



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

+ **WRIT PETITION (CIVIL) NO. 19774-75/2005**

% **Reserved on: 23rd February, 2011**

Date of Decision: 5th March, 2012

VLS FINANCE LIMITED AND OTHERS ...Petitioners
Through Mr. O.S. Bajpai, Sr.
Advocate with Ms. Manasvini
Bajpai & Mr. V.N. Jha, Advocates.

VERSUS

THE ASSISTANT COMMISSIONER OF INCOME TAX &
ANOTHERRespondents
Through Mr. Sanjeev Rajpal, Sr.
Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.:

The petitioner No. 1, VLS Finance Limited, had filed this writ petition in October, 2005, impugning and seeking quashing of the order dated 28th July, 2005 passed under Section 281B of the Income Tax Act, 1961 (Act, for short). Prayer for payment for the refunds is also made.

2. The petitioner No. 1 has stated and claimed that they are entitled to refund of Rs.3,85,35,158/- in respect of assessment years 1998-99, 1999-2000, 2001-02 and 2004-05. Various



allegations have been made in the writ petition. However, view of the subsequent developments these need not be adverted to and in fact no arguments were raised with reference to the first order dated 28th July, 2005, under Section 281B of the Act.

3. The petitioner No. 1 was subjected to search under Section 132 of the Act resulting in initiation of block assessment proceedings for the period 1st April, 1988 to 22nd June, 1998. The impugned order dated 28th July, 2005 passed under Section 281 B of the Act records as under:

“ 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 ©-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

| S. NO. | A.Y. | Amount of Refund (Rs.) |
|---------------|-------------|-----------------------------------|
|---------------|-------------|-----------------------------------|



| | | |
|----|---------|--------------------|
| 1. | 1998-99 | 1,09,03,472 |
| 2. | 1999-00 | 12,44,152 |
| 3. | 2001-02 | 2,49,67,988 |
| 4. | 2004-05 | 14,19,546 |
| | | 3,85,35,158 |

4. At this juncture, we may state that the initiation of block assessment proceedings has been challenged by the petitioner No. 1 and Appeal Civil No. 1620/2007 is pending before the Supreme Court. By an interim order dated 5th February, 2007, it has been directed that special audit may go on but no final assessment order would be passed. The said order has been made absolute till the disposal of the appeal.

5. The order dated 28th July, 2005 quoted above was operative and the provisional attachment was to continue for a period of six months, i.e., upto 25th January, 2006. The petitioners have not challenged or questioned any order/extension of provisional attachment under Section 281B by the subsequent orders. However, we may note and record here that it has been contended by the senior counsel appearing for the petitioner No. 1 that they have not been communicated and informed about orders extending the provisional attachment



after 25th January, 2006. In the affidavit, which was filed on 2nd April, 2008, we may note that the petitioner No.1 has not contended or stated that they were not communicated or informed about the extension orders for continuation of provisional attachment on or after 25th January, 2006. However, it is stated in the affidavit that the purport and spirit behind Section 281B is not to deprive the assessee from the money/refund due to him beyond the maximum period of attachment of two years and six months.

6. It was noticing the aforesaid contention that an order under Section 281 B of the Act can continue for a maximum period of a 2 years and 6 months, on 3rd March, 2008, the following order was passed:-

“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 28th 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 12th March, 2008.”



7. Thereafter, the respondents had filed an affidavit dated 9th April, 2008. In this affidavit, it is stated that the block assessment proceedings were to be completed by 25th August, 2007 but in view of the stay granted by the Supreme Court, the proceedings were still pending. Reference was made to Section 158BE of the Act and it was stated that because of the stay granted, the stay period has to be excluded for computing the limitation period for completing the block assessment proceedings. In the said affidavit, reference is made to decision of the Punjab and Haryana High Court in ***Tek Chand versus ITO***, (2001) 252 ITR 799 and Madras High Court in ***NEPC India Limited versus ACIT***, 1999 (104) TAXMAN 651 and it is averred that the order under Section 281B is not surviving and, therefore, the writ petition of the petitioner should be dismissed. It may be appropriate to reproduce the last paragraph in the affidavit, which reads as under:-

“Therefore, if it is considered that the order u/s 281B is not surviving, then in view of above quoted judgments the writ petition of the assessee may be dismissed.”



