

W.P.No.27872 of 2025

C.SARAVANAN.J.

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The matter was taken up for consideration.

2. The learned Senior Counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench in ***Agasthiya Holdings Pvt. Ltd., Vs Commissioner of Income Tax and Others, (2018) 403 ITR 288***, wherein, in Paragraph Nos.17, 34 and 35, it was held as under:-

“17. As already pointed out, the Tax Recovery Officer in his order dated August 9, 2011 has noted that the property has been illegally transferred by way of a registered sale deed dated June 18, 2008 and since it has been sold after service of the demand notice, it has to be declared as null and void as per the provisions of the Income-Tax Act.

*34. In the light of the ratio laid down in the above cited decision, it is not open to the Tax Recovery Officer to declare the said transfer/alienation as null and void as per the provisions of the Income Tax Act. It is also brought to the knowledge of this court by the learned counsel appearing for the appellant/writ petitioner that he also sought information under the Right to Information Act, from the Public Information Officer – the Joint Sub-Registrar, Tuticorin, as to the order of attachment by the Income-tax Officer in respect of the property concerned in registered document No.2212/2008, dated June 18, 2008 and vide communication dated May 24, 2011 bearing No.2099/mggp/2011, the said official informed that no such document is available on file. **Therefore, this Court is of the considered view that it is for the Income-Tax Department, to file a suit to hold the transaction declared as null and void as per the ratio laid down by the Hon'ble Supreme Court of India in TRO v. Gangadhar Viswanath Ranade (Decd.) reported in (1998) 234 ITR 188 (SC); AIR 1999 SC 427.***



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35. In the result:

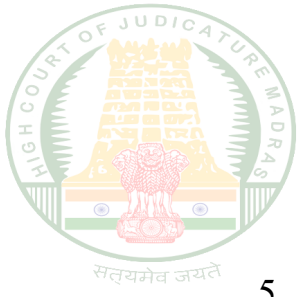
(I) *W.A.(MD).No.1186 of 2017 is partly allowed and the order of the learned judge in granting liberty to the writ petitioner to move the Tax Recovery Officer under rule 11 of the Second Schedule seeking adjudication of his claim is set aside and the Revenue is granted liberty to file a civil suit to declare the sale transaction/sale deed in favour of the writ petitioner as null and void;*

(ii) *W.A.(MD).No.1150 of 2017 filed by the Revenue is dismissed in the light of the judgment made in W.A.(MD).No.1186 of 2017.*

(iii) *However, considering the facts and circumstances of the case, there shall be no order as to costs. ”*

3. Though the aforesaid decision of the Hon’ble Division Bench is in consonance with the principle laid down by the Hon’ble Supreme Court in ***TRO v. Gangadhar Viswanath Ranade (Decd.) reported in (1998) 234 ITR 188 (SC); AIR 1999 SC 427***, it is to be noted that the law declared by the Hon’ble Supreme Court in the above case cannot be applied as Section 281 of the Income Tax Act, 1961 has been amended thereafter.

4. Therefore, the question to be decided is whether the petitioner is still required to avail the remedy under Rule 11 of the Second Schedule to the Income Tax Act, 1961, as amended on 29.05.2012 without prejudice to the rights before a civil suit seeking a declaration before the competent court of civil jurisdiction.



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5. List the case for further arguments and for passing final orders on
23.02.2026.

20.01.2026

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20.01.2026