

W.A.Nos.1643, 1644 and 1647 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNAM

AND

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

W.A.Nos.1643, 1644 & 1647 of 2021

and

C.M.P.Nos.10364, 10324 & 10368 of 2021

The Deputy Director of Income Tax (Inv),
Unit 4(2), Chennai,
Room No.125, New Building (First Floor),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai – 600 034.

... Appellant
in all the appeals

Vs.

1. Ms.Sigapi Muthiah,
Represented by her Power Agent,
Mr.M.A.M.R.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

2.M/s.Indian Bank,
Represented by its Branch Manager,
Thousand Lights Branch,
Chennai.

... Respondents
in W.A.No.1643 of 2021

1.Ms.Sigapi Muthiah,
Represented by her Power Agent,
Mr.M.A.M.R.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

2.M/s.State Bank of India,
Represented by its Branch Manager,
Gopalapuram Branch,
Chennai.

... Respondents
in W.A.No.1644 of 2021

1.Ms.MeyyammaiMuthiah,
Represented by her Power Agent,
Mr.M.A.M.R.Muthiah,
Chettinad House,
Rajah Annamalaipuram,
Chennai – 600 028.

2.M/s.State Bank of India,
Represented by its Branch Manager,
Gopalapuram Branch,
Chennai.

... Respondents
in W.A.No.1647 of 2021



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W.A.Nos.1643, 1644 and 1647 of 2021

Prayer : Writ Appeals in W.A.Nos.1643, 1644 & 1647 of 2021 filed under Clause 15 of the Letters Patent to set aside the order, dated 09.04.2021, passed in W.M.P.Nos.9469, 9452 & 9423 of 2021 in W.P.Nos.8927, 8893 & 8869 of 2021 respectively.

For Appellant : Mr.R.Sankara Narayanan
Additional Solicitor General
and Mr.A.P.Srinivas
Senior Standing Counsel
in all the appeals

For R1 : Mr.A.L.Somiyaji
Senior Counsel
for Mr.R.Sivaraman
in all the appeals

COMMON JUDGMENT

(Judgment was delivered by **T.S. SIVAGNAM, J.**)

Heard Mr.R.Sankara Narayanan, learned Additional Solicitor General appearing for Mr.A.P.Srinivas, learned Senior Standing Counsel for the appellant, and Mr.A.L.Somiyaji, learned Senior Counsel appearing for Mr.R.Sivaraman, learned counsel for the 1st respondent.

W.A.Nos.1643, 1644 and 1647 of 2021

2.These Writ Appeals have been preferred by the Revenue, challenging the correctness of an interim order granted in W.P.Nos.8441, 8451, 8447, 8869, 8893, 8927 & 8952 of 2021 and W.M.P.Nos.8991, 8992, 8994, 9001, 9002, 9006, 9007, 9421 to 9423, 9449, 9450, 9452, 9467 to 9469, 9480 & 9481 of 2021, dated 09.04.2021.

3.We find from the said order, the writ petitions are still pending and the request made by the Revenue for granting time for filing counter affidavit was acceded to by the learned Single Bench and the matter was directed to be listed on 02.06.2021. The orders which are impugned in the writ petitions are orders of attachment of properties under Section 132(9B) of the Income Tax Act, 1961 ("the Act" for brevity). The interim order enures in favour of the two writ petitioners, who have filed three writ petitions, viz., W.P.Nos.8927, 8893 and 8869 of 2021. The learned Single Bench, on perusal of the records which were called for from the Department, has recorded a finding that the provisional attachment of the property envisaged under Section 132(9B) is of property 'belonging to the assessee' and that the two writ petitioners have not been subjected to search and seizure under

Section 132 of the Act, and therefore, held that there is no justification for provisional attachment of their assets.

