

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 15485 of 2022**

FOR APPROVAL AND SIGNATURE:

**HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

FCS MANUFACTURING (INDIA) PVT. LTD.

Versus

DEPUTY DIRECTOR OF INCOME TAX (INVESTIGATION)

Appearance:

MR SAURABH SOPARKAR with MR DHINAL A SHAH(12077) for the
Petitioner(s) No. 1

MR. AH MOHAPATRA(6807) for the Petitioner(s) No. 1

MR.VARUN K.PATEL with MR DEV PATEL (3802) for the Respondent(s) No.
1,2

**CORAM: HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

Date : 29/11/2022

ORAL JUDGMENT

(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. The petitioner in the present petition challenges the

attachment of the Bank Account No. 101040608001 maintained in HSBC Bank situated at C.G.Road, Ahmedabad with Rs. 10,97,72,399/- (Rupees Ten Crore Ninety-Seven Lakh Seventy-Two Thousand Three Hundred Ninety-Nine) since 18.11.2021 by letter nos. DDIT (Inv)/ Unit 6(1)/132 (9B) 2021-22 dated 18.11.2021 under Section 132(9B) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). This has been continued by a letter dated 21.12.2021 indefinitely till further orders.

1.1. The petitioner also challenges the continuing attachment of its Bank Account No. 855210062222 maintained with DBS Bank, Prahalad Nagar Branch, Ahmedabad since 18.11.2021 under Section 132(9B) of the Act by letter No. DDIT (Inv)/Unit 6(1)/132 (9B) 2021-22 dated 18.11.2021 and on expiry of six months of the operation of the said order, under an order dated 13.05.2022 passed by the respondent no.2 under Section 281(B) of the Act. Pursuant thereto, the respondent no.2 has attached the Fixed Deposit No. 552205260019 for an amount of Rs. 2,65,04,306/- (Rupees Two Crore Sixty-Five Lakh Four Thousand Three Hundred Six) of the petitioner in DBS Bank.

1.2. It is the say of the petitioner that the attachment of the HSBC Bank and DBS Bank account of the petitioner since 18.11.2021 under the guise of securing the interest of the revenue is ex-facie bad in law and is passed without any basis or reason which has seriously jeopardized the business operations of the petitioner company. The continuing of the attachment after a period of six months from the date of the order is also alleged to be bad in law and contrary to Section 132(9C) of the Act.

2. The petitioner is a private limited company incorporated on 27.04.2020 under the provisions of Companies Act and has an authorized capital of Rs. 51,80,00,000/- (Rupees Fifty-One Crore Eighty Lakhs) and the paid up capital of Rs. 19,66,81,000/- (Rupees Nineteen Crore Sixty-Six Lakh Eighty-One Thousand). It is engaged in the business of manufacturing of Injection Molding Machines. It is wholly owned subsidiary of Fu Chin Shin (FCS) Machinery Manufacturing Co. Ltd. (referred as "Fu Chun Shin Machinery Manufacturing Co. Ltd." in Memorandum of Association) - a company incorporated in and under the laws of Taiwan. It has

invested its funds in setting up its operations through FDI route and currently has 52 employees under its employment. The details of which has been provided.

2.1. A search through the office of Deputy Director of Income Tax (Inv), Unit 2(2) Mumbai has been conducted on 17.11.2021 at the premises of the petitioner situated at Ahmedabad which was concluded on 18.11.2021. During search, the statements were recorded and several materials, digital data, books of accounts and documents were seized by the Income Tax Authorities. Copy of the order dated 17.11.2021 under Section 133A(3)(ia) impounding the books of accounts along with panchanama is also brought on record.

2.2. The petitioner is impaired on account of the attachment of the two of its accounts with the DBS Bank and HSBC Bank and has made a request to release the attachment of the current bank accounts, however, the letter dated 02.12.2021 directed the Branch Manager, BDS Bank to continue to freeze the bank account. Thereafter also, once again similar request has been made but, by virtue of the subsequent directions, the attachment has continued. Thus, what emerges is that the first order attaching the bank accounts was passed on

13.05.2022. This provisional attachment under Section 281(B) of the Act had continued by virtue of the order dated 11.11.2022 which has been also challenged by way of draft amendment which is allowed by way of order dated 15.11.2022.

