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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 25th July, 2023.

Date of decision: 26th September, 2023

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W.P.(C) 10998/2022 & CM APPL. 41138/2022

PRATEEK CHITKARA

..... Petitioner

Through: Mr. Akhil Sibal, Sr. Advocate with
Mr. Gaurav Gupta & Mr. Sharan
Mehta, Advocates. (M:7827890225)

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Tarveen Singh Nanda, Govt.
Pleader, for R- 1 to 3. (M:
9555551536)
Mr. Abhishek Maratha & Mr. Akshat
Singh, Advocates for Income tax
Department. (M: 9810819178)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

Prathiba M. Singh, J.

Brief Facts

1. The present petition has been filed by the Petitioner – Mr. Prateek Chitkara, holder of Indian Passport nos. Z2303946 (valid until 31st January 2023) and Z6212946, praying for the quashing of, and seeking the reasons for, the issuance and continuation of the Look-Out Circular (*hereinafter* “*LOC*”) issued against him at the behest of the Income Tax Department.
2. The Petitioner is an Indian citizen who claims to have deep roots in society, whose parents, wife and brother permanently reside in India. He is



an educated and qualified young entrepreneur, who has built various well-recognised businesses including in the hospitality, jewellery and electronics sector.

3. According to the Petitioner, in recognition of his entrepreneurial skills, he has been conferred with various awards within India as well as internationally. The details of his ventures have been set out in paragraph 6 of the petition, which reads as under:-

“6. After completing his formal education, the Petitioner ventured into business without any support or backing and very soon, at a very young age, launched various successful ventures such as Dengen Products India, Tiana (a famous silver jewellery brand which has two stores in the premium markets of Delhi, i.e. Khan market and Greater Kailash 1), Playboy Club Delhi (franchise of the world famous group), RSVP Club, Jazbaa, Velvet Room (all are famous hospitality clubs/restaurants) etc. In addition, the Petitioner has also successfully ventured into businesses relating to electronics. All the said brands are very successful in their right, having been singularly driven by the Petitioner’s passion, commitment and hard work. All the said ventures required the Petitioner to constantly travel abroad for reasons including, but not limited to purchase of goods, negotiations, collaborating with entities abroad, entering into agreements etc. In fact, the Petitioner travelled extensively to China and Hong Kong for purchasing products from 2011 to 2016. In addition, the Petitioner has also frequently travelled abroad for personal reasons, including visits to his family.”

4. On 7th December 2018, a search and seizure action was conducted under Section 132(3) of the Income Tax Act, 1961, at the residence of the



Petitioner at S-79, Greater Kailash-II, Delhi. It is claimed by the Income Tax Authorities, that the Petitioner remained untraceable and non-cooperative during the said search and seizure proceedings.

5. On 14th December 2018, notice was issued to the Petitioner under Section 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (*hereinafter* “*Black Money Act, 2015*”), requiring him to furnish information in relation to the undisclosed foreign assets that were found during the course of the investigations. The same was duly replied to by the Petitioner.

6. As per the Income Tax Authorities, the Petitioner was found to be running a network of companies through which funds were being transferred to Hong Kong. It was discovered that the Petitioner was a beneficial owner, shareholder and director in a Hong Kong based entity, namely, M/s Wise Sharp Tech Group Limited (*hereinafter* “*WSTGL*”) which was incorporated in Hong Kong on 13th March 2014. The said company is stated to be struck off on 27th July 2018.

7. Further, information regarding transactions to the tune of about Rs. 300 crores undertaken in the bank account of the Hong Kong based company, was also received from the Competent Authority of Hong Kong. It was found that the Petitioner was the authorized signatory in the said bank account. This information had not been declared by the Petitioner in his income tax returns.

8. It is claimed by the Petitioner, that he has been travelling abroad regularly, for both personal and professional reasons, especially between the years 2016 to 2018, without any hindrance.



9. The Petitioner's case is that, on 18th January 2019, while boarding a flight from Delhi to Dubai to meet his sister and niece, he was stopped by the immigration authorities at the Delhi International Airport. The Petitioner was orally informed by the concerned officer, that a LOC had been issued against him and thus, he would not be permitted to fly out of the country. His request for a copy of the said LOC was also denied.

10. The Petitioner visited the office of Respondent No. 4, where he was orally informed by the concerned officer, that a LOC had been issued owing to the pendency of the proceedings against him under the Black Money Act, 2015.

11. Thereafter, the Petitioner, appeared before the Income Tax Authorities regularly from time to time to record his statements during the investigation proceedings.

12. During the post-search proceedings, in his statement recorded on 26th June 2019 under Section 131(1A) of the Income Tax Act, 1961, on being asked as to why he did not declare his shareholding in WSTGL, the Petitioner had answered that it was because he was unaware of the relevant provisions under the Income Tax Act, 1961. Accordingly, proceedings under the Black Money Act, 2015 were also commenced.

13. On 30th July 2019, the Petitioner, sent a representation to Respondent No.4, seeking permission to travel abroad in connection with his business and for collecting an award, at an event to be held in France. He also sought the revocation/cancellation of the impugned LOC. However, the Petitioner did not receive any response to the same.

14. On 7th September 2020, the statement of the Petitioner was recorded under Section 8 of the Black Money Act, 2015, wherein he was enquired



about the documents received from the Competent Authority of Hong Kong and the transactions disclosed in the bank accounts mentioned therein. The Petitioners statements were duly recorded, wherein he stated that the transactions had not been undertaken by him, but by one Mr. Sachiv Batra, resident of RBI colony, Paschim Vihar, Delhi. The Petitioner was unable to tender any proof regarding the same.

15. On 1st September 2020, the Petitioner tried to travel to Dubai once again, to meet his sister and niece. Yet again, the Petitioner was stopped from travelling abroad, as it was discovered that the LOC was still pending against him.

16. On 5th August 2021, the statement of the Petitioner was again recorded under Section 8 of the Black Money Act, 2015 to give him an opportunity to establish that the transactions in the bank account of the Hong Kong based company were actually undertaken by Mr. Sachiv Batra.

17. The Petitioner's stand was that he had accepted Rs. 2,00,000/- as cash sale consideration under an oral agreement for transferring the title to the shares in the Hong Kong company and the control of the company to Mr. Sachiv Batra, without any written agreement to the said effect.

18. He further stated that he had also shared the net-banking passwords and other details with Mr. Sachiv Batra. However, the Petitioner was unable to provide any evidence in support of these statements to the Income Tax Authorities.

19. On 22nd October, 2021, a show cause notice under Section 10(1) of the Black Money Act, 2015 was issued to the Petitioner.

20. Finally, on 30th March, 2022, an Assessment Order under Section 10(3) of the Black Money Act, 2015 was passed.



21. As per the Assessment Order dated 30th March 2022, a total sum of Rs. 187,85,00,650.10/- was assessed as being the undisclosed income of the Petitioner over which he was liable to pay 30% tax in terms of Section 3(1) of the Black Money Act, 2015. Further, a demand for an amount of Rs. 56,35,50,210/- was raised under the Black Money Act, 2015 and penalty proceedings under Section 41 of the Black Money Act, 2015 were initiated against the Petitioner vide the said order.

22. In view of the said assessment order, the Petitioner wrote another representation to Respondent No.4 dated 12th April 2022, seeking the revocation of the LOC on account of the conclusion of the assessment proceedings under the Black Money Act, 2015. No response was received to this communication as well.

23. On 20th April 2022, the Petitioner filed an appeal against the assessment order dated 30th March 2022 before the Commissioner of Income Tax (Appeals). The Petitioner also sent a reminder representation to Respondent No. 4, on 9th May 2022, requesting the revocation of the LOC against him. It is claimed that no reply was received towards the same.

24. In addition to the demand under the Black Money Act, 2015, a demand of about Rs. 66.48 crores was raised under Section 153A of the Income Tax Act, 1961. Further, in conclusion of the assessment under Section 153C of the Income Tax Act, 1961, in December 2022, a demand of about Rs. 5.35 crore was raised against the Petitioner.

25. On 29th March 2023, a penalty order under Section 41 of the Black Money Act, 2015 for an amount of about Rs. 169 crores was passed against the Petitioner. The same has subsequently been set aside by the Id. Division Bench vide order dated 12th April 2023.



26. Fresh penalty and prosecution proceedings have also been initiated against the Petitioner by the Income Tax Authorities at the stage of conclusion of oral submissions.

27. Broadly, the case of the Petitioner is that he has already preferred an appeal before the Commissioner of Income Tax ('CIT') against the assessment order which is pending. In view of the fact that the demand under the Black Money Act, 2015 has been crystallized, concluding the proceedings thereunder, by virtue of which the LOC was issued and that no criminal proceedings have been instituted against the Petitioner, the LOC against him ought to be quashed.