4.The argument of the learned Additional Solicitor General is that the appellant/Revenue/Department was not granted reasonable opportunity to put forth the facts in the form of counter affidavit, and to support such a submission, the learned counsel has referred to the order passed by the learned Single Bench, dated 01.04.2021. It is submitted that, on the said date, the learned Standing Counsel for the Revenue accepted notice and sought time to obtain instructions and file counter. Though such was the request made by the Department, the Hon'ble Court directed the production of records, as it was inclined to peruse the records. Therefore, the case was directed to be listed on 08.04.2021 immediately after admission. Counter/written instructions were to be filed by the Department by then with advance copies served on the counsel for the respondents/writ petitioners. In the same order, the Court directed the counsel for the respondents/writ petitioners to serve a copy of the writ petitions and its annexures upon the learned counsel for the Department. The order reads as follows :

“W.P.Nos.8441, 8451 and 8447 of 2021
and
WMP. Nos.8991, 8992, 8994, 9001,
9002, 9006 and 9007 of 2021

Mr.A.P.Srinivas learned Senior Standing Counsel accepts notice for the respondents and seeks some time to obtain instructions and file a counter.

2.Let records be produced as the Court is inclined to peruse the reasons on the basis of which the impugned orders under Section 132(9B) of the Income Tax Act, 1961 have been passed.

3.List on 08.04.2021 immediately after admission. Counter/written instructions by then with an advance copy served upon the petitioner. Learned counsel for the petitioner is directed to serve a copy of the Writ Petitions and its annexures upon the learned counsel for the respondents.”

5.As directed, the case was listed on 08.04.2021 and the Court has passed the following order :

“W.P.Nos.8441, 8451 and 8447 of 2021
and
WMP. Nos.8991, 8992, 8994, 9001, 9002,
9006 and 9007 of 2021

Mr.A.P.Srinivas learned Senior Standing Counsel seeks a few days for production of records as directed on 01.04.2021, since he states that the concerned officer has returned from election duty only yesterday.

2.A specific clarification is sought as to whether any warrant has been issued in the names of Ms.Sigapi Muthiah and Ms.Meyyammai Muthiah, daughters of Mr.M.A.M.R.Muthiah and Mrs.Geetha Muthiah.

3.List on 09.04.2021 along with W.P.Nos.8869, 8893, 8927 and 8952 of 2021 at the end of admission list.”

From the above order, it is seen that the learned Standing Counsel for the Department sought few days for production of records as directed on 01.04.2021, as the concerned officer has returned from Election duty only the previous day (07.04.2021). After recording the above submission, the Court proceeds to record by observing that a specific clarification is sought for as to whether any warrant has been issued in the names of the two writ

petitioners, who are the respondents before us in these appeals. The case was directed to be listed on the next day, i.e., 09.04.2021 at the end of admission list.

6.In obedience to the directions issued by the Court, the records appear to have been produced before the Court and the Court has passed the interim order lifting the attachment forthwith. In Para No.3 of the impugned order, the Court records that the learned Standing Counsel has also confirmed the fact that the respondents/writ petitioners have not been subjected to search and seizure under Section 132 of the Act.

7.In our considered view, the order lifting the attachment forthwith would amount to allowing the writ petition itself, as what was impugned in the writ petition is the order of attachment under Section 132(9B) of the Act. If the order of attachment is lifted, then the respondent/assessee would get the entire relief as prayed for in the main writ petition. Thus, in our considered view, the prayer for interim stay of the order of attachment, if granted before filing the counter and before adjudicating the issues, would

result in granting the main relief at the interim stage itself, which is normally not granted unless and until the pleadings are complete and the arguments are heard on the prayer for interim relief.

8. In the Memorandum of Grounds of Writ Appeal, it is stated that the scope of provisional attachment under Section 132(9B) is wide and should not be construed to be limited to the searched persons alone, as the scheme of search assessment under the Act is not limited to the searched persons alone and it will include any other person to whom the seized materials may relate. Several other grounds have also been raised touching upon the merits of the matter pointing out that search was conducted under Section 132 of the Act in the group case and evidences indicating generation of unaccounted income to the tune of Rs.650 Crores have been found and the tax liability along with interest and penalty leviable would be approximately Rs.455 Crores, and the Department has proceeded to attach assets worth nearly Rs.260 Crores which is to the extent of the likely tax liability only, and the investigation in the group case is still in progress and the order of attachment is only a provisional order of attachment, which is of temporary nature.

9.The above ground and the other grounds raised in the Writ Appeals are touching upon the merits of the matter, which need to be agitated in the writ petitions, for which, a counter affidavit of the Department is essential. At the time when the Writ Appeals were entertained, noting that the order of attachment has been raised, the respondents/writ petitioners were directed not to liquidate the Fixed Deposits till the disposal of the Writ Appeals. After considering the submissions made on either side and perusing the orders passed by the Court on 01.04.2021 and 08.04.2021 and the order impugned before us, we are of the view that, reasonable opportunity was not afforded to the appellant/Department to place their submissions on record in the form of counter affidavit. In fact, in the impugned order, the Court has directed counter to be filed. Therefore, we are inclined to interfere with the impugned order.

