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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 08TH DAY OF NOVEMBER, 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION No.22849/2017 (T-IT)

BETWEEN

SRI. SAI RAMAKRISHNA KARUTURI
S/O. KARUTURI SURYA RAO,
THE HONORARY CONSULATE OF
THE FEDERAL DEMOCRATIC
REPUBLIC OF ETHIOPIA,
AGED ABOUT 52 YEARS,
OCCUPATION: BUSINESS,
#204, EMBASSY CENTRE,
NO.11, CRESCENT ROAD,
BANGALORE-560 001. ... PETITIONER

(BY SRI. RAGHU HULIKAL, ADVOCATE)

AND

1. UNION OF INDIA,
   REPRESENTED BY ITS SECRETARY,
   MINISTRY OF FINANCE,
   PARLIAMENT SADAN,
   NEW DELHI - 110 001.

2. COMMISSIONER OF INCOME TAX,
   59, HMT BHAVAN, 3RD FLOOR,
   BALLARI ROAD, DENA BANK COLONY,
   GANGANAGAR, BENGALURU - 560 032.

3. ASSISTANT COMMISSIONER OF INCOME TAX,
   CIRCLE -4(1)(1), ROOM NO. 229,
   2ND FLOOR, BMTC BUS DEPOT,

KORAMANGALA, BANGALORE - 560 095.
... RESPONDENTS

(BY SRI. K.V. ARAVIND, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO SET ASIDE THE PROCEEDINGS INITIATED BY R-3 INCIDENTAL TO THE SUMMONS DATED 13.2.2017 AT ANNEXURE-A ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

The petitioner - Sri.Sai Ramakrishna Karuturi, has filed this petition in this court on 29.5.2017 challenging the Summons (Annexure-A) issued by the respondent No.3- Assistant Commissioner of Income Tax, Circle-4(1)(1), Bengaluru, under Section 131 of the Income Tax Act, 1961, calling upon the petitioner to attend the office of the respondent No.3 for recording his statement under the said Act.

2. The petitioner claimed an immunity as he was appointed as "Honorary Consulate of Federal Democratic Republic of Ethiopia " and the learned counsel for the

petitioner relying upon the provisions of "The Diplomatic Relations (Vienna Convention) Act, 1972 particularly, Section 8 thereof and Article 59 to 61 of the Vienna Convention of Consular Relations, 1963, copies of which are produced as Annexure-C and Annexure-D on record, has submitted that the respondent No.3- Assistant Commissioner could not have insisted upon the petitioner to attend his Camp Office of respondent at the very same place of the Consular Office, situated at 304, Embassy Centre, 11, Crescent Road, Bangalore-560001.

3. He however further submitted that the petitioner is ready to abide by the provisions of the Income Tax Act and could attend the office of the Assistant Commissioner in the office of the respondent himself and the present petitioner is not intended to disregard the said Summons issued under Section 131 of the said Act, but in view of the sanctity attached to the consular premises under the " The Diplomatic Relations (Vienna Convention) Act, 1972,

the respondent could not have held his Camp Office at the very same premises where the consular office is situated and direct the petitioner to comply with the provisions of Section 131 of the said Act.

4. On the other hand, Mr. K.V.Aravind, learned counsel appearing for the respondents – Income Tax department has submitted that there is no objection to the said respondent – Assistant Commissioner to summon and record the statement under section 131 of the Act of the present petitioner even in the office of the respondent-Assistant Commissioner. He also urged that since the petitioner who is a Director of the said company – M/s.Karuturi Global Limited which carries in the business in the same premises where the consular activities as claimed by him were also being carried on. Therefore, Summons on the said address were served upon the petitioner and there is no prohibition to enforce attendance of the witness under section 131 of the Act at a business palce.

