

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 1321 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MS. JUSTICE NISHA M. THAKORE**
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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

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M/S. RAGHUNANDAN ENTERPRISE**Versus****ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -4 ,
SURAT**

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Appearance:**MR B S SOPARKAR(6851) for the Petitioner(s) No. 1****MRS KALPANAK RAVAL(1046) for the Respondent(s) No. 1****NOTICE SERVED BY DS for the Respondent(s) No. 2**
=====**CORAM:HONOURABLE MR. JUSTICE J.B.PARDIWALA****and****HONOURABLE MS. JUSTICE NISHA M. THAKORE****Date : 07/02/2022****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant – a Partnership Firm and assessee has

prayed for the following reliefs:-

7(A) Quash and set aside the impugned order dated 29.05.2021 at Annexure-‘A’ to this petition so far as attachment over in respect fo land admeasuring 11981 sq.mtr. Land situated at Block No.142, New Block No.166, T.P. 22, F.P.53, Village Valak, Taluka Kamrej, District Surat;

(B) Quash and set aside the amendment. Record made in the Village Form Number 7 at Annexure ‘B’ in relation to land admeasuring 11981 sq.mtr. Land situated at Block No.142, New Block No.166, T.P. 22, F.P.53, Village Valak, Taluka Kamrej, District Surat consequence to the order at Annexure- ‘A’ dated 29.05.2021.

(C) Pending the admission, hearing and final disposal of this petition, to stay operation of the order at Annexure - ‘A’ to this petition to the limited extent to attachment over land admeasuring 11981 sq.mtr. Land situtated at Block No.142, New Block No.166, T.P. 22, F.P.53, Village Valak, Taluka Kamrej, District Surat as well as to stay the operation of amendment in Village Form Number 7 dated 29.05.2021 (Annexure B);

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

(E) To provide for the cost of this petition.

2. The facts giving rise to this writ-application may be summarized as under:-

2.1 The writ-applicant is a Partnership Firm. It came to be constituted on 20.11.2014 and got duly registered with the Registrar of Firms on 26.11.2014.

2.2 It appears from the materials on record that a search and seizure was undertaken under Section-132 of the Act at the premises of one Arnav Mukeshbhai Savaliya (searched person). In the course of the search, many documents were seized. One

statement also came to be recorded of Mr. Savaliya. Savaliya in his statement said something about a parcel of land bearing Block No.142, New Block No.166, T.P.-22, F.P.-53, admeasuring 11981 sq.mtrs. situated at the Village Valak, Taluka Kamrej, District Surat. The statement of Mr. Savaliya if to be understood correctly is that with respect to the Block No.142, his son Arnav Savaliya paid Rs.1,50,00,000/- [*Rupees One Crore Fifty Lakh Only*] in cash to Nitaben Shaileshbhai Radadiya one of the Partners of the writ-applicant – Partnership Firm and thereby, got 2.5% share in the profit assigned in his favour.

2.3 The Department thought fit to pass an order of provisional attachment of various properties of Arnav Savaliya under Section-281B of the Act.

2.4 The impugned order of provisional attachment reads thus:-

**GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 4, SURAT**

To,
ARNAV MUKESHBHAI SAVALIYA
95, Mahendra Park Society,
B/s. Suzuki Showroom,
Puna Kumbhariya Road,
Surat, Surat 395010, Gujarat
India.

PAN	Assessment Year	Dated	DIN & Order No:
BRGPS5116K	2020-21	29/06/2021	ITBA/COM/F/17/2021-22/ 1033162496(1)

Sir/ Madam/ M/s.

Subject: Proceedings under section 281B – Order for provisional attachment.

Order under section 281B of the I.T. Act, 1961

A search action U/s.132 of the I.T. Act, 1961 was carried out in the cases of Shree Kuberji Group of Surat on 06/07/08.02.2020. In consequence of the same scrutiny proceedings u/s.153A of I.T. Act are under progress in the cases of the Shri Arnav Savaliya. As there was voluminous incriminating documents and evidences revealing instances of tax evasion, warrant u/s.132 of the I.T. Act, 1961 was issued by the Pr. DIT(Inv.), Surat in the case of the assessee on 05/02/2020 at 95, Mahendra Park Society, Besides Suzuki Showroom, Puna Khambharia Road, Surat.