2.3. According to the petitioner, after the initial order, the office of the Principal Commissioner of the Income Tax, Ahmedabad-1 intimated the petitioner in view of the CBDT guidelines for centralization of search cases and subsequent guidelines of the Board as proposed by CCIT (Central-1), Mumbai that the case of the petitioner was transferred to ITO, Ward2(1)(1), Ahmedabad to DCIT, Central Circle-2(4), Mumbai. On 16.02.2022, despite the objection on the part of the petitioner, the order under Section 127(2) of the Act was passed.

2.4. By a communication dated 05.02.2022, a request has been made by the respondent no.1 to release the provisional attachment of the bank accounts held with DBS and HSBC Banks by emphasizing that it is not a Chinese Company nor has it evaded the tax obligations and on account of continuing

freezing of amount in excess of Rs. 13 crores it is unable to pay wages to the workers, purchase raw materials, make expenditure of day to day running cost of electricity charges etc. The creditors or vendors are also not paid and hence, it has led to the stoppage of supplies. The entire business operations have come to a halt and hence, the request is made to release the provisional attachment of bank accounts. He has further ensured to give undertaking and guarantee to pay the tax liability if imposed eventually. Yet another communication dated 14.02.2022 also has been sent, however, none of them had been replied to.

2.5. It is the say of the petitioner that it came to know of the issuance of notice under Section 148 of the Act for the years 2019-20, 2020-21 and 2021-22 unmindful of the fact that the company itself has been incorporated on 27.04.2020. The orders of provisional attachment of the bank accounts of the petitioner attaching more than Rs. 13 crores passed by the respondent are ex-facie bad in law, patently arbitrary on the ground that the orders are passed by the authority without any tangible material about any potential tax liability, even without framing any opinion as to how the interest of revenue

is required to be protected particularly, when the order is passed raising the demand overlooking the investment and plant and machinery of the value of Rs. 2.16 crores (rounded off).

2.6. The proposition of law, according to the petitioner, is well settled as interpreted in the analogous provision of Section 83 of the Himachal Pradesh Goods and Services Act, 2017 in case of Radha Krishnan Industries vs. State of Himachal Pradesh [2021 (6) SCC 771]. Hence, attachment of the bank account, according to the petitioner, for amount in excess of Rs. 13 crores is disproportionate and suffers from malice of law and deserves to be quashed.

2.7. It is also urged that Section 132(9C) of the Act does not permit any provisional attachment to be continued to be operational after the expiry of period of six months from the date of the order. On 18.11.2021, the order came to be passed and therefore, beyond 18.05.2022, it shall cease to operate. Without recording the reasons, when the powers of provisional attachment have been exercised, its continuation is seriously questioned by the petitioner with the following

prayers:-

“(A) This Hon'ble Court be pleased to issue writ of Mandamus or appropriate writ, order or direction to quash and set aside Letter Nos. DDIT (Inv)/Unit 6(1)/132 (9B)2021-22 dated 18.11.2021 along with letter dated 21.12.2021 issued by Respondent No. 1 annexed hereto and marked as Annexure-A(colly) as well as the order of provisional attachment passed by Respondent No. 2 dated 13.05.2022 along with order dated 16.06.2022 freezing the FD No 552205260019 of the Petitioner at Annexure-B (Colly) and the order of provisional attachment passed by Respondent No.2 dated 13.05.2022 attaching the HSBC bank account No. 101040608001 of the Petitioner at Annexure R-2; and the order dated 11.11.2022 passed by the Respondent No.2 extending period of provisional attachment of HSBC bank account of the Petitioner bearing No. 101040608001 at Annexure R as well as the order extending period of provisional attachment passed by Respondent No. 2 dated 11.11.2022 freezing the FD No 552205260019 of the Petitioner at Annexure S;

(B) Pending admission and final hearing of the present petition, this Hon'ble Court be pleased to stay the operation and implementation of the orders of provisional attachment at Annexure-A and Annexure-B and Annexure R-2, Annexure R and Annexure S and be pleased to restrain Respondents from taking any coercive actions against the Petitioner;

(C) This Hon'ble Court be pleased to grant ex-parte ad-interim relief(s) in terms of pare 6(B) above;

(D) This Hon'ble Court be pleased to grant any other or further reliefs as may just and proper in the interest of justice.”

