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

Date of Order: July 24, 2018

\+ W.P.(C) 7444/2018, C.M. APPL. No. 28499/2018

SHREYASEN, & ANR. ..... Petitioner

Through: Ms. Tripti Poddar, Advocate

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Ms. Amrita Prakash, CGSC with Mr. Harishankar Sharma, Advocate for respondent No.1
Mr. Ruchir Bhatia, Senior Standing Counsel for respondent No.2

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

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S. RAVINDRA BHAT, J. (ORAL)

The petitioners are claiming directions that they should be permitted to file Income Tax returns for AY 2017-2018 without complying with the condition of providing Aadhar Card registration number or Aadhar Card Enrolment number and a direction of the similar kind is sought thereby directing the CBDT to rely on its notification dated 30.06.2018. The petitioner relies upon the order of this court dated 14.05.2018 (W.P. (C) No. 3212/2018 – *Mukul Talwar vs. Union of India & Ors.* and connected matters). In those cases, on 04.04.2018, this court had observed as follows:

> *"The petitioners challenge Rule 12(3) of the Income Tax Rules as being violative of Article 14 of the Constitution. It is contended that the refusal to accept income tax returns is arbitrary and without authority of law. In this*

regard, the petitioners cited a statutory circular of the Central Board of Direct Taxes (CBDT) dated 27.03.2018 which reads as follows:

> *"**<u>Order under Section 119 of the Income-Tax Act, 1961</u>***
>
> *Vide its orders dated 31.07.17, 31.08.17 & 08.12.17, in file of even number, CBDT had allowed time till 31st March, 2018 to link PAN with Aadhaar while filing the tax-returns. Upon consideration of the matter, the CBDT, further extends the time for linking PAN with Aadhaar till 30th June, 2018."*

It is also pointed out that in identical circumstances, the Punjab and Haryana High Court in CWP 7672/2018 [*Pardeep Kumar v. UOI and Ors.*] had accepted the statement made on behalf of the Union that the system would accept the petitioners' returns without Aadhaar Card. The order dated 28.03.2018 of the Division Bench of the Punjab and Haryana High Court reads as under:

> *Present : Petitioner-in -person*
> *Mr . Satya Pal Jain, Additional Solicitor General of India With Mr. Sourabh Gael, Advocate for UOI*
> ••
> *Mr. Satya Pal Jain, the learned Additional Solicitor General of India appearing on behalf of the respondents/ states that the time for linking the Aadhar card with PAN Card has been extended up to 30.06. 2018 and as a result thereof the system would accept the petitioner's return without the Aadhar Card. In view thereof, it is not necessary to consider the application for interim relief at this stage. The notification tendered by Mr. Jain is taken on record and marked. "X" .*
>
> *Issue notice of motion returnable on 10.05.2018.*
>
> *Copy dasti to petitioner under the signatures of the*

Bench Secretary."

Having regard to the above facts and circumstances the respondents are hereby directed to ensure that the petitioners' returns are accepted without indicating any linkage with Aadhaar No./quoting Aadhaar Enrolment No. or quoting Aadhaar No. with PAN details in accordance with the above circular, provided they are duly filed before 30.06.2018."

The writ petition (W.P. (C) No. 3212/2018 – *Mukul Talwar vs. Union of India & Ors. and connected matters*) were disposed of on 14.05.2018 in the following terms:

"Counsel appearing for the Revenue urges that the interim order made by this Court has to be seen in the context of the directions of the Supreme Court in Binoy Viswam Vs. Union of India, (2017) 7 SCC 59; especially in para 133, which by and large, upheld the validity of Section 139AA of the Income Tax Act, 1961 (hereafter "the Act"). The para under consideration is granting limited relief as has been given by the larger Bench judgment delivered by Nine Judges. Attention of the Court is also invited to the order of Five Judges, who were parties to the Nine Judges' Bench decision in the case of Justice K.S.Puttaswamy (Retd) vs. Union of India (2017) 10 SCC 1. It is therefore urged that the CBDT's circular relied upon by the petitioner is contextual and compliant of Section 139 AA of the Act is the norm.

This Court has considered the submissions.

