

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7005 of 2020

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BEST OASIS LTD.
 Versus
 THE DDIT / ADIT (INV.)

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Appearance:

MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
 MR MANISH BHATT, LD SR. COUNSEL WITH MRS MAUNA M BHATT(174)
 for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
 and
HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 12/05/2020

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. By this writ application under Article 226 of the Constitution of India, the writ applicant, a Company registered under the laws of Hong Kong and a wholly owned subsidiary of “ The Priya Blue Industries Pvt. Ltd.”, a Company incorporated and registered under the laws of India, has prayed for the following reliefs:

(a) quash the impugned order passed under Section 132(9B) of the Act (ANNEXURE “A”);

(b) pending admission, hearing and final disposal of this petition, direct the Respondent to stay the implementation and operation of the impugned order under section 132(9B) (ANNEXURE “A”);

(c) any other and further relief deemed just and proper be granted in the interest of justice;

(d) to provide for the cost of this petition”

2. We need not go into the merits of the matter, as the writ application can be disposed of on the basis of the consensus arrived at between the writ applicant and the Income Tax Department. However, with a view to dispose of the matter, we incorporate few relevant facts:

2.1 It appears that a search action under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act' for short) was undertaken in the Priya Blue group of Bhavnagar and connected entities on 19.11.2019. Later, the search action under Section 132 of the Act was carried out in the case of the writ applicant also on 9.12.2019. The respondent passed an order under Section 132 (9B) of the Act dated 10.12.2019, whereby, the Fixed Deposit Receipts (FDRs for short) of two Banks namely (i) Bank of India and (ii) Indian Overseas Bank, aggregating to USD 9.02 million (approximately Rs.70 crores) came to be provisionally attached and order of such provisional attachment was served upon the writ applicant vide letter dated 13.12.2019.

2.2 It is the aforesaid action on the part of the department, which is made the subject matter of challenge in the present writ application.

3. The Department has filed affidavit-in-reply pointing out various aspects of the matter. According to the department such action of provisional attachment of FDRs has been taken with a view to protect the interest of the revenue. In short, the case of the Department is that the writ applicant is liable to pay a particular amount towards tax in India. With a view to secure such amount liable to be paid by way of tax, the department had to pass the impugned order of provisional attachment of the FDRs of the two banks referred to above.

4. Mr. Tushar Hemani, the learned senior counsel appearing for the writ applicant has put forward a suggestion to put an end to this litigation.

According to Mr. Hemani, his suggestion or arrangement would protect the interest of both, the writ applicant as well as the department. According to the suggestion of Mr. Hemani, the provisional attachment of the FDRs of two banks referred to above, may continue but at the same time, the writ applicant may be permitted to carry on the operation with respect to the bank accounts.

5. In response to the aforesaid suggestion put forward by Mr. Hemani, Mr. M.R. Bhatt, the learned Senior Counsel assisted by Ms. Mauna Bhatt, the learned Senior Standing counsel for the department, after obtaining necessary instructions from the authority concerned, submitted that if the writ applicant is permitted to operate bank accounts, the department should not have any objection. However, Mr. Bhatt, clarifies that at any cost, the provisional attachment over the FDRs shall continue. Mr. Bhatt further clarifies that it shall be open for the department to initiate fresh action also in future in accordance with law.

6. Having heard the learned counsel appearing for the parties and having considered the suggestions put forward by Mr. Hemani as well as by Mr. Manish Bhatt, learned Senior Counsel for respondent, we dispose of this writ application with the following directions :

(i) The impugned order of provisional attachment dated 10.12.2019 shall continue to operate in accordance with law.

(ii) As the bank accounts have not been freezed or attached by the department, it shall be open for the writ applicant to operate such bank accounts / limits in accordance with law.

(iii) If the department wants to initiate any fresh action including the action of further provisional attachment, it

shall be open for them to do so in accordance with law.

7. With the aforesaid directions, this writ application stands disposed of. It shall be open for the writ applicant to inform the concerned department of the order passed by this Court by E-mail. The Registry shall furnish one copy of this order to Ms. Mauna Bhatt, learned Senior Standing Counsel appearing for department. Mr. Hemani, learned counsel is requested to forward one copy of this order to Ms. Mauna Bhatt by E-mail.

(J. B. PARDIWALA, J)

(ILESH J. VORA, J)

P. SUBRAHMANYAM

