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

Date of Decision: 22nd March, 2023

\+ **W.P.(C) 11604/2022 and CM APPL. 8921/2023**

MANOJ VASUDEV PARDASANY ..... Petitioner

Through: Mr. R. K. Handoo, Mr. Yoginder Handoo, Mr. Garvit Solanki, Mr. Aditya Chodhary & Mr. Ashwin Kataria, Advocate. [M:9871500952]

versus

UNION OF INDIA & ORS. ..... Respondents

Through: Mr. Vineet Dhanda, CGSC, Mr. Hussain Taqvi, Adv, Mr. Shubham Prasad, Adv, Ms. Shruti Gupta, Adv for UOI. [M:9712533333]
Mr. Kunal Sharma, Sr. Standing Counsel; Ms. Zehra Khan, Jr Standing Counsel and Shubhendu Bhattacharyya, Advocate. [M: 9910200911]

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.

2. At the outset, Ld. counsel for the Respondent-Income Tax department submits that on the last date, the counter affidavit was on record and that he had instructions in the matter. The presence of the Income Tax official is accordingly exempted.

3. The present petition has been filed by Mr. Manoj Vasudev Pardasany seeking quashing of the Look Out Circular (*'LOC'*) issued against him. The

Respondents in the present case are the Principal Director of Income Tax (Inv.)-1, Income Tax Department and other concerned authorities of the Union of India i.e., the Secretary, Ministry of Finance, Secretary, Ministry of Home and the Foreigners Regional Registration Officer.

4. The brief facts in this case are that a search and seizure operation was conducted by the Income Tax department on 1st November, 2019 against the Petitioner. Thereafter, a LOC is stated to have been issued *qua* the Petitioner. After the search and seizure was conducted, proceedings were initiated against the Petitioner both under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter *'Black Money, Act'*) and the Income Tax Act (hereinafter *'IT, Act'*).

5. It is not disputed that as on date, the money demanded under the Black Money, Act, as per demand order/notice dated 8th June 2022, after notice was issued under Section 10 of the Black Money, Act, to the tune of Rs.7,99,300/- has been deposited by the Petitioner vide challan serial no.22942 dated 9th June 2022.

6. Insofar as the Income Tax department is concerned, initially summons were issued to the Petitioner. The Petitioner has complied with the said summons and his statement also stands recorded by the IT Department. The LOC, however, continued to be operational. Post the proceedings which were conducted *qua* the Petitioner, assessment orders were passed for the AYs 2014-15 to 2020-21. A total demand of Rs.9,21,82,365/- is stated to have been raised against the Petitioner. Further, it is stated that the assessment orders have been challenged by the Petitioner before the CIT (Appeals) for AY 2019 -20 and 2020-21.

7. The submission of Mr. Handoo, ld. Counsel appearing for the

Petitioner is that in the appeal before the Commissioner of Income Tax (Appeals) for AY 2019-20 and 2020-21, the Petitioner has paid 20% of the demand. The same is in terms of the Memorandum issued by the CBDT, where, if the assessee is in appeal before the CIT(Appeals), the assessing officer shall grant stay of demand till disposal of appeal upon payment of 20% of the demand. It is stated that 20% of the demand of Rs. 9,21,30,796/- for AY 2019-20 and AY 2020-21 which comes to Rs. 1,84,26,159/- (Rs.1,33,36,159/- vide challans dated 24th June 2022 bearing challan serial nos. 13318 & 14635 and the balance Rs. 50,90,000/- adjusted towards cash seized during the search) has been deposited. Thus, it is submitted that there is a stay of the demand. The matter is now pending adjudication with the CIT (Appeals).

8. It is further submitted that the Petitioner has repeatedly requested for withdrawal of the LOC. However, the said LOC continues to operate against the Petitioner in terms of the Office Memorandum dated 27th October, 2010 read with the 22nd February, 2021. The said Office memorandum, provides in clause (J), that the LOC would continue to remain in force unless a deletion request is received.

9. In the present petition, notice was issued on 5th August, 2022. Counter affidavit has been filed by the Income Tax Department as the stand of the Union Of India is that the LOC has been issued only at the instance of the Income Tax department. Vide order dated 5th August, 2022, the Petitioner was permitted to travel to London subject to conditions. Thereafter, the matter has been taken up for hearing before this Court.

10. Mr. Handoo, ld. Counsel appearing for the Petitioner submits that in the present case, there is no compliance of the Office Memorandum itself,

which requires specifically that there has to be a periodic review of the LOC. He further submits that, in the present case, there has been no FIR, which has been registered and no prosecution has been undertaken by the Income Tax department or under the Black Money Act, 2015. Further, the circular and the conditions imposed therein are also not complied with for continuation of the LOC. There is no valid ground made out for the LOC to be continued in this manner, which has resulted in restraining the Petitioner from traveling abroad.

11. Mr. Handoo further submits that the assessment having already been done and the amounts having been deposited by the Petitioner before the CIT (Appeals) as also under the Black Money Act, the LOC deserves to be quashed. He further relies upon paragraph (H), (I) & (J) of the Office Memorandum to argue that no case of a cognizable offence under the IPC or other Penal laws has been made out. No sanction has been granted for prosecution of the Petitioner and thus, the Petitioner's freedom to travel ought not to be curtailed by indefinitely extending the LOC.