Submissions

Submissions by the Petitioner

28. Mr. Akhil Sibal, Id. Senior Counsel on behalf of the Petitioner, has made the following submissions: -

A. That the Petitioner is an educated and well qualified, law-abiding citizen of India, with deep roots in society. He is a successful entrepreneur, largely in the hospitality, jewelry, and electronics sectors, and has built a substantial reputation for himself. Further, it is submitted that he has been conferred with a number of awards in recognition of his entrepreneurial skills, both in India and abroad.

B. That the issuance of the LOC dates back to 2018 which is when the show cause notice had been issued and the investigation had commenced under the Black Money Act, 2015. No other grounds appear to be the basis for the issuance of the LOC, except the pending investigation under the Black Money Act, 2015.



C. That the Petitioner having cooperated with the authorities, the investigation under the Black Money Act, 2015 having been concluded, and the demand under the same having been raised, the mere pendency of the appeal against the assessment order cannot be a ground to curtail the travel of the Petitioner. Ld. Senior Counsel further submits, that in view of the fact that there is no investigation pending against the Petitioner and that the alleged undisclosed income, which is now the subject matter of proceedings before the Income Tax Department, could at best lead to the imposition of some taxes or penalty. However, four years have gone by since the issuance of the LOC and mere recovery of cash and jewelry etc. would not be sufficient to presume that this is black money.

D. That the ground, that the amounts would be liable to be recovered under income tax proceedings cannot lead to the issuance of a LOC. He submits that, the Respondent cannot be permitted to rely on material extraneous to the basis of the LOC and that it is only an exceptional case, when a person's travel is considered detrimental to the economic interests of India, which is a very high standard, that the issuance of the LOC can be justified in these circumstances. Ld. Senior Counsel submits that the Respondents cannot invoke the exception of economic interest at this stage.

E. That the OM dated 27th October 2010 and the amended clause 8(J) in terms of the OM dated 5th December 2017, clearly indicate that a case of this nature cannot be claimed to be affecting the economic interests of India as an exceptional case for the issuance of a LOC.

F. That no FIR/ ECIR has been registered/filed against the



Petitioner till date. Ld. Senior Counsel argues that there is no criminality which has been alleged against the Petitioner except for the first time, it is sought to indirectly be contended in the counter affidavit that there appears to be a cognizable offence or that *prima facie* an offence is made out. He thus, submits that these two contentions in the counter affidavit do not provide a justification for the issuance of the LOC.

G. That the present LOC does not satisfy the test as laid down in *Sumer Singh Salkan v. Asstt. Director & Ors. [2010 SCC OnLine Del 2699]* or any of the other judgements which require a cognizable offence or an offence under the IPC or other penal law where the accused has deliberately evaded arrest or has not appeared and cooperated in the investigation for the issuance of a LOC. He submits that there is no material to demonstrate that the Petitioner is a flight risk or that he has sought to evade arrest or has failed to appear in courts. He further submits, that the counter-affidavit has admitted to this legal position. Thus, there is no ground for the issuance or continuation of the LOC against the Petitioner.

H. That reliance is placed on the affidavit filed by the Petitioner in compliance with the order dated 13th February 2023.

I. Ld. Senior Counsel submits that the said affidavit clearly illustrates that the Petitioner and his family are well established in India and have deep roots in society. He states that it can be observed on a perusal of the said affidavit that the Petitioner and his family have several immovable properties in India, the details of which have been set out in Paras 3 and 4 of the affidavit. It is further elucidated by the



ld. Senior Counsel, that the Petitioner's family is a well-established business family and that all the immediate family members of the Petitioner reside in India. He further submits that the affidavits of the Petitioner's parents have also been placed on record to show that his parents are willing to stand as surety in support of the plea of quashing of the LOC against the Petitioner.

J. That the reasons for the issuance of the LOC ought to be communicated to the Petitioner who is entitled to a copy of the LOC at least after he has been stopped from travelling abroad in curtailment of his fundamental right to travel. Ld. Senior Counsel relies upon two judgements of the Karnataka High Court and the High Court of Telangana in *W.P.(C) 12185/2022* titled *Harshavardhana Rao K. v. Union of India & Ors. [Decided on 24th August 2022]* and *W.P.(C) 14746/2022* titled *Kondaveeti Papamma v. Union of India and Ors. [Decided on 28th April 2022]*, respectively, in support of this position.

K. That the issuance of directions under the OMs would not constitute 'procedure established by law' as there is a serious curtailment of the fundamental right to travel under Article 21 of the Constitution of India, which is now a well-established right and has been recognized by various decisions of the Supreme Court. Thus, the OM itself would be contrary to law, especially if it is being exercised in an arbitrary and discriminatory manner. Ld. Senior Counsel further submits that the Petitioner is not required to make a specific prayer for the setting aside the OM as raising the same as a ground in the petition and seeking the setting aside of the LOC is sufficient.



Submissions by Respondent No. 4

29. Mr. Abhishek Maratha, Id. Senior Standing Counsel for the Income Tax Department, having filed his written submissions has made the following broad submissions: -

A. That the Black Money Act, 2015 is a well thought out legislation which has provided for punitive measures against persons dealing with black money.

B. That in the present case, a penalty order dated 29th March 2023, has been passed under Section 41 of the Black Money Act, 2015 imposing a penalty of approximately Rs.169 crores and a demand has been raised as per the assessment order passed under Section 10(3) of the Black Money Act, 2015 to the tune of around Rs.56 crores. He further submits that, there is a total demand of approximately Rs.72 crores under the Income Tax Act, 1961 against the Petitioner as well.

C. That the Black Money Act, 2015 contemplates prosecution under Chapter V of the Act, the relevant sections of which would be Sections 48 and 49. He further submits, that when the Black Money Act, 2015 was brought into force, persons were given an opportunity to make declarations of undisclosed foreign assets under Section 59 of the Act. However, in respect of those persons who failed to make such declarations within the period as specified by the Government i.e., by 30th September 2015, if the Department found any undisclosed foreign income or assets, the assessments ought to be made. Id. Senior Counsel then submits, that the penalty in terms of Section 41 of the Black Money Act, 2015 is three times the tax computed. Under Section 60 of the Black Money Act, 2015, if the declaration under Section 59



had been made initially itself, 30% tax would have been liable to be paid along with penalty of 100% in terms of Section 61 of the Black Money Act, 2015. However, in the present case the Petitioner has deliberately avoided the declaration of the assets.

D. That it is clear from a reading of the notice of demand itself that, the Petitioner had a bank account of M/s Wise Sharp Tech Group Ltd. where he held the entire shareholding. Ld. Senior Counsel submits that, it was also found that his phone numbers and other contact details were given as the contact person for the account holder.

E. That a perusal of the assessment order dated 30th March 2022, passed under the Black Money Act, 2015 as also the statements made by the Petitioner would show that, his replies to questions asked by the Income Tax Department, were completely evasive. Mr. Maratha goes on to state that the various portions of the assessment order as also the statements of the Petitioner would show that the Petitioner has refused to cooperate in the investigation and a large sum of foreign currency has been credited in the bank account of the Hong Kong company, in which the Petitioner had owned the complete shareholding.

F. That under the Black Money Act, 2015, an appeal is maintainable under Section 15, if filed within the time specified therein. However, one of the conditions for entertaining such an appeal is that the payment of the demanded amounts would have to be made under Rule 6(4) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015(*hereinafter* “*Black Money Rules, 2015*”). It is his submission that though the Petitioner has filed an appeal in the present case, he has not taken the steps to get the



appeal listed nor has he paid the demand in terms of Rule 6(4) of the Black Money Rules, 2015. He states that this itself shows that the Petitioner has no intention of complying with and availing of the legal remedies in accordance with the Act and the Rules.

G. That the demand amounts as also the penalty amounts raised under both the Income Tax Act, 1961 as well as under the Black Money Act, 2015 remain unpaid.

H. That reliance may be placed on the various OM's for issuance of LOC's, wherein it is clearly mentioned that if a person's travel would be detrimental to the economic interest, the travel would not be permitted, and the LOC would not be liable to be quashed.

I. That the Petitioner in the course of the statements recorded by the Income Tax Department, has also tried to pass on the responsibility to a third party who has not been produced before the Department.

J. That the Petitioner has *prima facie* committed offences under Section 50 and Section 51(1) of the Black Money Act 2015 which are punishable with rigorous imprisonment up to 7 years and 10 years respectively along with a fine. He further submits that the Petitioner also appears to have committed an offence of willful attempt to evade tax under Section 276C (1) of the Income Tax Act, 1961 which is also punishable with rigorous imprisonment up to 7 years and a fine. Ld. Senior Counsel submits that accordingly the offences committed by the Petitioner under the Black Money Act, 2015.

