IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.08.2025
Pronounced on	14.10.2025

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.No.28622 of 2025
& W.M.P.Noss.32070 & 32075 of 2025

M/s.JSR Infra Projects Pvt.Ltd.,
Rep.by its Authorized Signatory, J.Sekar,
Having Office at,
No.4, 10A, East Cross Road,
Gandhi Nagar, Vellore,
Tamilnadu, India 632 006

... Petitioner

Vs.

1.The Tax Recovery Officer,
TRO Central 2, Chennai,
119, 1st Floor, Investigation Building,
No.46, Old No.108,
Mahatma Gandhi Road, Chennai 600 034.

2.The Principal Commissioner of Income Tax,
Central Circle-2,
Investigation Wing,
New No.46, MG Road,
Chennai 600 034.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for records on the file of the 1st Respondent in its impugned attachment order in ITBA/COM/F/17/2022-23/1043863711 (1) dated 15.07.2022 and quash the same as it is unreasonable, illegal, improper and in gross violation of principles of natural justice and consequently, direct the respondent to lift the order of attachment, morefully described in the schedule hereunder

For Petitioner : Mr.Nithyaesh Natraj,
for Mr.Vaibhav R Venkatesh

For Respondent : Mr.A.P.Srinivas, Sr.St.counsel
& Mr.A.N.R.Jayaprathap, Jr.St.counsel

ORDER

This writ petition has been filed challenging the impugned attachment order dated 15.07.2022 and to direct the 1st respondent to lift the said attachment order.

2. The learned counsel appearing for the petitioner would submit

that in this case, the respondent-Department had conducted search on 08.12.2016. Pursuant to the said search, they had initiated proceedings against the petitioner and issued notice under Section 153A of the Income Tax Act, 1961 (hereinafter called as "IT Act"). Subsequently, the assessment orders were passed on 06.02.2020 for the AYs 2011-2012 to 2017-2018.

3. As far as the AYs 2015-16 to 2017-2018 are concerned, the Assessing Officer made new additions in the assessment orders dated 06.02.2020. On the other hand, the assessment orders, pertaining to AYs 2011-2012 to 2014-2015, were passed with "Nil" addition. Subsequent to the said assessment order, the impugned attachment order came to be passed on 15.07.2022.

4. Aggrieved over the aforesaid assessment order, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. After hearing the concerned parties, the CIT(A) had set aside the aforesaid new additions made by the assessing officer and the appeal was partly allowed vide order dated 15.09.2023, which was given effect

on 19.10.2023.

5. Thereafter, against the CIT(A) order dated 15.09.2023, the Department had preferred an appeal before the Income Tax Appellate Tribunal (ITAT), whereby, the said order was confirmed by ITAT vide order dated 30.04.2025.

6. In a similar manner, an assessment order dated 30.09.2021, pertaining to the AY 2016-17, was passed under Section 153C of the IT Act with new additions. The said new additions were set aside by the CIT(A) vide order dated 24.06.2024 and the said order was confirmed by the ITAT vide order dated 28.02.2025. In spite of the confirmation order, the respondents had failed to lift the attachment order till date.

7. He would submit that as far as the arrears amount referred in paragraph No.9 of the counter is concerned, the entire amount has already been remitted by the petitioner and thus, as on date the petitioner

is not liable to pay any amount to the respondent. In this regard, they filed the entire details before this Court by virtue of statement dated 28.08.2025. Hence, he would contend that the respondent is supposed to have lift the attachment order.

8. Further, he would submit that once if an order attained its finality at the level of ITAT on the factual aspect, then the respondent is bound to lift the attachment order passed against the Assesee. If at all if any appeal is filed before the High Court, the same has to be filed on the aspect of question of law but not on the factual aspect.

