HC-KAR

NC: 2026:KHC:50532
WP No. 16540 of 2021

CNR: KAHC010328382021

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

WRIT PETITION NO. 16540 OF 2021 (T-IT)

BETWEEN:

MRS. HIND SENNOUN
W/O. MEHMOOD AYAZ,
AGED ABOUT 40 YEARS
NO. 19, KASTURBA ROAD,
SHANTALA NAGAR,
SHIVAJINAGAR,
BANGALORE – 560 001.

…PETITIONER

(BY SRI. PRABHULING K NAVADGI, SENIOR COUNSEL APPEARING FOR
SRI. A. MAHESH CHOUDHARY, AND
MISS. KRISHIKA.G. VAISHNAV, ADVOCATES

AND:

1. UNION OF INDIA
THROUGH THE SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
GOVERNMENT OF INDIA,
NORTH BLOCK,
NEW DELHI 110 001.

2. THE DY DEPUTY COMMISSIONER OF INCOME TAX (INV)
2ND FLOOR, CENTRAL REVENUE BUILDING ANNEXE,
QUEENS ROAD,
BANGALORE - 560 001.

…RESPONDENTS

(BY SRI. RAVI RAJ Y. V, ADVOCATE)

THIS W.P IS FILED ARTICLES 226 AND 227 OF THE CONSTITUITON OF INDIA PRAYING TO QUASH AND DECLARE THAT THE ASSESSMENT ORDER DATED 31.3.2021 U/S 10(4) OF THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015 FOR THE A.Y.2018-2019 AS HIGHLY ARBITRARY AND ILLEGAL.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S.R.KRISHNA KUMAR

ORAL ORDER

In this petition, petitioner seeks for the following reliefs:-

" a) Issue a Writ of Certiorari or any direction to quash and declaring that the assessment order dated: 31.3.2021 bearing number ITBA/COM/M17/2020-21/1032055091(1) under Section 10(4) of The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for the A.Y.2018-2019 as highly arbitrary and illegal.

b) Issue a writ in the nature of mandamus or any other writ, order or direction declaring the action of the Respondent in initiating proceedings under the Black Money(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 as highly arbitrary , illegally seriously affecting the right of the petitioner under Article 14 of the Constitution of India.

c) Grant such other relief as circumstances and contingencies may permit, in the interest of justice and equity."

2. A perusal of the material on record would indicate that the petitioner is a citizen of Morocco and wife of one Mr. Mehmood

Ayaz, who was, at the material time, residing in India. The petitioner acquired two immovable properties/assets situated in Morocco, under registered sale deeds dated 26.08.2015 and 28.02.2016 for valuable consideration. By Act No. 22 of 2015, the Central Government enacted the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as "the said Act of 2015"), which was brought into force with effect from 01.04.2016, it is axiomatic and indeed beyond the pale of controversy that the petitioner acquired the aforesaid two foreign assets well prior to and anterior in point of time to the commencement of the said Act of 2015.

3. On 25.01.2017, the respondents conducted a search and seizure operation under Section 132 of the Income Tax Act, 1961 (for short, 'the I.T. Act') against the petitioner's husband, which also extended to their matrimonial residence in Bengaluru. Pursuant thereto, the respondents issued a Notice dated 28.04.2017 under Section 8 of the said Act of 2015 to the petitioner, who, in compliance thereof, filed/submitted her income tax returns on

07.06.2017 for the Assessment Year (AY) 2017-18 pertaining to the Financial Year (FY)/Previous Year (PY) 2016-17.

4. Subsequently, during the period from 04.12.2018 to 25.03.2021, the respondents issued seven Notices under Section 10 of the said Act of 2015 in relation to AY 2018-19, pertaining to FY/PY 2017-18, calling upon the petitioner to furnish the requisite particulars and explanations. The petitioner duly submitted her replies to the said notices. Upon consideration thereof, the respondents proceeded to pass the impugned order dated 31.03.2021 directing the initiation of penalty proceedings against the petitioner under Section 45 of the said Act of 2015. Consequent thereto, a Show Cause Notice dated 05.05.2021 came to be issued to the petitioner under Section 46 read with Section 41 of the said Act of 2015. Aggrieved by the aforesaid proceedings, the petitioner has approached this Court by way of the present petition.