5. I have heard learned counsel on both sides and perused the relevant provisions of the said Act. Section 131 of the Income Tax Act reads as under;

> **Section 131 Power regarding discovery, production of evidence, etc.,**
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> *131. (1) The (Assessing) Officer, (Deputy Commissioner (Appeals)) ((Principal Chief Commissioner or) Chief Commissioner or (Principal Commissioner or) Commissioner and the Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C) shall, for the purposes of this Act, <u>have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908),</u> when trying a suit in respect of the following matters, namely:-*
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> *(a) <u>discovery</u> and inspection;*

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

((1A) (If the (Principal Director General or) Director General or (Principal Director or) Director or (Joint) Director or Assistant Director (or Deputy Director), or the authorized officer referred to in sub-section (1) of section 132 before he takes action under clauses (i) to (v) of that sub-section,) has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then, for the purposes of making any enquiry or investigation relating thereto, it

shall be competent for him to exercise the powers conferred under sub-section (1) on the income tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.)

((2) For the purpose of making an inquiry or investigation in respect of any person or class of persons in relation to an agreement referred to in section 90 or section 90A, it shall be competent for any income-tax authority not below the rank of Assistant Commissioner of Income-tax, as may be notified by the Board in this behalf, to exercise the powers conferred under sub-section (1) on the income-tax authorities referred to in that sub-section, notwithstanding that no

proceedings with respect to such person or class of persons are pending before it or any other income-tax authority.)

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) (or sub-section (1A)) (or sub-section (2)) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

***Provided** that an (Assessing) Officer (or an (Assistant Director (or Deputy Director))) shall not –*

a) impound any books of account or other documents without recording his reasons for so doing, or

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b) retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the (((Principal Chief Commissioner or) Chief Commissioner or (Principal Director General or) Director General or (Principal Commissioner or) Commissioner or (Principal Director or) Director therefor, as the case may be.))

6. Under the said provisions of Section 131 of the Income Tax Act, 1961, the designated Assistant Commissioner or other specific authorities have the powers of the Civil Court vested in them under the Code of the Civil Procedure, 1908. The said provision is applicable to any person to whom such summons are issued and the said provisions do not carve out any exception for any designation of office held by him. The alleged immunity claimed by the present petitioner under the provisions of

the Diplomatic Relations (Vienna Convention) Act, 1972 cannot be claimed by the petitioner so as not to respond to the summons issued by the Assistant Commissioner in connection with the business activity of the petitioner or his company in which he is Director particularly, when the business is carried out in the same premises in which the alleged consular activities were also being carried on. The provisions of the Diplomatic Relations (Vienna Convention) Act, 1972 relied upon by the learned counsel for the petitioner also do not envisage any such immunity and Section 8 of the Diplomatic Relations (Vienna Convention) Act, 1972 which is quoted below. The said section provides only for a restriction for a public servant or agent of the Central Government or State Government or any public authority not to enter the premises of the diplomatic mission for the purpose of legal process except with the consent of the Head of the Mission. Section 8 of the Diplomatic Relations (Vienna Convention) Act, 1972 is quoted below for ready reference.

> " *8. Restrictions on entry into diplomatic premises:-*
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> *No public servant or agent of the Central Government, a State Government or any public authority shall enter the premises of a diplomatic mission for the purpose of serving legal process except with the consent of the head of the mission. Such consent may be obtained through the Ministry of External Affairs of the Government of India."*

The said immunity as such cannot be claimed by a person even though he is appointed as Honorary Consulate of Federal Democratic Republic of Ethiopia, when he is carrying on his business activities also in the same premises, so long as the action is being taken under the provisions of the Income Tax Act or other similar enactments. His other business activities has nothing to do with the consular activities carried on in the very same premises. If the noticee under section 131 of the Act himself has violated the sanctity of the consular premises by carrying on his other business activities in the same premises for which no specific permission was given to him, then he cannot claim any such immunity under the Act of 1972 of the Vienna Convention.

7. Be that as it may, the only issue raised before this court and agreed by the learned counsel for the Department has a practical solution in the matter. The respondent-Assistant Commissioner can summon the petitioner to his own office under Section 131 of the Act. The learned counsel for the petitioner also has fairly agreed that the petitioner would not object to it.

8. Therefore, the present petition is disposed of with a liberty and direction to both the parties to undertake the proceedings under Section 131 of the Income Tax Act in the office of the respondent-Assistant Commissioner Circle-4(1) (1), Bengaluru. The respondent Authority will be free to issue fresh summons under section 131 of the

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13/13

Act to the petitioner for seeking his appearance, within a period of one month from today. No costs.

Sd/-
JUDGE

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