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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th January, 2023

\+ **W.P.(C) 6411/2022**

XUFENG CHEN ..... Petitioner

Through: Mr. Murari Kumar, Mr. Sanjeev Kumar & Mr. Parvez Haider, Advocates. (M:9013048103)

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Nidhi Raman, CGSC with Ms. Charu Modi & Mr. Zubin Singh, Advocate for R-1. (M:9891088658)
Mr. Puneet Rai, Advocate for Income Tax Deptt. (M:9910586277)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. Vide order dated 25th January, 2022, the Foreign Registration Officer and Supdt. of Police, Tirupati Urban issued a Leave India Notice to the Petitioner. The said notice reads as under:

> *" The Foreigners Regional Registration Officer, Hyderabad In the letter No.03/FRRO/HYD/LR/MISC/2022-129, Dated: 13-01-2022 requested the Foreigners Registration Officer & Superintendent of police, Trupati Urban to issue Leave India Notice to the Chinese National* ***Xufeng Chen****, holding Passport No.EA7184535 stating that you visited India on e-Business Visa No.901AE7BCJ valid till 03-09-2020, but you did not leave the country though 'Exit Permit' was granted several times, prolonging your stay on the pretext of non-availability of International flights. Thus you are illegally staying In India.*

> *You have arrived in India on 16-01-2020, staying at TCL CSOT Project, Vikruthamala, Yerpedu Mandal, working in Sinoea Technological Engineering India Private Limited and taking salary from the company. You are staying In India for more than two (02) years.*
>
> *As per Income Tax Rules, if any foreigner stayed more than 182 days continuously In India is liable for tax compliance. But you have failed to upload Form No.30A addressed to the Income Tax Department for getting Form No.30B (No Objection Certificate).*
>
> *In view of the above, you are directed to make your arrangements to leave India on or before 15 days from the date of receipt of this notice and obtain Form No. 30B (No Objection Certificate) from the Income Tax Department.*
>
> *If you fall to leave India within 15 days from the date of receipt of this notice, legal action will be taken against you U/Sec. 14 of the Foreigners Act, 1946.*
>
> *The receipt of this notice may be acknowledged."*

3. The present petition has been pending before this Court to enable the ld. Counsel for the Respondents to seek instructions from their respective Departments. This has been recorded in order dated 19th July, 2022 by this Court. The said order read as:

> *"From the material placed on the record, the Court notes that the company with which the petitioner was employed is stated to have filed the requisite undertaking. The petitioner claims to be awaiting the issuance of Form-30B by the concerned Income Tax Department. The Court further observes that the Income Tax Department is not arrayed as a party respondent in these proceedings.*
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> *In view of the aforesaid, the Court requests Ms.Raman, learned CGSC appearing for respondent No.1, to apprise learned counsel representing the Income Tax*

> *<u>Department of the pendency of the present proceedings who may then consequently take instructions with respect to the issues raised."</u>*

4. The Petitioner- Xufeng Chen is a Chinese national who has approached this Court seeking extension of his stay in India for at least three months considering that the exit permits have been issued several times by the Respondent No. 2- Foreigners Regional Registration Officer (**"FRRO"**).

5. The Petitioner had arrived in India on 16th January, 2020 upon invitation of his employer Sinoea Technological Engineering (India) Pvt. Ltd. The Petitioner was invited by the said company for rendering Engineering Consulting Services relating to the engineering project awarded by TCL CSOT Project.

6. It is stated by the Petitioner that the company was providing him accommodation, food, lodging and other expenses. The Petitioner began staying in India from January, 2020 and continues to stay in India till date. The Petitioner has himself stated in his Request for Income Tax Clearance dated 31st January, 2022 that he received consultancy fees from the company but according to him, he was not liable to pay income tax.

7. The Petitioner has applied for obtaining a PAN Card vide submission of Form 49AA under Rule 114 of the Income Tax Rules, 1962, on 25th November, 2021. In the meantime, the e-business visa bearing no. 901AE7NCJ which was issued to the Petitioner on 5th September, 2019 has expired and the Petitioner was served with the Leave India Notice by the FRRO, Hyderabad on 25th January, 2022. It is observed that one of the conditions in the Leave India Notice dated 25th January, 2022 is to obtain an

NOC under Form No. 30B from the Income Tax Department. The relevant portion of the Leave India Notice is extracted below:

> *"As per Income Tax Rules, if any foreigner stayed more than 182 days continuously In India is liable for tax compliance. But you have failed to upload Form No.30A addressed to the Income Tax Department for getting Form No.30B (No Objection Certificate).*
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> *In view of the above, you are directed to make your arrangements to leave India on or before 15 days from the date of receipt of this notice and obtain Form No. 30B (No Objection Certificate) from the Income Tax Department."*

Thus, it is clear that the Petitioner needs a no objection certificate from the Income Tax Department in order to leave India. However the said no objection certificate is not being issued as the Petitioner does not have a PAN number.

8. The company i.e., the Petitioner's employer, has submitted Form 30A under the Income Tax Act, 1961 giving an undertaking to the Commissioner of Income Tax and applied for the issuance of the No-Objection Certificate (NOC) under Form 30B, on behalf of the Petitioner. The said Form 30B is to be issued by the Income Tax Department. However, the issuance of the same seems to have been delayed.

9. The case of the Petitioner is that the company i.e, his employer has given an undertaking as per Form 30A of the Income Tax Act, 1961 to the Income Tax Department in respect of any income tax liability which may become due and payable. Accordingly, reliance is placed upon the duly filled Form 30A which has been certified by the employer which having PAN No. AAZCS7048E.

10. It is submitted by ld. Counsel for the Income Tax Department that if the company appears before the Income Tax Department or furnishes requisite documents relating to the Company and the Petitioner, the NOC under Form 30B, would be issued expeditiously.

11. In view of the above facts and stand of parties let the company's official along with the Petitioner appear before the Income Tax Department on 7th February, 2023 at the following address:

Ward no. 23(3), Room no. 246,
C.R. Building, ITO, New Delhi 110001

12. On the said date whatever documents or undertakings are required from the Petitioner or his employer, shall be submitted to the Income Tax Department and Form 30B shall be issued within two weeks thereafter.

13. Upon receiving the NOC under Form 30B, the Petitioner shall then leave India. The requisite permit/exit clearance shall be extended till 15th March, 2023 within which period the Petitioner shall make all necessary arrangements to leave India.

14. The Petitioner, along with all pending applications, is disposed of.

15. Liberty to approach the Court is granted to all parties.

PRATHIBA M. SINGH
JUDGE

JANUARY 25, 2023
dj/am