5. Heard learned Senior counsel for the petitioner and learned counsel for the respondents and perused the material on record.

6. In addition to reiterating the various contentions urged in the petition and referring to the material on record, learned Senior counsel for the petitioner would invite my attention to the material on record in order to point out that having regard to the fact that the respondents conducted search and seizure operations on 25.01.2017, coupled with the undisputed circumstance that the subject assets were situated outside India and had come to the notice and knowledge of the Assessing Officer at the relevant point in time, the proviso to Section 3(1) of the said Act of 2015 was squarely applicable and invocable insofar as the petitioner is concerned. Consequently, the respondents were required to initiate proceedings under the said Act of 2015 against the petitioner for AY 2017-18 corresponding to FY/PY 2016-17. In such circumstances, the impugned proceedings having admittedly been initiated only in respect of the subsequent AY 2018-19, corresponding to FY/PY 2017-18, were *ex-facie* illegal, arbitrary and without jurisdiction or authority of law, besides being contrary to the express provisions of the said Act of 2015. Accordingly, the impugned order and the proceedings initiated pursuant thereto are liable to be quashed.

6.1 Learned Senior counsel would further contend that since the respondents issued the first notice under Section 10 of the said Act of 2015 only on 04.12.2018, the appropriate Assessment Year, having regard to the statutory scheme and the applicable provisions would be AY 2019-20, corresponding to FY/PY 2018-19, in view of the mandate embodied in Section 72(c) of the said Act of 2015, especially since the subject assets had admittedly been acquired by the petitioner on 26.08.2015 and 28.02.2016, i.e., prior to the said Act of 2015 coming into force with effect from 01.04.2016. It was further submitted that the petitioner had neither made nor furnished any declaration in respect of the subject assets as contemplated under Section 59 of the said Act of 2015 and in the backdrop of these undisputed facts and the statutory prescription contained therein, Section 72(c) of the said Act of 2015 would squarely stand attracted to the facts and circumstances of the instant case and consequently, the impugned proceedings initiated and the order passed in relation to AY 2018-19, corresponding to FY/PY 2017-18, are *ex-facie* illegal, arbitrary and wholly without jurisdiction or authority of law, besides being manifestly contrary to the provisions and scheme of the said Act of

2015. It was therefore submitted that the impugned order and all proceedings emanating therefrom, therefore, deserve to be quashed and set aside.

7. Per contra, learned counsel for the respondents – revenue would reiterate the various contentions urged in the statement of objections and submits that there is no merit in the petition and that the same is liable to be dismissed. He would also fairly submit that the subject assets had been acquired by the petitioner prior to 01.04.2016 when the said Act of 2015 came into force and also that the petitioner having not filed any declaration under Chapter VI, Section 72(c) would be applicable to the facts of the instant case.

8. I have given my anxious consideration to the rival contentions and perused the material on record.

9. Before adverting to the rival contentions, it would be necessary to extract Section 72 of the said Act of 2015, which reads as under:-

> ***"72. Removal of doubts.—*** *For the removal of doubts, it is hereby declared that—*

(a) save as otherwise expressly provided in the Explanation to sub-section (1) of section 69, nothing contained in this Chapter shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Chapter;
(b) where any declaration has been made under section 59 but no tax and penalty has been paid within the time specified under section 60 and section 61, the value of such asset shall be chargeable to tax under this Act in the previous year in which such declaration is made;
(c) where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly "

10. A plain and conjoint reading of the aforesaid statutory provisions makes it abundantly clear that sub-section (b) of Section 72 contemplates a situation wherein a declaration has been made under Section 59, but the corresponding tax and penalty have not been discharged within the statutorily prescribed period under Sections 60 and 61. In such circumstances, the value of the asset is rendered chargeable to tax in the previous year, in which such declaration was made.

11. On the other hand, sub-section (c) of Section 72 contemplates a distinct and materially different eventuality, namely, where an asset was acquired or made prior to the commencement of the said Act and no declaration in respect of such asset was made under Chapter VI, i.e., under Section 59. In such a case, the asset is deemed by a statutory fiction, to have been acquired or made in the year in which a notice under Section 10 is issued by the Assessing Officer.

