

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.04.2018
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.8832 to 8835, 8840 and 8841 of 2018
and
W.M.P.Nos.10701, 10702 and 10706 of 2018

W.P.No.8832 of 2018

Srinidhi Karti Chidambaram

...Petitioner

Vs.

1. The Principal Chief Commissioner of Income Tax,
(Tamil Nadu and Puducherry)
Main Building, No.121, Nungambakkam High Road,
Chennai - 600 034.
2. The Director General of Income Tax (Investigation)
New Building, 2nd Floor, Investigation Wing,
New. No.45, Old No.108,
Nungambakkam High Road,
Chennai - 600 034.
3. The Deputy Director of Income Tax (Investigation)
Unit - 3 (3)
Room No.120, First Floor, Investigation Wing Building,
No.45, Uthamar Gandhi Road,
Nungambakkam High Road,
Chennai - 600 034.
4. The Deputy Director of Income Tax (Investigation)
Unit -3(2),
Room.No.120, 1st Floor, Investigation Wind
Building, No.45, Uthamar Gandhi Road,
Nungambakkam, Chennai 600 034. ...WP.No.8834/2018

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Prohibition, prohibiting the first respondent from sanctioning any prosecution against the petitioner and the respondent No.2 and 3 from instituting any prosecution against the petitioner, under Chapter V of the Act, (Act 22 of 2015) before the Special Court for Economic Offences or any other appropriate Court having jurisdiction over the subject matter.

For Petitioner in W.P.Nos. 8832 to 8835 of 2018

Mr.N.Venkataraman, Senior Counsel for M/s. C.Uma

For Petitioner in W.P.Nos. 8840 to 8841 of 2018

Mr. Sathish Parasaran, Senior Counsel for M/s. C.Uma

For Respondents in all W.P.Nos.

Mr. A.P.Srinivas, Senior Standing Counsel and
Mr. A.N.R.Jayaprathap.

COMMON ORDER

These Writ Petitions can be segregated into two categories. In the first category of Writ Petitions, i.e., in Writ Petition Nos.8832, 8834 and 8840 of 2018, the petitioners seek for a issuance of Writ of Prohibition, prohibiting the first respondent from sanctioning any prosecution against them and the respondent No.2 and 3 from instituting any prosecution against the petitioners, under Chapter V of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, (Act 22 of 2015, for brevity) before the Special Court for Economic Offences, or any other appropriate Court, having jurisdiction over the subject matter.

2. In the second category, i.e., Writ Petition Nos.8833, 8835 and 8841 of 2018, the petitioners have sought for a direction upon the third respondent, Deputy Director of Income Tax (Investigation), Unit - 3 (3) to pass an order forthwith under Section 10 (3) of the Act 22 of 2015, pursuant to the notices issued under Section 10 (1) of the Act, 22 of 2015, dated 04.08.2017, 08.08.2017, 01.11.2017 and 30.01.2018, and also pursuant to the enquiry conducted.

3. At the request of the learned Senior Counsel appearing for the petitioners, W.P.Nos.8834 and 8835 of 2018 are taken as lead cases, for, the learned Senior Counsel would submit that, any decision rendered in these Writ Petitions, would apply to the other Writ Petitions as well, since the facts are identical.

4. W.P.No.8834 of 2018, falls under the first category of Writ Petitions, i.e, Writ of Prohibition, and W.P.No.8835 of 2018, falls under the second category, i.e., Writ of Mandamus.

5. The third respondent issued a notice to the petitioner/assessee, dated 04.08.2017, under Section 10 (1) of the Act, stating that, pursuant to the receipt of information to

the effect that, the assessee have made certain investments in acquiring assets abroad, particularly, in respect of the property, in Cambridge and the sale consideration was effected by the assessee for the financial year 2014-15, relating to the AY 2015-16, and that, the assessee has not disclosed the said Foreign assets/Foreign interests fully in Schedule FA of the return of income filed by him for the AY 2016-17 on 30.07.2016, and for the purpose of making an assessment in the assessee's own case under Act 22 of 2015, the assessee was directed to furnish certain informations/documents.

