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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 19774-75/2005

VLS FINANCE LTD & ORS. .... Petitioners  
Through Mr. O.S. Bajpai, Sr. Advocate with  
Mr. V.N. Jha, Advocate.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX &  
ANOTHER ..... Respondents  
Through Mr. Sanjeev Rajpal, Advocate.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

**ORDER**

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**10.01.2011**

The petitioner-assessee was assessed under Section 143(3) of the Income Tax Act, 1961(Act, for short) for the assessment year 1998-99 and eventually the said assessment order was framed vide order dated 31<sup>st</sup> March, 2001. Assessment order under Section 143(3) of the Act for the assessment year 1999-2000 was passed on 31<sup>st</sup> March, 2001. On 25<sup>th</sup> June, 2001, an order of assessment was passed under Section 143(3) of the Act for the assessment year 2000-01. On 21<sup>st</sup> October, 2002, the petitioner on the basis of the said assessment orders submitted an application for grant of refund. At this juncture, on 17<sup>th</sup> January, 2003, a notice under Section 148 of the Act was issued for the assessment years,



viz., 1998-99 to 2000-01. When the matter stood on 24<sup>th</sup> January, 2003, a notice under Section 148 of the Act was issued for the assessment years 1996-97 and 1997-98. On 3<sup>rd</sup> July, 2003, reassessment order under Section 143(3) of the Act was passed for assessment years 1997-98 to 2000-01. Learned counsel for the petitioner has pleaded that the petitioner submitted an application under Section 154 of the Act before the first respondent to allow the set off for brought forward loss. A writ petition W.P. (C) No. 4406/2003 was filed for quashing of the notice under Section 148 of the Act and the subsequent reassessment orders passed by the respondent No. 1. Later on the said writ petition was withdrawn. On 4<sup>th</sup> August, 2003, the petitioner was intimated that the demand had been reduced in accordance with the prayer made and it is proposed to adjust the refund due against the balance payment. Be it noted, the initial demand of Rs.31.89 crores was reduced to Rs.3.99 crores.

2. As is perceptible from the material brought on record, the reassessment orders passed by the Assessing Officer were quashed by the CIT-A on 18<sup>th</sup> November, 2004. Thereafter, the petitioner filed an application for grant of refund. When the matter stood thus, an order under Section 281B of the Act was passed on 28<sup>th</sup> July, 2005. The said order reads as follows:-

“ Please refer to block assessment proceedings for the period 1.4.1988 to



22.6.1998 pending in your case. In this connection since the undisclosed income for the block period is yet to be ascertained/assessed and the regular assessment for assessment year 2003-04 and 2004-05 are pending, a provisional attachment u/s 281B in your case has been authorized by the Commissioner of Income tax (Central)-II, New Delhi vide No. CIT (C)-II 281B 2005-06/346 dated 26.7.2005 to protect the interest of revenue. The following refunds determined in you(sic) case are provisionally attached for a period of 6 months i.e. upto 25.01.2006

#### **DETAILS OF PROPERTY**

<b>S. NO.</b>	<b>A.Y.</b>	<b>Amount of Refund (Rs.)</b>
1.	1998-99	1,09,03,472
2.	1999-00	12,44,152
3.	2001-02	2,49,67,988
4.	2004-05	<u>14,19,546</u>
		3,85,35,158”

3. At this juncture, we may usefully use that the initiation of the proceeding in block assessment has been challenged before the Apex Court and it was directed that audit can go on but no final assessment order be passed. This is not disputed at the Bar. The stay order continues.

4. Section 281B reads as follows:-

**“281B. Provisional attachment to protect revenue in certain cases.** (1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that for the purpose of protecting the interests of the revenue it is



necessary so to do, he may, with the previous approval of the Chief Commissioner, Commissioner, Director General or Director , by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

[Explanation.-For the purposes of this sub-section, proceedings under sub-section (5) of [section 132](#) shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.]

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under sub-section (1):

Provided that the Chief Commissioner, Commissioner, Director General or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

Provided further that where an application for settlement under [section 245C](#) is made, the period commencing from the date on which such application is made and ending with the date on which an order under sub-section (1) of [section 245D](#) is made shall be excluded from the period specified in the preceding proviso.

Provided also that the period during which the proceedings for assessment or reassessment are stayed by an order or injunction of any court shall be excluded from the period specified in the first proviso”

5. The third proviso has been inserted by Finance (No. 2) Act, 2009



(33/2009) with effect from 1<sup>st</sup> April, 1988. The order of attachment which was reproduced hereinabove was passed on 28<sup>th</sup> July, 2005. Subsequently under sub-section 2 to Section 281B of the Act, the life span of said provisional attachment is six months and the said provision categorically stipulates that provisional attachment was ceased to have effect after the expiry of the order, i.e., six months from the date of the order made under sub-section 1. It is not disputed at the Bar when the exercise of the power vested with the competent authority under the first proviso to sub-section 2, time was initially extended for a further period of six months by the order dated 6<sup>th</sup> January, 2006 upto 25<sup>th</sup> July, 2006.

6. At this juncture, Mr. Sanjeev Rajpal, learned counsel for the Revenue Department has referred us to the order dated 3<sup>rd</sup> March, 2008.

It reads as follows:-

“ It has been stated in the affidavit in reply to the show cause notice that the period of limitation for the order passed under Section 281-B of the Income Tax Act, 1961 would expire on 28<sup>th</sup> January, 2008. Since the period of limitation has expired, learned counsel for the Revenue seeks time to take instructions with regard to the refund allegedly due to the petitioner.

On request, adjourned to 12<sup>th</sup> March, 2008.”

7. It is submitted by Mr. O.S. Bajpai, learned senior counsel for the petitioners that this Court had computed the period of 2 ½ years, including the initial period of six months and the period of extension,



which is permissible in exercise of the first proviso to sub-section 2. It submitted by Mr. O.S. Bajpai, learned senior counsel that this Court had held that the time can be extended till 28<sup>th</sup> July, 2008. Learned senior counsel has invited our attention to second proviso to sub-section 2 to highlight that a positive and affirmative act is required to be done prior to the expiry of the specified date and communicate it to the petitioners, but because a power is vested with the competent authority that does not ipso facto will result or cause extension of time. Mr. Sanjeev Rajpal, learned counsel for the Revenue Department shall produce the file to show whether the time was extended as required under the law and the same was communicated to the assessee.

Matter be listed for further hearing on 29<sup>th</sup> March, 2011.

**CHIEF JUSTICE**

**SANJIV KHANNA, J.**

**JANUARY 10, 2011**

**VKR**