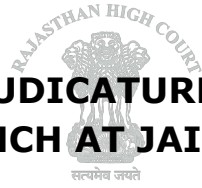




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 1217/2026

ARL Infratech Limited, A-27/13A, Akshat House, Kanti Chandra Road, Bani Park, Jaipur 302016 Through Its Director Shri Pramod Jain

-----Petitioner

Versus

Deputy Commissioner Of Income Tax, Central Circle 2, Jaipur, Room No. 410, 4Th Floor Jeevan Nidhi-2, LIC Building Ambedkar Circle, Jaipur 302005

-----Respondent

For Petitioner(s) : Mr. Siddharth Ranka
For Respondent(s) : Mr. Siddharth Bapna with
Ms. Tanushka Saxena

**HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SANGEETA SHARMA**

JUDGMENT

Date of conclusion of arguments : **10/02/2026**
Date on which the judgment was reserved : **10/02/2026**
Whether the full judgment or only operative part is pronounced : **Full Judgment**
Date of Pronouncement : **06/03/2026**

REPORTABLE

(Per Hon'ble The Acting Chief Justice)

1. This writ petition has been preferred by the petitioner assailing the order dated 01.01.2026 passed by the respondent-Deputy Commissioner of Income Tax Circle-II, Jaipur whereby, it has issued orders of provisional attachment of the petitioner's property.

2. Learned counsel for the petitioner had pointed out that the petitioner is engaged in the business of manufacturing of building materials such as cement sheets, cement pipe, AAC block, Metal



Sheet and quartz slabs, etc. and has been paying regular income tax.

3. A table has been placed before the Court for assessment year 2021-22 to 2026-27, reflecting the income tax revenue paid to the tune of Rs.45,43,61,618/- by the assessee. The petitioner has been obtaining credit facility from the HDFC Bank and industrial plot situated at A-201-202, Industrial Area, Bagru Extension, Phase-II, Bagru, Jaipur along with plant & machinery stands mortgaged with the Bank. The property has been valued at Rs.31,58,60,000/-. It is stated that a search was conducted at the petitioner's premises under Section 132/133 A of the Income Tax Act, 1961 (for short 'the Act of 1961') and assessment order was passed on 27.03.2025 and on the basis of the appraisal report, the Investigation Wing of the Income Tax Department has made an addition of Rs.4,40,120/-, while no demand was created thereon. First appeal against the said order has been filed by the petitioner which is pending. The Jurisdictional Assessing Officer (JAO) has issued notices under Section 148 of the Act of 1961 for the assessment years 2021-22, 2022-23 & 2024-25, although the jurisdiction lies with the Faceless Assessing Officer (FAO).

4. While replies have been filed by the petitioner stating that a demand of Rs.1,30,11,024/- was stated to be created for assessment year 2022-23 & 2024-25 by the Jurisdictional Assessing Officer (JAO) and provisional attachment order dated 01.01.2026, exercising powers under Section 281B of the Act of 1961 has been passed whereby, the industrial plot, as noticed above, was attached considering its purchase price of Rs.5,21,76,253/-.





5. Learned counsel for the petitioner further submits that the attachment goes contrary to the guidelines laid down by the CBDT dated 29.02.2016 & 31.07.2017. At the best, even if an appeal would have been filed, the amount of 15% of the disputed demand was stated to be deposited in terms of Office Memorandum dated 29.02.2016 which has been revised to 20%. He submits that while the petitioner could have deposited the amount of Rs.26,02,205/- as maximum amount against the demand, the property worth several crores has been attached. He submits that there was no reason or logic for issuing provisional attachment order and the same deserves to be quashed being unfair, arbitrary and illegal. It is a case of abuse of jurisdiction. He submits that the attachment action renders the Office Memorandums of 2016-2017 otiose and redundant.

6. Learned counsel further submits that upon examining the past record of the petitioner, there was no occasion to arrive at the conclusion of the so called strong possibility of non-payment of demand. In the present case, notices were issued and reply has been filed by the respondent, wherein, it is stated that the action has been taken under Section 281B which does not require issuing of prior show cause notices. As per disclosure of the petitioner, it was revealed that the petitioner possessed five immovable properties, out of which the present property was least valued as per the case of acquisition and therefore, only the same was attached while the remaining four properties have not been attached. The power has been exercised judiciously and it is submitted that the provisional attachment is to be treated as a preventive order and has been passed reflecting objective





satisfaction, live nexus between material and formation of opinion which is in consonance with the CBDT instructions dated 03.06.1984.

7. We have considered the submissions.

8. It is an admitted position that the petitioner is a regular assessee having regularly paid tax for the assessment years, as noticed above. Even in the search, a petty amount of Rs.4,40,120/- was attached for assessment year 2023-24 and no demand was created for assessment years 2022-23 & 2024-25 and only on the basis of an apprehension that a demand may be created for a sum of Rs.1,30,11,024/-, a provisional attachment order has been passed.