3. Affidavit-in-reply is filed by the respondent no.2 - Mr.

Uday Shakar, ACIT, Central Circle - 2(1), Mumbai where he has denied each and every averment. According to him, search and seizure operation on certain Chinese Controlled Indian Shell Companies and some Indian Subsidiaries of Chinese Companies was carried out on 16.11.2021 and ended on 18.11.2021.

3.1. During the search, it was found that these entities were involved in various methods of tax evasion like unaccounted cash sales, purchase through shell companies, diversion of funds to tax havens etc. The premises of the petitioner - M/s. FCS Manufacturing (India) Pvt. Ltd. was also covered under the search and seizure action. During the course of the same, the bank account of the companies covered under the search were attached. The two of them have been attached on 18.11.2021. The case of the petitioner was centralized under Section 127 of the Act on 16.02.2022 consequent to the said act. Under Section 148 of the Act notices came to be issued on 13.05.2022. The attachment of the account has continued by virtue of the approval of Principal Commissioner of Income Tax under Section 281(B) of the Act. The approval was also taken from the competent authority to convert the amount

attached to BDS Bank into fixed deposit and accordingly, the bank was directed to convert the same.

3.2. On 16.06.2022 the bank account of DBS Bank was released and the balance fund as on 18.11.2021 remained under attachment under Section 281(B) of the Act until further order.

3.3. It is further the say of the respondent that the assessment proceedings were not completed on 13.05.2022. Notices were issued to the assessee and after verification of the reply, the proceedings will be completed. It is further stated that the requirement of provisional attachment was because of the search/survey proceedings at the premises of the petitioner and on seizure of certain documents as well as data back-ups.

3.4. It is further his say that Section 281(B) of the Act talks about the provisional attachment to protect the interest of the revenue during the pendency of any proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.

3.5. According to the respondent, as per the Board Instruction No. 08 of 2004, in search and seizure cases, when huge demands are raised under block assessment and the recovery of the same is tedious and time consuming, it is important for the assessing officer in central charges to explore the possibility of invoking the provisions of section 281(B) and it shall be the responsibility of the assessing officer to follow the procedures given under the Board Instructions No. 08/2004 dated 02.09.2004 and Instruction F. No. 404/22/2004-ITCC dated 05.11.2004. If the demand becomes irrecoverable due to the failure of the assessing officer to follow these guidelines, he shall be held accountable for the loss caused to the Government regardless of his subsequent posting. It is further his case that notices also came to be issued on 13.05.2022 under Section 148 of the Act. It is also denied that the assessment proceedings is not in progress.

4. The rejoinder affidavit has come on record where it is urged that the petitioner company is not a Chinese Company but is a wholly owned subsidiary of Fu Chin Shin (FCS)

Machinery Manufacturing Co. Ltd. a public listed company incorporated under the laws of Taiwan incorporated under the Companies Act, 2013 on 27.04.2020. The petitioner company was incorporated under the FDI policy of India and funds received through banking channels was recorded and the company has filed FCGPR in India and has duly complied with the provisions of the FEMA Act. It is engaged in the business of manufacturing of injection molding machines and has attained goodwill and reputation worldwide. All allegations made on the part of the respondent have been denied and it is alleged that the provisional attachment of sum exceeding Rs. 13 crores since 18.11.2021 de hors the provision of Section 132(9C) of the Act.