9. He would also submit that the aforesaid issue has already been dealt with by this Court in the following two judgements:

i) ***Sri Lakshmi Brick Industries vs. Tax Recovery Officer and others*** reported in ***2013 SCC OnLine Mad 378*** [W.P.Nos.22913 to 22915 & 24101 of 2012, order dated 01.02.2013];

ii) ***Coromandel Oils P. Ltd., vs. Tax Recovery***

Officer and others reported in ***(2017) 10 ITR-OL 56*** [W.P.No.26821 of 2016, order dated 14.09.2016];

10. In the above two judgements, it has been held that once the issue attained finality on the factual aspect at the level of ITAT and if the entire arrears has been remitted by the Assessee, the attachment order has to be lifted by the concerned Authority. Hence, he would submit that the said issue is no more *res integra* and it is very well settled by this Court vide the aforementioned 2 judgements. Thus, he requests this Court to pass appropriate orders.

11. *Per contra,* the learned Senior Standing counsel appearing for the respondents made objections by stating that the issue has not attained finality at the highest level and the respondents are still in the process of filing the appeal, which is yet to be numbered, due to which, they are not in a position to lift the attachment order.

12. Further, he had filed the counter, whereby, at paragraph No.9, the pending payment is narrated as follows:

AY	*Rule 5 interest including costs (in Rs.)*	*Remarks*
2011-12	Demand of Rs.16,70,417/- vide assessment order u/s.153A dt. 06.02.2020	The Assessee have filed a rectification petition u/s.154 dated 13.01.2021 and a reminder request petition dated 01.02.2024 filed on 02.02.2024. Rectification order passed manually on 20.05.2025 reducing the demand to Rs.41,841/-.
2012-13	Demand of Rs.2,53,802/- vide assessment order u/s.153A dt. 06.02.2020	The Assessee have filed a rectification petition u/s.154 dated 13.01.2021 and a reminder request petition dated 01.02.2024 filed on 02.02.2024. Rectification order passed manually on 20.05.2025 reducing the demand to Rs.644/-.
2014-15	Demand of Rs.16,06,142/- vide assessment order u/s.153A dt. 06.02.2020	The Assessee have filed a rectification petition u/s.154 dated 13.01.2021 and a reminder request petition dated 01.02.2024 filed on 02.02.2024. Rectification order passed manually on 20.05.2025 reducing the demand to Rs.45,604/-.

13. However, he had accepted the legal position as per the law laid down by this Court in the aforementioned two citations referred by the petitioner and hence, he requests this Court to pass appropriate orders.

14. I have given due consideration to the submissions made by the learned counsel appearing for the petitioner and the learned Senior Standing counsel appearing for the respondent and also perused the entire materials available on record.

15. In the case on hand, initially, the proceedings were initiated under Section 153A of the IT Act and the assessment orders were passed on 06.02.2020. As far as the AYs 2015-16 to 2017-2018 are concerned, the Assessing Officer made new additions in the aforesaid assessment orders. On the other hand, the assessment orders, pertaining to AYs 2011-2012 to 2014-2015, were made with nil addition.

16. Against the said assessment order dated 06.02.2020, an appeal was filed by the petitioner before CIT(A). The said appeal was partly allowed vide order dated 15.09.2023, which was given effect on 19.12.2023. Thereafter, the Department had preferred an appeal against the order passed by CIT(A), whereby, the order dated 15.09.2023 passed by CIT(A) was confirmed by ITAT vide its order dated 30.04.2025.

17. Now, the question that arises for consideration is as to whether the issue had attained its finality on the factual aspect vide the order dated 30.04.2025 passed by ITAT.

