IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

Reserved on: 19.05.2025.
Pronounced on: 23.05.2025

WP(C) No. 1149/2025

MEHMOOD ASKARI
S/O: SHEIKH GHULAM ALI
R/O: KHARDONG PASHKUM, KARGIL, LADAKH
PIN CODE: 194103

...PETITIONER(S)

Through: - Mr. Huzaif Ashraf, Advocate

Vs.

1. **UNION OF INDIA THROUGH SECRETARY, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, CENTRAL SECRETARIAT, NEW DELHI.**

2. **PRINCIPAL COMMISSIONER OF INCOME TAX, RAJBAGH, SRINAGAR.**

...RESPONDENT(S)

Through:- Mr. T.M Shamsi, DSGI with
Mr. Faizan Ahmad, Advocate for R-1.
Mr. Umar Rashid, Advocate for R-2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

JUDGMENT

Per: Sanjeev Kumar-J:

1. The petitioner invokes an extraordinary jurisdiction vested in this Court under Article 226 of the Constitution of India to seek an appropriate writ, order or direction in the nature of a writ of certiorari for quashing and setting aside an order dated 11th March, 2025, passed by the Principal Commissioner of Income Tax, Srinagar, under Section 264 of the Income Tax Act, 1961 ["the Act"]. The petitioner also

challenges an assessment order passed by the Assessing Authority for the assessment year 2014-15 by Income Tax Officer Ward 25(2) (1) Mumbai ["the Assessing Authority"].

2. Before we proceed to examine the grounds of challenge urged by the learned counsel for the petitioner, we deem it appropriate to briefly set out a few material facts.

3. The Assessing Authority had noticed a cash deposit of Rs. 1,21,60,300/- by the petitioner in bank account No. 0096010100001492 held with J&K Bank during the financial year 2013-14, relevant to the assessment year 2014-15. It was also found by the Assessing Authority that the petitioner had neither filed the original return of income nor any response to the notice under Section 148 of the Act. The Assessing Authority was thus *prima facie* of the opinion that the aforesaid amount of deposit had remained unexplained by the petitioner for the assessment year 2014-15. Accordingly, a notice under Section 148 of the Act dated 28.07.2022, was served upon the petitioner calling upon him to comply with the said notice within a period of thirty days. The notice was not complied with by the petitioner. This was followed by notices under Section 142(1) of the Act dated 01.05.2023 and 09.05.2023, asking the petitioner to file the details/explanation/documents/evidence etc. However, the petitioner again failed to comply with the aforesaid notice.

5. The Investigation Wing of the Income Tax Department conducted an investigation and submitted its report indicating that the J&K Bank had not been filing their Annual Information Return properly and correctly, as is mandated and required under Section 285BA of the Act. Pursuant to the investigation report prepared by the Investigation Wing, a notice under Section 133(6) of the Act was issued to the J&K Bank calling for the account statement of the petitioner for the assessment year 2014-15. The J&K Bank furnished the bank statements of the petitioner, which indicated different deposits made by the petitioner in four different accounts. A show cause notice dated 16.05.2023 was issued to the petitioner for completing the assessment under Section 144 of the Income Tax Act. The notice was based upon the information on record, and the petitioner was asked as to why an amount of Rs. 3, 90,87,098/- should not be added to his income for the assessment year under consideration.

6. The petitioner responded to the show cause notice and in his written submission dated 20.05.2023, submitted to the Assessing Authority, it was claimed by the petitioner that he was a resident of Kargil and, therefore, exempted from paying Income Tax under Section 10(26A) of the Act. He also submitted a resident certificate dated 28th February, 2022, issued by the Tehsildar, Kargil. He indicated the

source of income as earnings from conducting religious tours to Syria, Iran and Iraq for the residents of Kargil. It was thus claimed that the income was derived by him on account of these tours.

7. The reply was considered by the Assessing Authority and vide order dated 26th May, 2023, an assessment order for the assessment year 2014-15 was passed by the Assessing Authority and the total income determined by the Assessing Authority for payment of Income Tax was Rs. 3,90,87,098/-. It was provided in the assessment order that a penalty notice under Section 271(1)(c) of the Act would be issued separately.

8. Feeling dissatisfied and aggrieved by the assessment order dated 26th May, 2023, a revision petition under Section 264 of the Act was filed by the petitioner before the Principal Commissioner of Income Tax, Srinagar ["the Principal Commissioner"]. The Principal Commissioner has declined to interfere with the order of assessment and has dismissed the revision petition filed by the petitioner vide order dated 11th March, 2025, impugned in this petition.

