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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION NO. 1709 OF 2018**

Hussain Indorewala and Ors. .. **Petitioners**

**VERSUS**

Union of India and Ors. .. **Respondents**

...

Mr. Sanjay Singhvi Senior Counsel a/w Rahul Kamerkar I/b Mr. Mihir Joshi for Petitioners.

Mr. Anil Singh, ASG a/w Suresh Kumar & Geetika Gandhi for Respondents.

...

**CORAM : M.S. SANKLECHA &  
SANDEEP K. SHINDE, JJ.**

**DATE : 29<sup>th</sup> JUNE, 2018**

**P.C. :-**

1. This petition under Article 226 of the Constitution of India has been jointly filed by 25 petitioners seeking to set aside Rule 12(3) of the Income Tax Rules 1961 to the extent it does not allow discretion to the Authorities under the Income Tax Act 1961(Act) to accept Income Tax returns other than electronically. It is the case of the petitioners that they are not in possession of Aadhar cards and/or Adhar enrollment numbers, resulting in not being able to file their Returns of Income for the assessment years 2018-19. This is so as the

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electronic system does not accept the same without the necessary adhar number and/or adhar enrolment number.

2. On hearing the parties and examining the challenge, we were of the view that the petition would require consideration. Thus admitted. The issue raised would require early disposal. Therefore as convenient to all parties the petition is kept for disposal on 17 July 2018 at 3.00p.m.

3. However the petitioners state that pending the consideration of their challenge by this court, they may be allowed to file their return of income electronically without indicating their Adhar number/Adhar enrollment number and without linking it with PAN as has been allowed(in similar circumstances)by the interim orders dated 28 March 2018 of Punjab and Haryana High Court and 4 April 2018 of Delhi High Court provided such returns of income are filed before 30 June 2018. It is submitted that the basis of the above interim decision is Press release dated 27 March 2018 issued by the Central Board of Direct Taxes(CBDT). Therefore we heard the

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parties today for the purposes of grant of interim reliefs and pass this order.

4. It is the case of the petitioners that on 27th March, 2018, the CBDT has issued a press release which extended the time to link PAN with Aadhar number, while filing the Income Tax Return from 31st March, 2018 to 30th June, 2018. The petitioners also placed reliance upon the interim orders of the Punjab and Haryana High Court in *Pradeep Kumar Vs. Union of India* {C.W.P. 7672 of 2018} passed on 28th March, 2018 wherein a statement was made on behalf of the Respondent-State that the time for linking Aadhar card with PAN has been extended up to 30th June, 2018 and as a result thereof the system would accept the petitioners return of income without Aadhar card. Further reliance is also placed upon the common interim order of Delhi High Court in *Mukul Talwar Vs. Union of India* (WP No. (C) 3212 of 2018) and *Vrinda Grover Vs. Union of India* (WP No.(C)3226 of 2018) passed on 4April 2018, which after placing reliance upon the interim order of Punjab and Haryana High Court dated 28 March 2018 and the

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CBDT press release dated 27 March 2018 at the interim sage held as under:

*“Having regard to the above facts and circumstances the respondents are hereby directed to ensure that the petitioner's return are accepted without indicating any linkage with Aadhaar No./quoting Aadhaar Enrolment No. or quoting Aadhaar No. with PAN details in accordance with the above circular, provided they are duly filed before 30.06.2018.”*

5. In spite of the above the petitioners state that when they attempted to upload their Return of Income for the assessment year 2018-19, the system was not accepting the same in the absence of Aadhar number. However today an affidavit of Mrs. Sandhya Gokhale i.e. petitioner No. 16 has been filed stating that after the filing of the petition her attempt to file her income tax return for A.Y. 2018-19 was successful as her return of income has been accepted by the CBDT Portal. This, the affidavit states is even though she did not fill in any adhar number as she does not possess one. It is stated that the system by itself generated an Adhar number which does not belong to her and accepted her return of income. The affidavit also states that the petitioner in the Delhi

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High Court's order in Writ Petition No. 3226 of 2018 has informed her that, her return has been accepted by the CBDT Web Portal without her quoting of any Aadhar number and/or Aadhar Enrolment number. It is in the above facts that the petitioner seeks a direction to the CBDT to accept their Income Tax Returns without quoting of the Aadhar number and/or linking with Aadhar, if, they file their return of income with the web Portal of the CBDT, on or before 30th June, 2018.

