**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

DATED THIS THE 16TH DAY OF SEPTEMBER, 2016

BEFORE

THE HON'BLE Mr. JUSTICE L. NARAYANA SWAMY

**WRIT PETITION NO.49185/2016 (T-IT)**

**BETWEEN:**

SRI K. VENKATESH DUTT,
S/O. K.S. DATTATREYA
AND L/R. OF LATE SRI K.S. DATTATREYA
AGED 66 YEARS,
RESIDING AT NO.11,
BRUNTON ROAD,
BENGALURU-560 025

... PETITIONER

(BY SRI VANI H. ADVOCATE)

**AND:**

THE TAX RECOVERY OFFICER,
RANGE-7,
BMTC BUILDING,
80 FEET ROAD, 6TH BLOCK
KORAMANGALA,
BENGALURU-560 095

... RESPONDENT

(BY SRI K.V. ARAVIND, ASG)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER OF ATTACHMENT DTD. 28.02.2013 AS BARRED BY TIME UNDER RULE 68B OF SECOND SCHEDULE TO INCOME TAX ACT, PRODUCED AND MARKED AS ANNEXURE-E TO THE WRIT PETITION, ETC..

THIS PETITION COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

**O R D E R**

Earlier, the Revenue approached this Court in ITRC Nos.101 to 103 and 119 of 1999 which came to be disposed of on 10.08.2010. The reference made by the Revenue was allowed and the same was remained unchallenged.

2. Based on the order made by the Division Bench the respondent-Revenue has issued Demand Notice as per Annexure-D dated 13.10.2011. Under the provision of Rule 68B to Second Schedule to the Income Tax Act, 1961 (for short ***'the Act'***) sale of immoveable properties should be within a period of three years, from the end of the financial year in which order gives rise to demand is passed. However, contrary to the said provision, no sale of immoveable property has been made as per order of attachment dated 28.02.2013 and continued till now.

Hence, the learned counsel for the petitioner submits to set aside the order of attachment.

3. In support of her submission, she referred the judgment of ***High Court of Madras*** in ***W.P. No.3570/1996*** reported in **(2001) 171 CTR 0078,** wherein, it has been held that *"a provision which requires the Revenue to act within the period prescribed by law cannot be construed in a manner which would enable the Revenue to act beyond that period unless the Act specifically so provides"*.

4. Learned counsel for the respondent submits to dismiss the petition. He supports the Demand Notice of attachment of immoveable properties.

5. When the reference made by the Revenue was disposed of on 10.08.2010, the sale of immovable property should have been made within a period of three years from the end of the financial year as mandated under Rule 68B to Second Schedule to the Act, which provides no sale of

immovable property under this part after the expiry of three years from the end of financial year in which the order giving rise to demand of any tax, interest, fine/penalty or any other sum, has become final.

6. Sub rule (4) of Rule 68B of II Schedule further clarifies that where the sale of immovable property has not been made within three years as required under Rule 68B to Second Schedule to the Act, the effect would be the attachment order of the said property deemed to be vacated. When the provision is very clear which covered the field, the continuation of the order of attachment Annexure-E till date is not proper. For the purpose of calculating three years it would be from the end of financial year on which the order was passed i.e. 10.08.2010, the end of the financial year would be 31.03.2011. Hence, the Demand Notice and Order of Attachment Annexure-E dated 28.02.2013 were no doubt issued within time, by virtue of Rule 68B (4) to Second Schedule to the Act has expired by

31.03.2014. In view of the above, Annexure-E order of attachment of immovable properties stands vacated.

Petition is accordingly disposed of.

Sd/-
**JUDGE**

Sbs*