K. That the Petitioner is now an assessee in default in terms of Section 30(4) of the Black Money Act, 2015. He further submits that, considering the assessment orders and the penalty which has been



imposed, the LOC is not liable to be quashed.

Rejoinder Submissions by the Petitioner

30. Mr. Akhil Sibal, Id. Senior Counsel, has made the following rejoinder submissions:

A. That as pointed out by the Respondent in its written submissions, there are two sets of amounts which are outstanding. One set under the Black Money Act, 2015 and the other set under the Income Tax Act, 1961. It is submitted by Id. Senior Counsel that the LOC itself is based purely on the demand of approximately Rs. 56.35 crores raised under the Black Money Act, 2015 and that none of the other amounts as computed in paragraphs 8 and 9 of the written submissions by the Respondent form the basis of the LOC.

B. That the penalty of approximately Rs. 169.06 crores imposed under the Black Money Act, 2015 has been set aside by the Ld. Division Bench vide its order dated 12th April 2023. Mr. Sibal further submits that, insofar as the main demand under the Black Money Act, 2015 is concerned, the Petitioner had already filed an appeal which has been lodged within the prescribed time on 20th April 2023.

C. That the interpretation of Rule 6(4) of the Black Money Rules, 2015 would entail that only if any liability is not objected to by the assessee, would the same have to be deposited in order to admit the appeal under Section 15 of the Black Money Act, 2015, and not otherwise.

D. That an LOC cannot be issued by the Government in every case of Black Money Act proceedings. He submits that even as per the OM, detrimental to economic interest of India is one of the rare exceptions



within the OM for the issuance of a LOC and the same ground cannot be triggered in every case involving black money proceedings. He further submits that economic interest being an exceptional circumstance under the OM cannot be resorted to in a mechanical or routine manner and ought to be read *ejusdem generis* with “...*detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interest ...*” i.e. the factor affecting the economic interest etc. have to be such factors which affect the sovereignty, integrity or the economic integrity of India at the national level and cannot mean individual cases where certain demands under the Black Money Act, 2015 are being raised. Ld. Senior Counsel further explains that the purpose of the Black Money Act, 2015 is to stop the stashing of foreign assets and to recover tax in respect of black money. He argues that it was never meant to be a tool for stopping the international travel of Indian citizens.

E. That the LOC mechanism in terms of the OM is clearly being misused by the Respondents. He submits that the right to travel abroad being a fundamental right under Article 21, it can only be impeded by procedure established by law. He urges once again that an OM does not constitute procedure established by law as it is merely an executive instruction. Ld. Senior Counsel further argues that it is a settled legal position that executive instructions do not constitute procedure established by law. He relies upon the judgements in *A.K. Gopalan vs. State of Madras [1950 SCC OnLine SC 17]*, *Maneka Gandhi vs. Union of India & Anr. [(1978) 1 SCC 248]* and *Bijoe Emmanuel vs.*



State of Kerala [(1986) 3 SCC 615] in support of this submission.

F. That the giving of evasive answers by a citizen or non-cooperation is not sufficient to issue an LOC. Ld. Senior Counsel adds that no criminal proceedings have been initiated against the Petitioner till date.

G. That till date, the petitioner has not been informed as to what is the basis of the issuance of the LOC itself.

Sur-rejoinder submissions by Respondent No.4

31. Mr. Abhishek Maratha, ld. Senior Counsel for the Petitioner submits that though the penalty order has been set aside *qua* the Petitioner, the same was merely done on the basis of the principles of natural justice. He submits that the Income Tax Department has again issued summons to the Petitioner to appear in the month of May. However, the Petitioner has chosen not to appear which shows that there is complete non-cooperation by the Petitioner which is reason enough to justify the issuance of the LOC.

Analysis and Findings

32. Look-out-Circulars (LOCs) are circulars which were historically issued by the Government in order to keep a watch on the arrival/departure of individuals, at the behest of law enforcement agencies. With the passage of time however, the purpose of LOCs has expanded, and LOCs were issued in the larger public interest, to ensure that such individuals who are suspected to have committed serious crimes or indulged in anti-national conduct such as terrorism etc. do not escape from investigations as also punishment by courts, by leaving the country.

33. In recent times, the purpose of LOCs has been extended to include individuals alleged to have committed economic crimes, or who may have



indulged in scams and siphoning- off private and public funds. The authorities at whose behest such LOCs can be issued has also been enlarged.

34. The issuance of LOC's can be traced back to a letter issued by the Ministry of Home Affairs dated 5th September 1979, which permitted the issuance of circulars by various authorities to keep a watch on the arrival and departure of Indians and foreigners. The authorities which were vested with this power under the OM of 5th September 1979, included the Ministry of External Affairs, the Customs Department, the Income Tax Department, the Directorate of Revenue Intelligence, Central Bureau of Investigation ('CBI'), Interpol, Regional Passport Officers, Police authorities in various states, etc.

35. Under the 1979 framework, such a circular was to be valid only for a period of one year, unless the authority specified a longer period.

36. The OM of 2010 laid down a proper and more comprehensive framework for the issuance of LOCs. On 27th December 2000, an OM was issued dealing with the issuance of LOCs in respect of Indian citizens. Vide this OM, it was provided that, only on the approval of an Officer not below the rank of Deputy Secretary to the Government of India or Joint Secretary in the State Government or the concerned Superintendent of Police at the district level, issuance of a LOC could be directed. Even as per the OM of 2000, the LOC was to be valid for a period of one year. The LOC could, however, be extended further before the expiry of the one-year period. Otherwise, it would stand automatically closed upon the completion of the stipulated one-year period.

37. The decisions in *W.P.(C) 10180/2009* titled *Vikram Sharma and Ors. v. Union of India & Ors. [2010 SCC OnLine Del 2475]* and in *W.P.(Crl.)*



- (viii) Assistant Director of IB/BoI; or
(ix) Deputy Secretary of R&AW; or
(x) An officer not below the level of Superintendent of Police in National Investigation Agency; or
(xi) Assistant Director of Enforcement Directorate; or
(xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India;
or

(xiii) Designated officer of Interpol

Further, LOCs can also be issued as per directions of any Criminal Court in India.

c) The name and designation of the officer signing the Proforma for requesting the LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to endure proper communication for effective follow up action.

e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma, apart from sex and nationality, are available. However, LOC can also be issued if the name and passport particulars of the person are concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers.

f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason



for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/departure of the subject in such cases.

i) The LOC will be valid for a period of one year from the date of issue and the name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:

- a. Ban-entry LOCs issued for watching arrival of wanted persons (which have a specific duration);
- b. loss of passport LOCs (which ordinarily continue till the validity of the document);
- c. LOCs regarding impounding of passports;
- d. LOCs issued at behest of Courts and Interpol

j) In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti-national elements, etc. in larger national interest.

k) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P. concerned will then make the request for issuance of an LOC upon an assessment of the situation, and



strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para 8 (b) above.”

38. The power to issue a LOC was vested in high-ranking officials such as the Deputy Secretary to the Government of India, Joint Secretary in the State Government, District Magistrate of the concerned district, Superintendent of Police of the concerned district, SP in the CBI, Assistant Director of Enforcement Directorate, Deputy Secretary of R&AW, Designated officer of Interpol, etc. which are spelt out in Clause 8(b) of the same. It was also provided that the signing officer requesting the issuance of the LOC, would have to mention his name and designation in the request for the LOC, without which the same would not be entertained. The liability of issuance of the LOC, thus, vested with the originating agency.

39. As per the OM of 2010, recourse to LOC could be taken in the case of cognizable offences under IPC or other penal laws. In cases where there is no cognizable offence, only information relating to the arrival and departure of the LOC subject could be made mandatory. A LOC, usually, was to be valid only for a period of one year from the date of issue. However, it would automatically lapse after the expiry of the said one-year period, unless timely renewal was requested, or certain exceptions were attracted.

40. If statutory bodies such as, the National Commission for Women (NCW), National Human Rights Commission of India (NHRC), and the National Commission for Protection of Children’s Rights (NCPCR) wanted to make a request for preventing any Indian/foreigner from leaving India,



the same was to be routed through the concerned law enforcement agencies.

41. Thus, up until 2010, LOCs could be issued primarily in cases where there were cognizable offences that were alleged to have been committed or had been committed under the IPC or other penal laws.

