

*Before Ajay Kumar Mittal, Gurmeet Singh Sandhwalia, J.J.*

**M/S MOTOROLA SOLUTIONS INDIA  
PVT. LIMITED—Petitioner**

*versus*

**COMMISSIONER OF INCOME TAX, FARIDABAD  
AND ANOTHER—Respondents**

**CWP No. 22229 OF 2012**

26th November 2012

*Constitution of India, 1950 - Arts. 226 & 227 - Income Tax Act, 1961 - Ss. 144-C & 281-B - Deputy Commissioner, Income Tax ordered provisional attachment under S. 281-B and further ordered to issue notices to Banks and Debtors not to make payment - Petitioner sought quashing of impugned orders of the Deputy Commissioner and submitted that order of provisional attachment and notices cease to operate after passing of assessment order - Contention of Revenue that provisional attachment order shall remain in force for six months - Held that after the passing of the assessment order, provisional attachment order shall not remain in force for six months - Contention of Revenue rejected - Writ allowed*

*Held*, that the interpretation put by learned counsel for the revenue that even after the passing of the assessment order, provisional attachment order shall still remain in force for six months, does not merit acceptance and, is thus, rejected. It may be observed that since the order for provisional attachment has been held ineffective after 8.11.2012, it would not be necessary to delve into the merits of the controversy regarding whether the order of provisional attachment was bad or not in the facts and circumstances of the case as the same has been rendered academic.

(Para 13)

*Further held*, that while holding that the provisional attachment order Annexure P-2 dated 1.11.2012 and notices/letters dated 2.11.2012, appended collectively as Annexure P-9 shall also cease to operate after 8.11.2012, it is directed that in terms of the statement made by the Senior

Counsel for the Petitioner, the assets to the extent of Rs. 100 Crores shall not be utilised and shall remain in the same form till 31.12.2012.

(Para 15)

Ashok Aggarwal, Sr. Advocate with Ashim Aggarwal, Advocate,  
*for the petitioner.*

Tajender K. Joshi, Advocate, *for the respondents.*

**AJAY KUMAR MITTAL, J.**

(1) The petitioner is a private limited company incorporated under the Indian Companies Act, 1956. It is a subsidiary of Motorola Solutions International Capital LLC, USA and Motorola Solutions, USA is the ultimate holding company. The petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, direction or order for quashing the order dated 1.11.2012, Annexure P.2 passed by respondent No.2 – Deputy Commissioner of Income Tax, Circle-2, Gurgaon (DCIT) under Section 281B of the Income Tax Act, 1961 (in short, “the Act”), whereby provisional attachment has been ordered. A further prayer has also been made for quashing of letters/notices dated 2.11.2012, collectively appended as Annexure P.9, directing the banks and debtors not to make payments to the petitioner.

(2) The facts relevant for adjudicating the controversy involved herein as pleaded in the writ petition may be noticed. The case of the petitioner is that it is an income tax assessee and is filing its returns since it was incorporated. On 30.9.2008, the petitioner had e-filed original return of Income for the assessment year 2008-09 which was subsequently revised on 31.3.2010 declaring income of ‘ 9,42,01,184/-. A draft assessment order under Section 144C of the Act was passed by the Assistant Commissioner of Income Tax, Gurgaon (ACIT) on 22.12.2011 for the assessment year 2008-09 wherein certain additions were made in the income returned. The petitioner had filed objections before the Dispute Resolution Panel (DRP) to the draft assessment order on 27.1.2012. Thereafter, DRP on 21.9.2012 passed an order Annexure P.8 under Section 144C(5) of the Act directing the Assessing Officer to complete the assessment in accordance with the directions passed by it. In the meantime, on 1.11.2012,

respondent No.2 sent a proposal for provisional attachment of the assets of the petitioner under section 281B of the Act to respondent No.1 Commissioner of Income Tax, Faridabad which was approved by him. On the aforesaid provisional attachment, letters/notices were issued on 2.11.2012 to the Standard Chartered Bank, Mumbai and sundry debtors of the petitioner not to make payments to the petitioner. Feeling aggrieved thereby, the petitioner has approached this Court through the present petition.

(3) Upon notice having been issued, reply on behalf of the respondents has been filed wherein action of provisional attachment under Section 281B of the Act has been sought to be justified. It has been averred that though the assessee has substantial liquid funds and other assets available with it, recovery of outstanding amount from the balances available in bank accounts and debtors would not cause any irreparable damage to the petitioner. It has further been stated that the order dated 1.11.2012 has been passed in accordance with the provisions of the Act for protecting the interests of the revenue.