18. The aforesaid issue involved in this case is no more *res*

integra. When a similar issue came up for hearing, this Court, in WP.No.26821 of 2016, passed a detailed order dated 14.09.2016 (referred supra). The relevant portion of the said order is extracted hereunder:

> *"3. The learned counsel appearing for the petitioner contended that the petitioner cannot be treated as a defaulter, and even if the Revenue has challenged the order of ITAT, by filing Tax Case Appeal before this Court, still the petitioner cannot be treated as defaulter. Even assuming that the Revenue succeeds in the Tax Case Appeal filed before this Court, yet, the petitioner cannot be treated as assessee in default, as they are entitled to a notice of 30 days, and if the liability is cleared by then, they are not a 7 defaulter. Therefore, the impugned order of attachment cannot survive after ITAT passed orders, which order has been given effect to by the second respondent.*
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> *4. It is further submitted by the learned counsel that for four years, the petitioner is suffering. Apart from that, their Directors are also suffering, as they are unable to sell the property. The value of the property, which has been attached is more than Rupees Ten Crores, the value of the property, given as surety by Directors, is more than Rupees Twenty Crores, and action of the Revenue Department, in refusing to consider the petitioner's request for raising attachment not tenable. It is submitted that, this Court, in the case of (Sri Lakshmi Brick Industries Vs. The Tax Recovery Officer) reported in (2013) 351 ITC 0345 has considered a similar issue to release the property, which was the subject matter of attachment, and rendered the decision, following the decision of the Hon'ble Supreme Court, in the case of (Sri Mohan Wahi Vs. Commissioner of Income Tax and*

others) reported in (2001) 248 ITR 799.

5. The learned Senior Standing Counsel for the respondent/Income Tax Department has referred to Section 225 (3) of the Act, and submitted that, where a certificate has been drawn up, and subsequently, the amount of the outstanding demand is reduced as a result of an Appeal, or other proceeding, under the Act, the Tax Recovery Officer shall, when the order, which was the subject matter of such Appeal, or other proceeding has become final and conclusive, amend the certificate, or cancel it, as the case may be. Placing emphasis on the words "final" and "conclusive", it is submitted that the order passed by ITAT has not attained finality, and it has not become conclusive, as the Department as filed Tax Case Appeal before this Court, under Section 260 A of the Act, and the same is to be numbered shortly, as there is a delay in re-presenting the papers. Therefore, it is submitted that, as long as the order passed by ITAT has not become final and conclusive, the question of raising the attachment does not arise.

6. Further, it is submitted by the learned Senior Standing Counsel that the procedure under Rule 12 of second schedule to the Act has to be followed, and such a contingency would arise only after finality is arrived at the proceeding, and therefore, the prayer sought for by the petitioner cannot be acceded to, by the Department. In support of the said contention, reliance has been placed on the decision of this Court, in the case of (Pyramid Saimira Theatre Ltd., Vs. Commissioner of Income Tax) reported in (2009) 316 ITR 75 Madras and the decision of the Hon'ble High Court of Calcutta, in the case of (Income Tax Officer Vs. Ghanshyamdas Jatia) reported in (1976) 105 ITR 693 (CAL).

7. Heard Mr.R.Sivaraman, the learned counsel appearing for the petitioner, and Mr.T.Ravikumar, learned Senior Standing Counsel (Income Tax Department) appearing for respondents, and perused the

materials placed on record.

8. The factual matrix of the case, as set out in the preceding paras, pertaining to the assessment, and, culminating in the order of ITAT, is not disputed by the Revenue. The fact that, giving effect to orders have been passed by the second respondent pursuant to the order passed by ITAT, on 08.09.2015 and 14.09.2015, for all three assessment years, is not disputed. The only defence, putforward by the Revenue for refusing to accede to the prayer sought for by the petitioner for raising the attachment is that, the order passed by ITAT has not become final and conclusive. In this regard, reference was made to Section 225 (3) of the Act, and Rule 12 of second schedule to the Act.

9. As noticed above, sub-section 3 of Section 225 uses the expressions "final" and "conclusive". It has to be seen, as to how the expressions should be understood, in the given facts and circumstances of the case.