42. This OM of 2010 was amended vide OM dated 5th December 2017 by the addition of the following clause:

“OFFICE MEMORANDUM

Sub: “Amendments in Circular dated 27.10.2010 for issuance of LOC in respect of Indian citizens and foreigners”-reg.

In continuation to this Ministry OM No. 25016/31/2010-Imm dated 27.10.2010 and as approved by the Competent Authority, the following amendment is hereby issued: -

Amendment-

Read as:

*“In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic **and/or economic interest of India** or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not to be*



permitted in the larger public interest at any given point in time.

Instead of:

“In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti-national elements, etc.in larger national interest”

43. The above clause was to replace clause 8(j) of the OM of 2010 which provided as under: -

“In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, anti-national elements, etc in larger national interest.”

Thus, as per the OM of 5th December 2017, ‘*detrimental to the economic interests of India*’ was added as a ground for issuance of an LOC.

44. Vide another OM dated 19th September 2018 the officers of the Serious Fraud Investigating Office (SFIO), and the Ministry of Corporate Affairs were also added to the list of officers that could request the issuance of an LOC, provided as under: -

“OFFICE MEMORANDUM

Subject: Issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners

The undersigned is directed to refer to this Ministry’s O.M. No. 25016/31/2010-Imm dated 27th October 2010 and subsequent O.M. no. 25016/10/2017-Imm(Pt.) dated 5th December 2017 & 19th July 2018 on the above mentioned subject and to say that the request of the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs to include an officer of SFIO not below the rank of Additional



Director (in the rank of Director in the Government of India) in the list of officers who can make a request for opening a Look-Out Circular (LOC) has been considered in this Ministry.

2. *It has accordingly been decided, with the approval of the competent authority, to add the following as sub-para (xiv) in para 8 (b) of this Ministry's O.M. no. 25016/31/2010-Im. Dated 27th October, 2010:-*

“xiv)An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India)”

45. Vide a further OM dated 12th October 2018, in addition to the various officers/authorities who which were permitted to approve the issuance of LOCs under Clause 8(b) of the OM of 2010, the Chairman/Managing Directors/Chief Executives of all public sector banks could also approve the request for the issuance of LOCs. The relevant portion of the said OM is extracted hereinbelow: -

“OFFICE MEMORANDUM

Sub: Issuance of Look out Circulars (LOCs) in respect of Indian citizens and Foreigners-reg.

The undersigned is directed to refer to this Ministry's letter no. OM No. 25016/31/2010-Imm. Dated 27.10.2010 and subsequent OM No. 25106/10/2017-Imm (Pt.) dated 05.12.2017, 19.07.2018 & 19.09.2018 on the above mentioned subject and to say that request of the Department of Financial Services, Ministry of Finance to include “ Chairman (State Bank of India)/Managing Directors and Chief Executive Officers (MDs and CEOs) of all other Public Sector banks “ in



the list of officers who can make a request for opening of Look Out Circulars (LOCs) has been considered in this Ministry.

2. *It has accordingly been decided with the approval of the Competent Authority, to add the following as sub-para (xv) in para 8(b) of this Ministry's OM "October 2010: -*

"(xv)Chairman/Managing Directors/Chief Executive of all Public Sector Banks."

46. Finally, all the above- mentioned amendments were consolidated into the OM of 2010 and the OM dated 22nd February 2021 was issued, containing the consolidated guidelines for issuance of LOCs, which is presently under challenge.

47. The question before this court is, whether Clause L of the OM of 2021 would be legally valid, especially in respect of the phrase '*detrimental to the economic interests of India*' and in respect of other clauses which permit indefinite continuation of LOCs, non-communication of reasons either prior or post issuance of the LOC and extension of LOC to such individuals who in the opinion of the authorities ought not to be permitted to travel on the ground of it being detrimental to the economic interests of India.

48. This issue has arisen in a large number of cases and has been the subject matter of discussion by courts across the country.

Analysis of the judgements cited by the parties

49. In the present case, Mr. Akhil Sibal, Id. Senior Counsel has vehemently tried to argue and place before the Court the legal position that the OM itself is unconstitutional in view of the law laid down in ***A.K. Gopalan vs. State of Madras [1950 SCC OnLine SC 17], Maneka Gandhi***



vs. Union of India & Anr. [(1978) 1 SCC 248] and Bijoe Emmanuel vs. State of Kerala [(1986) 3 SCC 615].

50. The said decisions do lay down clearly that the right to travel abroad is a fundamental right. It cannot be stultified without due process. On the said preposition, there can be no dispute. However, the question is whether the OM's are liable to be declared as unconstitutional, in view of the clauses which permit the issuance of LOCs.

51. The Petitioner has relied upon *W.P(Crl.) 1315/2008* titled *Sumer Singh Salkan v. Asstt. Director & Ors. [2010:DHC:3951] [Date of decision 11th August 2010]*, which is the basic judgment on LOCs, which played an important role in the issuance of the OM of 2010. In the said decision, the Court held as under: -

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11. Look-out-Circular has also been issued against the petitioner as the petitioner is an accused before the Court of M.M. and he has not appeared before the Court of M.M. If the petitioner gives an undertaking before the court for his appearance on a particular date, through his counsel, the Look-out-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.

The questions raised in the reference are as under:

“A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?

B. What procedure is required to be followed by the investigating agency before opening a Look-out-circular?

C. What is the remedy available to the person against whom such Look-out-circular has been opened



D. What is the role of the concerned Court when such a case is brought before it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest ”

52. In *W.P.(C) 774/2015* titled *Priya Parameswaran Pillai v. Union of India & Ors. [2015VIIAD(Delhi)10] [Date of decision: 12th March 2015]*, the Id. Single Judge observed that merely because there were some revenue implications due to notices issued by the Income Tax Authorities, the alleged violations of tax laws were not demonstrative of being inimical to the economic interests of the country. Thus, the LOC was quashed in this case.

53. The Id. Division Bench of Madras High Court in *Karti P. Chidambaram v. Bureau of Immigration, Ministry of Home Affairs, Government of India and Ors. [W.P. No. 21305/2017, decided on 23rd July, 2018] [2018 SCC Online Mad 2229]* considered the OM's of 2000 and 2010 and observed that LOCs are subject to judicial review and if the conditions precedent for issuance of LOCs are not satisfied, the LOC would be liable to be quashed.

54. Reliance has been placed on *W.P.(C) 5382/2020* titled *Deept Sarup Aggarwal v. Union of India & Anr. [2020: DHC :3439] [Date of decision 2nd December 2020]*.



55. The allegation in *Deept Sarup Aggarwal (supra)* was, that an amount of about Rs.80.84 crores which was obtained from banks, was siphoned off and parked outside India while making a misrepresentation to the banks that that the same was lost in the market, thereby causing losses to the banks. It was noted that the mere mention in the counter affidavit, of the power to issue an LOC in the economic interest of India, could not take the place of giving reasons for the exercise of the same. The court has also referred to the settled legal position whereby the legality and/or validity of a LOC has to be adjudged having regard to the circumstances prevailing on the date on which the request for the issuance of a LOC was made. Further, it was held that the mere allegation that the conduct of the Petitioner (who was arraigned in an FIR and ECIR) is evasive and non-cooperative, would not be a valid ground for the issuance of a LOC. Accordingly, the LOC was quashed.

56. In *Hemanta Kumar Banka v. Union of India [WPO No. 53/2021, decided on 23rd February 2021]*, the High Court of Calcutta was considering a case where a nationalized bank of India which had a branch in Singapore had given a loan to the Petitioner. In the said case, the Calcutta High Court observed as under:

“ xxx xxx xxx

25. *The Office Memorandum dated October 4, 2018, apart from the above provisions, also clarified that the guidelines enable LOCs against persons who are fraudsters/persons who take loans, willfully default/lend money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India or in the larger public interest.*

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28. Not only the economic interests of India but bilateral relations with Singapore (both of which are recognized in the relevant Office Memoranda as valid grounds of issuance of LOC) will suffer in the event the petitioner is permitted to leave India, thereby evading repayment of the huge loans taken by him from the Singapore branch of respondent no.3, a nationalized and Government undertaking bank of India.

29. In such context, it does not lie in the mouth of the petitioner to say that his rights of travel touch his personal liberty under Article 21 of the Constitution of India. Article 21(6) is a sufficient handle to curtail such right, since the individual right of the writ petitioner has to give way to the public interest of India.”

