IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2017

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.18042 of 2000

and

W.M.P.No.20809 of 2017

G.Jabarchand Nahar ...Petitioner

Vs.

The Post Master, HSG.1,
Mettupalayam,
Coimbatore District ...Respondent

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in AIR.02-03/Para-1/Part-II(a)/PPF/Dlgs/MTP 641 301, dated 23.12.2002, and quash the same as illegal and direct the respondent to treat the two accounts as separate account and pay interest according to the Public Provident Fund Act.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.J.Madanagopal Rao
Senior Central Government
Standing Counsel

ORDER

The prayer sought for in this writ petition is for writ of Certiorarified Mandamus to call for the records on the file of the respondent in AIR.02-03/Para-1/Part-II(a)/PPF/Dlgs/MTP 641 301, dated 23.12.2002, and quash the same as illegal and direct the respondent to treat the two accounts as separate account and pay interest according to the Public Provident Fund Act.

2. The short facts which are required to be noticed in this case is that, the petitioner in the name of family (Hindu Undivided Family) "G.Jabarchand Nahar and sons" had opened PF account in MTP.146 at the respondent post office on 26.12.1989. On the very same day, the petitioner had also opened another PF

account in MTP.147 at the respondent post office in the name of "G.Jabharchand Nahar and family". The Audit Officer at the time of inspection had found and observed that the Kartha of the family ie., G.Jabarchand Nahar had been operating two accounts on behalf of the family, under Clarification No.9 below paragraph -3 of Public Provident Fund rules, only one account can be opened by the Hindu Undivided Family by the Kartha and the petitioner since had maintained two accounts in the respondent Post Office, which were not permissible. It is seen that based on the objection raised by the Audit Officer, the respondent issued a letter dated 23.12.2002 to the petitioner asking him to close any one of them and retain any one of the account. As against the said communication dated 23.12.2002, the petitioner had approached this Court with the aforesaid prayer.

3. I have heard Mr.A.Thiyagarajan, learned counsel appearing for the petitioner and Mr.J.Madanagopal Rao, learned Senior Central Government Standing Counsel appearing for the respondent.

4. Mr.A.Thiyagarajan, learned counsel appearing for the petitioner would submit that the very dictum laid by the respondent through the impugned communication dated 23.12.2002 asking the petitioner to close any one of the Public Provident Fund account is not justifiable one as the issue raised in this writ petition has no more res integra, as in the similar situation, this Court in W.P.Nos.29026 & 29027 of 2003, by order dated 06.06.2013, had decided in favour of the depositors. In this regard, the learned counsel appearing for the petitioner would rely upon the following passages of the said order passed by the learned Judge of this Court and the same are reproduced here under:-

> " 10. As of now, there is no dispute before me that these two Hindu Undivided Families have been treated as two different persons in terms of Section 2(31) of the Income Tax Act and accordingly, assessment orders have been issued by the Income Tax Department. Therefore, there is no scope to argue before this Court that these High Undivided Families are one and the same. It is the contention of the learned Senior Counsel that the members of these two Hindu Undivided Families are differed sets of person, though, Mr.B.Mahaveerchand Shankla is a member in both Hindu Undivided Families. IN t he judgment in Shenbagam Auto Works and another (cited supra) the Division Bench of this Court has taken the view that there can be two Hindu Undivided Families, one Larger

HUF and the other Smaller HUF and the members of the smaller HUF may also be members simultaneously of the Larger HUF. Because some members are common in both Hindu Undivided Families it cannot be construed as one and the same person in terms of Section 2 (31) of the Income Tax Act.

11. In view of the judgement in Shenbagam Auto Works and another (cited supra) and also in view of the factual aspect that both Hindu Undivided Families have all along been treated for assessment purpose as two different person in terms of Section 2 (31) of the Income Tax Act, the respondent was not right in issuing the impugned orders closing one of the accounts. Thus, the impugned orders are liable to be set aside."