10. The contention of the Revenue is that, the terms "final" and "conclusive" would mean the finality attached to the order, when the order is challenged and taken to the logical end, or in the case, where the Department accepts the judgment. In other words, the stand taken by the Revenue is that, even if the Revenue fails to succeed in the Tax Case Appeals, yet, they got a remedy of Appeal to the Hon'ble Supreme Court, and only thereafter, the proceeding could be construed as final and conclusive. However, I am not in a position of subscribing to such a submission, as Section 225 (3) should not be read in isolation, but should be read along with Section 222. This is so because, in terms of Section 222, where, an assessee is in default, or is deemed to be in default in making payment of tax, the Tax Recovery Officer may issue a certificate, specifying the amount of arrears due from the assessee, and shall proceed to recover from such assessee, the amount so specified, by one or more of the modes, which includes attachment and sale of the

assessee's immovable properties. The second schedule sets out the procedure for recovery of tax. Therefore, the action, that is required to be taken prior to the property being attached is that, the Tax Recovery Officer should issue a certificate that the assessee is in default.

11. In Sri Mohan Wahi's case (supra), a house property, owned by one late B.P. was the subject matter of attachment, and the proclamation of sale was issued for sale of the property, and the property was sold and the highest bidder deposited the money. The widow of the owner of the property filed a Suit to restrain the sale, claiming that the shares of two of her sons could not have been attached, and advertised for sale. In the said Suit, order of interim injunction was granted by the Civil Court, as a result of appellate and other proceedings, all the demands against the Firm stood wiped out and reduced to nil. Therefore, the assessee addressed the Income Tax Officer that the demand had been cancelled, and the Tax Recovery Officer may be informed accordingly. Inspite of the same, the Tax Recovery Officer confirmed the sale, and the Revision Petition filed against the same before the Commissioner, under Section 264 of the Act was dismissed. As did the High Court, when a Writ Petition challenging the dismissal of Revision Petition was filed, and on Appeal to the Hon'ble Supreme Court, the Hon'ble Supreme Court reversed the decision of the High Court, and held that the Tax Recovery Officer could not have confirmed the sale, when the demands on account of tax, for the recovery of which certificates were issued, had admittedly ceased to exist.

12. It was further held in Sri Mohan Wahi's case (supra) that the term "reduced" in Section 225 (3) of the Act would include a case, where the demand, consequent upon an appeal, or any proceeding, under the Act has been reduced to nil also. Further, it was pointed out that the combined effect of Section 225 (3) of the Act and Rules 56 and 63 of schedule II is that, before an order

confirming the sale is actually passed by the Tax Recovery Officer, the demand of tax consequent upon an order made in appeal, or other proceedings under the Act had been reduced to nil, the Tax Recovery Officer is obliged to cancel the certificate, and, as soon as the certificate is cancelled, he shall have no power to make an order confirming the sale. Though this interpretation was made, taking note of Rules 56 and 63 of schedule II to the Act, yet, the underlying legal principal is that, once the demand has been reduced to nil, the Tax Recovery Officer has no power to confirm the sale. If that be the case, then, it would apply with more force in a case of attachment, which is a step anterior to sale.

13. The decision rendered in Sri Mohan Wahi's case (supra) was taken into consideration by the learned Single Judge of this Court, in Sri Lakshmi Brick Industries case (supra) wherein, it was held as follows:-

> *" 12 . In the present case, the order of the Income Tax Appellate Tribunal, which is the highest fact finding authority, held infavour of the petitioner assessee andthat order has been given effect to. As a consequence,the Tax Recovery Officer is bound to give effect of the order of the Assistant Commissioner, who accepted the order of the Tribunal. It is another matter for the Department to proceed in Appeal, and the Department is always at liberty to proceed for recovery, if they succeed in the Appeal before the Court. The provisions of Section 225(2) of the Income Tax Act,1961, gives a mandate to Tax Recovery Officer to pass appropriate orders based on the orders passed in Appeal, or other proceedings.*
>
> *13. In such view of the matter, the first respondent Tax Recovery Officer is directed to*

pass necessary orders, consequent to the proceedings of the Assistant Commissioner of Income Tax, Circle XIV, accepting the order of the Tribunal. Taking note of the nil payment insfor as the assessee for all the assessment year, the Tax Recovery Officer has to release the property from attachment in terms of the order of the Tribunal, and consequent to the order of the Assistant Commissioner of Income Tax, Circle XIV. The Writ Petitions are allowed as above. No costs."