4.1. It is alleged that the respondents have not been provided any sort of reason, opinion or document highlighting the reasons which had drawn the respondent to take such a harsh steps against the petitioner. The prior approval of the competent authority under Section 281(B) had been taken on the strength of the documents, however, they have not been provided to the petitioner. There are misleading statements of the respondent about which the details have been provided.

4.2. Much reliance is placed on the Board Instruction No. 08/2004 which says that Section 281(B) should be resorted to only in cases where there is a reasonable likelihood of the recovery becoming difficult due to inadequacy of assets. Where there is sufficient asset to cover the demand, the provisions of Section 281(B) should not be resorted to, except under exceptional circumstances.

4.3. It is reiteratively emphasized that the petitioner company has no connection with the Chinese Company directly or indirectly, however, in spite of the objections raised by the petitioner, the case of the petitioner was centralized on 16.02.2022.

5. The affidavit-in-sur-rejoinder is filed by the respondents stating that the petitioner is a wholly owned subsidiary of Fu Chin Shin (FCS) Machinery Manufacturing Co. Ltd. which was incorporated under the laws of Taiwan. It is alleged that modus operandi of the petitioner under consideration are similar to the China based companies which were covered along with the petitioner for the search/survey proceedings.

“It is noticed during the search/survey proceedings by the investigation wing that the petitioner have been showing purchases from M/s. Tianchao Import Export Trading Private Limited and M/s. Pipeguard Trading Private Limited. The Chinese parent companies who used to supply materials to the petitioner are also supplying material to these two shell companies. Further, the shell companies are selling such imported goods again to the petitioner in India after adding 2-4% commission. It is also noticed that almost all fund received by the shell companies from the petitioner company was transfer to their holding companies in Taiwan through this channel. Further, it was found that M/s. Tianchao Import Export Trading Private Limited and M/s. Pipeguard Trading Private Limited are just paper companies without any genuine businesses. These companies were used as conduit, to layer the transactions from its parent company based in Taiwan. M/s. Tianchao Import Export Trading Private Limited and M/s. Pipeguard Trading Private Limited are ultimately purchasing from Fu Chun Shin based in Taiwan which is parent company of the petitioner.”

5.1. According to the respondent, during the course of search

proceedings by the investigation wing, incriminating materials have been found and seized which has been considered and verification of the same is under progress for the assessment year 2021-22. The attachment of the account under Section 281(B) was made after obtaining statutory approval of Principal Commissioner of Income Tax, Central-1, Mumbai and the same is not liable to be disclosed to the petitioner. Each and every allegations in the affidavit-in-rejoinder have been denied.

5.2. It is thus emphasized on the part of the respondent is that petitioner - FCS Manufacturing (India) Pvt. Ltd. is a wholly owned subsidiary of M/s. Fu Chin Shin (FCS) Machinery Manufacturing Co. Ltd. incorporated under the laws of Taiwan. The modus operandi of the petitioner is similar to the China based companies which were covered along with the petitioner for the search/survey proceedings.

6. We have extensively heard learned Senior Advocate Mr. Saurabh Soparkar appearing with learned advocate Mr. Dhinal Shah for the petitioner.

6.1. Having noticed the need for the original papers, recording the satisfaction and also the approval, this Court had called for the same from the respondent - department on 09.11.2022. We could get the original file and for satisfaction of the Court, the same has been perused.

6.2. It was argued emphatically along the line of the rejoinder affidavit that at no point of time, the details have been provided by the respondent by stating that recording of reasons for attachment is an internal part of the office procedure and in absence of any opinion, reasons or documents highlighting the reasons which drew the respondent to take such a harsh step and attach the bank accounts, ought to have furnished to the petitioner. The initial ground of absence of any tangible reasons and recording of such reasons, it has also gone on to the absence of any supply, resulting into the serious prejudice to the petitioner while dealing with such matters. However, later on, this challenge is not been actually incorporated in the petition and on a specific query raised by this Court, it is urged that in the present matter what is already prayed for in the petition is being pursued. This larger challenge of non-supply is not

being pressed into service.

