



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-01-2026

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THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

**WP No. 17088 of 2018
&
WMP No.20353 of 2018**

Smt.Kumari Kanagam,
G-1, Sakthi Towers, No.57/1, 8th Cross Street,
Shenoy Nagar, Chennai-600 030.

..Petitioner(s)

Vs

Tax Recovery Officer,
Central-2, 46, Income Tax Investigation Wing,
M.G.Road, Room No.322, 3rd Floor, Chennai-600
034.

..Respondent(s)

PRAYER: This writ petition is filed under Article 226 of the Constitution of India praying for issuance of writ of Certiorari calling for the records of the respondent in proclamation of sale dated 12.6.2018 fixing the sale on 13.07.2018 in respect of the petitioners residential property located at Flat: G-1, Sakthi Towers, No.57/1, 8th Cross Street, Shenoy Nagar, Chennai-600 030 and quash the same as illegal and non est in law.

For Petitioner(s) : M/s. D. Vijayakumar,

For Respondent(s): Mr.A.P.Srinivas, Senior Standing Counsel
Mr.AN.R.Jayaprathap, Junior Standing
Counsel



ORDER

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An assessment order in respect of block assessment was issued in respect of the petitioner on 22.12.2006 imposing tax liability of Rs.68,14,378/-. The petitioner filed an appeal before this Court in TCA No.128 of 2006, which was dismissed on 22.08.2012. A Special Leave Petition was filed against the said judgment in Special Leave Petition [C] No.6942 of 2015. The said Special Leave Petition was dismissed on 15.05.2015.

2. Meanwhile, pursuant to the issuance of certificate under Section 222 of the Income-tax Act, 1961 (the I-T Act), an order of attachment was issued by the Tax Recovery Officer in respect of the immovable property of the petitioner on 06.11.1998. Much later, pursuant to certificate dated 01.05.2018 for the recovery of a sum of Rs.6,13,294/-, another order of attachment was issued. In order to realise the above amounts, a proclamation of sale was issued in Form No.I.T.C.P.13. The said proclamation of sale is challenged in this writ petition.



3. The principal ground on which the petitioner challenges the proclamation of sale is that the limitation period of three years prescribed in Rule 68B of the Second Schedule of the I-T Act expired. Therefore, it is contended that the attachment order stands vacated by operation of law in terms of sub-rule 4 of Rule 68B.

4. In support of the above contention, learned counsel for the petitioner relied on the following judgments:

(i) *Noorudin v. Tax Recovery Officer, (2001) 251 ITR 357* ('Noorudin');

(ii) *T.Subramanian v. The Tax Recovery Officer, order dated 25.04.2019 in WP(MD) No.17040 of 2016* ('T.Subramanian');

(iii) *Sri K. Venkatesh Dutt v. the Tax Recovery Officer, order dated 16.09.2016 in W.P.No.49185 of 2016.*

5. In response to these contentions, learned senior standing counsel for the revenue submits that the limitation period under Rule 68B(1) is required to be reckoned from the date on which the order giving rise to the demand for payment of tax, interest, penalty and the like becomes final. After



pointing out that the petitioner assailed the assessment order by filing appeals all the way up to the Hon'ble Supreme Court, he submits that such order attained finality only on 15.05.2015. Consequently, he submits that the limitation period should be reckoned from the end of financial year 2015-16, i.e.31.03.2016. If reckoned from such date, he submits that the limitation period would end on 31.03.2019. Since the proclamation of sale was issued on 12.06.2018, he submits that limitation is not a bar to the sale of the property. By relying on the judgment of the Bombay High Court in *Rajiv Yashwant Bhale v. Principal Commissioner of Income-Tax, Pune*, [2017] 82 *Taxmann.com* 140 (Bombay), he submits that the Division Bench considered the limitation period under Rule 68B in the context of proceedings before the Settlement Commission. After referring to several paragraphs of the said judgment, he points out that the Division Bench examined the meaning of the expression "conclusive" in Rule 68B(1) and held that it means the point at which finality, closure or ending is reached. Applied to the facts of this case, he contends that such finality was attained only upon the SLP being dismissed.



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6. Learned senior standing counsel also submits that a fresh certificate bearing TRC No.15/CR-2/2018-19 dated 01.05.2018 was issued and that both the certificates are referred to in the proclamation of sale. Therefore, he contends that, even assuming without admitting that the first attachment was deemed to be vacated under Rule 68B(4), the fresh attachment survives and that the proclamation of sale is valid on account thereof.