14. The learned Senior Standing Counsel for the Revenue pointed out that, in the decision rendered in Sri Lakshmi Brick Industries (supra), the Court did not interpret the expressions "final" and "conclusive", and therefore, the said decision cannot be applied to the facts of the case on 15 hand. This contention does not merit acceptance, as the decision in Sri Mohan Wahi's case (supra) was rendered, taking into consideration the scope of Section 225 (3) read with Rule 12 of second schedule to the Act. This was taken note of in Sri Lakshmi Brick Industries (supra), and therefore, the ground raised by the Revenue, is not a ground to distinguish the decision in Sri Lakshmi Brick Industries (supra).

15. In the considered view of this Court, the decision in Sri Lakshmi Brick Industries (supra) would apply with full force to the case of the petitioner herein.

16. The learned Senior Standing Counsel for the Revenue has referred to the decision in Ghanshyamdas Jatia's case, and submitted that, unless the outstanding demand is reduced by an order in Appeal, or other proceeding, and such order has become final and conclusive, the question of lifting the attachment does not arise, and the position would be that, the certificate proceeding already started under the original assessment in such case remains in abeyance, subject to the provisions of Section 225 (4) abiding with the last order,

as it attains finality and conclusiveness. In the said decision, the matter was pending before the Tribunal, and the Court observed that the matter had not attained the character of final and conclusive order, and therefore, it did not have any effect on the certificate proceeding, which remained in abeyance pending decision by a final and conclusive order.

17. However, in contradistinction to the present case, the Appeal filed by the petitioner/assessee has been allowed in full by ITAT, and demand of tax, in respect of the assessment year 2009-10 was Nil, and with regard to two assessment years, it has resulted in refund. Thus, to say that the order of attachment should still continue till the matter reaches the Hon'ble Supreme Court would be an interpretation, which would be inconsistent with the provisions of the Act, more particularly, by reading together Sections 222 and 225 of the Act.

18. As rightly pointed out by the learned counsel for the petitioner, the object of the demand is to secure the interest of the revenue. The Income Tax Officer acquires jurisdiction to attach the property based on a certificate issued by the Tax Recovery Officer, certifying that the assessee is a defaulter. As on date, the Tax Recovery Officer has not issued such a certificate. Even assuming that the Tax Case Appeal filed by the Revenue is entertained, that by itself, will not make the petitioner as an assessee in default, on account of the fact that the entire tax liability is wiped of pursuant to the order of ITAT.

19. Assuming further that the Revenue succeeds in the Tax Case Appeal, automatically, the assessee will not be treated as defaulter, since the consequential orders have to be passed, notice of demand have to be issued, time has to be granted, thereafter, proceeding has to be initiated and certificate has to be issued by the Tax Recovery Officer, declaring the petitioner as defaulter, and only then, the order of attachment of immovable

property of the petitioner could be effected. Furthermore, the decision in the case of Sri Lakshmi Brick Industries (supra) was challenged by the Revenue, by way of Writ Appeal, being Writ Appeal No.1527 of 2013 and it is pending, and it is submitted that the issue involved in the Writ Appeal has become infructuous.

20. Thus, the decision of this Court in the case of Sri Lakshmi Brick Industries (supra) being the jurisdictional Court for the respondent, the same would bind over the respondent, as held by the Hon'ble Supreme Court in the case of (M/s. East India Commercial Co. Ltd., and another Vs. Collector of Customs, Calcutta) reported in A.I.R. (1962) S.C. 1893, that the law declared by the highest court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it, either in initiating a proceeding or deciding on the rights involved in such a proceeding.