57. In *Mr. Chaitya Shah v. Union of India & Ors.* [2021:BHC-AS:16392-DB], a ld. Division Bench of the Bombay High Court was dealing with a case where a substantial amount had been invested in a company called M/s Gitanjali Gems of Rs.50 crores and various banking operations and transfer of money was found. The Court observed that the words ‘economic interest of India’ and ‘larger business interest’ are not empty words. The relevant paragraph of the said judgment is extracted below:

“xxx xxx xxx
 32. In the present case the SFIO is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to LOC was not unfounded as the Petitioner has definite connection with the investigation as discussed hereinabove. From the facts of the case it is clear that Clause (L) of these Guidelines clearly covers the Petitioner’s case as it is detrimental to the “economic interests of India” and that his departure ought not be permitted in the larger public interest. The words “economic interests of



*India” and “larger public interest” are not empty words in the context of the present case because as mentioned earlier the Petitioner is directly involved and was concerned with considerable share-holding of M/s. Gitanjali Gems Limited. It involves huge amount of almost Rs. Fifty Crores which requires serious explanation from the Petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back. This transaction is an important part of the entire fraud involving huge amount. **Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is definitely involved and affected. Therefore, we do not find that issuance of LOC against the Petitioner was unnecessary.**”*

58. In *Vishambhar Saran v. Bureau of Immigration & Ors.* [WP No. 10241(W) of 2020, decided on 24th December 2021] [2021 SCC Online Cal 3074], the Calcutta High Court held that vague allegations of a persons travel being detrimental to the economic interest of the country or the quantum of the alleged default (Rs. 351 crores in this case), is not sufficient to issue a LOC thereby restricting the personal liberty of a person to travel. In the said petition, no civil or criminal proceedings were initiated against the Petitioner and thus the Petitioner was allowed to travel. This view was echoed in *Vishambhar Saran v. Bureau of Immigration & Ors.* [WPA No. 6670 of 2022, decided on 31st January 2023]

59. In *Vikas Chaudhary v. Union of India and Ors.* [W.P.(C) 5374/2021, decided on 12th January 2022], the Petitioner was a businessman engaged in the export of garments to a number of foreign countries. A LOC was



issued against the Petitioner on the ground of undisclosed foreign assets and interests in foreign-entities liable for penalty and prosecution under the Income Tax Act, 1961, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 as also the proceedings under the Prevention of Money Laundering Act, 2002 having been commenced against the Petitioner. The Petitioner did not hold any foreign assets and any undisclosed assets.

60. In *Vikas Chaudhary (supra)*, the Court primarily dealt with the question as to whether an LOC could be interfered with in a writ petition and what would be the circumstances which could be held to be detrimental to the economic interests of the country.

61. The Court noted that the phrase '*detrimental to the economic interests of India*' was introduced for the first time in the Office Memorandum (*hereinafter "OM"*) dated 5th December, 2017. The said phrase did not exist in the previous OM dated 27th October, 2010. However, it continues to exist in all the subsequent OM's. In this context, the Court observed as under:

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36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the Clause 'detrimental to the economic interests of India' introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned LOC, as also whether the impugned LOC could be continued for the last almost 3 years without any proceedings under the IPC or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a LOC



necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this Clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be 'detrimental to the economic interests of India' to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad.....

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39. Merely because the OM dated 05.12.2017 permits the issuance of a LOC, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the IPC or any other penal law, it has to be remembered that this power is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be 'detrimental to the economic interest of India', when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years”

62. Thus, the conclusion of the Court was that exceptional circumstances could exist even if a person was not involved in any cognizable offence under the Indian Penal Code or under any other penal law. In the said petition, the LOC was quashed by the Court.

63. However, this judgment was subsequently challenged in **LPA 78/2022**



dated 3rd February 2022 titled *Income Tax Dept. v. Vikas Chaudhary and Ors.*, wherein it was argued by the Income Tax Department that there was an investigation into the offences under the Black Money Act, 2015 which was ongoing and that an FIR, is not a prerequisite for the commencement of an investigation under special enactments such as this Act. The relevant paragraph is set out below:

“Mr. Zoheb next contends that assessment for two Assessment Years being 2018-19 and 2019-20 for the individual is complete while the same is pending with respect to the companies. Ongoing investigation has revealed that there are proposed additions upwards of Rs. 14,83,93,68,371/- and penalties upwards of Rs. 2,66,13,000/-. It is also submitted that the Appellant is investigating into the offences under the Black money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and has submitted FT&TR references to the authorities in Dubai and under special enactments such as this Act, an FIR is not a pre-requisite for commencement of the investigation and on a complaint being filed, it is treated as a complaint case.

It is thus urged by the learned counsel for the, Appellant that if the impugned judgment quashing the LOC is not stayed, grave prejudice shall be caused to the investigation and if Respondent No.1 is permitted to travel abroad, it shall be detrimental to the core economic interests of the country and will be a contravention of the very object for which OMs dated 05.12.2017 and 22.02.2021 have been issued. It is emphasised that the OM dated 05.12.2017 was issued by the Government of India, Ministry of Home Affairs- Foreigners Division (Immigration Section), amending the OM dated 27.10.2010 and expanding its scope to issue LOCS against persons impacting the economic interests of India and the OM dated 22.02.2021 was



issued laying down fresh Guidelines for issuance of LOCS and it is clearly stipulated therein that no LOC shall be deleted automatically and shall remain in force till a deletion request is received from the Originator.”

64. In the background of the above, the Court stayed the judgement dated 12th January, 2022 passed by the Id. Single Judge in the following terms:

“ Having heard the learned counsel for the Appellant and the learned Senior Counsels for respondent No. 1, in our view, Appellant has made out a prima facie case for grant of interim relief. The balance of convenience is also in favour of the Appellant and in case the impugned judgement is not stayed, irreparable loss shall be caused to the Appellant. We, accordingly, stay the operation, implementation and execution of the impugned judgement dated 12.01.2022, passed by the learned Senior Judge in W.P.(C) 5374/2021, till the next date of hearing.

Respondent No. 1 is hereby directed to deposit his passport with the Learned Registrar general of this Court, latest by 5:00 PM on 04.02.2022. The passport shall be kept by the Learned Registrar General in safe custody in a sealed cover.

Since it is the stand of the Learned Senior Counsels appearing on behalf of Respondent No. 1 that on account of business constraints, he is required to frequently travel abroad, we grant liberty to Respondent No. 1 to file an appropriate application as and when the need arises to travel abroad, detailing the reasons therein. Needless to state, as and when such an application is preferred, the same shall be decided, based on facts and circumstances brought forth and in accordance with law.”

65. In **W.P.(C) 3545/2022** titled **Ghanshyam Pandey v. Union of India & Anr. [2023/DHC/001114]**, this Court had the occasion to consider the



issuance of LOCs wherein the following was observed:

“xxx xxx xxx

28. LOCs impinge upon the individual’s right to travel which is recognised as a Fundamental Right. However, the rights and interest of the investing public would also be a relevant consideration which cannot be ignored. Challenge to LOCs can be raised by way of a writ petition and the Court has to determine whether the extraordinary writ jurisdiction is to be exercised or not in favour of a person seeking relief. While LOCs cannot be resorted to for every case involving a loan transaction, the facts of the present case reveal that a large amount of public funds of public sector banks and financial institutions are at stake. The question as to whether the LOC would be valid or not would have to be determined in the facts and circumstances surrounding each case.

xxx xxx xxx

30. In view of the above discussed factual and legal position, as the funds amounting to approximately Rs.1,400 – Rs. 1,700 crores belonging to public sector banks and financial institutions are at stake, it would be in the larger public interest as also in the economic interest of India to not exercise discretion in favour of the Petitioner. Thus the LOC against the Petitioner is not liable to be quashed, at this stage.”

66. In ***Rahul Surana v. The Serious Fraud Investigation Office, Chennai and Ors.*** [W.P.No. 2477/2020, decided on 7th March, 2022], the Madras High Court observed that though the investigation had commenced, no concrete evidence was found to implicate the Petitioner or frame charges and that there was no sufficient material to hold that the Petitioner was a flight risk. Thus, the Petitioners challenge to the LOC was accepted and the writ petition was allowed.



67. In the case of *Noor Paul v. Union of India and Ors. [2022(3)RCR(Civil)445]*, the Id. Division Bench of the Punjab and Haryana High Court observed that there ought to be no impediment in giving a post decisional opportunity to the Petitioner by supplying the LOC to the subject and for permitting the legal recourse to challenge the same. The Court also observed that defaults in loan payments need not only be happening due to the fraud committed by the borrower but also due to market conditions, labor unrest, lack of raw material, pandemic situation, etc.

68. The Petitioner in *Noor Paul (supra)* was a guarantor in respect of the said loan which was taken for her family business. She had thereafter, secured admission in an MBA Program in Boston for which she was required to travel abroad. It was under these circumstances that the LOC was quashed and costs were also imposed.