6. The petitioner, through his Authorized Representative, sent a reply, dated 17.08.2017, questioning the validity of the notice, dated 04.08.2017, and stated that, foreign remittance for purchase of the said foreign asset was through normal banking channels, as per RBI guidelines, enclosed documents in the form of annexures, and prayed for withdrawal of the notice issued under Section 10 (1) of the Act. Subsequently, another notice was issued to the petitioner, dated 08.08.2017, for the AY 2016-17, in which, copies of documents in respect of investments made by M/s. Chess Global Advisory Services Private Limited were called for. This was followed by another notice, dated 21.08.2017, calling for further information in respect of certain investments made in Foreign Countries. After the issuance of the aforesaid three notices, the third respondent issued summons under Section 8 (1) of the Act, dated 01.11.2017, calling upon the assessee to appear on 06.11.2017, for giving evidence.

7. Mr.N.Venkataraman, the learned Senior Counsel for M/s. C.Uma, learned counsel for the petitioners/assesseees submitted that the documents sought for by the third respondent have been furnished and in spite of the receipt of the documents, the third respondent is yet to pass orders under Section 10 (3) of the Act. Whiles, the Deputy Director of Income Tax (Investigation), Unit - 3 (2) (fourth respondent in W.P.Nos.8834 and 8834 of 2018) issued summons to the assessee, dated 09.04.2018, directing the petitioner to appear in person before the Officer and produce copies of details, listed as 1) to 6) thereunder, under the heading "Details/Documents to be produced", which are extracted hereinbelow:

- 1) The copy of affidavit filed before the Supreme Court stated in the reply filed by your Advocate, dated 07.02.2018;
- 2) The copy of the Bank Statement of Metro Bank account 20113723 and 21689491;
- 3) The copies of the KYC documents submitted during opening of account in Metro Bank;

- 4) Details of funds transferred to the said Metro Bank Accounts through LRs (if any);
- 5) Details of immovable assets owned by you in abroad, in your name or anyone else name belonging to you either wholly or partly;
- 6) List of Bank accounts, including operative / inoperative / closed accounts along with copies of statements maintained by you in abroad

8. The learned Senior Counsel further contended that, in terms of Section 3 of the Act, 22 of 2015, there shall be charge on every assessee for every assessment year, commencing on or after the first day of April, 2016, subject to the provisions of the said Act, and tax, in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty percent on such undisclosed income and asset. It is submitted that, there are three conditions, which are required to be satisfied by the Officer to invoke such provisions of the Act, 22 of 2015, viz., i) Undisclosed income; ii) Undisclosed investments; and iii) Non-disclosures in the Income Tax Returns (ITRs).

9. It is submitted that, unless, these aforementioned three conditions are fulfilled, the question of invoking the provision of Act 22 of 2015 does not arise. To buttress his submission that the petitioners/assessee have disclosed their income, investments/source and also the ITRs, the learned Senior Counsel referred to the ITRs filed for the AYs 2015-16 and 2016-17, in particular, the details of Foreign assets and income from any source outside India, in Schedule FA. The learned Senior Counsel took great pains to compare the figures to show that the entire investment has been fully disclosed in the ITRs and the figures tally and there is no discrepancies in the same.

10. Further, it is submitted that, with regard to the source and the manner of investment, reference was made to the appointment of M/s.Hewitson, as their Legal Specialist, for the purchase of the said asset. In this regard, the agreement entered into between the assessee and M/s.Hewitson and the tax invoices were referred to. The learned Senior Counsel also referred to the financial statement and completion statement given by M/s. Hewitson. It is submitted that, the monies were transferred through proper banking channels to the nominee's Bank and after transactions were over, bank account has been closed. The learned Senior Counsel also referred to the official copy of register of title standing in the name of the assessee.

11. Thus, it is submitted that, there is absolutely no material available in the hands of the third respondent for initiating proceeding under the provisions of Act 22 of 2015. In any event, the petitioners, having furnished all the relevant details to the third respondent, though nine months had elapsed, till date, no orders have been passed under Section 10 (3) of the Act. It is further submitted that, while factual situation remain thus, a new Officer, viz., the Deputy Director of Income Tax (Investigation), Unit - 3 (2), who is the fourth respondent in W.P.Nos.8834 and 8835 of 2018 has issued summons to the petitioners under Section 8 (1) of the Act, and this would clearly shows that two Authorities are examining the same matter, and it is sheer harassment on the assessee. Further, it is submitted that, the way the matter has proceeded, will clearly show that there is no intention for the Authorities to finalize the matter, but, only to harass the assessee. In this regard, it is stated that the fourth respondent is attempting to initiate parallel proceedings, as apart from the Cambridge Property, there is no property owned by the assessee outside India.