(4) We have heard learned counsel for the parties at length and perused the record.

(5) Learned Senior counsel appearing on behalf of the petitioner submitted that during the pendency of this writ petition, the assessment order has been passed on 8.11.2012 and, therefore, the provisional attachment order Annexure P.2 ceases to operate. Support was drawn from certain observations in paras 55 and 68 of the judgment of Madras High Court in **Devarajan and others versus Tamil Nadu Farmers Service Cooperative Federation and others (1)**, in support of his contention, which are in the following terms:-

“55. xxxxxxxxSimilarly, under Section 281B where, during the pendency of any proceeding for the assessment of any income, the ITO was of the opinion that for the purpose of protecting the interests of the revenue, it was necessary to do so, he may, with the previous approval of the Commissioner, by order in writing, attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.



30 days for depositing the outstanding amount after obtaining approval of the Joint Commissioner provided the Assessing Officer has reason to believe that allowing of full period of 30 days would be detrimental to the revenue.

(6) Further, the impugned order was also sought to be challenged on merits as well pointing out that no satisfaction as required under the provisions of Section 281B of the Act had been fulfilled in as much as the Assessing Officer was influenced by the fact that in the immediately preceding year, a demand of Rs. 161 crores had been made against which the assessee had moved a stay application before the Income Tax Appellate Tribunal, New Delhi and order for stay of demand had been passed by the Tribunal and as a result, the revenue could not recover any amount from the assessee. It was also urged that the Assessing officer while framing the assessment order and issuing notice under Section 156 of the Act had allowed 30 days time to deposit the tax demand and therefore, till the expiry of the aforesaid period, the assessee could not be treated to be an assessee in default and the order of provisional attachment is, thus, legally not sustainable.

(7) On the other hand, controverting the submissions of learned Senior counsel for the petitioner, learned counsel for the revenue submitted that the Assessing Officer was fully justified to pass the order for provisional attachment under Section 281B of the Act on 1.11.2012 which was to operate for a period of six months as prior approval of respondent No.1 had been obtained by respondent No.2. It was also submitted that it was to safeguard the interests of the revenue as there were certain newspaper publications whereby it was published that Motorola Mobility India was disposing of its assets and trying to close its activities in India and therefore in that eventuality, recovery of liability created by the assessment order could not be made. According to the learned counsel for the revenue, the validity period of six months of the provisional attachment order dated 1.11.2012 would not be extinguished after the passing of the assessment order on 8.11.2012 as on the date of passing of order on 1.11.2012, it was validly passed which was to continue for six months. Reliance was placed on judgments of the Bombay High Court in *Firoz Tin Factory and another v. Assistant Commissioner of Income tax and others*, Writ Petition (Lodging) No.765 of 2012, decided on 26.3.2012 and *M/s Balaji Universal Tradelink Pvt. CWP No.22229 of 2012 7 Limited v. Union of India*, Writ Petition (Lodg.) No.1424 of 2012, decided on 22.6.2012.

(8) Examining the issue relating to validity period of provisional attachment order dated 1.11.2012, firstly, it would be expedient to refer to Section 281B of the Act which was inserted in the Statute by the Taxation Laws (Amendment) Act, 1975 w.e.f 1.10.1975 and it reads thus:-

- (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 interests 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.

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.”

(9) A plain reading of Section 281B of the Act clearly spells out that the Assessing Officer is empowered to pass order for provisional attachment to protect the interests of the revenue in certain cases 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. However, the Assessing Officer is required to form an opinion that the same is necessary for the purposes of protecting the interests of the revenue. Further requirement has been specified therein, wherein approval of the Chief Commissioner or Commissioner or Director General or Director is to be obtained before passing the order for provisional attachment. Under Sub-section (2) thereof, the period during which the order remains operational has been provided which is six months from the date of the order made under Sub-section (1) of Section 281B of the Act. However, the Chief Commissioner or Commissioner or Director General or Director has been authorised, after recording reasons in writing, to extend the aforesaid period for further period or periods as in their opinion would be justified but the total period of extension shall not, in any case, exceed two years. In other words, according to the aforesaid provision, during the pendency of any assessment proceeding or proceedings in pursuance to reassessment that in order to safeguard the interests of the revenue, after recording reasons for the same in writing and seeking the approval from the concerned authority, an order for provisional attachment can be passed.

