



W.P.(MD) No.7595 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.04.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

**W.P.(MD) No.7595 of 2023
and
W.M.P.(MD) Nos.7071 to 7073 of 2023**

Thasirkhan Abdul Hameed

... Petitioner

/vs./

The Deputy Commissioner of Income Tax,
Non-Corporate Circle-1, Income Tax Office,
Madurai MA,
No.2, VP Rathinasamy Nadar Road,
CR Building, Bibikulam,
Madurai, Tamil Nadu 625 002.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the Impugned Demand Order in PAN AFRPA3435M in DIN and Letter No. ITBA/COM/F/17/2022-23/1048143440(1) dated 21.12.2022 from the files of the Respondent herein and quash the same and further directing the Respondent to return the sums withdrawn and transferred to the Respondent's account in pursuant to the order impugned in this Writ petition.



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For Petitioner : Mr.G.Prabu Rajadurai

For Respondent : Mr.N.Dilip Kumar
Standing Counsel

ORDER

Challenging the demand order dated 21.12.2022 issued by the respondent in PAN AFRPA3435M in DIN and Letter No. ITBA/COM/F/17/2022-23/1048143440(1) dated 21.12.2022, quashing the same and directing the respondent to return the sums withdrawn and transferred to the respondent's account, the petitioner is before this Court.

2.The petitioner's case is that he is a Non-Resident Indian having an NRE account in the Indian Bank and ICICI Bank. That apart, he has savings bank account with the ICICI Bank. The petitioner holds a Permanent Account No.AFRPA3435M as a Non-Resident Indian. He is running a hotel in Malaysia and in India, he is the authorized dealer of Bharath Petroleum.

3.The petitioner would submit that he has been holding the NRE account from the assessment year 2011-2012 onwards and he has been regularly and



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diligently reporting the income in his returns under the following heads from the year 2011-2012 onwards.

- a) net profit from the petrol bunk business; and
- b) interest from savings bank ICICI SB account.

The petitioner was claiming exemption in respect of the following amounts.

- a) NRE receipts;
- b) interest from NRE accounts and
- c) LIC benefits.

4.It is his further case that the NRE receipts vis-a-vis the capital account from the Malaysian hotel business has been increasing since 2011. The petitioner would submit that being an NRI, he was always shuttling between Malaysia and India. In this process, by oversight, when the returns were filed for the assessment years 2014-2015, 2015-2016, 2016-2017 and 2017-2018, the NRE receipts and NRE interest were omitted to be included. These amounts though excluded from the taxable income and exempted under Section 10 of the Income Tax Act, 1961, (*herein after referred to as Act*) ought to have been included while disclosing the



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capital account, however, by oversight the said amounts were omitted. However, the revised return for the assessment years 2014-2015 to 2016-2017 could not be filed within time as stipulated under Section 139(5) of the Act. But the petitioner has thereafter filed the revised return on 25.11.2018 for the assessment year 2017-2018. The revised return was accepted in the month of March, 2019. For the assessment year 2018-2019, the capital account as on 31.03.2018 reflected a total sum of Rs.10,81,65,290/- as shown in the income tax return.

5.While so, the petitioner has been served with notices under Section 142(1) of the Act on 13.01.2020, 06.03.2020, 16.07.2020, 26.08.2020 and 23.11.2020. These notices were issued when the COVID-19 pandemic was at its peak. Therefore, the petitioner was not in a position to reply the said notices. Thereafter, he had received a notice dated 07.01.2021 stating that there was an introduction of a huge capital amounting to Rs.7,73,84,755/- for the year under consideration.

6.On 08.02.2021, the petitioner had issued a reply stating that he is a Non-Resident Indian and also an authorized dealer of Bharat Petroleum having a total



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turn over of Rs.8,37,00,000/-. That apart, he was also running a hotel in Malaysia.

The petitioner had enclosed all the relevant documents for the scrutiny of the respondent. Despite producing the details and proof as also the explanation, the respondent has passed the assessment order on 31.05.2021 imposing tax liability of Rs.5,18,36,412/- and interest of Rs.2,26,97,456/-. This tax liability along with interest of Rs.7,42,62,087/- had been imposed arbitrarily. The respondent had also issued a penalty order dated 24.07.2021 under Section 272A(1)(d) of the Act. Against this order, the petitioner had filed a statutory appeal under Section 246(A) of the Act on 19.01.2022.

7.Meanwhile, the petitioner by letter dated 08.02.2022 had requested the respondent to stay the recovery of the disputed amount of Rs.7,42,62,087/- and not to treat the petitioner as an assessee in default, since he has already filed the statutory appeal before the Faceless First Appellate Authority, CIT as provided under Section 220(6) of the Act.

8.Thereafter, the respondent had issued the demand order dated 13.10.2022 demanding the payment of 20% of the disputed tax, interest and penalty



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immediately and to produce proof of payment to his office on or before 19.10.2022. The stay petition filed was rejected without even permitting the petitioner to make his submissions on the stay petition.

9.As already submitted, since the petitioner being an NRI was shuttling between India and Malaysia, he was not in a position to take immediate steps to challenge this demand. The respondent had, therefore, initiated garnishee proceedings and attached the Bank accounts of the petitioner with the Indian Bank and ICICI Bank vide impugned notices of attachment in DIN and Notice Nos.ITBA/RCV/S/226(3)-1/2022-23/1047552749(1) dated 22.11.2022, ITBA/RCV/S/226(3)-1/2022-23/1047556796(1) dated 22.11.2022 and ITBA/RCV/S/226(3)-1/2022-23/1047551301(1) dated 22.11.2022.

10.The petitioner had challenged the said demand by filing writ petitions in W.P.(MD) Nos.27059 to 27062 of 2022. By an order dated 13.10.2022, this Court had allowed the said writ petitions thereby quashing the demand order dated 13.10.2022 and directed the respondent to reconsider and pass speaking orders. The writ petitions challenging the attachment orders in W.P.(MD) Nos.27059 to



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27062 of 2022 were also taken up on the very same day and it was held that the attachment orders would be vacated, if no order is passed regarding the demand on or before 28.02.2023. Thereafter, the petitioner had sent a letter dated 20.12.2022 to the respondent to grant stay on the grounds raised in the appeal as well as in the letter. Once again, by order dated 21.12.2022, the respondent has demanded 20% of the disputed amount, which is totally a sum of Rs.1,42,52,917/- as well as 100% of the undisputed demand amounting to Rs.51,97,684/-. It is this order that is the subject matter of challenge before this Court.

11. Heard the learned counsels appearing on either side.

12. Admittedly, the appeal challenging the assessment is still pending disposal and in the earlier writ petitions, namely W.P.(MD) Nos.27059 to 27062 of 2022, this Court had quashed the demand and directed the respondent to reconsider and pass speaking orders. It is also seen that the entire amounts demanded, namely 20% of the disputed tax, interest and penalty has been withdrawn by the respondent from the bank accounts of the petitioner.



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13. Therefore, this Court feels that the interest of justice would be met, if the respondent is directed to dispose of the statutory appeal filed by the petitioner under Section 246(A) of the Act and further since 20% of the disputed tax, interest and penalty has been recovered by the respondent from the banks, in which the petitioner had accounts, a direction is issued to the appellate authority to dispose of the appeal within a period of 12 weeks from the date of receipt of a copy of this order. Till then, there shall be a stay in respect of the remaining 80% of the demand and the attachment in respect thereto is raised.

14. In the result, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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