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

+ **W.P.(C) 3732/2017 & CM No.16414/2017**

POONAM JAIN

..... Petitioner

Through: Mr. H.S. Bhullar, Ms. Bhawani Gupta
& Mr. M.P. Rastogi, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anil Dabas, Advocate for
respondent No.1
Mr. Ashok K. Manchanda with Mr.
Raghvendra Singh, Advocates for
ITD
Dr. Nidhi Khera ADIT Unit 3(2),
Respondent No.3

And

+ **W.P.(C) 3749/2017 & CM No.16490/2017**

SURENDRA KUMAR JAIN

..... Petitioner

Through: Mr. Akhil Sibal, Senior Advocate
with Mr. Pradeep Chhindara, Mr.
H.S. Bhullar, Ms. Bhawani Gupta &
Mr. M.P. Rastogi, Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anil Dabas, Advocate for
respondent No.1
Mr. Ashok K. Manchanda & Mr.
Raghvendra Singh, Advocates
Dr. Nidhi Khera ADIT Unit 3(2),
Respondent No.3

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE ANIL KUMAR CHAWLA**

ORDER

08.05.2017

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1. The short point involved in these petitions is that neither of the Petitioners has been furnished with the copies of the documents relied upon in the Show Cause Notice ('SCN') issued to them by the Respondents. Both the petitioners seek copies of the documents and their statements referred to in the SCN to enable them to file a reply to the SCN.

2. The facts in brief are that a search was conducted at the residences of the Petitioners on 2nd March, 2017 and 3rd March, 2017. During the search, several documents were seized and statements were recorded of the Petitioners.

3. Following the above search, on 28th March, 2017, two separate SCNs were issued to each of the Petitioners, proposing their prosecution under Section 276 C(1) and Section 277 of the Income Tax Act, 1961('Act') as well as Section 181 of the Indian Penal Code ('IPC'), 1860 and Sections 50 and 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

4. The Petitioners kept making representations seeking copies of the documents and their the statements referred to in the SCN. On 14th April, 2017, a letter was written by the Petitioners denying each and every allegation levelled in the SCN. The Petitioners also stated therein that

without being furnished all the documents referred to therein they would not be able to give an effective reply to the SCN.

5. On 18th April, 2017, the Assistant Director of the Income Tax (ADIT) sent a reply to each of the Petitioners stating that the said documents have been confronted to the Petitioners during the course of search; that an opportunity had already been granted earlier by the summons dated 9th November, 2016 issued to them under Section 131 (1A) of the Act. A further representation was sent by the Petitioners on 22nd April, 2017 and thereafter the present petitions were filed.

6. When notice was accepted by Mr. Ashok Manchanda, learned counsel for the Revenue on the last occasion, i.e., 1st May, 2017, he sought time to seek instructions on whether copies of the documents, statements etc. which were shown to the Petitioners could be provided to them.

7. Today, Mr. Manchanda appears along with the ADIT concerned who had sent the replies to the Petitioners on 18th April, 2017. The Court was informed that under Article 26(2) of the OECD Model Tax Convention on Income and on Capital ('OECD Model Convention'), there is a restriction on the authorities in India sharing information that may have been obtained from foreign countries, except with either authorities or the persons concerned with proceedings of the assessment or prosecution etc. It is stated that since the documents relied upon in the SCN include statement of bank accounts maintained with foreign banks, the above prohibition comes in the way of the Respondents furnishing copies of the said documents to the Petitioners. Mr. Manchanda went one step further to state that there was no

requirement for any SCN to be issued to the Petitioners in the first place in terms of Section 279 of the Act.

8. Article 26(2) of the OECD Model Convention states:

“Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. *Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.*”

9. The exception includes both the ‘persons’ and ‘authorities.’ It is inconceivable that the person against whom the prosecution or the proceedings is proposed can be denied the material relied upon to prosecute such person. The basic principle of natural justice requires that the person being proceeded against has to be furnished with copies of the material (whether in the form of documents or statements) gathered against such person and which is being relied upon by the authority which is prosecuting such person. This may, in a given case, and if the prosecution or agency makes out a case in that behalf, be subject to safeguards requiring the person to maintain the confidentiality of such document depending on their nature and contents. But to say that the person being prosecuted or proceeded against can only be 'shown' such documents, but not provided copies thereof

is untenable even on a plain reading of Article 26 (2) of the OECD Model Convention.

10. As regards the contention that a SCN is not required to be issued, it is obvious that the Department itself recognises the importance of complying with the rules of natural justice and has therefore rightly issued the SCN to the Petitioners, which has to be responded to by them. Indeed, for an effective response, the Petitioners would be required not merely to be 'shown' the material relied upon in the SCN but with copies thereof. This would include their own statements, documents seized during the search and documents gathered from other sources including statements of bank accounts, relied upon against them to be provided copies thereof. Such a requirement inheres in the principles of natural justice and would be applicable even if the statute governing the proceedings does not specifically mandate it.

11. It is accordingly directed that not later than 1st June, 2017, the Respondents will provide to each of the Petitioners copies of the documents referred to and relied upon in the SCN issued to the Petitioners, including the statements made by the Petitioners, copies of the statements of bank accounts and any other documents relied upon and referred to in the SCN. Subject to the above, not later than two weeks thereafter, i.e., on or before 15th June, 2017, both the Petitioners will send in their respective replies to the SCNs.

12. Since both the petitions seek a limited relief, no further directions are called for at this stage. The petitions and the pending applications are disposed of in the above terms.

13. Order be given *Dasti*.

S.MURALIDHAR, J

ANIL KUMAR CHAWLA, J

MAY 08, 2017

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