The aforesaid statement in the affidavit dated 9th April, 2008 has been referred to below and ultimately forms basis for disposing and deciding of the present writ petition.

8. Section 281B as it existed at the time of filing of the petition, i.e., before addition of the third proviso by the Finance (No.2) Act, 2009 with retrospective effect from 1st April, 1988, is as under:-

“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 interest 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.”

9. Sub-section 1 to Section 281B stipulates that an order provisionally attaching any property of the assessee can be passed during pendency of any proceedings for assessment/reassessment, if the Assessing Officer is of the opinion that such an order is necessary for purpose of protecting interest of the Revenue. The order can be only passed with the previous approval of the Chief Commissioner, Commissioner, Director General or Director. The order has to be in writing. Sub-section 2 to Section 281B states that the order for provisional attachment under sub-section (1) shall cease to have effect after six months. Thus, sub-section 2, provides the period during which an order of provisional attachment remains in force, i.e., six months. The first proviso to Section 281B states that the Chief Commissioner, Commissioner, Director General,



Director may for reasons recorded in writing extend the said period or periods, which shall not exceed two years. Thus, the total period for which extension can be granted is two years, after the first order of provisional attachment, which is valid for six months, comes to an end. The period of provisional attachment, therefore, cannot be for more than two years and six months. The said period in the present case, as the first attachment order was issued on 28th July, 2005, came to an end on 24th January, 2008.

10. The third proviso was inserted in 2009 by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1988 is as under:-

“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.”

11. During the course of arguments, a number of contentions were raised by the petitioner No.1 on whether or not the third proviso would be applicable to the present case as the period of 2 years 6 months came to an end on 24th January, 2008. Relying upon ***CIT vs. Oriental Rubber Works***, (1989) 145 ITR 477(SC); ***Thanthi Trust v. Commissioner of Income-tax***, (1987) 167 ITR 397(Del); ***Metal Fittings P. Ltd. v. Union of***



India, (1983) 141 ITR 758 (Del), it was submitted that the extension orders under the proviso to Section 281B(2) were required to be communicated. The aforesaid decisions pertain to Section 132(8) of the Act and it was stated that the requirement and need to communicate an order under the said section, are equally applicable to the Section 281 B of the Act.

12. As we perceive, we are not required to go into the said aspects and contentions raised by the petitioner No.1 in the present case. Pursuant to the order dated 10th January, 2011, the Revenue has produced before us the original file and we find that the last order under Section 281B was passed on 19th July, 2007. The said order extended the period of provisional attachment upto 24th January, 2008. Thereafter, no order under Section 281B has been passed even after the third proviso to Section 281B was inserted by the Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1988. As no order as of now has been passed by the Revenue under Section 281B after insertion of the third proviso, we need not examine and go into the legal issues and contentions raised. These aspects and legal issues can be examined in an appropriate matter or when and if at all the respondents pass a fresh order under Section



281B of the Act. The contention relating to communication of tl
order also need not be decided as there is no order extending
the provisional attachment under Section 281B on or after 24th
January, 2008. We may also note that it is not the contention of
the Revenue and it was not urged and in our opinion rightly that
the third proviso incorporates a deeming provision, which has
the effect of continuation or extension of the last order under
Section 281B dated 19th July, 2007 which was upto and valid till
24th January, 2008. The said proviso quoted above states that
the period pursuant to which assessment/reassessment
proceedings have been stayed due to injunction or stay order,
shall be excluded from the period of two years mentioned in the
first proviso. It does not stipulate that the provisional attachment
order issued, shall be deemed to be effective and continue
beyond the stipulated period mentioned in the order, when there
is an injunction or an order by a Court staying the
assessment/reassessment proceedings. Injunction/stay order
does not on its own or by deeming fiction extend the period
stipulated/mentioned in an order under Section 281B.