2. Further, during the course of search proceedings in the case of Shri Arnav Savaliya u/s.132 of the I.T. Act conducted in the premises of 95, Mahendra Park Society, Besides Suzuki Showroom, Puna Khambharia Road, Surat various incriminating documents were found and seized having implication of large amount of unaccounted income during the financial year 2013-14 to 2019-20 relevant to AY 2020-21.

3. In view of the seized material found during the course of search conducted u/s.132 in the premises of the assessee which belonged to Shri Arnav Savaliya, there is a likelihood of huge demand being raised in the case of the above assessee on the basis of investigations/enquires being conducted during the course of assessment proceedings. The assessment proceedings u/s.153A for Assessment Year 2014-15 to 2019-20 is in progress. Accordingly, I am of the opinion that for the purpose of protecting the interest of Revenue it is necessary to attach provisionally the properties belonging to the assessee u/s.281B of the I.T. Act, 1961. Hence, following properties are required to be provisionally attached with immediate effect:-

IMMOVABLE PROPERTIES ATTACHED

All rights and interest of assessee Shri Arnav Savaliya in following properties:

Shri Arnav Savaliya (PAN: BRGPS5116K)		
Particulars	Cost as per document executed (Rs. In Cr.)	Details of Registration
Land at Block No.184, Niyol (50% share) [Niyol-Palsana]	0.48	Vide Document No.PSN/6992, dated 22.03.2018, Rs.90,98,000/-.
Construction at Block No.199, Niyol [Niyol-Palsana]	0.48	Vide Document No.PSN/2357, dated 28.02.2017, Rs.5,26,11,000/-.
Land at Block No.196, Niyol	0.96	Vide Document No.PSN/

<i>(50% share) [Niyol-Palsana]</i>		<i>22358, dated 28.02.2017, Rs.1,82,11,000/-.</i>
<i>Land at Block No.419 RS No.255 Village Narthan [Narthan-Palsana]</i>	<i>0.09</i>	<i>Vide Document No.PSN/12212, dated 05.07.2016, Rs.8,80,000/-.</i>
<i>Land at Block No.199 Village Sayan [100%] [Sayan-Palsana]</i>	<i>0.27</i>	<i>Vide Document No.PSN/19510, dated 28.12.2017, Rs.26,94,000/-.</i>
<i>Land at Block No.740/A Puna Gam (35% share) [Puna-Navagam – Sub- Registrar-3]</i>	<i>0.99</i>	<i>Vide Document No.20, dated 24.12.2018, Rs.2,67,72,000/-.</i>
<i>Block No.142, New Block No.166, T.P.22, F.P.53, Valak, 11981 sq.mtr. land in Reghunandan Enterprise [2.5% Share] [Valak-Sub-Registrar-Kamrej]</i>	<i>0.26</i>	<i>Vide Document No.6362, dated 09.04.2015, Rs.10,48,34,000/-.</i>
<i>Plot of land at Block No.144/2, Saroli [Saroli-Navagam – Sub-Registrar-3]</i>	<i>0.08</i>	<i>Vide Document No.1633, dated 28.01.2011, Rs.51,60,000/-.</i>

As per the provisions of Section-281B of the I.T. Act, 1961, assessee Shri Arnav Savaliya is hereby prohibited from transferring or charging the said properties in any way directly or indirectly, until further order of the undersigned. Further, all persons are prohibited from taking any benefit under such transfer or create any charge in the said property without written prior approval from undersigned.

This order is passed with the approval of the Pr. Commissioner of Income Tax (Central), Surat vide letter No.SRT/PR, CIT (Central))/281B/ Shree Kuberji & Ambaji Gr/2021-22, dated 22.04.2021.

Sd/-
DEVANGI BHARATAN MARTHAK
CENTRAL CIRCLE 4, SURAT

2.5 The second last property in the above table is Block No.142. This land bearing Block No.142 is of the ownership of writ-applicant – Partnership Firm. There is no dispute in this regard. However, it appears that alongwith the personal properties of Arnav Savalaiya, the Block No.142 owned by the writ-applicant – Firm also came to be included and provisionally attached on the ground

that Arnav Savaliya paid the cash consideration referred to above and thereby, derived 2.5% share in the profit from Nitaben Radadiya i.e. one of the partners of the writ-applicant – Firm.