6.3. The emphasis on the part of the petitioner is that on expiry of six months period, when further extension is made on 11.11.2022, let there be a provisional release of these bank accounts as what is to be kept in mind by the Court is the safeguard of the Revenue at the same time balancing the same vis-a-vis the right of the petitioner to continue to do the business.

6.4. Reliance is also placed on the following decisions:-

(i) Principal Director of Income Tax (Investigation) vs. Laljibhai Kanjibhai Mandalia [(2022) 140 taxmann.com 282 (SC)]

(ii) Commissioner of Income Tax-II vs. Gujarat Ambuja Export Ltd. [(2014) 43 taxmann.com 244 (Gujarat)]

(iii) Vodafone Idea Limited vs. Dy. Commissioner of Income Tax and Others [2019 SCC OnLine Bom 1786]

(iv) VLS Finance Limited vs. Commissioner of Income Tax [(2000) 112 TAXMAN 295 (DELHI)]

7. Learned Senior Standing Counsel Mr. Varun Patel appearing with learned advocate Mr. Dev Patel for the Revenue has strongly resisted this along the line of the affidavit-in-reply. At the same time, he has urged that the Court satisfaction to the material which has led the authority to attach the bank accounts would be essential and not the supply of these to the petitioner concerned. It is also urged that there are serious doubts in relation to the conduct of the petitioner company and the Director of which is also not available for answering to the summons issued to him, therefore also, the Court shall need to regard the interest of the Revenue in mind.

8. We could notice from the material on record that central issue revolves around the attachment of the HSBC Bank and DBS Bank accounts of the petitioner on 18.11.2021 under Section 132(9B) of the Act. This was on account of the operation of search at the company premises at Ahmedabad which was concluded on 18.11.2021. This was through the office of Deputy Director of Income Tax(Inv), Unit 2(2), Mumbai on 17.11.2021 and 18.11.2021. Several materials,

books of accounts and the digital data seized by the Income Tax Authority are all part of the record and the order dated 17.11.2021 impounding the books of accounts along with Panchanama is also forming part of this.

8.1. Section 132 of the Act speaks of the search and seizure. Profitable it would be to reproduce sub-sections (9B) and (9C) of Section 132 of the Act:-

“(9B) Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorizations for search was executed, the authorized officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purposes, the provisions of the Second Schedule shall, mutatis mutandis, apply.

(9C) Every provisional attachment made under sub-

section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B)."

8.2. In the instant case, it appears that at the end of search and seizure, the authorized person, after being satisfied for the reasons recording in writing and produced before us in the form of material pursuant to our direction on 09.11.2022, has attached provisionally the two of the bank accounts belonging to the assessee for protecting the interest of the Revenue. This attachment had been initiated on 13.05.2022 which had been once again extended on 11.11.2022 by virtue of the order of the authorized officer after seeking the necessary permission.

9. The first issue that requires to be addressed by this Court is as to whether in absence of any material and any reasons recorded in writing that such a harsh step of attachment of the property of the petitioner had been taken and that shall need to be straightway answered in negation. This, as a result of search and seizure that took place on 17.11.2021 and 18.11.2021, that the officer who is authorized

in this case has recorded reasons and has provisionally attached both the bank accounts. One of them had been later on converted into the fixed deposit and the bank account has been released and not the fixed deposit. Thus, on 11.11.2022 it is the fixed deposit which has been directed to be attached.

9.1. So far as availing the opportunity of furnishing the reasons to the petitioner at the time of provisional attachment, the issue is not being pressed by the other side and we would not like to delve into the same at this juncture, leaving it open to be decided at a future date in as much as in the affidavit-in-reply which has been filed by the respondent before this Court, the reasons which are sufficient enough for the other side to know as to why the order of provisional attachment of the properties belonging to the assessee is being passed, have already come on record. Had it been a case where no information was divulged and the petitioner was completely groping in dark, the Court could have considered the very issue of furnishing the basic and bare minimum details. However, for present, when the assessment proceedings are going on and entire issue is still at large before the authority concerned, the requisite details which

can be culled out from the affidavit-in-reply and which have been also dealt with by the petitioner in its rejoinder affidavit as also in the further affidavit, we deem it appropriate not to further delve into this or dilate this issue.