13. Before we conclude, we must refer to one contention raised by the petitioner with reference to our order dated 19th May, 2011, which reads as under:-

“Mr. Sanjeev Rajpal, learned counsel appearing for the revenue, submitted that this writ petition should await the verdict of the Apex Court in Civil Appeal arising out of SLP(C) No.1620/2007. Mr. Bajpai, learned senior counsel appearing for the petitioner-assessee submitted that the lis which is pending before the Apex Court has nothing to do with the present case. The aforesaid aspect shall be adverted to on the next occasion and if this court would be prima facie satisfied that there is no connection between the nature of litigations, the hearing shall proceed.

Call on 18th August, 2011.

The requisite file that was directed to be produced shall be produced by Mr. Rajpal on the next date.”

14. The contention of the petitioner is that there is no connection between the block assessment proceedings and the refunds which are due to the petitioner. We may note that in the written submissions the petitioner No.1 has referred to refunds due for assessment years 2001-02 onwards. Some of these refunds are not a subject matter of the writ petition and we are not concerned with the same. It is also averred that the Supreme Court has granted stay against the block assessment proceedings as the restraint order under Section 132(3) was



clamped or revoked fifteen times in respect of one of the premises. The “connection” referred and mentioned in the order dated 19th May, 2011, does not refer to the nature and character of the additions made or reason for the refunds or the assessment years involved. The “connection” mentioned in the said order has reference to the reasons stated in the order of provisional attachment and whether the said reasons have any nexus or connection with the assessment/reassessment proceedings, which have been stayed by the Supreme Court. There is certainly nexus and connection between the reasons stated in the order under Section 281B, i.e., pendency of the block assessment proceedings and the proceedings subject matter before the Supreme Court i.e. the block assessment proceeding. We may again note that the Supreme Court has stayed the block assessment proceedings.

15. We wish to further clarify as a matter of abundant caution and state that we have not considered and examined whether the Revenue can pass a fresh order under Section 281B in view of the third proviso to the said Section introduced/inserted by Finance (No. 2) Act of 2009 with retrospective effect from 1st April, 1988. If required, the said issue and question will be



examined in case the Revenue passes any such order. V
have not barred or prohibited the Revenue from passing any such order or expressed any opinion whether any such order should be or could be passed. These aspects can be examined by the respondents. It will be premature to decide these contentions now. We do not want to express any opinion in vacuum on the assumption that an order may be passed. This caveat is necessary least there be any confusion. We may also note that this aspect has not been raised in the pleadings, i.e., the affidavit dated 9th April, 2008 and the reply affidavit dated 21st April, 2008 filed by the petitioner. These affidavits were filed prior to the retrospective amendment vide Finance (No. 2) Act of 2009. The petitioner in fact had filed an application CM No. 2845/2010 challenging the retrospective amendment, which was dismissed as withdrawn vide order dated 26th May, 2010. Thereafter, the petitioner No.1 had filed a writ petition to challenge the said retrospective amendment and it is pointed out that the said writ petition was dismissed as withdrawn on 10th January, 2011. This was right as till the said date, (for that matter even now) no order under Section 281B relying upon the third proviso has been passed.



16. In view of the aforesaid position, we accept the prayer made by the respondents in their affidavit filed on 9th April, 2008, which has been quoted above with one modification that the writ petition filed by the petitioner will not be treated as dismissed. It is only recorded that the respondents admit that there is no order under Section 281B in operation. The respondents are at liberty and should proceed in accordance with law. The writ petition is disposed of. No costs.

**(SANJIV KHANNA)
JUDGE**

**(R.V. EASWAR)
JUDGE**

**MARCH 5th, 2012
VKR**