3. Being dissatisfied with the aforesaid action on the part of the department, the writ-applicant is here before this Court with the present writ-application.

SUBMISSIONS ON BEHALF OF THE WRIT-APPLICANT:-

4. Mr. S.N. Soparkar, the learned senior counsel assisted by Mr. Bandish Soparkar appearing for the writ-applicant vehemently submitted that the impugned order of provisional attachment in exercise of powers under Section-281B of the Act to the extent of Block No.142, New Block No.166, T.P.-22, F.P.-53, is erroneous in law and without jurisdiction. The argument of the learned senior counsel proceeds on the footing that under Section-281B what can be attached is the property of the assessee. The assessee in the present case is Arnav Savaliya. It is argued that Nitaben Radadiya as one of the partners of the writ-applicant – Firm might have assigned her 2.5% share in the profit of the firm in favour of Arnav Savaliya, but that does not mean that the block No.142, which is otherwise an asset owned by the Partnership Firm would become one of the properties of the assessee, and the same can be attached under Section-281B of the Act.

5. Mr. Soparkar to make good his aforesaid submission, first invited our attention to Section-29 of the Partnership Act, 1932. Section-29 of the Partnership Act reads thus:-

“29. Rights of transferee or a partner’s interest.—

(1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

(2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.”

6. Mr. Soparkar would submit that what Section-29 referred to above speaks of is a transfer by a partner of his/her interest in the firm and not a transfer by a partner of his/her interest in any particular property or assets of the firm. The assignee of a share in Partnership is only entitled to receive the share of the profits, to which, the assignee partner would otherwise be entitled and the assignee must accept the account of profits agreed to by the partners. In the case of a dissolution, the assignee is entitled to receive the share of partnership assets, to which, the assignee partner is entitled and for purpose of ascertaining that share, to an account as from the date of the dissolution.

7. Mr. Soparkar also placed reliance on a decision of the Supreme Court in the case of **Addanki Narayanappa & Anr. vs Bhaskara Krishtappa And 13 Ors.** reported in **AIR 1966 SC 1300**. He submitted that the partnership property will vest in all partners. During the subsistence of the partnership, no partner can deal with any portion of the property as his/her own. Nor can be assigned

his/her interest in a specific item to anyone.

8. Mr. Soparkar, thereafter, invited the attention of this Court to the provisions of Order 21 Rule 49 of the Code of Civil Procedure. Order 21 Rule 49 reads thus:-

"Order 21 Rule 49: Attachment of partnership property:-

(1) Save as otherwise provided by this rule, property belonging to a partnership shall not be attached or sold in execution of a decree other than a decree passed against the firm or against the partners in the firm as such.

(2) The Court may, on the application of the holder of a decree against a partner, make an order charging the interest of such partner in the partnership property and profits with payments of the amount due under the decree and may, by the same or a subsequent order, appoint a receiver of the share of such partner in the profits (whether already declared or accruing) and of any other money which may be coming to him in respect of the partnership, and direct accounts and inquiries and make an order for the sale of such interest or other orders as might have been directed or made if a charge had been made in favour of the decree-holder by such partner, or as the circumstances of the case may require."

9. Order 21 Rule 49 is analogous to the principle of Section-29 of the Partnership Act referred to above.

10. Our attention was, thereafter, drawn to Section-281B of the Act, which reads thus:-

281B. Provisional attachment to protect revenue in certain cases.:- *(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.