6. On the other hand the learned Additional Solicitor General on instructions states that the decision of the Division Bench of Punjab and Haryana High Court's in the case of Pradeep Kumar (Supra) proceeded on a concession made by the Assistant Solicitor General and this concession by the Assistant Solicitor General was incorrect. In support he tenders a copy of the communication dated 27th June, 2018 addressed by the CBDT to the Chief Commissioner of Income Tax, Mumbai in response to this petition. In the aforesaid communication it is recorded that in the course of proceedings the Additional Solicitor General had made an incorrect

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statement before the Punjab and Haryana High court. Thus the Commissioner of Income Tax at Chandigarh has been requested to take appropriate measures. It is further submitted that in view of the clear provisions of Section 139AA of the Act the filling of Adhar numbers and linking it with PAN is mandatory. In support attention is drawn to the decision of the Apex Court in *BINOY VISWAM VS. UNION OF INDIA AND ORS.*<sup>1</sup> wherein it was held that the Section 139AA of the Act, is not violative of Article 14 and 19 of the Constitution of India, The above view is again reiterated by the Supreme Court in *JUSTICE K.S. PUTTASWAMY (RETD.) & ANR. VS. UNION OF INDIA AND ORS.*<sup>2</sup> In view of the above position in law, it is submitted that there can be no estoppel in law and an incorrect concession made contrary to the statutory provisions would not bind the party on whose behalf it was made. In support reliance was placed upon the decision of the Apex Court in *CENTRAL COUNCIL FOR RESEARCH IN AYURVEDA & SIDDHA AND ANR. VS. DR. K. SANTHAKUMARI*<sup>3</sup>.

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1 (2017) 7 SCC 59

2 (2018) 1 SCC 809

3 (2001) 5 SCC 60

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7. We find that the orders of Punjab and Haryana High Court, in the case of Pradeep Kumar (Supra) was made on 28th March, 2018 and of the Delhi High Court in the case of Mukul Talwar (Supra) and Brinda Grover(supra) on 4th April, 2018. The decisions of the Apex Court being relying upon by the Respondent-State in the case of *Binoy Viswam (Supra)* and *Justice K.S. Puttaswamy (RETD.) & Anr. (Supra)* were already available with the Respondent-State when orders dated 28th March, 2018 of the Punjab and Haryana High Court and on 4th April, 2018 when the Delhi High Court were passed. Till date no steps have been shown to be taken by the Respondent State to correct the incorrect concessions made on its behalf before the Punjab and Haryana High Court by either filing an appeal or seeking a variation and/or recall of the interim order. It is likely that the concession may have been made on the basis of its understanding of the CBDT press release dated 27 March 2018 and also the observation in *Binoy Viswam(supra)* that Section 139AA of the Act has still to pass the test of Article 21

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of the Constitution of India. It is not for us to speculate, but the fact is that no attempt has been shown to have been made to vary the order dated 28 March 2018 of the Punjab and Haryana high Court till today. Moreover the Delhi High Court order dated 4 April 2018 though passed at the interim stage, was passed not only on the basis of the order dated 28 March 2018 of the Punjab and Haryana High Court but also on the basis of its prima facie interpretation of the press release dated 27 March 2018 of the CBDT. In fact the affidavit of Mrs. Sandhya Gokhale i.e. petitioner No. 16 states that the Income Tax Return of the petitioner viz. Ms. Brinda Grover (supra) before Delhi High Court was accepted without linking or quoting of any Aadhar number or any Aadhar Enrolment number. This would indicate that the order dated 4 April 2018 of the Delhi High Court have been complied with and implemented by the respondent-State. At this stage, it is not open to the State to take a stand that the orders passed by the Punjab & Haryana High Court and Delhi High Court as far back as 28th March 2018 and 4th April, 2018 are contrary to the statute and/or made on incorrect concession made by the

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counsel for the State, without even attempting to have the same set aside either in appeal and/or recalled/varied.

8. There can be no dispute with the proposition that there can be no estoppel against the law. However, the Respondent State itself must be clear in respect of the position in law with regard to the issue whether quoting of Adhar number while filing return of income is mandatory or not. It appears from the CBDT letter dated 27 June 2018 addressed to the Principal Commissioner of Income Tax at Mumbai, referred to hereinabove and tendered by the Learned Additional Solicitor General itself states that this issue has been referred to the Law Ministry and its opinion thereon is awaited. In any case when the State itself is not clear and two high courts have granted interim reliefs on a particular understanding of the law then the State while implementing the law cannot follow a pick and choose policy, otherwise the State action would be arbitrary and hit by Article 14 of the Constitution of India. This would in all fairness apply even in respect of interim orders as passed by the two high courts when the prima facie view taken is a very

