IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2020

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.17701 OF 2018
AND
WMP NO.20965 OF 2018

K.Vijaya Kumar ...Petitioner

Vs

The Principal Commissioner of Income Tax,
Room No.430, 4th Floor,
Main Building, 121, Mahatma Gandhi Road,
Chennai. .. Respondent

Prayer:

Petition filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari, calling for the records on the file of the respondent relating to the impugned proceedings in C.No.3033/PCIT-3/263 (12)/2017-18 dated 26.03.2018, received by the petitioner on 27.03.2018 and quash the same.

For Petitioner : Mr.AL.Somayaji,
Senior Counsel
For Mr.V.Perumal

For Respondent : Mrs.Hema Muralikrishnan
Senior Standing Counsel

O R D E R

The petitioner has had a distinguished career in the Indian Police Service and is presently engaged as a Senior Security Advisor to the Union Home Ministry. In the course of his service, he had been appointed as Chief of the Special Task Force (STF) leading 'Operation Cocoon' against forest brigand Veerapan leading to Veerapans' fatal encounter on 18.10.2004. In recognition of the special and commendable services of the STF, the Government of Tamil Nadu had issued G.O.Ms.No.364, Housing and Urban Development Department dated 28.10.2004 instituting an award in national interest to personnel of the STF for the valuable services rendered by them as part of the team. In consequence thereof, G.O.Ms.No.16, Housing and Urban Development Department dated 12.01.2006 was issued sanctioning a sum of Rs.54,29,88,200/- towards the cost of 773 plots to be allotted to STF personnel including the petitioner against loans sanctioned to the Tamil Nadu Housing Board for implementation of various housing schemes.

2. Specifically G.O.Ms.368, Housing and Urban Development dated 29.10.2004 had been issued allotting a HIG Plot bearing No.1A-642 at Thiruvanmiyur Scheme to the petitioner. Accepting the representation of the petitioner dated 21.07.2008, G.O.Ms.No.763 Housing and Urban Development Department dated 21.07.2008 had been issued allotting Plot No.1 adjacent to Andaman Guest House at Anna Nagar West Extension in lieu of the plot issued earlier.

3. A registered deed of sale had been executed on 27.11.2009 whereby the Tamil Nadu Housing Board conveyed to the petitioners' favour land measuring 2 grounds and 8 sq.ft. of land in consideration of Rs.1,08.43,000/- paid by the Government of Tamil Nadu on his behalf to the Tamil Nadu Housing board.

4. A return of income had come to be filed by the petitioner in terms of the Income Tax Act, 1961, wherein the petitioner had initially returned a total income of Rs.18,38,791/- for Assessment Year (AY) 2010-11. The return was revised thereafter to include short term capital gain of a sum of Rs.82,00,400/- arising from the sale of the plot allotted to him on 15.12.2009 for a sum of Rs.1,99,10,900/-. The petitioner, it appears, had returned the aforesaid gain in his return for the subsequent assessment year, ie., AY 2012-13 remitting the liability thereupon. In the revised return filed for AY 2010-11, perhaps filed since the petitioner was advised that the incidence of tax would arise in that year, he claimed refund of the tax paid for AY 2012-13 and adjustment of the same against the demand that arose under the revised return.

5. The assessment for AY 2010-11 had been reopened under Section 147 of the Act and after due process, was completed on 02.03.2016. In the course of the proceedings, the award in cash as well as by allotment of plot are stated to have been discussed, though the order of assessment is silent in this regard.

6. This was followed by a show cause notice dated 26.02.2018 under Section 263 of the Act, wherein the Commissioner of Income Tax proposed revision of the assessment on the ground that the computation of capital gain was incorrect. The petitioner had taken the cost of acquisition of property as per the sale deed at Rs.1,08.43,000/-. However,

according to the respondent, if the cost as per deed were to be taken, then the award granted to the petitioner would have to qualify to be a reward in terms of Section 10(17A) of the Act. Since the Assessing Authority had not specifically examined this aspect of the matter, the respondent was of the view that the cost of the property would have to be taken as 'nil' and the order of assessment passed was, in his view, erroneous and prejudicial to the interests of the revenue.