12. With these submissions, the learned Senior Counsel stressed that the petitioners have no intention to stall the proceedings initiated under Section 10 (1) of the Act, but what they seek is for earlier conclusion of the issue, and therefore, the learned counsel prays for an appropriate direction, directing the third respondent to forthwith pass an order under Section 10 (3) of the Act 22 of 2015. Further, it is submitted that, the fourth respondent is attempting to initiate proceedings under Section 8 (1) of the Act, insisting upon personal appearance of the petitioner, when the third respondent had initiated the proceedings under Section 10 (1) of the Act.

13. Mr.Sathish Parasaran, the learned Senior Counsel for M/s. C.Uma, in W.P.Nos.8840 and 8841 of 2018, submitted that, when the petitioners have reasonable apprehension that the respondent/Income Tax Department will initiate prosecution and considering the peculiarity of Act 22 of 2015 and the wordings, the manner, in which, Section 48 has been worded, the petitioners apprehends that prosecution will be initiated, and since the petitioner is cooperating with the assessment proceedings, a Writ of prohibition should be issued, prohibiting the respondent/Department from initiating prosecution, in terms of Section 48 of the Act.

14. Mr. A.P.Srinivas, the learned Senior Standing Counsel for the respondents submitted that, it is no doubt true that, in response to the notice under Section 10 (1) of the Act, dated 04.08.2017, initially, the assessee submitted part of the

informations on 17.08.2017 along with annexures, and subsequently, notices were issued, calling upon the petitioner to furnish further details and these proceedings are now dealt with by the third respondent, Deputy Director of Income Tax (Investigation) Unit - 3 (3), and after receiving requisite details, the third respondent has issued summons under Section 8 (1) of the Act, dated 01.11.2017. So far as the summons by the Deputy Director of Income Tax (Investigation) Unit - 3 (2), the fourth respondent is concerned, it is incorrect to state that he has straightaway issued summons under Section 8 (1) of the Act, but, he has done so, only after issuing notice under Section 10 (1) of the Act. In response to the same, the assessee, through their counsel, sent a reply, dated 17.08.2017, stating that the Deputy Director of Income Tax (Investigation) Unit - 3 (2) should not insist upon appearance of the assessee, either personally or through their representative, and this being the reason, the summons under Section 8 (1) of the Act was issued for personal appearance to produce the information called for. Further, it is submitted that, the question of issuing writ of prohibition, prohibiting the respondents from initiating prosecution against the petitioners does not arise and such a prayer is not maintainable in law. In this regard, reference was made to the decision rendered by this Court, in Krishnaswami Vijayakumar Vs. The Principal Director of Income Tax, in W.P.No.29464 of 2017, dated 17.11.2017.

15. Heard Mr.N.Venkataraman, the learned Senior Counsel for M/s. C.Uma, the learned counsel for petitioners in W.P.Nos. 8832 to 8835 of 2018, Mr. Sathish Parasaran, the learned Senior Counsel for M/s. C.Uma for petitioners in W.P.Nos. 8840 and 8841 of 2018, and Mr. A.P.Srinivas, the learned Senior Standing Counsel for the respondent/Income Tax Department, and carefully perused the materials.

16. In the second category of Writ Petitions, the petitioners seek for a direction upon the third respondent, to pass final orders under Section 10 (3) of Act 22 of 2015. The statute prescribes an outer time limit, within which, the Authority is entitled to pass final orders. Therefore, to compel the Authority to pass final orders well before the time stipulated in the statute is not feasible of consideration. When the statute prescribe an outer time limit, the Court, while exercising its power under Article 226 of the Constitution should not interfere with the said power, i.e., either by reducing the time limit prescribed under the statute or by increasing the time limit. While considering the power of the Statutory Authorities to condone delay, in filing the Appeal Petition before them, the Courts have held that, when the statute prescribes an outer time limit, as limitation period, then, the Court, exercising its power under Article 226 of the

Constitution cannot extend the time limit prescribed under the statute.