12. The aforesaid provisions, therefore, unequivocally delineate two distinct statutory contingencies; under Section 72(b), where a person has made a declaration in respect of an asset but has failed to discharge the tax and penalty within the stipulated period, the value of such asset becomes chargeable to tax in the previous year in which such declaration was made; in other words, the applicability of Section 72(b) is predicated upon the existence of a declaration under Section 59 coupled with the subsequent failure to pay the requisite tax and penalty within the statutorily prescribed time. Conversely, where an asset was acquired or made prior to 01.04.2016, i.e., prior to coming into force of the said Act of

2015, and no declaration in respect thereof was made by the concerned person under Section 59, the statutory fiction embodied in Section 72(c) becomes attracted, whereby such asset is deemed to have been acquired or made in the year in which the Assessing Officer issues a notice under Section 10 of the said Act of 2015.

13. It is therefore clear that for Section 72(b) to apply, the following conditions would have to be fulfilled / satisfied;

(a) a declaration under Section 59 should have been made;

(b) no tax and penalty should have been paid within the time specified under Sections 60 and 61;

14. On the other hand, for Section 72(c) to apply, the following conditions would have to be fulfilled / satisfied;

(a) an asset should have been acquired or made prior to commencement of the said Act of 2015, which came into force w.e.f. 01.04.2016;

(b) no declaration in respect of such an asset should have been made under Chapter-VI of the said Act of 2015.

15. A perusal of Section 72(c) of the said Act of 2015 makes it manifest that the provision engrafts a statutory deeming fiction,

by operation of which it must necessarily be presumed, without inviting any further inquiry, that the acquisition in question is deemed to have taken place in the year in which the notice under Section 10 is issued; the provision, by necessary implication, postulates that such deemed acquisition pertains to the previous year preceding the relevant Assessment Year; the said deeming fiction is self-executing and conclusive in its operation and it does not contemplate any further investigation into, or determination of, the actual date of acquisition, and the fiction so created must be accorded its full amplitude and carried to its logical and juridical conclusion.

16. The operation and effect of the aforesaid deeming fiction are best appreciated in the context of the statutory scheme governing the expressions “previous year” and “assessment year”. The previous year, as defined under Section 2(9) of the said Act of 2015, denotes the period immediately preceding the assessment year, whereas the assessment year, as defined under Section 2(4), signifies the period of twelve months commencing on the first day of April, during which the income pertaining to the previous year is brought to charge. The statutory scheme thus proceeds upon a

sequential and chronologically structured framework, whereby income is earned or an asset is acquired during one year and the same is subjected to assessment in the succeeding year. Consequently, the year in which the notice under Section 10 is issued, being the year in which the asset is deemed to have been acquired by virtue of Section 72(c), necessarily assumes the character of the previous year, and the corresponding assessment can only be undertaken in the assessment year immediately succeeding such previous year.

17. The statutory fiction, therefore, necessarily situates the deemed acquisition of the asset in the previous year and relegates its assessment to the ensuing assessment year. By virtue of Section 72(c), the asset is required to be treated for the purposes of the statute, as forming part of the undisclosed foreign income and asset of the assessee in respect of the previous year, in which the notice under Section 10 is issued with the consequential assessment necessarily falling in the assessment year immediately succeeding such previous year. Any contrary interpretation would not only defeat the very purpose and efficacy of the statutory fiction

but would also render the provision wholly otiose and devoid of meaningful effect.

18. It consequently follows as a necessary corollary of the statutory scheme, that an asset cannot be subjected to assessment in the very year in which it is acquired. The scheme of the said Act is founded upon a sequential and temporally calibrated progression: an asset is first acquired; it thereafter comes to light, whether through voluntary disclosure or by way of detection by the authorities; and it is thereafter subjected to assessment in accordance with law. Assessment, by its very nature and statutory conception, necessarily operates retrospectively, inasmuch as it looks back upon the previous year and undertakes the determination and computation of the corresponding tax liability in the assessment year that follows.

19. Any interpretation which permits an asset to be assessed in the very year of its acquisition, would therefore be fundamentally incongruous with the established architecture of the statutory scheme and contrary to both the textual mandate and legislative intent underlying the provisions. Assessment must

necessarily be undertaken in a year subsequent to the year in which the asset is actually acquired or, where a statutory deeming fiction is attracted, in the year succeeding that in which the asset is deemed to have been acquired.