9. In **Radha Krishan Industries Vs. State of Himachal Pradesh & Ors., 2021 (4) TMI 837 SC**, while analyzing the similar provisions under Section 83 of the CGST Act, 2017, the Hon'ble Apex Court held as under:

"72 For the above reasons, we hold and conclude that

(i) The Joint Commissioner while ordering a provisional attachment under section 83 was acting as a delegate of the Commissioner in pursuance of the delegation effected under Section 5(3) and an appeal against the order of provisional attachment was not available under Section 107 (1);

(ii) The writ petition before the High Court under Article 226 of the Constitution challenging the order of provisional attachment was maintainable;

(iii) The High Court has erred in dismissing the writ petition on the ground that it was not maintainable;

(iv) The power to order a provisional attachment of the property of the taxable person including a bank account is draconian in nature and the conditions which are prescribed by the statute for a valid exercise of the power must be strictly fulfilled;

(v) The exercise of the power for ordering a provisional attachment must be preceded by the formation of an opinion by the Commissioner that it





is necessary so to do for the purpose of protecting the interest of the government revenue. Before ordering a provisional attachment the Commissioner must form an opinion on the basis of tangible material that the assessee is likely to defeat the demand, if any, and that therefore, it is necessary so to do for the purpose of protecting the interest of the government revenue.

(vi) The expression "necessary so to do for protecting the government revenue" implicates that the interests of the government revenue cannot be protected without ordering a provisional attachment;

(vii) The formation of an opinion by the Commissioner under Section 83(1) must be based on tangible material bearing on the necessity of ordering a provisional attachment for the purpose of protecting the interest of the government revenue;

(viii) In the facts of the present case, there was a clear non-application of mind by the Joint Commissioner to the provisions of Section 83, rendering the provisional attachment illegal;

(ix) Under the provisions of Rule 159(5), the person whose property is attached is entitled to dual procedural safeguards:

(a) An entitlement to submit objections on the ground that the property was or is not liable to attachment; and

(b) An opportunity of being heard; There has been a breach of the mandatory requirement of Rule 159(5) and the Commissioner was clearly misconceived in law in coming into conclusion that he had a discretion on whether or not to grant an opportunity of being heard;

(x) The Commissioner is duty bound to deal with the objections to the attachment by passing a reasoned order which must be communicated to the taxable person whose property is attached;

(xi) A final order having been passed under Section 74(9), the proceedings under Section 74 are no longer pending as a result of which the provisional attachment must come to an end; and

(xii) The appellant having filed an appeal against the order under section 74(9), the provisions of sub-Sections 6 and 7 of Section 107 will come into operation in regard to the payment of the tax and stay on the recovery of the balance as stipulated in those provisions, pending the disposal of the appeal."

10. Almost on similar lines, judgments have been passed by the Bombay High Court in **Vodafone Idea Ltd. Vs. Dy.**





Commissioner of Income Tax & Ors in Writ Petition No.2036 of 2019, the Karnataka High Court in **M/s. India Mineral and Granite Co. Vs. Dy. Commissioner of Income Tax in Writ Petition No.102273 of 2021**, **Xiaomi Technology India Pvt. Ltd. Vs. Dy. Commissioner of Income Tax in Writ Petition No.16692 of 2022**, the Madras High Court in **M/s Saravana Selvarathnam Retail Pvt. Ltd. Vs. Principal Commissioner of Income Tax, (2025) 482 ITR 121 (Mad)**, the Gujarat High Court in **Raghunandan Enterprise Vs. Asst. Commissioner of Income Tax, Special Civil Application No.1321 of 2022** and the Calcutta High Court in **Abul Kalam Vs. Asst. Commissioner of Income Tax & Ors. in Writ Petition No.25 of 2020**.

11. We are of the further view that before invoking power under Section 281B of the Act of 1961, the authorities must examine whether the assessee before it is a person who has been a regular tax payer. Merely because he may have taken loan from the Bank for his business, may not be the only sufficient ground to attach the properties. Such attachment, even if provisional, creates a sense of apprehension and fear in the minds of bankers who are giving loans to the concerned units for their businesses. Their public reputation is seriously hampered. Therefore, invoking of such provision has to be done by exercising great caution and care and so as not to harm the reputation of an honest income tax payer.

12. While Section 281B of the Act of 1961 gives unequivocal power to the authority to put the properties under attachment, the Hon'ble Apex Court has time and again held that such power has to be exercised by taking into consideration all the aspects as





noticed in the case of **Radha Krishan Industries** (supra) and the contentions prescribed in the statute must be strictly fulfilled. Once such provision has to be treated as draconian in nature, in the opinion of this Court, the minimum requirement is to give an opportunity to the concerned assessee to make the payment or part of it as required in the Office Memorandum issued by the CBDT. A presumption cannot be drawn that the assessee would not make the payment. Principles of natural justice to that extent would be inherent as the civil rights are likely to be harmed, if action is taken under Section 281B of the Act of 1961.

13. We notice that even if a demand is raised, the same can be challenged in appeal and maximum amount to be deposited for settling the remaining demand is 20% of the said demand. In the present case, demand of Rs.1,30,11,024/- has been provisionally assessed and as of today even the demand has not been raised. Therefore, issuing of provisional attachment order would be wholly unjustified and would go contrary to the purpose sought to be achieved.

14. We, therefore, disapprove the approach adopted by the respondents and set aside the order of attachment dated 01.01.2026. However, we direct the petitioner-assessee to deposit 20% of the demand, provisionally assessed, with the authorities within a period of one week.

15. It is made clear that, ultimately, if the demand is found to be unjustified or deserves to be reduced or waived, the amount as directed by us to be deposited, shall be refunded with interest to the assessee.





16. With the aforesaid observations, we allow this writ petition and quash the attachment order dated 01.01.2026.

17. Costs made easy.

18. Pending application(s) stand disposed of.

(SANGEETA SHARMA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ



GOVIND SHARMA/RAHUL/