11. Mr. Soparkar also invited the attention of this Court to a decision of the Supreme Court in the case of ***Commissioner of Income Tax Vs. Sunil J. Kinariwala*** reported in ***(2003) 1 SCC 660***, wherein, the Supreme Court drew a fine distinction between a case where a partner of a firm assigns his/her share in favour of a third person and a case where a partner constitutes a sub-partnership with his share in the main partnership. While drawing the fine distinction between the two, the Supreme Court explained that whereas in the former case, in view of Section 29(1) of the Indian Partnership Act, the assignee gets no right or interest in the main partnership except to receive that part of the profits of the firm referable to the assignment and to the assets in the event of dissolution of the firm. In the latter case, the sub-partnership acquires a special interest in the main partnership. Mr. Soparkar vehemently submitted that the case on hand is not one, wherein, Nitaben as one of the partners of the writ-applicant – Firm could be said to have created a sub-partnership with her share. In view of Section 29(1) of the Partnership Act, Arnav Savaliya as an assignee at the most becomes entitled to receive the assigned share in the profits from the firm. Arnav Savaliya would not be entitled to receive the assigned share in the profits as a sub-partner because no sub-partnership came into existence, but as an assignee he may be entitled to the share of profit of the assigner-partner i.e. Nitaben Radadiya.

12. Mr. Soparkar would submit that the theory of assignment is also that of the department, however, for the time being even if it

is assumed that Nitaben assigned her share to the extent of 2.5% in the profit, the department could not have proceeded to provisionally attach the Block No.142 as this land is the asset of the ownership of the writ-applicant – firm.

13. Mr. Soparkar also invited our attention to Rule-32 of the Schedule-2 – Procedure of Recovery of Tax. Rule 32 reads thus:-

32. Attachment of partnership property:- (1) *Where the property to be attached consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and make an order for the sale of such interest or such other order as the circumstances of the case may require.*

(2) The other persons shall be at liberty at any time to redeem the interest charged or, in the case of a sale being directed, to purchase the same.”

14. In such circumstances referred to above, Mr. Soparkar prays that there being merit in his writ-application, the same be allowed and the impugned order of provisional attachment to the extent it includes the Block No.142 i.e. the land owned by the writ-applicant – Partnership Firm be quashed set aside.

15. On the other-hand, this writ-application has been vehemently opposed by Ms. Kalpana Raval, the learned senior standing counsel appearing for the revenue. Ms. Raval would submit that no error not to speak of any error of law could be said to have been committed by the Department in passing the impugned order of

provisional attachment. She would submit that the very object of provisional attachment as envisaged under section-281B of the Act is to protect the interest of the revenue. Ms. Raval laid much emphasis on the statement that came to be recorded during the search, as referred to above. The entire focus is on the fact that when the Block No.142 came to be purchased by the writ-applicant – Firm vide document no.6362, dated 09.04.2015 for a total sale-consideration of Rs.10,48,34,000/-, an amount of Rs.1,50,00,000/- [Rupees One Crore Fifty Lakh Only] in cash was paid by Arnav Savaliya. This is how Arnav Savaliya contributed in the purchase of Block No.142. If there is such a huge contribution at the end of Arnav Savaliya, then how does Savaliya expect to protect his interest. It is in such circumstances that Nitaben as one of the partners of the writ-applicant – Firm is said to have assigned 2.5% of her share in the profit in favour of Arnav Savaliya. According to Ms. Raval in such a scenario, it could be said that Arnav Savaliya has a share in Block No.142.

16. Ms. Raval invited the attention of this Court to few averments made in the affidavit-in-reply filed on behalf of the revenue. We quote the relevant averments as contained in the reply.

“4. Before entering into a parawise response to the petition of the petitioners, the respondents seek leave to raise a preliminary objection with respect to the maintainability of the petition. The petitioner submits that there is a statutory alternative remedy available to the petitioner, which is efficacious. The petitioner seeks from this Hon'ble Court, in exercise of writ jurisdiction, an examination of the issue on facts, which exercise the petitioner cannot seek, in the humble submission of the answering respondent.

