



Serial No.04
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.213/2024

Date of order: 06.09.2024

Sutapa Chakravarty

..... Petitioner

Vs.

1. The Chief Commissioner of Income Tax, Aaykar Bhawan 110 M.G. Road, Shillong-793001 (Meghalaya).
 2. The Principal Commissioner of Income Tax (PCIT), Shillong, Aaykar Bhawan 110 M.G. Road, Shillong-793001 (Meghalaya).
 3. Income Tax Officer, Ward No.2, Aaykar Bhawan 110 M.G. Road, Shillong-793001 (Meghalaya).
- Respondents

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Chief Justice (Acting)
Hon'ble Mr. Justice B. Bhattacharjee, Judge

For the Petitioner : Mr. N. Dasgupta, Adv with
Mrs. A. Synrem, Adv

For the Respondents : Mr. S. Pandey, Adv

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

ORAL:

The instant writ petition, which is the second round of litigation, has been filed for a mandamus to issue to the respondents to approve closure of the State Bank of India, Capital Gains Deposit Scheme (CGDS), A/c No.37030629542 and Capital Gains Term Deposit A/c No.37062902436, total amounting to Rs.1,36,62,000.00/- (Rupees one crore thirty six lakh and sixty two thousand), in accordance with law within such reasonable time and also to keep in abeyance the transfer of income jurisdiction as far as the petitioner is concerned.



2. The brief facts are that the petitioner had on the earlier occasion assailed an order dated 07.03.2024, transferring the petitioner's income tax jurisdiction from Shillong to Kolkata and had also further prayed for closure of her CGDS account. This Court then by the order dated 21.03.2024 passed in WP (C) No.65 of 2024 was pleased to direct as follows:-

“The petitioner has come forward to this Court with the following prayers:

“(i) Admit the Petition and call for the records.

(ii) Issue Rule calling upon the Respondents as to why the arbitrary Order, dated 07.03.2024 (**ANNEXURE-16**), directing transfer of the Petitioner's Income Tax jurisdiction from Shillong to Kolkata shall not be set aside/quashed during pendency of the Petitioner's application for closure of CGDS account is decided. Moreover, impugned Order was passed without giving an opportunity to the Petitioner to be heard, following the Principles of Natural Justice read with Section 127(2) of the Income Tax Act, 1961.

(iii) As to why the Valuer's Report and Chartered Accountant's Report (**ANNEXURE-5&6**) showing capital loss in the sale of ancestral property, submitted to the Department shall not be accepted and the amount of Rs. 1,36,62,000.00 (*Rupees one crore thirty six lakh and sixty two thousand*) lying in the SBI A/c No. 37030629542 and CGDS Term Deposit A/c No. 37062902436, shall not be ordered to be released within a time frame as may be decided by this Hon'ble Court.”

2. During the last hearing, it was pointed out that the impugned order dated 07.03.2024 was passed without affording an opportunity of hearing to the petitioner. The respondents took time to ascertain the same but however, submitted that the petitioner did not avail the opportunity of being heard.

3. On instructions, learned counsel for the respondents, submitted before this Court today that the petitioner will be given an opportunity of hearing in person and she can appear on a specified date that may be given by this Court where the



petitioner shall produce all necessary documents in support of her contentions along with written submission, if required.

4. Learned counsel appearing for the petitioner would submit that the petitioner has no objection in appearing before the authorities concerned on the date specified.

5. Taking note of the submissions made by both the parties, the petitioner is expected to appear before the respondent authorities concerned on 02.05.2024 on which date she shall produce all the evidence available to her together with written submission. We make it very clear that in case the petitioner fails to avail this opportunity, her absence may be recorded by the authorities and an order may be passed based on the records available. We also make it very clear that the petitioner will not be given one more chance to contend that the petitioner was not given an opportunity. The respondent authorities shall take a decision within a period of four weeks from the date of appearance of the petitioner.

6. Accordingly, WP(C) No. 65 of 2024 and MC(WPC) No. 42 of 2024 are disposed of.”

3. That the petitioner had then appeared before the respondent No.2, who as per the petitioner by the order dated 28.05.2024, mechanically affirmed the previous impugned order dated 07.03.2024 without addressing the objection and concern for closure of the CGDS account. It is also pertinent to note herein that the CGDS account was created due to the sale of ancestral property of the petitioner with an intention to buy a new property in terms of Section 54 of the Income-Tax Act, 1961, without computation of Capital Gains or Loss Capital in order to avail the benefit of exemption provided under the said Section.

4. It is submitted by Mr. N. Dasgupta, learned counsel for the petitioner that the closure request of the CGDS account has been kept pending since 2019 but despite all efforts, the petitioner could not get the issue resolved by the Assessing Officer. It is further submitted that due to non-receipt of approval, money deposited under the Capital



Gains Account Scheme has remained unutilised and the concerned bank is not allowing closure of the same thereof without an approval from the concerned Assessing Officer. He finally submits that the pressing problem of closure of CGDS account for which necessary formalities have been completed in 2020 before the respondent No.3, has been kept pending without assigning any reasons and that the transfer of jurisdiction at this juncture, will pose a major hurdle in the closure of CGDS account in the new dispensation. As such, he has prayed that the proceedings of closure be completed before the transfer jurisdiction is implemented.

5. Mr. S. Pandey, learned counsel for the respondents has submitted that for all practical purposes, the petitioner as per the database and the latest statement filed, is a resident of Kolkata and that this has been reflected in the income tax returns filed. He further submits that the pendency of approval for closure of CGDS account does not put any bar in transferring the PAN of the assessee to his or her permanent territorial jurisdiction. He also submits that the delay in closure of the CGDS account is attributable to the petitioner only, as the petitioner did not give a correct picture of her income in the returns filed by her. He further submits that the petitioner has sold the ancestral property and deposited the amount in the CGDS in terms of Section 54 of the Income-Tax Act, but did not disclose any income from Capital Gains in her returns and the computation of long term Capital Loss was filed much after the due date of filing returns. He also further submits that the allegation that without closure of CGDS account, the transfer of income tax jurisdiction cannot be effected is incorrect as the transfer of jurisdiction is being done as per the provisions of the Income-Tax Act.



6. On these submissions, Mr. N. Dasgupta, learned counsel for the petitioner then submits that the petitioner will not resist the transfer of jurisdiction to Kolkata but prays that the closure of the CGDS account notwithstanding jurisdiction, be completed within a time frame.

7. Having heard learned counsel for the parties and as it appears from the submission of Mr. N. Dasgupta, learned counsel for the petitioner that transfer of jurisdiction is no longer resisted, the only issue that remains is with regard to the approval for closure of the CGDS account.

8. Accordingly, it is directed that on production by the petitioner before the respondent authorities of all materials necessary to be taken into consideration on the application for closure of CGDS account, the respondents, shall thereafter within a period of four weeks thereof, decide on the matter and pass final orders.

9. The commencement of the said proceedings however will be intimated to the petitioner by the concerned respondent within a period of three weeks from today.

10. The matter on the above noted term stands disposed of.

(B. Bhattacharjee)
Judge

(H.S. Thangkhiew)
Chief Justice (Acting)