



W.P.(MD).No.1810 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 15.07.2022

ORDER PRONOUNDED ON : 21 .07.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.1810 of 2010
and MP(MD).No.1 of 2010**

N.Kamala

...Petitioner

-Vs-

1.The Post Master
Head Post Office
Kumbakonam
Thanjavur District

2.The Post Master General
Tamil Nadu Circle
Annasalai
Chennai

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandmus, calling for records relating to the impugned sanction order issued by the first respondent in LA1/SBC-20/09-10 dated 21.05.2009 and quash the same and direct the respondents to pay the entire accrued amount in the KMB PPF A/c.No.1161 as per the entries with subsequent interest.

For Petitioner : Mr.Ram Sundar Vijayaraj

For M/s.Veera Associates

For Respondents : Mr.G.Rajaraman



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ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein under which the PPF account operated by the writ petitioner's husband was closed without any interest on the ground that it is an irregular account.

2.The petitioner in her affidavit has contended that her husband late.M.Narayanan belonged to a business family and he was engaged in the business of Timber and Tiles under the name and style of 'V.Mahadeva Iyer and Sons'. The said M.Narayanan had started his own business in the year 1969. In the same year, there was a partition and a separate Hindu undivided family smaller status was created for the said M.Narayanan after verification of the Assessing Officer of the Income Tax Department as contemplated under Section 171 of the Income Tax Act, 1995.

3.According to the petitioner, her husband M.Narayanan was assessed under three heads namely (i). M.Narayanan as an individual with PAN.No.HHBPN2271R, (ii).M.Narayanan as a member of Bigger HUF constituting his father and brothers with PAN.No.AABHN7227H, (iii).



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M.Narayanan as Karta of the smaller HUF PAN.No.AADHN1267R.

According to the petitioner, her husband was filing returns under the three heads till 2007.

4.The petitioner further submitted that her husband has opened three PPF accounts on 24.03.1994 at the Post Office at T.Nagar, Chennai. The three newly opened PPF accounts were allotted the following numbers:

(i).M.Narayanan as an individual PPF No.1182-New No.1160.

(ii).M.Narayanan as Karta of smaller (HUF) PPF.No.1183- New No. 1161.

(iii).M.Narayanan as a member of bigger (HUF) PPF No.1184- New No.1157.

These three PPF accounts were transferred to the Head Post Office at Kumbakonam in the year 2000. The first respondent had accepted the transfer and allotted to new PPF numbers for all the three accounts.

5.According to the petitioner, the petitioner's husband continued to contribute to the PPF accounts and the same was accepted as exemption from Tax by the Income Tax Department. The contributions were made to the above said PPF accounts without any break from 24.03.1994 till 2007. The petitioner's husband had passed away on 17.02.2008. After the death of the



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petitioner's husband, her son N.Raman who was shown as nominee of PPF No.1160 claimed the amount and the same was settled by the first respondent herein. The petitioner claimed the amount for PPF Account Nos.1161 and 1157 as per the Will of late M.Narayanan dated 16.12.2007. The first respondent had cleared the amount relating to PPF No.1157 in favour of the writ petitioner. However due to audit objection, the amount now deposited in PPF Account No.1167 namely for smaller HUF represented by M.Narayanan was not disbursed.

6.According to the petitioner, smaller HUF and bigger HUF are recognised under the Income Tax Department. Both Hindu undivided families are two different persons and they are assessed to income tax independently. Hence, her husband Narayanan was legally entitled to open two separate PPF accounts, one in the name of smaller HUF and another in the name of bigger HUF. However by way of the impugned order dated 21.05.2009, the first respondent had contended that the interest accrued to PPF account No.1161 will not be paid since it is an irregular account. In the impugned order, it has been further stated that the interest amount that was already paid for the said irregular account will be deducted from the payment due to PPF Account No. 1157. The said order is impugned in the present writ petition.