17. Insofar as Act 22 of 2015 is concerned, time given for completion of assessment and reassessment is only in terms of Section 11 of the Act. Section 11 (1) of the Act states that, no order of assessment or reassessment shall be made under Section 10, after the expiry of two years from the end of the financial year, in which, the notice under sub-section (1) of Section 10 was issued by the Assessing Officer. Sub-section (2) commences with a non obstante clause, stating that, notwithstanding anything contained in Section (1) of the Act, an order of fresh assessment in pursuance of an order passed under Section 18 setting aside or cancelling an assessment, may be made at any time before the expiry of the period of two years from the end of the financial year, in which, the order under Section 18 is received by the Principal Commissioner or the Commissioner.

18. Thus, the prayer sought for by the petitioners in the second category of Writ Petitions, i.e. to direct the third respondent to forthwith pass orders under Section 10 (3) of the Act, if acceded to, it would be contrary to the statutory provisions under Section 11 (1) of the Act. Therefore, such a positive direction cannot be issued.

19. With regard to the first category of cases, praying for issuance of a writ of prohibition, the submission of the learned Senior Counsel for the petitioners is that, the Deputy Director of Income Tax (Investigation) Unit - 3 (2), viz., the fourth respondent in W.P.Nos.8834 and 8835 of 2018, is dealing with the very same subject matter, which is seized of and dealt by the third respondent, in which, notices have been issued and the fourth respondent cannot proceed parallelly. Second limb of the submission is that, Deputy Director of Income Tax (Investigation) Unit - 3 (2) straightaway issued summons under Section 8 (1) of the Act. However, I find that, it is factually incorrect statement made by the assessee, as the Deputy Director of Income Tax (Investigation) Unit - 3 (2) has not straightaway issued summons under Section 8 (1) of the Act, but was preceded with notice under Section 10 (1), dated 30.01.2018, and to the said notice, the assessee through their counsel, sent a reply, stating that the Deputy Director of Income Tax (Investigation) Unit - 3 (2) should not insist upon appearance of the assessee, either personally or through their representative, and this appears to be the reason, which triggered of the summons under Section 8 (1) of the Act.

20. With regard to the first limb of the submission that the Deputy Director of Income Tax (Investigation) Unit - 3 (2)

is also dealing with the same matter pending before the third respondent, is a question of fact, which should be adjudicated before appropriate Authority and not in a Writ Petition, under Article 226 of the Constitution, however, this Court, prima facie, is of the view that, what is being dealt with by the third respondent is pertaining to the Cambridge property and certain investments in Nano Holdings LLC, USA made by M/s. Chess Global Advisory Services Private Limited and the summons issued by the Deputy Director of Income Tax (Investigation) Unit - 3 (2), dated 09.04.2018, callings for i) Copies of the affidavit filed before the Hon'ble Supreme Court; ii) Copy of the bank statement of Metro Bank account; iii) Copies of the KYC documents; iv) Details of funds transferred to the said Metro Bank accounts thorough their LrS (if any); v) Details of immovable assets owned by the assessee in abroad, in his name or any one else name belonging to the assessee either wholly or partly; and vi) List of bank accounts, including operative/inoperative/closed accounts along with copies of statements maintained by the assessee in abroad.

21. Thus, I am not inclined to agree with the second limb of the submission of the learned Senior Counsel for the petitioners that both the third respondent and the Deputy Director of Income Tax (Investigation) Unit - 3 (2) are examining the same issue. However, this Court refrains from expressing any findings on this aspect, and it is for the assessee to establish the same before appropriate forum. In the connection, the learned Senior Counsel for petitioners would contend that the petitioners are not challenging the notices issued against them under Act, 22 of 2015 or the proceedings initiated the under the Section 8 (1) of the Act, but what they seek is for earlier conclusion of the matter, as the proceedings are hanging like Damocles' Sword over the head of the assessees.

22. Under normal circumstances, this Court would direct the Statutory Authorities to perform their functions expeditiously when no time lines are fixed under the relevant statute, and if there is slackness, the Court would fix a peremptory time limit. However, the Court cannot exercise such power in the instant case, on the account of the time limit fixed under Section 11 (1) of the Act. Since the petitioners have agreed to cooperate in the assessment proceedings before the respondents, both the Deputy Director of Income Tax (Investigation) Unit - 3 (3) and Deputy Director of Income Tax (Investigation) Unit - 3 (2) are directed to proceed with the matter, as it is represented that certain documents were placed by the assessee before the Officer today (12.04.2018).