7. A reply was filed on behalf of the petitioner as follows:

> ' The said land at Anna Nagar which was sold by the assessee during the financial year 2009-10 for which Long term Capital Gain was admitted was purchased by the assessee on 27^{th} November 2009 from the Tamil Nadu Housing Board a statutory body of Government of Tamil Nadu vide the Registered Sale Deed No.3656/09, dated 27^{th} November 2009 for a total consideration of Rs.1,08,43,000/- a copy of which is enclosed for your perusal by paying a stamp duty of Rs.9,08,000/-. However the entire purchase proceeds were met by the Government of Tamilnadu which was the reward money for nabbing the forest brigand Veerapan. As the said sale agreement is between the assessee and the Tamilnadu Housing Board, it was an absolute purchase by the assessee and the land was not a gift from the Government of Tamilnadu. Only the cash money which was paid for the purchase of the land was only the reward and not the land. Hence the assessee has correctly computed the capital gain by taking the cost of purchase of Rs.1,08,43,000/- and the stamp duty of Rs.9,08,000/- as cost of acquisition for the computation of Long Term Capital Gain.
>
> The above facts have been fully disclosed during the course of the assessment and according the order under Section 143(3) was passed. We request you to kindly do the needful and oblige.'

8. Though the provisions of Section 10(17A) do not appear to have been specifically adverted to in the proceedings for assessment, letter filed by the petitioner before the Income Tax Officer, dated 26.05.2016, does refer to and rely upon this provision. In any event, and despite the objections raised by the petitioner, the proposal was confirmed by the respondent and at paragraph 8 of the impugned order, the Assessing Authority was directed to allow the claim of exemption under Section 10 (17A) only if the assessee were able to produce an order granting approval of exemption by the Government of India under Section 10(17A) (ii).

9. The respondent has filed a counter submitting that the petitioner has an efficacious statutory remedy as against the impugned order and on merits pointing out that the stand of the assessee is liable to be accepted only if an approval of the reward by the Central Government is produced. Thus, according to them there is no flaw in the impugned order and consequently, no merit in the Writ Petition.

10. The issue raised in this writ petition is a legal issue and no facts are in dispute. I thus see no reason to relegate the petitioner to statutory appellate remedy and hold that the writ petition is maintainable.

11. The question that arises relates to whether the reference to 'approval' in Section 10(17A) will include an implied approval or whether such approval has to be express. The provisions of Section 10(17A) of the Act read thus:

> Incomes not included in total income.
>
> 10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—
>
> (17A) any payment made, whether in cash or in kind,—
>
> (i) in pursuance of any award instituted in the public interest by the Central Government or any State Government or instituted by any other body and approved by the Central Government in this behalf; or
>
> (ii) as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;

12. A peek into the Legislative history of this provision is illuminating. Clause (17A) of Section 10 was substituted for clauses (17A), (17B) and (18) by the Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1989. Prior to substitution, the aforesaid three clauses read as follows:

> (17A) any payment made, whether in cash or in kind, in pursuance of awards for literary, scientific or artistic work or attainment or for service for alleviating the distress of the poor, the weak and the ailing, or for proficiency in sports and games, instituted by the Central Government or by any State Government or approved by the Central Government in this behalf:
>
> Provided that the approval granted by the Central Government shall have effect for such assessment year or years (including an assessment year or years commencing

before the date on which such approval is granted) as may be specified in the order granting the approval;

(17B) any payment made, whether in cash or in kind, as a reward by the Central Government or any State Government for such purposes as may be approved by the Central Government in this behalf in the public interest;

(18) any payment made, whether in cash or in kind, by the Central Government or any State Government in pursuance of gallantry awards instituted or approved by the Central Government.

13. Erstwhile Clause (17A) contained a proviso that stated that the 'effective date' from which the approval was granted was to be specified in the order of the Central Government granting such approval. The proviso has been omitted in the substituted provision, effective 01.04.1989 onwards. Thus, it appears to me that while enlarging the clauses generally, by obviating specific reference to the purposes for which the awards could be given, legislature has also done away with the specification of a written approval from the Central Government, with effect from 01.04.1989.