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7.The learned counsel appearing for the petitioner had contended that there were three PAN numbers. One in the individual name of Mr.M.Narayanan, second one for smaller HUF represented by Mr.M.Narayanan and the third one was bigger HUG represented by Mr.M.Narayanan. All the three are legally three different persons. Hence, the three different PPF accounts could be opened by Mr.M.Narayanan. He had further contended that in a Division Bench Judgment of our High Court reported *in (2000) 241 ITR 112 (Shenbagam Auto Works and another Vs. The Commissioner of Income Tax)* in Paragraph No.7, the Hon'ble Division Bench has held that the representative capacity of a Karta for his bigger HUF is completely different from the representative character of the same person for a smaller HUF. Even if the members are common in both families that would not make both families as one unit and cannot also presume that the Karta representing the smaller HUF as a partner. He further relied upon the judgment of the learned Single Judge of this Court *in W.P.No.18042 of 2000 dated 06.12.2017 (G.Jabarchand Nahar Vs. The Post Master, Coimbatore District)* to impress upon the Court that with regard to the same issue, the learned Single Judge has taken a view that a bigger HUF is different from smaller HUF and hence, two PPF accounts can be opened in these two different names though being represented by one person.



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8.The learned counsel for the petitioner had further contended that as per Clause-7 of the Summary of the PPF Scheme, only one account can be opened in one name. Therefore, according to the petitioner, when three different legal entities are recognised by the Income Tax Department, nothing wrong in opening three different PPF accounts in their respective names. What is prohibited under the Scheme is that the two accounts cannot be opened in the name of one person. Hence, he contended that opening of two different PPF accounts by two different legal entities cannot be considered to be an irregular account or in violation of PPF Scheme.

9.The learned counsel for the petitioner had further contended that when the claim for PPF No.1157 of the bigger HUF has already been released, the respondents cannot recover the interest amount in the smaller HUF in PPF No.1161 citing it as an irregular account. Hence, he prayed that the impugned order passed by the first respondent may be set aside and the amount in PPF account of smaller and bigger HUF accounts namely 1161 and 1157 may be released in entirety along with accrued interest.

10.Per contra, the learned counsel appearing for the respondents had filed a detailed counter and contended that the subscription to the Public Provident Fund qualifies for deduction from the taxable income of the



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subscriber. Hence, the provisions have been made in this scheme to limit the number of subscriber. He also extensively relied upon the Summary of the Scheme namely Clauses 3, 4, 7, 19 and 25 and contended that only one PPF account can be opened in the name of a person. When the PPF accounts were opened by the writ petitioner's husband, the same permitted for opening of a separate account in the name of HUF. Therefore, according to the learned counsel for the respondents, only one account in the name of HUF could be opened by the said Narayanan and he will not be entitled to open a second account in the name of HUF contending that it is a bigger HUF or a smaller HUF. He had further contended that the PPF Account No.1161 representing smaller HUF is an irregular account and hence, any interest accrued to the said account cannot be disbursed. While Mr.M.Narayanan was alive, he has made withdrawal and hence, the said irregular withdrawal have to be recovered from the PPF account namely PPF Account No.1157. Therefore, according to the learned counsel for the respondents, the respondents are entitled to recover the amount which were illegally disbursed in favour of the writ petitioner's husband. The writ petitioner being a nominee for PPF Account Nos.1161 and 1157, the respondents are entitled to recovery it from nominee also.



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11.The learned counsel for the respondents had further contended that though there were three PAN numbers for the purposes of income tax assessment in the name of M.Narayanan, they will not be applicable to the PPF Scheme. The benefit that is conferred upon the petitioner's family under the Income Tax Act cannot be used by the petitioner's family to convert an irregular account into a regular account. The petitioner and her family members are covered and regulated by the PPF Scheme. Therefore, they cannot rely upon three PAN numbers and contended that there are three different persons who are entitled to open three different PPF accounts. Hence, he prayed for sustaining the impugned order.