12. On behalf of the Income Tax department, Mr. Kunal Sharma, ld. Counsel submits that both under the Black Money Act and Income Tax Act, prosecution can be launched by the Respondents. He relies upon the counter affidavit filed by the Income Tax department, which lays down the reasons for continuation of the LOC as under:

> "*17. In view of the above discussions, it is likelihood that Sh. Manoj Vasudev Pardasany may try to escape India which might jeopardize interest of revenue due to following reasons:*
>
> *a. Avoidance of payment of huge demand under Income Tax Act, 1961*

> b. *Avoidance of penalty proceedings and penalty demand u/s 271AAB(1A) of Income Tax Act, 1961 for AY 2020-21 in range of 10% to 30% of undisclosed income.*
> c. *Avoidance of penalty proceedings and penalty demand u/s 271AAC for AY 2019-20 which would result in penalty of 10% of tax payable u/s 115BBE of Income Tax Act, 1961.*
> d. *Avoidance of penalty proceedings under Black Money Act.*
> e. *Evasion of prosecution proceedings which may also be contemplated under Income Tax Act, 1961 or Black Money Act, 2015 for tax evasion."*

13. He further submits that under Section 276C of the IT Act, if there is a wilful evasion of tax, the person can be prosecuted by the Income Tax department. However, he concedes that till date no sanction for prosecution has been granted under Section 279.

14. A perusal of the IT Act would show that clearly under Section 279A of the IT Act, certain offences under the Act are not treated as cognizable offences in terms of the Code of Criminal Procedure, an offence under Section 276C being one of them. Moreover, even for prosecution, the proceedings have to be initiated under Section 279 and usually notice has to be issued to the person concerned. In the present case, admittedly, no notice has been issued till date for prosecution of the Petitioner. The relevant provisions of the IT Act are extracted hereunder.

> ***<u>Section 276C-Wilful attempt to evade tax, etc.</u>***
>
> *(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable, or under reports his income,*

under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

(i) in a case where the amount sought to be evaded or tax on under-reported income exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any

tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

279.Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

*(1) A person shall not be proceeded against for an offence under section 275A, section 275B, section 276, section 276A, section 276B, section 276BB, **section 276C**, section 276CC, section 276D, section 277, section 277A or section 278 **except with the previous sanction** of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority:*

***Provided** that the Principal Chief Commissioner or Chief Commissioner or, as the case may be, Principal Director General or Director General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.*

Explanation.—For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.

*(1A) A person shall not be proceeded against for an offence under **section 276C** or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under section 270A or clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.*

(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the Principal Chief Commissioner or Chief Commissioner or a Principal Director General or Director General.

(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in clauses (a) to (g) of section 116 shall not be inadmissible as evidence for the purpose of such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, under section 273A or that the offence in respect of which such proceeding was taken would be compounded.

[(4) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of granting sanction under sub-section (1) or compounding under sub-section (2), so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based sanction to proceed against, or for compounding of, an offence, with dynamic jurisdiction.

(5) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (4), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

***Provided** that no direction shall be issued after the 31st day of March, 2022.*

(6) Every notification issued under sub-section (4) and sub-section (5) shall, as soon as may be after the

notification is issued, be laid before each House of Parliament.]

Explanation.—For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.

279A. Certain offences to be non-cognizable.

*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under section 276B or **section 276C** or section 276CC or section 277 or section 278 shall be deemed to be non-cognizable within the meaning of that Code.*

15. The assessment order is already under challenge before the CIT (Appeals) where 20% of the demand amount has already been stated to have been deposited. Insofar as the Black Money Act proceedings are concerned, the Petitioner has already deposited the amount demanded.

16. A perusal of the Paragraphs (H), (I) and (J) of the OM clearly shows that the LOC requires a periodic review. The said clauses read:

"(H) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.
(I) In cases where there is no cognisable offence under IPC and other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that

they be informed about the arrival/departure of the subject in such cases.
(J) The LOC opened shall remain in force until and unless a deletion request is received by BOI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOC's opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC originators through normal channels as well as through the online portal. In all cases where the person against whom the LOC has been opened is no longer wanted by the Originating Agency or by the Competent Court, the LOC deletion request must be conveyed to BOI immediately so that the liberty of the individual is not jeopardized."

The language used in paragraph (J) is that the originating agency must keep reviewing the LOCs opened at its behest on a quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. Clearly, the counter affidavit does not state that such a review has been undertaken either on a quarterly basis or annual basis and the reasons why the LOC is being continued against the Petitioner. The Office Memorandum also clearly records categorically that if the person is no longer wanted by the originating agency, the LOC cannot be continued. Thus, the spirit of the OM is to ensure that LOCs are not continued without periodic application of mind by the Originating Agency.

17. In the present case, the following facts are borne in mind by this Court-

(i) The Petitioner has participated in the investigation of the Income Tax department and his statements stand recorded.

(ii) The assessment is already completed and the demand has been raised.

(iii) 20% of the demand has already been deposited before the CIT (Appeals) and the proceedings are now pending before the CIT (Appeals).

(iv) The proceedings under the Black Money Act have been concluded and the demanded amount has been paid.

(v) No prosecution has been launched by the Respondent under the Income Tax Act.

(vi) No prosecution has been launched even under the Black Money Act.

(vii) The LOC has been continued since 2019 without being reviewed.

18. In view of the above factual and legal position under the OM, the LOC does not deserve to be continued and the same is quashed. The petition is allowed in the above terms.

19. Mr. Dhanda, ld. Counsel for the Respondent shall inform the immigration authorities of today's order.

20. The petition, along with all pending applications, is disposed of, in these terms.

PRATHIBA M. SINGH
JUDGE

MARCH 22, 2023
dk/rp
(corrected & released on 29th March, 2023)