20. The rationale underlying such legislative design is neither abstruse nor difficult to discern. A charge to tax can arise only in respect of an income, asset or transaction which has already come into existence and is capable of ascertainment and quantification. An asset must first be acquired, and its value or the corresponding income must first crystallise before the same can be quantified and subjected to the statutory charge. The previous year constitutes the temporal period during which such facts and circumstances materialise, whereas the assessment year constitutes the succeeding period during which those facts are examined, quantified and brought to charge in accordance with law. To permit an assessment of the asset in the very year in which the acquisition takes place would, in substance, amount to subjecting a factual occurrence to assessment before the statutory period contemplated for such assessment has run its course. Such an interpretation would impermissibly collapse the two distinct

temporal compartments of the previous year and the assessment year which the Legislature has consciously and meticulously maintained. It would further render the provision and intent nugatory and substantially obliterate the temporal distinction constituting the foundational architecture of the assessment mechanism. It follows, therefore, that the assessment year must necessarily be the year immediately succeeding the previous year or financial year in which the asset is actually acquired or, where the deeming fiction embodied in Section 72(c) is attracted, the year in which such asset is statutorily deemed to have been acquired.

21. In the instant case, the undisputed material available on record unequivocally establishes that no declaration under Section 59 was ever made by the petitioner. In such circumstances, Section 72(b) of the said Act of 2015 is plainly inapplicable to the petitioner as well as to the subject assets. However, having regard to the further undisputed fact that the subject assets were acquired on 26.08.2015 and 28.02.2016, i.e., prior to the said Act of 2015 coming into force with effect from 01.04.2016, coupled with the admitted position that the petitioner had not made any declaration in respect of the subject assets under Chapter VI of the said Act of

2015, the applicability of Section 72(c) is rendered inevitable. The statutory deeming fiction embodied therein consequently stands attracted, by virtue of which the subject assets are deemed to have been acquired or made in the year, in which the notice under Section 10 was issued by the Assessing Officer.

22. As stated supra, the first notice issued by the Assessing Officer to the petitioner under Section 10 of the said Act of 2015 was on 04.12.2018. Consequently, by operation of the statutory fiction engrafted in Section 72(c), the subject assets are deemed to have been acquired during the Financial Year/Previous Year (FY/PY) 2018-19, corresponding to Assessment Year (AY) 2019-20. In such circumstances, it was impermissible in law for the respondents to initiate the impugned proceedings against the petitioner in respect of the subject assets for AY 2018-19, corresponding to FY/PY 2017-18. The initiation and continuation of such proceedings are, therefore, *ex-facie* illegal, arbitrary and without jurisdiction or authority of law, besides being manifestly contrary to the statutory scheme and express provisions of the said Act of 2015. The impugned proceedings, order, notices and all

consequential actions are consequently liable to be quashed and set aside on this ground alone.

23. Insofar as the various contentions advanced by both sides with regard to Section 3 of the said Act of 2015 and the proviso appended to Section 3(1) are concerned, having regard to the findings recorded hereinbefore and the conclusion arrived at by this Court that the petitioner had acquired the subject assets prior to the commencement of the said Act and had admittedly not furnished any declaration in respect thereof, the relevant Financial Year/Previous Year by virtue of Section 72(c), would necessarily be FY/PY 2018-19, being the year in which the notice dated 04.12.2018 came to be issued by the respondents with the corresponding Assessment Year being AY 2019-20 and consequently, the impugned proceedings deserve to be quashed, it is unnecessary, for the purposes of the present order, to adjudicate upon or enter into the various other contentions canvassed by the parties in relation to Section 3 and the proviso to Section 3(1) of the said Act of 2015, and other contentions of the rival parties are not dealt with for the purpose of the present order and the same are

kept / left open to be dealt with in appropriate proceedings and no opinion is expressed on the merits / demerits of the rival contentions.

24. In the result, I pass the following:

ORDER

(i) Petition is hereby allowed.

(ii) The impugned order at Annexure-A dated 31.03.2021 issued by the respondents and all further proceedings pursuant thereto are hereby quashed.

Sd/-
(S.R.KRISHNA KUMAR)
JUDGE

BMC/SRL
List No.: 2 Sl No.: 4