69. The Supreme Court, in the *SLP No. 7733/2022* titled *Bank of India v. Noor Paul & Ors.* vide order dated 5th May 2022, stayed the observations of the Id. Division Bench insofar as it required issuance of a copy of the LOC to the subject and a post-decisional opportunity.

70. The judgment in *Noor Paul (supra)* clearly was held by the Supreme Court not to be treated as a precedent in other cases. The Petitioner, however, was allowed to travel with the condition that she would inform the Bureau of Immigration of the date of departure from and entry into India.

71. In *Atul Punj v. IDBI Bank & Ors. [W.P.(CRL) 2332/2022, decided on 24th November 2022]*, the Id. Single Judge of this Court held that where proceedings under the Black Money Act, 2015 are ongoing and millions of rupees have been transferred to foreign accounts, the Court has to tread cautiously. The relevant paragraph of the judgment is set out herein below:



“20. Thus, considering the fact the investigation is at initial/crucial stage and the petitioner allegedly is evading queries and has promised to give replies only on 09.12.2022 and millions have been transferred by him to foreign accounts per investigation till date, hence the discretion needs to be exercised cautiously moreso when the petitioner’s son has not returned to India for the last two years and is not co-operating. Thus, considering the allegations of siphoning off huge amounts and the investigation under the Black Money (Undisclosed Foreign income and assets) and Imposition of Tax Act, 2015 being at initial stage I am not inclined to suspend the LOC at this stage. The petition is thus dismissed. Pending application(s), also stands disposed of.”

72. In some cases, the Court has allowed permission to travel after adequate security has been provided. (See - ***Ratul Puri v. Union of India & Ors.***)

73. Recently, in ***W.P.(C) 5674/2023*** titled ***Apurve Goel v. Bureau of Immigration & Anr*** vide judgement dated **19th September 2023**, the court quashed an LOC holding that there must be proper application of mind by the authorities on the facts of each case before the opening of a LOC. The operative portion of the same is extracted below:

“25. A perusal of the above cases shows that there has to be proper application of mind by the authorities on the facts of each case before opening of a Look Out Circular which not only impedes the right to travel but also cast an aspersion/stigma on the person in the society against whom the Look Out Circular has been opened.”

Stand of Respondent Nos. 2 and 3

74. Respondent Nos. 2 and 3 i.e., the Ministry of Home Affairs and the



Bureau of Immigration have filed an affidavit stating that an LOC has been issued at the instance of the Income Tax Department. The relevant portion of the submissions which state that the Bureau of Immigration and Ministry of Home Affairs are the custodians of LOC's are extracted below:

"1. It is submitted that one Look Out Circular (hereinafter referred to as the "LOC") exists against the Petitioner at the behest of Respondent No. 4. It is further submitted that the details of the aforesaid LOC is as follows:

(i) Issued at the behest of Assistant Director of Income Tax (INV), UNIT-4(4), ROOM NO.121; C, BLOCK CIVIC CENTRE, NEW DELHI vide ref no. F.No. ADIT (INV)/U-4/2018-19/149, dated 11.12.2018, with the action "Prevent subject from leaving India and inform originator."

(ii) The LOC was issued by the answering Respondent on the request of Respondent No. 4 for the committing of offences by the petitioner under the penal provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

2. It is submitted that the answering Respondents issues LOC on the basis of and in terms of guidelines issued by the Ministry of Home Affairs vide Office Memorandum No. 25016/10/2017-Imm(Pt.) dated 22.02.2021 (hereinafter referred to as the "OM dated 22.02.2021").

3. It is submitted that Ministry of Home Affairs LOC Guideline issued vide Office Memorandum No. 25016/10/2017-Imm(Pt.) dated 22.02.2021 has been issued in supersession of all the earlier Ministry of Home Affairs LOC guidelines issued vide this Ministry's O.M.25016/31/2010-Imm. Dated 27.10.2010 and subsequent amendments.

4. It is submitted that in the present case, the request



for issuance of LOC was received by the answering Respondents from Respondent No. 4. It is further submitted that the request was found to be in order as per the OM dated 22.02.2021 and accordingly, the LOC was issued.

5. It is submitted that as per the Para 6(G) of the OM dated 22.02.2021, the legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency and not with the answering Respondents. The answering Respondent is only the custodian of LOCs, who maintains LOCs and takes action against LOC subjects at Immigration Check Posts at the behest of originating agency.

75. Further, Respondent No. 2 and 3 have submitted that the guidelines contained in the OM of 2021, do not violate the fundamental rights of a person under Article 21 of the Constitution of India as these are guiding principles that have to be ensured while opening/issuing the LOC. Being an executive function, it is within the domain of the Union of India to issue such guidelines for the effective and smooth discharge of various government functions. Additionally, such guidelines are also important to avoid any undue/ unreasonable action against any person who is not covered by the OM of 2021.

76. Reference is made to Para 6(J) of the OM of 2021 to explain that the LOC would remain open unless a deletion request is received from the Originator itself who must review the LOCs opened at its behest on a quarterly or annual basis and submit the proposals to delete the LOC, if any, immediately after such a review.

77. It is also submitted by the Respondents that the practice of issuance of LOCs has constitutional, statutory, and legal backing as per the powers



vested with the Union of India through Articles 53, 73 and 77 and the Lists I and III of the VII th schedule of the Constitution of India.

78. It is elucidated that India has signed various international conventions, agreements and bilateral treaties wherein the provisions for denial of entry/ exit to alleged criminals is an integral part thereof. It is obligatory for the Union of India to create an appropriate mechanism for effective implementation of the provisions of such conventions. It is stated that the Government of India has been finding it difficult, cumbersome and expensive to get willful defaulters and economic offenders back to India to face the law who have successfully evaded the process of law and fled the country. Additionally, LOC guidelines serve public as well as national interests since implementation results in prevention of flight risk.

79. The impact of LOC guidelines on helping nationalized banks in recovering their money by preventing the escape of willful defaulters in order to protect the money of the public at large from such scamsters and fraudsters is also highlighted.

80. The Bureau of Immigration has also expressed that it has no objection to the withdrawal/modification of the LOC in the instant case if the originator or the competent criminal court in India directs so.

81. From the case laws discussed above and the stand of the UOI, it is clear that there are several factors that have affected the quashing or upholding of LOCs, including:

- i) Existence of investigations in respect of cognizable offences under the IPC or other penal laws ¹

¹ See *Sumer Singh Salkan v. Asstt. Director & Ors.* [2010 SCC Online Del 2699]



- ii) Revenue implications due to notices issued by Income Tax Authorities and the categorization of the accused as an anti-national element.²
- iii) Status of the person in the entity which is under investigation. For example, chairman, managing director, independent director, non-executive director etc.³
- iv) Existence of a FIR/ECIR by authorities such as the Enforcement Directorate etc. and cooperation rendered by the Petitioner in the said investigation. ⁴
- v) Proceedings under the Black Money Act, 2015 having been initiated and the facts indicate undisclosed foreign income and assets, as also foreign transactions.⁵
- vi) Loan taken from a bank for a family business and its impact on the education of a young person in the family, who is a guarantor in respect of the said loan.⁶
- vii) Allegations of commission of offences under the IPC and the Prevention of Corruption Act, 1988 and whether a person is accused in the same.⁷
- viii) Subject not accused of any offence on account of being a minor

² See *Priya Parameswaran Pillai v. Union of India & Ors.* [2015 SCC Online Del 7987]

³ See *Kamlesh Sailesh Chandra Chakrabarty v. Union of India & Anr.* [W.P.(C) 4740/2019: Order dated 29th May 2019]; *Brij Bhushan Kathuria v. Union of India & Ors.* [2021 SCC Online Del2587]; *Nipun Singhal v. Union of India & Ors.* [2023: DHC:6486]

⁴ See *Deept Sarup Aggarwal v. Union of India & Anr.* [2020: DHC: 3439]

⁵ See *Vikas Chaudhary v. Union of India & Ors.* [2022 SCC Online Del 97]; See *Income Tax Dept. v. Vikas Chaudhary & Ors.* [2022 SCC Online Del 3376]

⁶ See *Noor Paul v. Union of India & Ors.* [2022 SCC Online P&H 3408]; See *Bank of India v. Noor Paul & Ors.* [Special Leave to Appeal (C). 7733/2022]