12.I have given anxious considering to the submissions made on either side and perused the materials on record.

13.There is no dispute that Late.M.Narayanan has opened three PPF Accounts on 24.03.1994 as stated above. The account which was opened by him in his individual name with PPF Account No.1160 is not in dispute and after his death, the amount has been disbursed to his son N.Raman. As far as the other two accounts opened by the said Narayanan are concerned, they were opened by him as Karta of a smaller HUF and a member of bigger HUF in PPF Account Nos. 1161 and 1157 respectively. As far as PPF Account No.



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1157 which was opened by Narayanan as member of a bigger HUF is concerned, the respondents have not disputed the said amount. As per Clause 4 of the Summary of PPF Scheme, even a member of HUF can open a PPF account. Hence, the respondents have not disputed or contended that PPF Account No.1157 opened by Narayanan as member of bigger HUF is irregular.

14.The contention in the writ petition is that PPF account opened by Narayanan as Karta of smaller HUF with PPF account No.1161 is irregular. According to the respondents, a second account in the name of HUF cannot be opened and if opened by mistake, it will only be treated as an irregular account. An irregular account would not fetch interest. If interest amount had been disbursed by mistake, the same can be recovered. The issue that arises for consideration is that whether the two PPF accounts could be opened by the same individual, one in the name of smaller HUF and another in the name of bigger HUF under PPF Scheme.

15.As per the second counter affidavit filed by the respondents on 22.04.2022, the petitioner would be eligible for only Rs.73,934/- after deducting the withdrawal made by the writ petitioner's husband from the irregular account.



16.The following Clauses in the Summary of PPF Scheme are relevant for disposal of the writ petition.

“(3).An individual can open a Public Provident Fund Account in his own name. He can also open an additional account on behalf of each minor of whom he is the guardian. He can subscribe any amount in multiplies of Rs.5/- of not less than Rs.100/- and not more than Rs. 60,000/- in a year in each of his account. A year for the purpose of scheme means a financial year (1st April to 31st March)

4.An individual who is a member of a Hindu Undivided Family can subscribe to the fund on behalf of and out of the income of the Hindu Undivided Family any amount not less than Rs.100 and not more than Rs.60,000/- in a year.

7.Only one account can be opened in one name either in the Head Post Office or in the State Bank or in the nationalised bank. If two accounts are opened by the subscriber in his name by mistake, the second account will be treated as irregular account and will not carry any interest unless the two accounts are amalgamated into one account with the approval of the Ministry of Finance (DEA).

19.Subscriptions to Public Provident Fund qualify for deduction from the taxable income of the subscriber for income tax purpose like contributions to Provident Fund, Life Insurance etc.,”

17.A perusal of these Clauses, especially Clause 7 clearly reveals that only one account can be opened in one name. If two accounts are opened by a subscriber, the second account will be treated as an irregular account and



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will not carry any interest unless two accounts are amalgamated with one account with the approval of the Ministry of Finance. Hence, it is clear that only one account can be opened in one name. That apart, a perusal of Clause-4 indicates that a member of HUF can also subscribe to the fund. A combined reading of Clauses 4 and 7 raises a doubt if there are two Hindu Undivided Families, can each one of them open an individual PPF account.

18.The learned counsel for the petitioner had relied upon Paragraph No.7 of the Hon'ble Division Bench Judgment of our High Court reported ***in (2000) 241 ITR 112 (Shenbagam Auto works and another Vs. Commissioner of Income Tax)***, which is extracted as follows:

“7.We have seen the facts of the case and they clearly show that it was the bigger Hindu undivided family which was a partner and the Karta of the said family was representing the bigger Hindu undivided family in both the firms. Therefore, it can be said that he was a partner in a representative capacity representing the bigger Hindu undivided family in the two firms. On the other hand, the smaller Hindu undivided family was not a partner in the firm and the Karta of the smaller Hindu undivided family, though he happened to be the Karta of the bigger Hindu undivided family, was not representing the smaller Hindu undivided family in the firm as a partner. In other words, his representative capacity was different and the amounts deposited by the