10.For the reasons set out, these Writ Appeals are allowed and the impugned common order is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

11.Further, we note that, pursuant to the impugned order granted in the writ petitions, the appellant has addressed the Indian Bank, Thousand Lights Branch, Chennai, vide communication dated 20.04.2021, withdrawing the warrant of attachment against the respondents/writ petitioners. Therefore, we direct that those Fixed Deposits, which are 9 in number, shall continue to remain in the Indian Bank and the respondents/writ petitioners are prohibited from withdrawing the said amount or liquidating the Fixed Deposits, and the Indian Bank, Thousand Lights Branch, shall await the orders to be passed in the main writ petitions. The appellant/Department is granted eight weeks' time to file their counter affidavit and after serving copies of the counter along with Annexures, if any, in the form of Typed Set of Papers, the counter is to be filed in the Registry. List the writ petitions before the appropriate Single Bench after twelve weeks.

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(T.S.S., J.) (S.S.K., J.)

10.08.2021

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Note :

Registry is directed to mark a copy of this order to the Branch Manager, Indian Bank, Thousand Lights Branch, Chennai.

Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

To

1.The Deputy Director of Income Tax (Inv),
Unit 4(2), Chennai,
Room No.125, New Building (First Floor),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai – 600 034.

2.The Branch Manager,
Indian Bank,
Thousand Lights Branch,
Chennai.

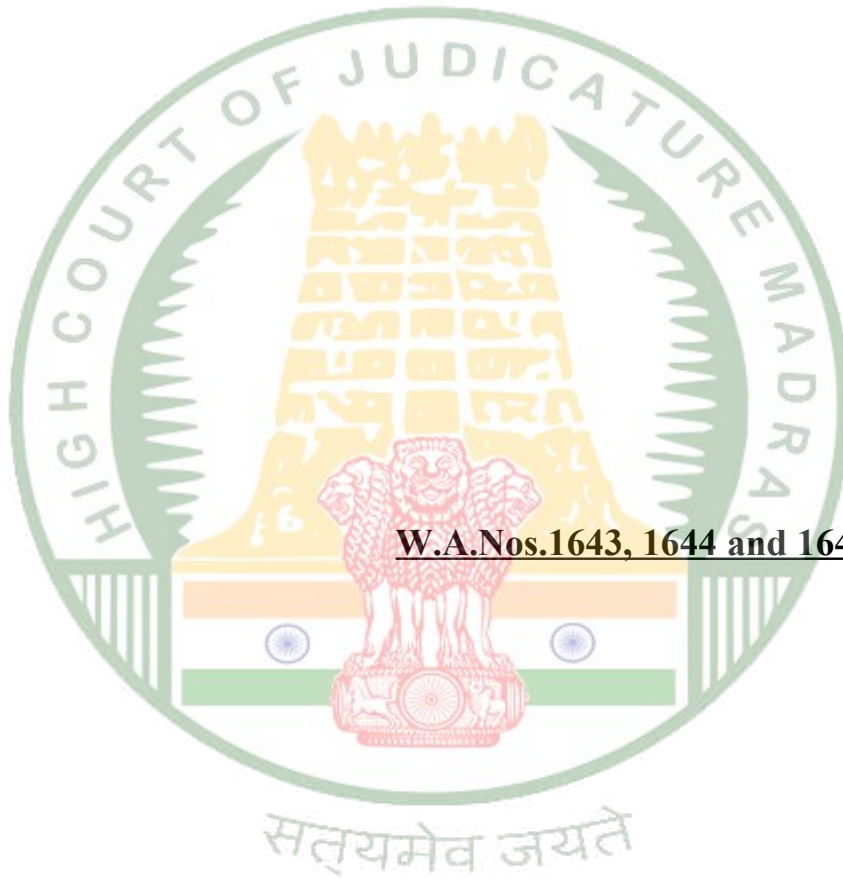


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T.S. SIVAGNANAM, J.
and
SATHI KUMAR SUKUMARA KURUP, J.

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