(10) The scope and effect of the insertion of this provision was explained by the Board vide Circular No. 179 dated 30.9.1975 as under:-

“27. The Amending Act has inserted a new section 281B with a view to empowering the ITO to make a provisional attachment of any property of the assessee during the pendency of any proceeding for assessment or reassessment of any income (even though there is no demand outstanding against the assessee), if he is of the opinion that it is necessary to do so to protect the interests of the revenue. The order of provisional attachment will be made only after obtaining the approval of the Commissioner. Such provisional attachment will ordinarily cease to have effect after the expiry of the period of six months but, in appropriate cases, the Commissioner may, for reasons to be recorded by him in writing, extend this period from time to time

so, however, that the total period of extension shall in no case exceed two years. This provision has been made in order to protect the interests of the revenue in cases where the raising of demand is likely to take time because of investigations and there is apprehension that the assessee may thwart the ultimate collection of that demand.”

(11) The above circular clearly envisages that where during the pendency of any proceeding for assessment or reassessment of any income, the raising of demand is likely to take time due to investigations and there is apprehension that the assessee may thwart the collection of that demand, provisional attachment can be made. This supports the interpretation that it is only till actual demand is created by passing an assessment order that the provisional attachment order will remain in operation. Another factor which deserves to be noticed relates to first Proviso to Sub-section (1) of Section 220 of the Act where the Assessing officer has been given an authority to reduce the full period of 30 days wherever he has reasons to believe that it would be detrimental to the revenue by allowing the full period of 30 days to deposit the demand in terms of Section 220(1) of the Act. The Assessing officer is required to have previous approval of the Joint Commissioner in this regard. Thus, there are sufficient provisions in the Act to safeguard the interest of the revenue in case the Assessing Officer has apprehension that the assessee by adopting extraneous method may thwart the recovery of the legitimate tax dues of the State.

(12) Adverting to the judgments of Bombay High Court on which reliance has been placed by the counsel or the revenue, it may be noticed that in those cases, the assessee had approached the High Court seeking stay of demand under Section 220(6) of the Act and prior thereto order of provisional attachment had been passed under Section 281B of the Act. The High Court while accepting that recovery was not to be effected during the pendency of the appeal, had observed that since there was provisional attachment order to which the petitioner had not objected to, therefore, during the pendency of the proceedings, no coercive steps would be taken against the petitioner for recovery of the demand. In those cases, it was not in issue whether the provisional order for attachment continues even after the passing of the assessment order.



(13) In view of the above, the interpretation put by learned counsel for the revenue that even after the passing of the assessment order, provisional attachment order shall still remain in force for six months, does not merit acceptance and is, thus, rejected. It may be observed that since the order for provisional attachment has been held ineffective after 8.11.2012, it would not be necessary to delve into the merits of the controversy regarding whether the order of provisional attachment was bad or not in the facts and circumstances of the case as the same has been rendered academic.

(14) The assessment order was passed on 8.11.2012 and demand notice under Section 156 of the Act was issued on the same day granting 30 days time to the assessee to deposit the tax due. It has been pointed out by the counsel for the petitioner that the appeal has been filed against the said assessment order on 9.11.2012 and stay application has also been filed at a later date before the Income Tax Appellate Tribunal, New Delhi. On a query being put to the learned counsel for the petitioner as to how the assessee would safeguard the interests of the revenue till the expiry of 30 days period allowed to discharge the liability of a huge amount of Rs. 2,10,57,87,648/-, learned counsel for the petitioner submitted that till 8.12.2012, the assets to the extent of ' 100 crores which are lying with the Bank shall not be utilised.

(15) Accordingly, while holding that the provisional attachment order Annexure P.2 dated 1.11.2012 and notices/letters dated 2.11.2012, appended collectively as Annexure P.9 shall also cease to operate after 8.11.2012, it is directed that in terms of the statement made by the Senior counsel for the petitioner, the assets to the extent of ' 100 crores shall not be utilised and shall remain in the same form till 31.12.2012. Needless to say, anything observed herein shall not be treated to be an expression of opinion on the merits of the controversy involved in this case. It shall however, be open for the petitioner to approach the Tribunal for stay of recovery or for the revenue to take proceedings for recovery in accordance with law.

(16) In view of the above, the writ petition stands disposed of.