5. The learned counsel appearing for the petitioner would further submit that, in view of the order passed by this Court, this writ petition has also been covered and therefore the petitioner is entitled to maintain both accounts at the respondent Post Office and therefore, the direction issued by the respondent through communication dated 23.12.2002 is liable to be interfered and to be quashed.

6. However, per contra, the learned Senior Central Government Standing Counsel would submit that, when the Audit Officer raised an objection of maintaining two Public Provident Fund accounts by the petitioner one in the name of "G.Jabarchand Nahar and Sons" and another one in the name of "G.Jaberchand Nahar and Family", the impugned communication was issued to the petitioner asking him to close any one of the account and the deposited amount on the closed account would be refunded to him. The learned Standing Counsel would further state that in response to the impugned communication, the petitioner on 05.03.2003 has responded and as per the communication of the respondent dated 23.12.2002, the account number in MTP 147 may be closed and the balance amount as on date has to be refunded to him. The said reply and request made by the petitioner dated 05.03.2003, is re-produced here under :-

"Date:05.03.2003

To
The Post Master,
Mettupalayam.

Dear Sir,

Ref:- Your Ref.No.AIR 02-03/para 1/part II(a)/PPF/Dlgs. letter dated 23.12.2002.

With reference to your letter dated 23.12.2002, I have not received any information till this date. So, I hereby request you to kindly close my PPF A/c No.MTP 147 and refund the balance amount as on date, pass book is enclosed herewith.

Yours faithfully

Sd/-”

7. In view of the said request made by the petitioner one of the account ie., MTP 147 has already been closed. However, the learned Standing Counsel would submit that the amount deposited by the petitioner in the said account ie., MTP 147 was not so far disbursed to the petitioner and the same will be disbursed to the petitioner within the time stipulated by this Court.

8. I have considered the said rival submission made by the respective counsel and perused the materials placed before this Court.

9. As has been rightly contended by the learned counsel appearing for the petitioner that the issue raised in the writ petition as to whether the Kartha can maintain two Public Provident Fund accounts in the family name (HUF) has already been resolved by this Court in the afore said writ petitions in W.P.Nos. 29026 and 29027 of 2003, by order dated 06.06.2013 and the relevant portion of the said order has already been extracted herein above. In view of the decision taken by this Court, I am of the view that the impugned communication can not be sustained on the basis of the alleged audit objection. However, in this case, pursuant to the impugned communication dated 23.12.2002, the petitioner has given a letter-cum-request on 05.03.2003 and the same has also been extracted herein above.

10. In the said request, the petitioner having accepted the direction issued by the respondent department, had in fact, requested the respondent to close the Public Provident Fund Account in MTP 147 and refund the balance amount as on date. Enabling the respondent to close the account, the petitioner has also enclosed the Passbook along with the said communication dated 05.03.2003. Since the petitioner has come forward to accept the direction issued by the respondent department and had requested the department to close one of the account and for the said purpose he has also forwarded the passbook to the respondent, now the petitioner cannot turn around and state, by filing the writ petition that, he is entitled to maintain two accounts and therefore the impugned communication has to go.

11. Though the issue has been, for the time being, settled by the order by this Court as referred above, in view of the own action on the part of the petitioner, who himself requested the respondent to close the account and give back the balance, the prayer sought for in this writ petition, insofar as the petitioner is concerned, cannot be granted.

12. In view of the above, the said claim made by the petitioner assailing the impugned communication dated 23.12.2002 is failed and accordingly, the writ petition is dismissed. However, since the account in MTP 147 has already been closed, at the request of the petitioner dated 05.03.2003, the balance amount as on date ie., the date of the closing of the account shall be refunded, if not refunded already to the petitioner, with 12% interest from the date of the closing of the account till the date of payment, within a period of four weeks from the date of the receipt of a copy of this Order.

13. With these directions, the writ petition is disposed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts

To
The Post Master, HSG.1,
Mettupalayam,
Coimbatore District

+1cc to Mr.S.RAMESH KUMAR, Advocate, S.R.No. 86458
+1cc to Mr.J.MADANAGOPAL RAO, Advocate, S.R.No. 86450

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TR(18/01/2018)