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possible view in law, till such time has the petition is heard finally. The law must at the very minimum be applied equally to one and all. Equal treatment at the hands of law is one of the basic postulates of a rule of law. We would consider the merits of the petition as well as the stand of the respondent in the context of Section 139AA of the Act at a later date. However, till such time at least, so far as the petitioners before us are concerned, they must be extended the same benefit which the State conceded before the Punjab and Haryana High Court's in the case of *Pradeep Kumar (Supra)* and the interim order of the Delhi High Court in *Mukul Talwar(supra)* and *Brinda Grover(supra)* that the respondent-State should accept returns without indicating any linkage with Aadhar number or quoting Aadhar Enrollment number or linking Aadhar number with PAN on the basis of the press release dated 27th March, 2018. Therefore, till such time as we hear the parties in detail in respect of this petition, we direct the respondent-State to ensure that their systems accept the Income Tax Returns when uploaded for the assessment year 2018-19 without the Returns

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indicating any Aadhar number and/or quoting Aadhar Enrollment number and/or quoting Aadhar number and not linking with PAN details, if in the same are filed before 30th June, 2018. This direction is of course without prejudice to the rights and contentions of the Respondent - State that such returns of income without quoting the necessary Aadhar numbers are non acceptable under the Act. It is made clear the petitioner will not claim any equities because of this order.

9. The learned Additional Solicitor General states that the Income tax website as designed may not accept the return of income, if it does not indicate the Adhar number and not link it with PAN. The System should be suitably modified to meet the requirement of the law and needs of the time. This is for the reason that we cannot be a slave to a facility only because its architecture is defective. The system is meant to assist us in achieving our objectives and not otherwise. However, in view of the above it is made clear that incase the system does not accept the petitioner's return of income then in that event the petitioners are permitted to file their return of

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income in physical form with the Assessing officer on or before 30 June 2018. At this the Respondent State informs us that the Income Tax Office is closed tomorrow and day after i.e. Saturday 30 June and Sunday i.e. 1 July.2018.

10. In the present facts this stand of the Respondent State is rather curious. The delay in dealing with this petition is entirely at the door of the Revenue. This petition was first on board on 21st June, 2018. At time the respondents did not appear even though the counsel for the petitioners stated that the respondents have been served. However we were of the view that before we pass any order on this petition the revenue should be heard. Therefore, we adjourned this petition specifically to 25th June, 2018 at 3.00 p.m. On 25th June, 2018, Mr. Suresh Kumar learned Counsel appearing for the Respondent-State sought time to take instructions. Therefore at his request this petition was adjourned to 28th June, 2018. However on 28th June, 2018 when the petition reached hearing, Mr. Suresh Kumar learned Counsel for the State sought time as the learned Additional Solicitor General was to be

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briefed for the State. Therefore at the instance of Mr. Suresh Kumar was adjourned to today the 29 June 2018. Today when the petition was first called out at 11a.m., it had to be kept back at the instance of the Revenue. Thereafter we could take up the petition only at 3 p.m. Thus it was not possible to pass this order earlier. In fact we concluded dictating this order only at 4.50p.m. after hearing the parties. In the above facts it is not fair of the Respondent State to plead fait accomli/helplessness. Accepting such a plea would mean allowing a party to take advantage of a situation created by the party to the detriment of the other side. This cannot be permitted.

11. Therefore at the interim stage we pass the following interim order:

### **ORDER**

a) The respondents-State is directed to accept the return of income for the Assessment Year 2018-19 by the petitioners herein if uploaded on or before 30<sup>th</sup> June, 2018 without Aadhar number, Aadhar Enrollment or any linkage with the PAN details. This is without prejudice to the rights and contentions of the state that such Returns of Income are

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contrary to the provisions of the Act.

b) In case the system does not accept the Returns of Income filed by the petitioners in the absence of it quoting the Aadhar number or Aadhar Enrollment number or Linking with PAN details, then in that event the petitioners herein are at liberty to file their return of income in physical form with the jurisdictional Assessing Officer on or before 2<sup>nd</sup> July, 2018, who would accept the same. This has become necessary as we are informed that the Income Tax Office is closed on 30<sup>th</sup> June, 2018 and 1<sup>st</sup> July, 2018.

c) The directions made in this order are restricted only to the petitioners before us. This is an interim order, without prejudice to the rights and contentions of the parties.

d) Petition to be on board on 17<sup>th</sup> July, 2018 at 3.00 p.m. Parties to act on copy of this order duly authenticated by the Associate of this Court.

[ SANDEEP K. SHINDE, J]

[M.S. SANKLECHA, J]