5. With respect to contentions raised in Para 1, it is

submitted that upon verification, the said land although was purchased in the name of the firm i.e. M/s Raghunandan Enterprise vide registered deed no.6362 on 09.04.2015, Smt. Nitaben Shaileshbhai Radadiya, wife of the Shri Shailesh Hasmukhbhai Radadiya, is one of the partners of the firm. It is noticed from the partnership deed that, Shri Shaileshbhai H. Radadiya retired from the firm and Smt. Nitaben Shaileshbhai Radadiya was admitted as a partner in the firm on 14.08.2018 having share of 5% in the firm. It is seen that the wife was awarded the same position as her husband in the firm. Further, it is seen that Shri Arnav M Savaliya has purchased 2.5% share **unofficially (on money or cash money)** out of 5% share of Nitaben Shailesh Radadiya with an investment of Rs.1,50,00,000/-. During the course of Search proceedings the statement of Shri Mukesh N. Savaliya (father of Shri Arnav M. Savaliya) was recorded on oath u/s.132(4) of the Income Tax Act, 1961, in which Shri Mukesh N. Savaliya has confronted the same with the incriminating document. The relevant part of the same is as under:

પ્ર-૧૦ અમારો જ અમારી કાર્યકારી દરમિયાન આપણા ફિર્મમાં અમારો
કબજામાંથી નળેલ પોટ્ટે અચારી જે અમમ. A-5 માં છે જે નળે
અમારુ છે તેની વિગતવાર માહિતી આપો.
જ-૧૦ અમારુ અમારો પોટ્ટેની ફિર્મમાં અચારી અમમ. A-5 ના પાળા
નંબર-1 ઉપર વાનકુનો બ્લોક નં 142, તળી બ્લોક નં 166
FP No. 53 મુજબ 11981 આ.મી જગ્યાની વિગત છે.
પાળા નંબર-2 માં આ પુરા અમારો મળે ર.5% (પેપર રૂપિયા)
રૂ. 1,50,00,000/- ના રોકડાની વિગત છે.

In the view of the above, the property situated at **B.No.142, New Block No.166, T.P.22, F.No.53, Valak**, was provisionally attached vide this office order no.ITBA/COM/F/1/2021-22/1033162496(1) dated 29.05.2021 for the purpose of the protecting the interest of Revenue.

As evident from the above statement Rs.1,50,00,000/- in cash was paid to acquire 2.5% share in the impugned land. It would appear prima facie, based on evidence available that the on-money component involve in the entire land is of Rs.60,00,00,000/- which should have been contributed either by the firm or by the partners at the time of purchase of land. Accordingly, the incriminating materials seized along with relevant statement was forwarded to the jurisdictional Assessing

Officers of the petitioner dated 17.12.2021 and the concerned Assessing Officer has initiated the proceedings by issuing notice u/s.153C of the I.T. Act.

6. *With respect to contentions raised in Para 2.1, it is submitted that the same are formal & factual in nature hence not responded to at present. The respondent however seeks leave to respond to the same subsequently if found necessary.*

7. *With respect to contentions raised in Para 2.2, it is submitted that the Shri Shailesh Harjibhai Radadiya, retired from the partnership firm on 14.08.2018 and Smt. Nitaben Shaileshbhai Radadiya entered on 14.08.2018 having 5% share. Smt. Nitaben Shaileshbhai Radadiya is wife of Shri Shailesh Harjibha Radadiya.*

8. *With respect to contentions raised in Para 2.3, it is submitted that as per explanation in Para 1, it is clearly seen that Shri Arnav M Savaliya has purchased **unofficially 2.5% share** out of 5% share of impugned land from Shri Shailesh Harjibhai Radadiya by paying huge on-money. The on-money payments in relation to land investment shall never become part of the register document/deed. Accordingly, the on-money profit on sale of such land shall also be out of regular books of account and document too. The accounting and share of profit in relation to on-money, are done through MOU, Saudachitthi, Samadhan Karar. In this impugned land also the same was done through unregistered document (Sauda Chitthi) signed by the parties. The contention of the petitioner deserves no merit when it comes to dealing in on-money transaction for purchase of land.*

9. *With respect to contentions raised in Para 2.4, it is submitted that as per section 132(9B) of the I.T. Act, 1961,*

“[(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 authorised 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.”

For the impugned land, the first provisional attachment was done

by ITO(Investigation), Surat dated 21.08.2020 after getting due approval from Pr. DIT(Investigation), Surat and during the course of assessment proceedings, the office of respondent has passed the order u/s.281B on 29.05.2021 & again extended vide this office order dated 02.11.2021 in accordance with law.