21. The learned Senior Standing Counsel for the Revenue relied upon the decision of this Court in Pyramid Saimira Theatre Ltd.,(supra). On a carefully going through the said decision, it is noted that the decision was on an entirely different issue, not with specific reference to the point, which has been agitated as to the effect of expressions "final" and "conclusive". Therefore, the said decision does not render support to the stand of the Revenue.

22. For all the aforesaid reasons, the Writ Petition is allowed, and the first respondent/Tax Recovery Officer is directed to pass appropriate orders for lifting the order of attachment of the immovable property of the 19 petitioner, and return the original documents given as surety to the second respondent, vide letter, dated 04.09.2012, and pass necessary consequential orders with due intimation to the Sub Registrar, Neelankarai. The above direction shall be complied with by the first respondent, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently,

connected Writ Miscellaneous Petitions are closed."

19. A reading of the above would show that once if the order attained its finality on the factual aspect at the level of ITAT and if the amount was paid as per the order passed by the Tribunal, no further recovery can be initiated and thus, the concerned Authority is bound to lift the attachment order.

20. In a similar way, this Court had already dealt with the very same issue in W.P.Nos.22913 to 22915 & 24101 of 2012 and passed the order dated 01.02.2013 (referred supra). The relevant portion of the said order is extracted hereunder:

> "*12. In the present case, the order of the Income Tax Appellate Tribunal, which is the highest fact finding authority, held in favour of the petitioner assessee and that order has been given effect to. As a consequence, the Tax Recovery Officer is bound to give effect of the order of the Assistant Commissioner who accepted the order of the Tribunal. It is another matter for the department to proceed in appeal and the department is always at liberty to proceed for recovery if they succeed in the appeal before the court. The provisions of Section 225(2) of the Income Tax Act, 1961 gives a mandate to Tax Recovery Officer to pass appropriate orders based on the orders passed in appeal or other proceedings.*
>
> *13. In such view of the matter, the first respondent*

Tax Recovery Officer is directed to pass necessary orders, consequent to the proceedings of the Assistant Commissioner of Income Tax, Circle XIV, accepting the order of the Tribunal. Taking note of the nil payment insofar as the assessee for all the assessment year, the Tax Recovery Officer has to release the property from attachment in terms of the order of the Tribunal and consequent order of the Assistant Commissioner, Circle XIV."

21. In the above order, this Court has held that if the order attained finality at the level of highest fact finding authority, then the tax recovery officer is bound of give effect of the order and further, it has been stated that if the Department preferred any appeal, they are always at liberty to proceed for recovery if they succeed in the appeal before the Court. Further, it was held that the provisions of Section 225(2) of the IT Act gives a mandate to the Tax Recovery Officer to pass appropriate orders based on the orders passed in appeal or other proceedings. By taking note of the above aspect, this Court had directed the Authorities to lift the attachment of property in the above order.

22. As stated above, it is clear that the issue involved in this case is no more *res integra.* In the present case, as per the order passed by ITIT and CIT(A), the entire arrears has already been paid by the petitioner. In such view of the matter, the law laid down by this Court in the aforementioned two citations will squarely apply for the present case.

23. Therefore, by taking note of the nil payment in so far as the assessee for all the assessment years, this Court directs the 1st respondent-Tax Recovery Officer to release the property, which was attached vide impugned attachment order dated 15.07.2022, within a period of 4 weeks from the date of receipt a copy of this order.

24. In the result, this writ petition is allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

14.10.2025

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
nsa

To

19/21

1.The Tax Recovery Officer,
TRO Central 2, Chennai,
119, 1st Floor, Investigation Building,
No.46, Old No.108,
Mahatma Gandhi Road, Chennai 600 034.

2.The Principal Commissioner of Income Tax,
Central Circle-2, Investigation Wing,
New No.46, MG Road,
Chennai 600 034.

KRISHNAN RAMASAMY.J.,

nsa

W.P.No.28622 of 2025
and W.M.P.Nos.32070 & 32075 of 2025

14.10.2025