9.2. What is far more necessary for this Court is to be subjectively satisfied about the satisfaction arrived at by the officer at the time of attaching the properties, for which, this Court has examined the material which has been furnished to preliminarily satisfy that it is not that without no reasons that the authority has chosen to attach the property, however, the affidavit-in-reply of the respondent filed by Mr. Uday Shakar, ACIT, Central Circle - 2(1), Mumbai categorically says that the premise of the petitioner M/s. FCS Manufacturing (India) Pvt. Ltd. was covered under the search and seizure action and the bank account of the companies covered under the search were attached. During the course of the search, it was found that these entities were involved in various methods of tax evasion like unaccounted cash sales, purchase through shell companies, diversion of funds to tax havens etc. Then after obtaining the prior approval of the Principal Commissioner of Income Tax under Section 281(B) on 13.05.2022, the

attachment of the accounts have been continued.

9.3. We also further noticed that as mentioned hereinabove that the petitioners are alleged to have shown the purchases from two of the shell companies namely M/s. Tianchao Import Export Trading Private Limited and M/s. Pipeguard Trading Private Limited by alleging that the parent company has supplied the material to the petitioner through these two companies which are shell companies and they are selling such imported goods against the petitioner in India after adding 2-4% commission. All funds received by the shell companies were transferred to the holding companies in Taiwan through a channel. Thus, these two companies have been alleged to be the paper companies and not having any kind of a genuine business. The purchase is said to be directly through Fu Chin Shin (FCS) Machinery Manufacturing Co. Ltd based in Taiwan which is a parent company.

9.4. We can notice that from 2020-21 and 2021-22, the total purchase from M/s. Tianchao Import Export Trading Private Limited aggregates to Rs. 4.51 crores. The petitioner company is said to have paid GST on the said purchase and

the same forms part of the GST returns. According to them, they have not purchased any goods from M/s. Pipeguard Trading Private Limited till date. This argument therefore by the other side that at the best the case of the respondent authority is taken, Rs. 4.51 crores of purchase from M/s. Tianchao Import Export Trading Private Limited would meet the protection to the extent that taxes upto 5% of the aggregate amount is covered under the heading of sale.

10. The decision in case of **Commissioner of Income Tax-II vs. Gujarat Ambuja Export Ltd. [(2014) 43 taxmann.com 244 (Gujarat)]**, is a case where the Appellate Tribunal has restricted the addition made by the assessing officer to 5% of the total bogus purchases made from one particular company. The Tribunal did not accept the revenue's stand that the purchases were bogus. The purchases have been shown to have been made through one company who had supplied by some other agency. In absence of any other additional facts noted by the Court, the gross ad hoc addition of 25% was not held to be justified. The assessee could produce before the authorities the precise rate at which the purchases were made and other suppliers to demonstrate that

the purchases made on the same day carried the same price. The Court held that it would substantially eliminate the angle of the purchase price being artificially inflated. Additionally, the Tribunal had noted other parameters such as higher net and gross profit rate of the present year compared to the earlier years of the recent past through tax appeal which was not entertained by the Court.

This is a case where on Appeal, the Commissioner (Appeals) though was of the opinion that purchases were not bogus, yet taxed 25% of the amount. On Second Appeal, the Tribunal noted that the GP rate and the net profit rate of the year under consideration were better than the previous year. The stock register was properly maintained and the purchases in question were reflected in such stock register. As there were internal contradictions in the statements made by the representatives of the company and the person controlling that company, the Tribunal reduced the addition of 5% of the amount.

According to this Court, this matter would have no applicability as after once the assessment was completed and

the matter had travelled from CIT (Appeals) and to Tribunal, it had reached to this Court. The entire detail was crystal clear. The additions made by the CIT (Appeals) was 25% whereas the Tribunal has added 5% of the purchase. At the end of the entire assessment proceedings, when the question would arise of the addition or labeling the same as a bogus purchases adding the entire amount to the total income of the assessee, this decision may help the petitioner. Presently, when it comes to protecting the interest of the Revenue and when the matter is in the realm of consideration before the concerned authority, it would not be apt to decide by reducing the amount to 5% of the total amount or for that matter, 25% of the amount.