23. The next issue to be considered is as to whether the respondents should be restrained by issuing writ of prohibition

from initiating any prosecution or instituting prosecution against the petitioner, under Chapter V of the Act, (Act 22 of 2015) before the Special Court for Economic Offences or any other Court.

24. The learned Senior Counsels for the petitioners would submit that Section 48 of Act, 22 of 2015 is uniquely worded, in contradistinction with other penal statutes. It is submitted that, in terms of sub-section 1 of Section 48 falling under Chapter V of the Act, dealing with the offences and prosecution, shall be in addition to and not in derogation of, the provisions of any other law, providing for prosecution for offences thereunder. Sub-section 2 of Section 48, states that, the provisions of this Chapter shall be independent of any order under the Act 22 of 2015, that may be made, or has not been made, on any person, and it shall be no defence that the order has not been made on account of time limitation or for any other reason.

25. In the light of the above mentioned statutory provisions, it is submitted that, without even waiting for the assessment to be completed, the statute permits the Authority, who is the highest Authority in the Department to grant sanction to prosecute, and if such an order is passed by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner, exercising his power under Section 55, the Assessing Officer, who is a lower level Authority in the Official hierarchy will definitely not take a decision contrary to the opinion of the Head of the Department, in granting sanction to prosecute.

26. Though, at the first blush, the argument appears to be convincing, but on a close reading of the statutory provisions, it is otherwise. Sub-section 1 of Section 48 states that, Chapter V dealing with offence and prosecution, shall be independent of any order under the Act, that may be, or has not been made, on any person and it shall be no defence that the order has not been made on account of time limitation or for any other reason. Thus, the language employed in the statute, includes 'offence and prosecution', as contained in Chapter V, as independent of other proceeding, which are enunciated under the Act. Section 48 commences by stating that, Chapter V is not in derogation of any other law or any other provision of Act 22 of 2015. In such circumstances, based on the apprehension of the petitioner, the Court cannot issue writ of prohibition, to prevent the Authorities from initiating prosecution. If done, it would under Section 48 of the Act be inoperative.

27. That apart, the assesseees have not placed any materials before the Court to show that the order of sanction has been

passed under Section 55 or steps have been taken to initiate prosecution. Furthermore, the order of sanction to prosecute passed under Section 55 of the Act is an administrative act. Therefore, the grant of sanction being an administrative act, as held by the Hon'ble Supreme Court in Assistant Commissioner Vs. Velliapa Textiles Limited, reported in [(2003) 132 Taxmann.com 165], the need to provide an opportunity of personal hearing to the accused before according sanction does not arise. In any event, as on date, it appears that, no such order has been passed, and thus, the Court cannot issue writ of prohibition, prohibiting the respondent from initiating or exercising powers under the statute.

28. Thus, for the above reasons, the prayer sought for in Writ Petition Nos.8833, 8835 and 8841 of 2018, seeking direction upon the third respondent, Deputy Director of Income Tax (Investigation) Unit - 3 (3) to forthwith pass orders under Section 10 (3) of the Act is rejected, as the Writ Petitions are disposed of, directing both the Deputy Director of Income Tax (Investigation) Unit - 3 (3) and Deputy Director of Income Tax (Investigation) Unit - 3 (2) to pass orders in accordance with the provisions of the Act 22 of

29. Insofar as the Writ Petition Nos.8832, 8834 and 8840 of 2018, seeking for issuance of writ of prohibition is concerned, the prayer cannot be granted and the Writ Petitions are dismissed.

30. It is needless to state that, the petitioners are entitled to canvass all the factual and legal contentions before the Deputy Director of Income Tax (Investigation) Unit - 3 (3) and Deputy Director of Income Tax (Investigation) Unit - 3 (2) in the proceedings initiated pursuant to the notices and summons issued.

31. In the result, all the Writ Petitions are dismissed, as indicated above. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Chief Commissioner of Income Tax,
(Tamil Nadu and Puducherry)
Main Building, No.121, Nungambakkam High Road,
Chennai - 600 034.
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+3cc to M/s.A.P.Srinivas, Advocate Sr.No.27406 to 27408

+3cc to M/s.C.Uma, Advocate Sr.No.27333 to 27335

KAN (CO)

sm:2.5.2018

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