14. One may make useful reference in this regard, to a decision of a Division Bench of this Court in the case of Commissioner of Income Tax V. J.G.Gopinath (231 ITR 229) wherein the Division Bench considered the eligibility of an award by the Central Government to an Income Tax Officer for exemption under Section 10(17B) of the Act for the meritorious and hard work turned out by him for the success of a Voluntary Disclosure Scheme. In that case, the Tribunal had noted that the reward has been granted in public interest and to ensure the success of the Voluntary Disclosure Scheme floated by the Ministry of Finance, Government of India. The personnel of the Income Tax Department had to work overtime in addition to the already existing heavy load that they carried and it was in appreciation of this hard work that the Ministry had come forward with an offer that the special output by the staff would not go unnoticed. The Government of India thus volunteered to pay a cash benefit equivalent to one month basic pay to the income tax personnel identified as having contributed, by their hard work, to the success of the Voluntary Disclosure Scheme.

15. After noting the aforesaid facts, a Division Bench comprising of Justices Sethuraman and N.V.Balasubramanian, while opining that the mandate of Section 10(17A) was wholly satisfied in that case held as follows:

5. The relevant circumstances under which this reward came to be given have been extracted by the Tribunal in I. T. A. No. 1422 (Madras) of 1976-77, which is also the subject of another petition numbered as T. C. P. No. 366 of 1978, that extract is as under :

> "The Central Government (Ministry of Finance) sponsored a voluntary disclosure scheme under the provisions of the Voluntary Disclosure of Income and Wealth Ordinance, 1975. By this Ordinance, the Government offered an unique opportunity to the public at large that any person who wanted to disclose his black money or suppressed wealth, etc., could come forward with a clean breast under certain conditions. Such undisclosed income or wealth would be assessed under a concessional rate without going into the details or the merits of the income or wealth. Besides this, the person was also immune from penalty or prosecution. The object was to bring out the suppressed black money in the country to bring down inflation in the market and also to give an opportunity to persons who were afraid to come forward to bring it out on account of high taxation attended with severe consequences. This scheme was extremely successful, with the result that large unforeseen revenue flooded into the exchequer. At the same time, it cannot be forgotten that the income-tax wing of the Ministry had to work very hard with the already existing heavy load carried on. In some quarters of the Department, the staff had to work round the clock particularly at the closure of the period declared in the Ordinance. Appreciating this hard work and the extra output the Income-tax Department had shouldered, the Ministry came forward that the special output turned out by the staff would not go unnoticed. Therefore, the Government volunteered to pay the hard work turned out by the staff by means of a token cash benefit equal to one month's basic pay. Presumably on account of the emergency no overtime allowance could be sanctioned. It might perhaps involve a larger expenditure. To quote the Ministry of Finance letter F. No. 1-11015/1/76 Ad. IX, dated January 16, 1976, the first paragraph itself explains the circumstances under which it is granted, 'I am directed to state that in appreciation of the meritorious work done by the income-tax personnel for the success of the voluntary disclosure schemes, the Government have

decided to grant them reward of an amount equal to one month's basic pay'."

6. The above extract makes it clear that such reward was granted in public interest. It would be surprising if the Government were to grant rewards for reasons other than public interest. It is, therefore, evident that the terms of Section 10(17B) are completely satisfied in the present case as the circular gives the circumstances under which the rewards are granted. The voluntary disclosure scheme could only have been conceived in public interest as we do not see any other reason for this scheme coming into existence. If any person rendered sincere work to make this scheme a success, and if he is rewarded for it, such grant of reward cannot but be in public interest. There is no specific mode of approval indicated in the statute. No further approval is necessary or called for. The section is clear in its language and does not raise any problem of construction. Therefore, we do not find that any question of law arises out of the Tribunal's order. Even assuming that a question of law arises, the answer is self-evident and, therefore, the reference shall be wholly academic and unnecessary. The petition is accordingly dismissed. Only because the respondent appears in person and not through counsel, we do not award any costs.