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smaller Hindu undivided family were deposited in the character of the creditor. Under Section 40(b) of the Act, if interest amount was received by him otherwise than in the capacity of the partner the provisions of Section 40(b) of the Act cannot be invoked. It may be true that some of the members are common in both the families, but under the income tax law both the joint families are different taxable entities and because some of the members are common in both the families that would not make both families one unit and it cannot also presume that the Karta was representing the smaller Hindu undivided family as a partner. His capacity is different. In our view, the provision of Section 40(b) of the Income Tax Act does not apply to the facts of the case”

19.A perusal of the above said Division Bench Judgment makes it clear that there can be two HUF, one bigger and other one a smaller. There is also a possibility of overlapping of the members of these two HUFs. Even then both HUFs are two different persons in the eye of law and therefore, they are assessed under the Income Tax Act as two different persons. Separate PAN numbers are allotted by the Income Tax Department for smaller HUF and a bigger HUF.

20.A perusal of Clause 19 of the Scheme discloses that the subscription qualifies for deduction from taxable income for income tax purpose. In Paragraph No.10 of the first counter, the respondents had also pointed out



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that the limitation with regard to the number of subscribers is only because of the fact that they are exempted from Income Tax and Wealth Tax. Therefore, it is evident that the limitation prescribed under Clause-7 of the Scheme is only with the object of preventing misusing of PPF account to claim income tax exemption. Any interpretation with regard to Clause-7 of the Scheme, has to be made only in consonance with the object which is sought to be achieved by placing such limitation. When three individual assesseees having different PAN numbers, have opened three PPF accounts, it can never be considered to be against the spirit of Clause-7 of the PPF Scheme. Each assessee would be entitled to seek exemption from the taxable income under Income Tax Act.

21. When a smaller HUF and the bigger HUF are two different entities and they are also assessed to income tax differently, I do not find any illegality in opening two different PPF accounts in the name of smaller HUF and the bigger HUF. Hence, the contention of the respondents, that the PPF Account No.1161 representing smaller HUF is an irregular account, in view of the another PPF Account No.1157 representing bigger HUF is not legally sustainable.

22. The learned counsel for the petitioner has also relied upon a judgment of the learned Single Judge *in WP.No.18042 of 2000 dated*



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06.12.2017 (G.Jabarchand Nahar Vs. The Post Mater, HSG.1, Coimbatore

District) in Paragraph No.9 has held as follows:

“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 aforesaid writ petitions in W.PNos.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.....”

23.The learned counsel for the respondents had contended that any interpretation of law rendered by the Court under Income Tax Act may be applicable for the proceedings under the said Act and it cannot be a precedent for an interpretation of Public Provident Fund Act and its scheme of the year 1968. The only benefit that a subscriber is likely to achieve is income tax exemption for the subscription made by him and for the maturity amount. When two different income tax assesses are opening two different PPF accounts, the respondents cannot have any objection whatsoever. The object of Clause-7 of the PPF Scheme has no other object to achieve except to prevent evasion of income tax. The same is also reflected in Paragraph No.10



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of the first counter filed by the respondents. In such view of the matter, the contention of the learned counsel for the respondents that the interpretation under the Income Tax Act cannot be extended to the PPF Account is not legally sustainable, especially when PPF scheme is so closely connected with the exemption under the Income Tax Act.

24. In view of the above said discussion, the impugned order passed by the first respondent herein is not legally sustainable and the same is set aside. The respondents are directed to disburse the entire subscription amount along with accrued interest for PPF Account Nos.1161 and 1157 in favour of the writ petitioner within a period of 12 weeks from the date of receipt of a copy of this order. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Pre-delivery order made in

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