10.1. In case of **Vodafone Idea Limited vs. Dy. Commissioner of Income Tax and Others [2019 SCC OnLine Bom 1786]**, the petitioner company was engaged in the business of providing communication service. The Court had an occasion to deal with Section 281(B) pertaining to provisional attachment by the Revenue in certain cases. It was a case where during the pendency of the proceedings for assessment or reassessment, the assessing officer is of the

opinion that for the purposes of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the higher authority pass an order in writing provisionally attaching the property belonging to the assessee. These are drastic powers permitting the assessing officer to attach any property of an assessee even before the completion of assessment or reassessment. These powers are thus in the nature of attachment before judgment, the Court held they should be exercised in appropriate cases for proper reasons that and cannot be exercised merely by repeating the phraseology used in the section and recording the opinion of the officer passing such order.

In the matter before the Court, it was held that permitting the department to provisionally attaching the petitioner's refund for the current year on the ground that in the final assessment, the demands are likely to be confirmed, would amount to ignoring the hard fact that for the earlier assessment years, the Tribunal has suspended the recoveries arising out of the demands made by the assessing officer on similar issues. It further held that looking it from any angle, the occasion for the competent authority to exercise the

drastic power under section 281(B) of the Act has not arisen, therefore, there was no justification to exercise such powers.

11. Going by the decision of **Vodafone Idea Limited (supra)**, we can surely say that the assessing officer, for the purpose of protecting interest of the Revenue, in the instant case, with the prior approval of the higher authority has passed an order in writing recording the reasons and provisionally attaching the property belonging to the assessee. These are though drastic powers in a given circumstances, we are satisfied that for the petitioner assessee to continue its business, the continuation of provisional attachment is not necessary and even otherwise, the interest of the Revenue can be safeguarded by directing a particular amount to be furnished by way of a bank guarantee to the authority concerned, that would sub-serve the purpose.

12. We are conscious of the fact that the order has come to be passed in relation to the two of the companies which is said to be the shell companies adding the commission and the main company of Taiwan is said to be benefiting. It is also alleged that the modus is adopted to shift the profit to the

Chinese Company.

12.1. We also have taken note of some of the details which have been culled out from the file which, for the purpose of secrecy pleaded by the respondent, we choose not to reveal the same as that may prove to be deleterious for the on-going assessment proceedings. However, if the past case of the respondent is taken into consideration along with its on-going proceedings, in our opinion, the fixed deposit which has been made by the respondent of the DBS Bank of Rs. 2,65,04,306/- (Rupees Two Crore Sixty-Five Lakh Four Thousand Three Hundred Six) would suffice to protect the interest of the Revenue for now. सत्यमेव जयते

12.2. We also would like to make a mention of the fact that except one Director, the rest are from Taiwan and therefore, the Indian Director along with the Taiwan Directors are also required to give the undertaking that in the eventuality if the assessment is more than the amount which is permitted to be provisionally attached, they shall fulfill the obligations even from their own personal funds. The said undertaking shall be filed before this Court within a period of one week from the

date of receipt of copy of this judgment. They shall also furnish the disclosure of the immovable assets of the company. At this stage, learned Standing Counsel upon instruction has informed that the matter has been already referred to the Transfer Pricing Officer and therefore, the Court shall need to regard the interest of the Revenue Authority.

12.3. On furnishing the above aspect, once having verified the details in a week's time thereafter, the attachment of the HSBC bank account bearing account no. 101040608001 shall be then released.

13. The original file is returned to the respondent. The petition is accordingly disposed of. None of the observations made here will prejudice the interest of either side in any further proceedings, if are undertaken.

(SONIA GOKANI, J)

(MAUNA M. BHATT, J)

Bhoomi