disputed, ordinarily the court is not supposed to exercise such discretion. A question involving determination of facts can be dealt with more efficaciously by the alternative forum."

17. The learned Senior Standing Counsel for the respondent would further submit that the petitioner is having fixed deposit for Rs.60,50,000/- and having other cash deposits and therefore this Writ Petition is liable to be dismissed.

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent. I have also perused the records that were made available and I have also perused the documents filed by the petitioner.

19. There is no dispute that the petitioner has suffered an adverse Assessment Order dated 07.12.2011. The limitation for filing an appeal before the Appellate Commissioner expired on 16.01.2012. The petitioner has also not filed any appeal against the aforesaid Assessment Order dated 07.12.2011.

20. The petitioner thereafter suffered a Penalty Order under Section

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271(1)(c) of the Income Tax Act, 1961 on 29.06.2012. The petitioner's appeal before the Appellate Commissioner against the aforesaid Penalty Order was also dismissed on 16.09.2013. The last date for filing an appeal expired on 15.11.2013. Since the petitioner did not file further appeals before the Appellate Commissioner and the Appellate Tribunal, liability under both the Assessment Order dated 07.12.2011 and the Penalty Order dated 29.06.2012 stand confirmed against the petitioner.

21. As per Rule 68B of the 2nd schedule to the Income Tax Act, 1961, no sale of immovable property shall be made under part III after the expiry of 7 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-I or, as the case may be, final in terms of provisions of chapter XX. Section 245-I of the Income Tax Act, 1961 relates to order of the Settlement Commission. Chapter XX deals with appeals before the Appellate Forum.

22. The Appellate Commissioner dismissed the appeal of the petitioner

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on 16.09.2013. Since no further appeal was filed by the petitioner before the Appellate Tribunal against the aforesaid Penalty Order dated 16.09.2013, the said order became final on 15.11.2013.

23. As far as the present facts are concerned, the 7 years period from the end of the financial year of the Assessment Order dated 07.12.2011 would have expired on 31.03.2019. The 7 years period from the end of the financial year of the Penalty Order dated 29.06.2012 would have been expired on 31.03.2020. However, the petitioner had filed an appeal before the Appellate Commissioner against the Penalty Order dated 29.06.2012.

24. Thus, the limitation under Rule 68B of the 2nd schedule to the Income Tax Act, 1961 expired on 31.03.2021, i.e. 7 years from 31.03.2014 being the end of the financial year in which the Penalty Order dated 16.09.2013 was passed.

25. In the present case, the immovable property of the petitioner was attached on 10.02.2021. This was few days before the period expired on 31.03.2021. On 26.02.2021, a proclamation of sale was made for the sale of immovable property of the petitioner. The auction was fixed to be held on

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25.03.2021. However, there were no bidders during the auction that was held on 25.03.2021.

26. As per the 1st proviso to Rule 68B of the 2nd schedule to the Income Tax Act, 1961, the Board may, for the reasons to be recorded in writing, extend the aforesaid period of 7 years by a further period not exceeding 3 years. In this case, the aforesaid avenue has not been resorted to as an attempt was made to bring the property to option by fixing the date of auction as **25.03.2021**. This Court is also not concerned with the situation contemplated in the 1st proviso to Rule 68B of the 2nd schedule to theIncome Tax Act, 1961.

27. As per the 2nd proviso to Rule 68B of the 2nd schedule to the Income Tax Act, 1961, an immovable property required to be resold due to the amount of the highest pay being less than the reserve price or under the circumstances mentioned in Rule 57 or Rule 58 or at the same is set aside under Rule 61, the aforesaid period of limitation for the sale of immovable property shall extend by one year.

28. Since the date of auction was fixed to 25.03.2021, on which date

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there are no bidders, it can be construed that the situation was covered by the 1st instance under 2nd proviso to Rule 68B of the 2nd schedule to the Income Tax Act, 1961 i.e., where the immovable property is required to be resold due to the amount of highest pay being less than the reserve price fixed.

29. Therefore, the extension of the period for bringing the immovable property of the petitioner by one year by the Chief Commissioner of Income Tax vide order dated 02.11.2021 cannot be questioned as it is in consonance with the 2nd proviso to Rule 68B of the 2nd schedule to the Income Tax Act, 1961.

30. Therefore, the argument of the petitioner that the respondent Income Tax Department was not authorised to extend the period of auction by one year to 31.03.2022 on the ground that the situation contemplated in Rule 57, Rule 58 Rule 61 of the 2nd schedule to the Income Tax Act, 1961 were not attracted cannot be countenanced.

31. As far as the defence of the petitioner, claiming that the petitioner is a

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labourer and therefore the property of the petitioner was exempted from attachment by virtue of Rule 10 of the 2nd schedule to the Income Tax Act, 1961 read with section 60 of the Civil Procedure Code, 1908 is concerned, it has to be examined from the status of the petitioner at the time of the Assessment Order / Penalty Order which has given rise to the proceedings under the 2nd schedule to the Income Tax Act, 1961.

32. The change in the status of the petitioner after the rights accrued to the Income Tax Department to attach the property of the petitioner cannot be whittled down. Therefore, a reference to Rule 10 of the 2nd schedule to the Income Tax Act, 1961 cannot come to the rescue of the petitioner.

33. Consequently, the challenge to the Impugned Order dated 24.11.2021 extending the time for bringing the immovable property of the petitioner to sale by auction by fixing the time till 31.03.2022 cannot be said to be beyond the period of limitation.

34. In the result, this Writ Petition is liable to be dismissed. It is

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accordingly dismissed. No cost. Connected Writ Miscellaneous Petition is closed.

02.01.2025

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

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To:

The Tax Recovery Officer-1,
Coimbatore-Main Building,
No.63, Race Course Road,
Coimbatore – 641 018.

C.SARAVANAN, J.

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Pre-delivery Order in
W.P.No.27919 of 2021

02.01.2025