⁷ See *Karti P. Chidambaram v. Bureau of Immigration* [2018 SCC Online Mad 2229]



at the time of the commission of the alleged offence.⁸

- ix) Proceedings under the Prevention of Money Laundering Act, 2002 and cooperation with the investigation agency.⁹
- x) Subject has not evaded arrest or failed to appear before the authorities and has cooperated in the investigation as also in the trial.¹⁰
- xi) The quantum of borrowing from a bank and declaration of wilful defaulter¹¹
- xii) Whether the person has been named as the accused and involvement in the day- to- day affairs of the company under investigation.¹²
- xiii) Pendency of departmental enquiry/proceedings.¹³
- xiv) Suspicion of existence of offshore funds and bank fraud of siphoning off funds to bank accounts in foreign countries.¹⁴
- xv) Right and interest of the investing public and large amount of public funds being at stake.¹⁵
- xvi) Existence of security commensurate to the amounts owed by the Petitioner.¹⁶
- xvii) Effect on bilateral relations with foreign countries if loans in foreign countries are not being repaid.¹⁷

⁸ See *Dhruv Tewari v. Directorate of Enforcement* [2022 SCC Online Del 1893]

⁹ See *Rana Ayyub v. Union of India & Anr.* [2022 SCC Online Del 961]

¹⁰ See *Shri Sathish Babu Sana v. Central Bureau of Investigation* [2022: DHC: 332]

¹¹ See *Vishambhar Saran v. Bureau of Immigration* [2021 SCC Online Cal 3074]

¹² See *Rahul Surana v. SFIO* [MANU/TN/1605/2022]

¹³ See *Satish Chandra Verma v. Union of India* [2019(2)SCT741(SC)]

¹⁴ See *Atul Punj v. IDBI Bank* [2022 SCC Online Del 4063]

¹⁵ See *Ghanshyam Pandey v. Union of India & Anr.* [2023/DHC/001114]

¹⁶ See *Ratul Puri v. Union of India & Ors.* [MANU/DEOR/120412/2022]

¹⁷ See *Hemanta Kumar Banka v. Union of India & Ors.* [WPO No. 53/2021 dated 23rd February 2021]



- xviii) Connection with other individuals who have already fled from India with whom the subject may be connected ¹⁸
- xix) Legal proceedings in foreign countries having reached the culmination and the financial institution having participated in the proceedings therein.¹⁹
- xx) Non- cooperation by the subject with the directions of the court; ²⁰
- xxi) Nature of offence whether bailable, non-bailable, cognizable, non-cognizable, compoundable non-compoundable²¹

82. The term '*detrimental to economic interest*' used in the OM is not defined. Some cases may require the issuance of a LOC, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in *hawala* transactions may have a greater impact as a whole which may justify the issuance of LOCs. However, issuance of LOCs cannot be resorted to in each and every case of bank loan defaults or credit facilities availed for business etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive capacity. The circumstances have to reveal a higher gravity and a larger impact on the country.

¹⁸ See *Chaitya Shah v. Union of India & Ors.* [2021: BHC-AS:16392-DB]

¹⁹ See *Mr. Muthuveerappan Arunachalam v. Union of India* [2023: DHC:5937]

²⁰ See *Pawanjot Kaur Sawhney v. Bureau of Immigration* [2023: DHC: 5938]

²¹ See *Rajesh Kumar Agarwal & Ors. v. Regional Director (E), Ministry of Corporate Affairs, Kolkata* [WP(C) 9502/2022 dated 25th July 2022] ; *Dhruv Tewari v. Directorate of Enforcement* [2022 SCC Online Del 1893]



83. The various decisions considered above reveal that the issues as to the legality and validity of issuance of LOCs under the OMs, is squarely pending before the Hon'ble Supreme Court and Id. Division Bench of this Court, at least, in the following two cases: -

- (i) **Bank of India v. Noor Paul & Ors. [Special Leave to Appeal (C) 7733/2022]**
- (ii) **Income Tax Dept. v. Vikas Chaudhary & Ors. [2022 SCC Online Del 3376]**

Thus, the legal issues raised herein as to the validity and legality of the O.M. itself are not being gone into. At this stage, pending a decision on the validity of the OM, bearing in mind the factors that have weighed with Courts, each petition would have to be judged on a case- to- case basis.

Analysis on facts

84. The Petitioner was the beneficial owner of a company by the name of M/s Wise Sharp Tech Group Limited which was incorporated in Hong Kong in 2014.

85. He claims to have purchased the company sometime in 2014, by paying a sum of HKD 10,000 and was also a director in the said Hong Kong company. However, the Petitioner did not disclose this fact in his income tax return.

86. Proceedings under the Black Money Act, 2015 were then commenced against him after issuing show cause notice dated 14th December 2018 followed up with another show cause notice dated 22nd October 2021.

87. The bank account maintained by the said Hong Kong company, was



alleged to be under the control of the Petitioner. Transactions worth Rs. 300 crores were admittedly undertaken in the said bank account. The said Hong Kong company is stated to be struck off as mentioned in the assessment order by the Income Tax Department.

88. Vide order dated 29th March 2023, a penalty to the tune of around Rs. 169 crores was imposed on the Petitioner under the Black Money Act, 2015. The said penalty order was quashed by the Id. Division Bench, vide order dated 12th April 2023, on the ground that the Petitioner's reply had not been taken into consideration by the Assessing Officer while passing the said penalty order.

89. The original file and the sealed cover documents which were handed over by the Income Tax Department, have been perused by the Court.

90. The same consist of the statements made by the Petitioner before the Income Tax Authorities during the course of investigation under Section 131(1A) of the Income Tax Act along with other connected documents.

91. It is observed by this court that when the Petitioner was confronted in proceedings under the Income Tax Act, 1961, the statements which have been made by him, do point towards concealment. It can be seen from the record that, the Petitioner claimed to have obtained a loan from one Mr. Jason Cheng but had not repaid the same for getting the control of the Hong Kong company.

92. When confronted with the transactions worth Rs.300 crores which were carried out in the bank account of the Hong Kong company, the Petitioner tried to evade the same and blamed one Mr. Sachiv Batra who is a resident of Paschim Vihar, New Delhi, for undertaking the said transactions. The Petitioner's stand in his statements was that he had accepted Rs.



2,00,000/- as cash sale consideration in terms of an oral agreement to transfer the title to the shares in the company, as well as the control of the company, to Mr. Sachiv Batra. He further stated that he had also shared the net-banking passwords and other details with Mr. Sachiv Batra, which allowed him to operate the bank account.

93. During the course of investigation, the Petitioner's standard reply to most questions was that he was not able to recall anything. The allegation of non-cooperation, concealment and suppression of information does appear to have some basis, at this stage.

94. As per the Respondents, the following are the amounts to which the Petitioner has been assessed:

- i) Outstanding demand of Rs.56,35,50,210/- under Section 10(3) of the Black Money Act, 2015.
- ii) Outstanding demand of Rs.66.48 crores under Section 153A of the Income Tax Act, 1961;
- iii) Outstanding demand of Rs.5.35 crores under Section 153C of the Income Tax Act, 1961.
- iv) Fresh penalty proceedings under the Black Money Act, 2015 are underway;
- v) Prosecution proceedings under the Black Money Act, 2015 are underway.

95. Enormous reliance has been placed upon Section 41 of the Black Money Act, 2015 which stipulates that three times the sum equivalent to the tax computed under Section 10 of the Act would be liable to be paid as penalty.



96. The Petitioner has filed an appeal against the assessment order, under the Black Money Act, 2015 which is pending before the Commissioner of Income Tax (Appeals). However, in the appeal, no amount has been deposited in terms of Rule 6(4) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, which requires the deposit of tax along with penalty and interest thereon, on the amount of liability which has not been objected to by the assessee, in order to admit an appeal preferred under Section 15 (1) of the Black Money Act, 2015.

97. The appeal is also stated to have not been listed before the Commissioner of Income Tax (Appeals), though the Petitioner also appears to have not pursued the same. Admittedly, an appeal has also been preferred by the Petitioner against the demand under the Income Tax Act, 1961.

98. In the present proceedings as well, the Petitioner has repeatedly sought permission to travel which was first refused by this court vide order dated 19th September 2022, in the following terms: -

“Notice. Since the respondents are duly represented, let a counter affidavit be filed within a period of six weeks from today.

List again on 13.02.2023.

CM APPL. 32139/2022(Interim Relief)

The Court finds no ground to grant the prayers as made herein for the following reasons.

Learned counsel for the fourth respondent has placed for the perusal of the Court a Status Report with respect to the proceedings which were taken against the petitioner here under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [“2015 Act”].