10. With respect to contentions raised in Para 2.5 and 2.6, it is submitted that the petitioner was required to file his request letter to lift provisional attachment to the office of Pr. Commissioner of Income-tax (Central), Surat since as per section 281B of the I.T. Act, he is the appropriate authority to grant approval for provisionally attaching the property to protect the revenue. Further, the attachment u/s 281B is provisional in nature and it automatically expired after 60 days from completion of assessment proceedings and in the case of Shri Arnav Savaliya, the assessment will be completed before 31st March, 2022. Further, the investigation/assessment for on-money involved with the impugned is under process and it involves further more parties. Therefore, the application of petitioner dated 21.09.2021 and 07.12.2021 could not be disposed off.

11. With respect to contentions raised in Para 2.7 and 2.8, it is submitted that the assessment proceedings in the case of Shri Arnav Savaliya are going on and will be completed within due course, Thereafter decision on merits can be taken after completion of his assessment proceedings.

In the context of above it is stated that attachment is provisional and to protect the interest of revenue. Decision could be taken immediately after completion of assessment proceedings in the case of Shri Arnav Savaliya. Since, the attachment u/s.281B is provisional in nature and it automatically expired after 60 days from completion of assessment proceedings and in the case of Shri Arnav Savaliya, the assessment will be completed on or before 31st March, 2022.

*12. With respect to contentions raised in Para 3.1, it is submitted that, as per the **incriminating document** seized during the course of search u/s.132 of the I.T. Act in the case of Shri Arnav Mukeshbhai Savaliya, the 2.5% share of the impugned land was sold by receiving huge on-money by Shri Shailesh Harjibhai Radadiya (husband of Smt. Nitaben Shaileshbhai Radadiya). It is pertinent to mention here that the on-money payments in relation to land investment don't become part of the register document/deed. Similarly, the on-money profit on sale of such land shall also be out of regular books of account and*

document too. The accounting and share of profit in relation to on-money, are generally done through MOU, Saudachitthi, Samadhan Karar. **In this impugned land also the same was done through unregistered document signed by the parties.** The contention of the petitioner deserves no merit when it comes to dealing in on-money transaction for purchase of land. The impugned land was transferred over and above the registered value and involves on-money payments also. The contention of petitioner that Shri Arnav Mukeshbhai Savaliya is neither the partner in partnership firm nor he hold any share/interest in the petitioner firm at any point of time, is out of context when it comes dealing in on-money, which is generally outside of books of accounts/registered document/deed.

13. With respect to contentions raised in Para 3.2 & 3.3, it is submitted that there is no dispute on the fact that Shri Arnav Mukeshbhai Savaliya is not an official partner in the petitioner firm as per registered deed of firm. The basis of provisional attachment under section 281B is to protect revenue as the **incriminating evidence reveals involvement of on-money for 2.5% share in the impugned land** and the same was confirmed by Shri Mukesh Savaliya through statement on oath u/s.132(4) of the I.T. Act also.

14. With respect to contentions raised in Para 3.4, it is submitted that as per the Provisional Attachment order u/s.281B of the I.T. Act dated 29.05.2021, the provisional attachment for the impugned land was done only to the extent of 2.5% **(for which incriminating seized document reveals payment of on-money by Shri Arnav Savaliya)**. The contention of the petitioner bears no merit.

15. With respect to contentions raised in Para 3.5, it is submitted that the basis of provisional attachment under section 281B of the I.T. Act is to protect the interest of revenue and the same was done on the basis seizure of incriminating material and statement of related party on oath for on-money payment related to 2.5% share in impugned land. It has been done legally on the basis of incriminating materials.

16. With respect to contentions raised in Para 4, it is submitted that the petitioner should have approached higher authority with regard to revocation of Provisional Attachment u/s.281B of the I.T. Act, rather than doing the same, the petitioner filed the Writ Petition before Hon'ble High Court for an examination of the issues on facts. Further, the attachment

u/s.281B is provisional in nature and it automatically expired after 60 days from completion of assessment proceedings and in the case of Shri Arnav Savaliya, the assessment will be completed before 31st March, 2022.