7. Upon taking stock of the contentions of the assessee and revenue, it is necessary to first set out Rule 68B of the Second Schedule. The said provision reads, in relevant part, as under:

“68B. (1) No sale of immovable property shall be made under this Part after the expiry of three 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 the provisions of Chapter XX:

...

(2) In computing the period of limitation under sub-rule



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(1), the period—

(i) during which the levy of the aforesaid tax, interest, fine, penalty or any other sum is stayed by an order or injunction of any court; or

(ii) during which the proceedings of attachment or sale of the immovable property are stayed by an order or injunction of any court; or

(iii) commencing from the date of the presentation of any appeal against the order passed by the Tax Recovery Officer under this Schedule and ending on the day the appeal is decided, shall be excluded :”

8. The text of sub rule (1) discloses that the limitation period of three years is required to be reckoned from the end of the financial year in which the order giving rise to the demand for tax, interest and the like attains conclusiveness under the provisions of Section 245-I, or, as the case may be, finality under the provisions of the Chapter-XX. Therefore, the follow on question is regarding the date on which such finality was reached. Learned counsel for the petitioner contends that such finality was reached on the date of dismissal of the Tax Case Appeal on 22.08.2012. On the contrary, learned



senior standing counsel contends that it should be reckoned from 15.05.2015, when the SLP was dismissed.

9. The agreed position is that the assessment order was the subject of challenge both in the Tax Case Appeal before this Court and in the Special Leave Petition. In order to decide whether an order has attained finality or not, it is necessary to ask the question whether the order is no longer capable of being set aside, modified or revised in any manner. It is also necessary to take note of the fact that such finality should be in terms of the provisions of Chapter XX. Chapter XX of the I-T Act deals with appeals and revisions. It also envisages a statutory appeal to the Hon'ble Supreme Court, but not a special leave petition. Section 261 of the I-T Act is relevant in this regard, and the same is set out below:

“Appeal to Supreme Court.

261. An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a reference made under section 256 [against an order made under section 254 before the 1st day of October, 1998 or an appeal made to High Court in respect of an order passed under section 254 on or after that date] in any case which High Court certifies to be a fit one for appeal to the Supreme Court.”



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10. It is clear from the language of Section 261 that an unsuccessful party to an appeal before the High Court may request for a certificate of appeal to the Hon'ble Supreme Court in terms thereof. If the petitioner had requested for such certificate and been granted the same, a statutory appeal could have been filed without applying for special leave. Without resorting to this option, the petitioner opted to directly apply for special leave before the Hon'ble Supreme Court. Nonetheless, as discussed earlier, the undoubted position is that the assessment order could have been set aside, modified or revised by the Hon'ble Supreme Court. Consequently, it cannot be said that the order attained finality until the Hon'ble Supreme Court dismissed the special leave petition on 15.05.2015.

11. 15th May 2015 falls within the financial year 2015-16, which ends on 31.03.2016. Therefore, the limitation period should be reckoned from 31.03.2016 and would run up to 31.03.2019. The documents on record disclose that the impugned proclamation of sale was issued on 12.06.2018, which is within the said limitation period. On account of this conclusion, the



judgments relied upon by learned counsel for the petitioner, including the judgments of this Court in *Noorudhin and T.Subramanian* will not come to her rescue.

12. An ancillary issue was also canvassed by the parties, namely, regarding the implications of not taking action to sell the immovable property within the prescribed period of limitation. Under Rule 65B(4), the statute incorporates a legal fiction providing for the attachment order being vacated. It should be noted that Part III of the Second Schedule is confined to the attachment and sale of immovable property and does not otherwise curtail the right of the Tax Department to recover the dues mentioned in the certificate issued under Section 222. Learned counsel for the petitioner contended that the second certificate issued and the attachment made pursuant thereto is confined to a sum of Rs.6,13,294/- and that any recovery pursuant to said tax certificate should be confined to the said amount. This contention is meritorious but does not carry the petitioner very far in view of the earlier conclusion that the proceedings pursuant to the first certificate are within the period of limitation.



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13. For reasons set out above, the writ petition fails and is dismissed without any order as to costs. Consequently, connected miscellaneous petition is closed.

23-01-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

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