When Binoy Viswam (supra) was decided, the Court was conscious of the issue as to whether the fundamental right to privacy existed or otherwise was moot; the Larger Bench of the Judges is seized of the reference. Consciously, therefore, Binoy Viswam (supra) had not only upheld the validity of Section 139 AA of the Act but *also added a note of caution that the consequences spelt out under Section 139AA(2) of the Act would not be presently visited with respect to those assesses who are not Aadhaar Card holders and do not comply with the mandate. The Five Judges (who were part of the Bench) merely reiterated those observations when the judgment was pronounced by the nine Judges. If the CBDT's circular dated 27.03.2018 is noticed in the background of these circumstances, there is no room for doubt that the time for linking PAN with Aadhaar has been extended to June 2018 in its expressed term. The Court, therefore, sees no reason to vary its previous order. The returns filed by the petitioner shall be expedited and processed in accordance with law subject to the outcome of the decision in WP(C) 494/2012 and connected matters.*

Writ petitions are disposed of in the above terms. Pending applications too are disposed of.

In the present petition, the CBDT issued an order under Section 119 of the Income Tax Act, 1961, on 30.06.2018 extending the time for linking the PAN and Aadhar Card till 31.03.2019 for the purposes of filing Income Tax returns. That order reads as follows:

"Order under Section 119 of the Income-tax Act, 1961

Vide its orders dated 31.07.17, 31.08.17, 08.12.17 & 27.03.18, in file of even number, CBDT had allowed time till 30th June, 2018 to link PAN with Aadhaar while filing the tax-returns. Upon consideration of the matter, the CBDT further extends the time for linking PAN with Aadhaar till 31st March, 2019."

Having considered the parties' submissions and the material on record, this court is of the opinion that a similar direction as in the case of *Mukul Talwar* (supra) is warranted in this case. Accordingly, the petitioners shall be permitted to file their returns, for AY 2018-

2019, without any insistence of linkage of their Aadhar and their PAN numbers and without instance of production of their proof of Aadhar enrolment. In case the returns are filed within the time prescribed by law, without such linkage, they shall be processed in accordance with law and in accordance with CBDT circular dated 27.03.2018 as extended on 30.06.2018.

The petitioners point out that even after the CBDT Circular of 30.06.2018, which in effect suspended the requirement of Aadhar linkage with PAN, for one year i.e. up to 31.03.2019, emails have been received from the Income Tax Authorities indicating that, in respect of the grievances like in the present case, parties have to approach the court. The relevant extracts of the said emails received by the petitioner No.1 in this regard is as follows:

> *"Dear Taxpayer,*
>
> *Greetings from e-Filing Helpdesk.*
>
> *e-Filing Request Number 5518705862 is Resolved.*
>
> *Issue Description:*
>
> *Mandatory Quoting of Aadhaar Number*
>
> *Resolution Inputs:*
>
> *Section 139M of the Income-Tax Act, 1961, as inserted by the Finance Act, 4017, provides for mandatory quoting of Aadhaar I Enrolment ID of Aadhaar application form for filing of return of income and for making an application for allotment of Permanent Account Number with effect from 1st July, 2017. However, the Central Government vide notification dated 11th May, 2017 has notified that the requirement of quoting of Aadhaar I Enrolment ID shall not apply to the following individuals If they do not possess the Aadhaar I*

Enrolment ID: An individual who is residing In the state of Assam, Jammu and Kashmir and· Meghalaya. An individual who is a non-resident as per the Income-Tax Act, 1961: .An Individual of the age of 80 years or more at any time during the previous year. An individual who is not a citizen of India. For all other, it is mandatory. In case, you have any reservation on this aspect; you may approach the Judiciary for specific relief from application of the above provisions of law.

Note: This is a system-generate e-mail. Please do not respond to this mail."

This court is of the opinion that at least for the period till 31.03.2019, the CBDT shall issue an appropriate direction, and also create a platform by amending the digital form of substituting them properly to enable "opt out" from the mandatory requirement of having to furnish Aadhar Registration or Aadhar linkage, for the duration, the exemption subsists i.e. till 31.03.2019.

In view of the aforesaid directions, the writ petition is disposed of.

Copy of this order be given *dasti* under signatures of Court Master.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 24, 2018
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