17. Ms. Raval further submitted that assuming for the moment that the action or the order passed by the revenue is not in accordance with law or without jurisdiction, still this Court may decline to exercise its extra-ordinary jurisdiction under Article 226 of the Constitution of India, more particularly, when it comes to protecting the interest of the revenue. Ms. Raval would submit that the necessary evidence as regards the understanding between the parties may surface during the course of the assessment proceedings. That may make the picture more clear. No prejudice would be caused to the writ-applicant – Firm, if till the final assessment is framed, the Block No.142 remains provisionally attached.

18. Ms. Raval also invited the attention of this Court to Sub-section (3) of Section 281B of the Act, which reads thus:-

281B. Provisional attachment to protect revenue in certain cases.:-

(3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached under sub-section (1), the Assessing Officer shall, by an order in writing, revoke such attachment:

Provided that where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

19. Relying on the aforesaid Sub-section (3) of Section 281B of

the Act, Ms. Raval would submit that if any tangible security is furnished at this stage by the writ-applicant – Firm to protect the interest of the revenue, there should not be any difficulty in releasing the subject land from provisional attachment.

20. In such circumstances referred to above, Ms. Raval, the learned senior standing counsel appearing for the revenue prays that there being no merit in the writ-application, the same may be rejected.

21. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the revenue could have proceeded to attach the subject property in the form of land, which indisputably is of the ownership of the writ-applicant – Partnership Firm.

22. The plain reading of Section-281B of the Act would make it clear that the same provides for the provisional attachment of the property belonging to the assessee for a period of six months from the date of such attachment unless extended, but excluding the period of stay of the assessment proceedings, if any. Under Sub-section (1) of Section 281B of the Act thus, where during the pendency of any proceedings for assessment or reassessment, if 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. They have provisional applicability and in terms of sub-section (2) of section 281B of the Act, a limited life. Such powers must, therefore, be exercised in appropriate cases for proper reasons. Such powers cannot be exercised merely by repeating the phraseology used in the section and recording the opinion of the officer passing such order that he was satisfied for the purpose of protecting the interest of Revenue, it was necessary so to do.

23. The assessee in the case on hand is Arnav Savaliya. The provisional attachment is of the property, which belongs to the writ-applicant – Partnership Firm. The plain language of the provision of Section-281B is plain and simple. It provides for the attachment of the property of the assessee only and of no one-else. The golden rule of interpretation of the statutes is that the statute has to be construed according to its plain, literal and grammatical meaning, unless it leads to absurdity. The subject land i.e. Block No.142 not being the property of the assessee as such, was not open to provisional attachment. Even if we go by the case of the revenue that there is some interest of Savaliya involved in the land in question, the same will not make the subject land of the ownership of the assessee i.e. Arnav Savaliya.

24. We once-again remind ourselves of the fine distinction drawn by the Supreme Court in the case of *Sunil J. Kinariwala (Supra)* between a case where a partner of a firm assigns his/her share in favour of a third person and a case where a partner constitutes a

sub-partnership with his/her share in the main partnership. The case on hand indisputably is not one of a sub-partnership though in view of Section-29(1) of the Partnership Act, Arnav Savaliya as an assignee may become entitled to receive the assigned share in the profits from the writ-applicant – Firm, not as a sub-partner because no sub-partnership came into existence, but as an assignee to the share of profit of the assigner-partner viz. Nitaben Shaileshbhai Radadiya.

25. In the overall view of the matter, we are convinced that the provisional attachment of the subject land under Section-281B of the Act at the instance of the revenue is not sustainable in law.

26. For all the forgoing reasons, this writ-application succeeds and is hereby allowed. The impugned order of provisional attachment dated 29.05.2021 to the extent it includes the subject land i.e. Block No.142, New Block No.166, T.P.-22, F.P.-53, admeasuring 11981 sq.mtrs. situated at Village Valak, Taluka Kamrej, District Surat, is hereby quashed and set aside.

Rest of the order of provisional attachment of all the properties owned by Arnav Savaliya is not touched.

If on the basis of the provisional attachment order, any entries have been mutated in the revenue records, the same shall now also stand corrected.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE, J)

A. B. VAGHELA