According to those respondents a demand of



Rs.5,63,55,210/- was raised and is still outstanding against the petitioner. While the aforesaid orders passed by the Assessing Authority presently form subject matter of a statutory appeal which has been preferred by the petitioner, the Court deems it apposite to notice the following undisclosed foreign assets which were found to have been held by the petitioner and which had led to the initiation of proceedings under the 2015 Act. Those facts as duly recorded in the course of proceedings taken under the 2015 Act read as under: -

“11. Based on the above facts of the case, it is clear the Mr. Prateek Chitkara was holder of the following undisclosed foreign assets:

Sl.	Asset	Relevant Financial Years	Amount/Value	Amount (INR)
1	Total Credits in the account no 582-288742-838 with HSBC Bank (Hong Kong)	2014-19	USD 4,19,48,161.87 HKD 1,705.69 EUR 1,13,951.69	2,72,73,44,850.92
2	Share Capital of Wise Sharp Tech Group Limited	2014-19	HK \$10,000	82,561.15
Total				272,74,27,412.07”

The Court bears in mind the fact that under the extant Office Memorandum which governs the issue of Look Out Circulars, the solitary relevant factor is not merely of the individual being arraigned as an accused in a criminal case, but also of the Court bearing in mind the larger public interest as well as the economic interests of the country which too are factors to be borne in mind while evaluation the validity of a Look Out Circular that may come to be opened. What weighs with the Court at this stage is the quantum of funds that are stated to have been ferreted overseas as well as the



possibility of the same being obfuscated and concealed to the detriment of the respondents.

The Court further notes that learned counsel for the petitioner was unable to tender any plausible explanation for the quantum of funds held overseas. The fact that the aforesaid account was opened and controlled by the petitioner was also not disputed on behalf of the petitioner. Learned counsel was also unable to place before the Court any cogent material in support of his contention that the aforesaid account was transferred to another individual/entity or that his interests therein were surrendered in accordance with a procedure recognizable in law.

Bearing the aforesaid facts in mind, the prayer for interim travel is refused.”

99. The **LPA No. 739/2022** against the said order was disposed of vide order dated 23rd December 2022 with the direction that the writ petition ought to be decided on an early date. The matter has, thereafter, been heard from time to time.

100. On 13th February 2023, this Court directed as under:

“4. On the basis of the submissions heard so far, the following directions are issued:-

(i) The Petitioner shall disclose by way of an affidavit his moveable/immovable assets in India as also the details of his family members etc. living in India.

(ii) The Respondent shall produce the original file for the perusal of the Court which consists of the reasons for the issuance of the Look-Out Circular (‘LOC’).”

101. Both the parents of the Petitioner have filed their affidavits. The said affidavits of assets, show that the parents of the Petitioner live in Delhi. It is clear from the same that the father of the Petitioner has various properties in



India and is engaged in the clothing business by the name of M/s Chitkara Cloth House. The parents of the Petitioner along with the Petitioner's sister, collectively, own immovable properties worth close to Rs.40 crores as can be made out from the affidavits.

102. The Petitioner's wife is stated to be a practicing lawyer in Delhi. The Petitioner's brother is also an entrepreneur based in Delhi.

103. The Petitioner's parents have agreed to offer the properties as a security for the quashing of the LOC against the Petitioner, by filing affidavits before the Court.

104. The situation that emerges from the above discussion is that the Petitioner has deliberately concealed the existence of a company in Hong Kong, which was under his control. He did not divulge the details of the same despite being provided with repeated opportunities to do so. Furthermore, substantial transactions have been carried out in the bank account of the said Hong Kong based entity, which was also not revealed to the authorities. Additionally, the Petitioner attempted to wriggle out of giving any explanation in respect of these transactions.

105. On the other hand, the Court also takes into consideration the fact that the Petitioner is only about 34 years of age and that the non-issuing of permission to travel, could be having an adverse impact on his career and his personal life. The Petitioner has substantial familial ties in India. His parents are senior citizens and have come to his rescue by agreeing to stand as sureties and are offering their properties as security.

106. This court is of the opinion that this is not a case that would be detrimental to the economic interest of the country as there is no allegation that the Petitioner has siphoned off any public funds.



107. In addition, the overwhelming fact that no criminal proceedings have been initiated against the Petitioner, despite the demand having already been raised against him is an important consideration.

108. While the demand against the Petitioner has already been raised and the assessment order has already been passed under the Black Money Act, 2015, the appeal before the Commissioner of Income Tax (Appeals) is still pending.

109. Fresh penalty proceedings are still under-way, and the Court is informed that prosecution is also sought to be initiated, after the final oral submissions in this matter stand concluded.

110. Under these facts and circumstances, this Court is of the opinion that stringent conditions deserve to be imposed upon the Petitioner. The LOC debarring him from traveling can be converted into an intimation about the arrival/departure of the Petitioner in terms of Clause 6(I) of the Office Memorandum of 2021.

111. The LOC issued against the Petitioner stands modified to an intimation, subject to the following conditions:

- i) The relevant authorities/entities shall be informed of the arrival/departure of the Petitioner on every occasion.
- ii) The following properties of the parents of the Petitioner shall be offered as security for the purpose of ensuring that the Petitioner does not flee or leave the country in order to escape further scrutiny and action in accordance with law: -
 - A) Land Measuring 88K 01M (approximately 11 acres) being part and parcel of Khawat No.2 Khatuni no.2 khasra nos. 47//2(8-0), 3(8-0), 4(8-0), 7(8-0), 13/3(3-4),



14(8-0), 16/2(7-16), 17(8-0), 24(8-0), 25/1(7-16), 56//4/2(6-16), 5/1/2/ (5-2), 5/3(1-7) situated at Village Chappar Mangoorpur, H, B.No. 443, sub Tehsil Mustafabad, Jagdhari, Distt. Yamuna Nagar as per Jamabandi for Year 2006-2007.

- B)** One Residential House bearing No. 348-L, Situated at Sarni Chowk, Model Town, Yamuna Nagar, Tehsil Jagadhari, Distt. Yamuna Nagar, admeasuring 71ft. x 50ft., wherein 4 rooms, one kitchen, one bathroom, store, toilet constructed.
- C)** One Plot measuring 2k-0M, approximately around 2000 sq. yards, being part and parcel of Khewat no.808 khatuni no. 1054 bearing khasara no. 33/23/2 situated at mauja mustafabad, HB NO. 444, Sub Tehsil Mustafabad, Tehsil Jagadhari, District Yamuna Nagar vide Jamabandi for year 2002-2003.
- D)** One Shop, Situated at Mauja Mustafabad, Tehsil Jagadhari, Distt. Yamuna Nagar, admeasuring 27ft. X 18.5ft.
- E)** One Shop, Situated at Mauja Mustafabad, Tehsil Jagadhari, Distt. Yamuna Nagar, admeasuring 10ft x 8ft.
- F)** One Residential House, Situated at Mauja Mustafabad, Tehsil Jagadhari, Distt. Yamuna Nagar being part and parcel of House No.44, admeasuring 40ft x 32ft.
- G)** Land admeasuring: 1 Bigha 4 Biswas and 7 Biswansi, situated at Khasara No. 40, Killa Nos. 7min (0-7-7),



5Min (0-5), 6Min (0-4) an 7Min (0-8), approximately **1226** Sq. yds at Village Mehrauli, New Delhi.

The abovementioned properties are valued at about Rs. 40 crores as per the Petitioner. If the Petitioner travels abroad and fails to return, the above properties would be liable to be confiscated.

- iii) The original documents of the above properties shall be submitted to the authorities, and it shall be verified that these are not encumbered in any manner;
- iv) The Petitioner shall file an undertaking before the authorities that he shall be bound by the orders that may be passed by the Commissioner of Income Tax (Appeals) in the Black Money proceedings subject to any remedies that he may avail of in accordance with law.
- v) Whenever the Petitioner travels abroad, he shall submit his entire itinerary, travel plan and be available on an active mobile number if the authorities wish to contact him. In addition, the phone number of a family member residing in India shall also be provided to the authorities.
- vi) The Petitioner shall render full cooperation to the authorities in the investigations which are currently underway. Any non-cooperation would permit the authorities to take fresh action in accordance with the applicable OMs.

112. Subject to the above conditions, the LOC shall stand modified to an intimation in terms of Clause 6(I) of the OM of 2021, which reads as under:

“(I) In cases where there is no cognizable offence



under IPC and other penal laws; the LOC subject cannot be detained/arrested or prevented from leaving the country. The Originating Agency can only request that they be informed about the arrival/departure of the subject in such cases.”

113. The Petitioner shall appear before the Assistant Director of Income Tax (INV), UNIT-4(4), ROOM NO.121; C, BLOCK CIVIC CENTRE, NEW DELHI for compliance of the above conditions on 5th October, 2023.

114. The original files along with copies of documents, etc. which were handed over by the Income Tax Department have been returned.

115. The writ petition, along with all pending applications, is accordingly disposed of.

**PRATHIBA M. SINGH
JUDGE**

SEPTEMBER 26, 2023

Rahul/RP