16. A contra view has been expressed by the Patna High Court in Commissioner of Income Tax V. S.N.Singh, Income Tax Officer (192 ITR 306), which view has been followed by the Delhi High Court in Commissioner of Income Tax V. J.C.Malhotra (230 ITR 361).

17. In Singhs' case, a Division Bench of the Patna High Court took a view directly opposed to the view expressed by the Madras High Court in J.G.Gopinaths' case. This order is dated 19.02.1990, prior to the decision of this Court in J.G.Gopinaths' case and has not been taken into consideration by the Madras High Court. The assessee was not represented before the Patna High Court and the Bench has proceeded on a strict interpretation of the provision rejecting the claim of exemption on the ground that though the reward by the Central Government to the assessee is indisputably in public interest, approval by the Central Government is mandatory for the purpose of exemption under Section 10(17B).

18. The Delhi High Court, in a very short judgment, drawing support from the decision of the Patna High Court (supra) also

negates the claim on a strict interpretation of Section 10(17B) on the ground that approval had not been accorded by the Central Government. The order reads as follows:

> 1. This is a reference under s. 256(1) of the IT Act, 1961, at the instance of the Revenue, seeking the opinion of the High Court on the following question :
>
> "Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding that the cash award of Rs. 920 is exempt from taxation under s. 10(17B) ?"
>
> 2. The reward to the assessee, who was an ITO at the relevant time, had been given by the Central Government directly in connection with the Voluntary Disclosure Scheme. A separate approval of the Central Government for the purpose of exemption under s. 10(17B) of the Act was not given. That being the position, cl. (17B) of s. 10 of the Act was not attracted and the reward was not liable to be excluded from the computation of the income. So is the view taken in CIT vs. S. N. Singh, ITO (1991) 192 ITR 306 (Pat) : TC 32R.650.
>
> 3. For the foregoing reasons, the question is answered in the negative, i.e., in favour of the Revenue and against the assessee.
>
> 4. No order as to costs.

19. The Division Bench has thus referred to the Circular issued by the Ministry of Finance, deducing therefrom the aspect of approval. Sitting in Madras, I am bound by the view taken by the jurisdictional High Court to the effect that 'approval' of the Centre may either be express or implied, and in the latter, gleaned from surrounding circumstances and events. Thus, this is the perspective from which the eligibility of the petitioner under Section 10(17A) to exemption or otherwise should be tested and decided.

20. The activities of Veerapan and his associates, although confined largely to the areas of Karnataka and Tamil Nadu, are etched in the minds of all Indians. The nature of the activities and their repercussions have been captured in a judgment of a three Judge Bench in the case of Abdul Karim and others V. State of Karnataka and others ((2000) 8 SCC 710) in the context of withdrawal of a Public Prosecutor at the instance of the Government, from proceedings for prosecution. The Bench sets out the sordid tale of the kidnapping of a film actor by name Rajkumar and three others and the events that follow. Though

prosecution was initially initiated, it was sought to be withdrawn in public interest and this came to be challenged.

21. The provisions of Section 321 of the Criminal Procedure Code dealing with an application to be filed by a Public Prosecutor for withdrawal of charges, has been discussed in extenso along with relevant case law. While concluding that the application and order made under Section 321 were misconceived, the Court says in the strongest of terms that such application and order was passed without understanding of the problem in proper perspective and without consideration of relevant material. At paragraph 45, the Court states as follows:

> 45. The application and order under Section 321 is a result of panic reaction by overzealous persons without proper understanding of the problem and consideration of the relevant material, though they may not have any personal motive. It does not appear that anybody considered that if democratically elected governments give an impression to the citizens of this country of being lawbreakers, would it not breed contempt for law; would it not invite citizens to become a law onto themselves. It may lead to anarchy. The Governments have to consider and balance the choice between maintenance of law and order and anarchy. It does not appear that anyone considered this aspect. It yielded to the pressure tactics of those who according to the Government are out to terrorise the Police force and to overawe the elected Governments. It does not appear that anyone considered that with their action people may lose faith in the democratic process, when they see public authority flouted and the helplessness of the Government. The aspect of paralysing and discrediting the democratic authority had to be taken into consideration. It is the executive function to decide in public interest to withdraw from prosecution as claimed. But it is also for the Government to maintain its existence. The self-preservation is the most pervasive aspect of sovereignty. To preserve its independence and territories is the highest duty of every nation and to attain these ends nearly all other considerations are to be subordinated. Of course, it is for the State to consider these aspects and take a conscious decision. In the present case, without withdraw consideration of these aspects the decision was taken to the TADA charges. It is evident from material now placed on record before this Court that Veerapan was acting in consultation with secessionist organisations/groups which had the object of liberation

of Tamil from India. There is no serious challenge to this aspect. None of the aforesaid aspects were considered by the Government or the Public Prosecutors before having recourse to Section 321 Cr.P.C

22. A reading of the aforesaid paragraph reiterates the enormity of the issue faced by the Country by virtue of the operations carried on by Veerapan and his associates. The categoric assertion of the Apex Court is that such issues and their repercussions are not to be viewed or taken lightly. The Bench has stated unambiguously that Veerapan was acting in consultation with secessionist organizations with the object of splitting India. One can hardly lose sight of this position that, in my view, is also a vital consideration to decide the present lis.

23. The object of Section 10(17A) is to reward an individual who has been recognized by the Centre or the State for rendition of services in public interest. While clause (i) is concerned with an award whether in cash or in kind, instituted in public interest by the Central or any State Government or instituted by any other body and approved by the Central Government in this behalf, clause (ii) refers to a reward by the Central or a State Government for such purposes as may be approved by the Central Government in this behalf in public interest. No specification or prescription has been set out in terms of how the approval is to be styled or even as to whether a formal written approval is required. Nowhere in the Rules/Forms is there reference to a format of approval to be issued in this regard.

24. That apart, one should, in my view, interpret the provision and its application in a purposive manner bearing in mind the spirit and object for which it has been enacted. It is clear that the object of such a reward is by way of recognition by the State of an individual's efforts in protecting public interest and serving society in a significant manner. Thus, in my considered view, the reference to 'approval' in Section 10 (17A) does not only connote a paper conveying approval and bearing the stamp and seal of the Central Government but any material available in public domain indicating recognition for such services, rendered in public interest.

25. The petitioner has been recognized by the Central Government on several occasions for meritorious and distinguished services and from the information available in public domain, it is seen that he was awarded the Jammu &

Kashmir Medal, Counter Insurgency Medal, Police Medal for Meritorius Service (1993) and the President's Police Medal for Distinguished Service (1999). Specifically for his role in nabbing Veerapan, he was awarded the President's Police Medal for Gallantry on the eve of Independence Day, 2005. What more! If this does not constitute recognition by the Centre of service in public interest, for the same purposes for which the State Government has rewarded him, I fail to understand what is. The reward under Section 10(17A)(ii) is specific to certain 'purposes' as may be approved by the Central Government in public interest and the 'purpose' of the reward by the State Government has been echoed and reiterated by the Centre with the presentation of the Gallantry Award to the petitioner in 2005. This aspect of the matter is also validated by the Supreme Court in Abdul Karim (supra) as can be seen from the judgment extracted earlier, where the Bench makes observations on the notoriety of Veerapan and the threat that he posed to the Country, as a whole.

26. Seen in the context of the recognition by the Centre of the petitioners' gallantry as well as the observations of the Supreme Court in Abdul Karim (supra) and ratio of the decision in J.G.Gopinath (supra), the approval of the Centre in this case, is rendered a fait accompli.

27. This Writ Petition is allowed. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Principal Commissioner of Income Tax,
Room No.430, 4th Floor, Main Building, 121,
Mahatma Gandhi Road, Chennai.

+1cc to Mrs.Hema Muralikrishnan, Advocate, S.R.No.16658

W.P.No.17701 of 2018
and WMP No.20965 of 2018

KJ(CO)
CS/22/05/2020