9. The impugned order passed by the Principal Commissioner and the order of assessment passed by the Assessing Authority are called in question by the petitioner primarily on the ground that the petitioner, being a Schedule Tribe and a resident of Union Territory of Ladakh,

is exempted from payment of Income Tax under Section 10(26A) of the Act. A strong reliance is placed by the petitioner on a resident certificate issued by the Tehsildar, Kargil on 28th February, 2022, and the Schedule Tribe certificate bearing No. 1583/BG/STC dated 17th May, 2019, issued by the same authority.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the order passed by the Principal Commissioner dated 11th March, 2025, impugned in this petition does not suffer from any error of law or fact and, therefore, cannot be interfered with in these proceedings. With a view to claiming the benefit of exemption envisaged under Section 10(26) of the Act, an assessee must satisfy the following three conditions:-

> (i) The person claiming exemption should be a member of a Schedule Tribe as defined in clause (25) of Article 366 of the Constitution.
>
> (ii) The assessee should be residing only in the Ladakh region of the State of Jammu and Kashmir.
>
> (iii) The income in respect of which exemption is claimed must be an income which accrues or

arises to him from any source in the specified area by way of dividend or interest on securities.

11. In the instant case, as is apparent from the order of the Assessing Authority, the petitioner had failed to file the return for the assessment year 2014-15 despite having been registered with the Income Tax Department under PAN No. BLIPS6355L. At the time of applying for the PAN, the petitioner had given his address as Room No. 25, C Block, Bandukwala Bldg, Opp, Jail Road North, Mumbai. Pursuant to the show cause notice issued under Section 144 of the Act, calling upon the petitioner to show cause as to why an amount of Rs. 3,90,87,098/- should not be added to his income for the year under consideration. The petitioner could not furnish relevant material/documents to satisfy the conditions explicitly laid down in Section 10(26) of the Act. He did submit a Schedule Tribe certificate dated 17th May, 2019, but could not prove that during the relevant year he was residing anywhere in Ladakh region. He also could not sufficiently demonstrate before the Assessing Authority that the amount which was found deposited in his accounts maintained with the J&K Bank, was income derived from source/sources in the specified area. Whether a person is or was residing in the specified area and whether the income in respect of which he is claiming exemption is derived from a source/sources in the said area is a question of fact to be

determined by the Assessing Authority on the basis of evidence produced before it.

12. The petitioner had claimed that he had earned the income in question by conducting religious tours to Syria, Iran and Iraq for the residents of Ladakh. However, he could not furnish any proof to the satisfaction of the Assessing Authority. The petitioner also failed to furnish any proof that he was residing in the specified area i.e. in the Ladakh region. The resident certificate issued on 28th February, 2022, by the Tehsildar was not proof enough to demonstrate that during the assessment year 2013-14 and 2014-15, the petitioner was residing in the Ladakh region. The Assessing Authority, thus, rightly found the claim for exemption under Section 10(26) of the Act filed by the petitioner, not supported by any evidence. Consequently, an order of assessment came to be passed, which the petitioner called in question in a revision petition filed under Section 264 of the Act before the Principal Commissioner. The Principal Commissioner has concurred with the findings of fact arrived at by the Assessing Authority.

13. It has been aptly noted by the Principal Commissioner that the petitioner had given his address as Mumbai, as is evident from his PAN, and was accordingly assessed by the jurisdictional Assessing Authority i.e., Income Tax Officer, Ward-25(2)(1), Mumbai. This was indication enough to show

that the petitioner was conducting his business of Tour and Travels from Mumbai and, therefore, no income which accrued or arose to him from any source in the Ladakh region. The Principal Commissioner has also noted that the brother of the petitioner who as per the petitioner was the proprietor of Tour and Travels business, had filed the Income Tax Returns for the assessment year 2014-15 on 23rd September, 2014, at the same address i.e., Room No. 25 C Block Bandukwala Bldg, Opp, Jail Road, Dongri, Mumbai. All these facts, including the reasoning given by the Assessing Authority, persuaded the Principal Commissioner to dismiss the revision petition of the petitioner and uphold the order of assessment passed by the Assessing Authority.

14. We see no reason or justification to take a view contrary to the concurrent view taken by the two Authorities under the Act. The petitioner having failed to satisfy the three conditions laid down in Section 10(26) of the Act, is not entitled to claim exemption of his entire income. What is agitated before us by the learned counsel for the petitioner clearly falls in the realm of disputed questions of fact. The two Authorities under the Act i.e., Jurisdictional Assessing Authority and the Principal Commissioner, having concurrently determined the questions of fact, this Court in the exercise of its jurisdiction under Article 226 of the Constitution of India, would be loath to interfere with such

concurrent findings of fact arrived at by two quasi-Judicial Authorities performing adjudicatory functions under the Act.

15. For the foregoing reasons, we find no merit in this petition and the same is, accordingly, **dismissed.**

(SANJAY PARIHAR)	**(SANJEEV KUMAR)**
JUDGE	**JUDGE**

Srinagar,
23.05.2025
"Mir Arif"

Whether approved for reporting? Yes