

**REPORTABLE**

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

+ **WRIT PETITION(C)No.328/2010**

% **Reserved on:15<sup>th</sup> February, 2011**  
**Date of Decision: 20<sup>th</sup> April, 2011**

Ravina and Associates Private Limited and Another..Petitioner  
Through Mr. C.S. Aggarwal,  
Sr. Advocate with  
Mr. Prakash Kumar  
and Mr. Sandeep  
Kapur, Advocates.

**VERSUS**

Commissioner of Income Tax, Delhi-V, New Delhi and Others  
....Respondent  
Through Ms. P.L. Bansal, Sr.  
Standing Counsel with Mr.  
Deepak Anand, Jr. Standing  
Counsel.  
Mr. Vikas Pahwa, Standing  
Counsel CBI.

**WRIT PETITION(C)No.340/2010**

Ravina Khurana  
Through  
....Petitioner  
Mr. C.S. Aggarwal,  
Sr. Advocate with Mr.  
Prakash Kumar and Mr.  
Sandeep Kapur, Advocates.

**VERSUS**

Commissioner of Income Tax, Delhi-V, New Delhi and Others  
....Respondents

Through Ms. P.L. Bansal, Sr.  
Standing Counsel with Mr.  
Deepak Anand, Jr. Standing  
Counsel.  
Mr. Vikas Pahwa, Standing  
Counsel CBI.

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE SANJIV KHANNA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? YES
3. Whether the judgment should be reported in the Digest ? YES

**SANJIV KHANNA, J.**

Ravina and Associates Private Limited and Ravina Khurana have filed the present writ petitions for stay of recovery of the outstanding demand of Rs.54,91,15,497/- for the assessment years 2004-2005, 2005-2006 and 2006-2007 in the case of Ravina and Associates Private Limited and Rs.5,02,17,426/- for assessment years 2000-2001 to 2004-2005 in the case of Ravina Khurana. In the alternative, the two petitioners have made a prayer that the outstanding amount should be recovered from the accounts of the petitioners in the NatWest Bank, London. Challenge is also made to the order dated 7<sup>th</sup> January, 2010

passed by the Commissioner of Income Tax, Delhi-V rejecting the W.P.(C) No.328/2010

application for stay of demand. It is submitted that the petitioners cannot be treated as assesseees in default in view of sub-section 7 to Section 220 of the Income Tax Act, 1961 (for brevity, 'the Act').

2. Though the facts are almost similar, yet for the sake of clarity, the factual matrix in the two cases may be noticed separately.

**Ravina and Associates Private Limited**

3. Ravina and Associates Private Limited, incorporated on 22<sup>nd</sup> July, 1987, was/is engaged in the business of providing technical support services to Russian companies. For the assessment years 2004-2005 and 2005-2006, income tax returns were filed by the said petitioner company declaring income of Rs.31,77,400/- and 49,97,160/- on 31<sup>st</sup> October, 2004 and 31<sup>st</sup> October, 2005, respectively.

4. Notice for reopening under Section 148 of the Act dated 22<sup>nd</sup> May, 2006 were issued for the assessment years 2004-2005 and 2005-2006.

5. It is accepted and admitted that Ravina and Associates Private Limited had received and accredited sum of Rs.108,39,46,971/- during financial years 2004-2005 to 2006-2007 under the agreements entered into with M/s Techno Prom Export, Moscow, Russia.

6. The said proceeds had been deposited in NatWest Bank, London and were not brought to India.

7. Central Bureau of Investigation had registered a criminal case on 6<sup>th</sup> March, 2006 under Section 120-B of the Indian Penal Code, 1860 read with Sections 7, 8, 13(2) and read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against unknown officials of National Thermal Power Corporation (NTPC), M/s Fgup 'Vo' Techno Prom Export (TPE), Moscow, Russia (Russian Company, for short) and others unknown. The allegations are that during the period 2002-2005, certain unknown officials of NTPC had entered into a criminal conspiracy with the unknown officials of the Russian company and pursuant to the aforesaid conspiracy, public servants of NTPC by abusing their official position had obtained illegal gratification in the matter of award of contract for a super thermal power station at Barh, District Patna, Bihar. Information was received from Interpol, London that funds were available in the U.K. account in excess of £ 15 million relating to commission payments. The information indicated that these were crime proceeds. Investigation was initiated regarding origin and flow of funds.

8. On an application moved by the CBI, a letter of rogatory was issued by the Special Judge, Delhi on 22<sup>nd</sup> March, 2006. The same was forwarded to the Central Authority, U.K. and acting on the same, the competent court of U.K. issued a restraint order dated 20<sup>th</sup> April, 2006 in respect of the said funds in the name of Ravina and Associates Private Limited.

9. Investigations have further revealed that NTPC had entered into three contracts with the said Russian company on 14<sup>th</sup> March, 2005 and advance payment of \$ 53,633,554 was released by NTPC to the Russian company on 31<sup>st</sup> March, 2005. It has come to light that the Russian company had transferred \$10,373,621.06 and \$10,372,441.07 to the account of Ravina and Associates Private Limited at NatWest Bank, London on 5<sup>th</sup> May, 2005 and 18<sup>th</sup> May, 2005 respectively, immediately after the NTPC made the said payment. Further amount of Rs. 3,33,06,123.61/- equivalent to \$ 762,686.83 was transferred by the Russian company to Ravina and Associates Private Limited in their account in Deutsche Bank, New Delhi on 20<sup>th</sup> April, 2005. Another payment of \$ 825,481.77 was transferred by the Russian company to Ravina and Associates Private Limited.

10. CBI has stated that the bid form dated 4<sup>th</sup> November, 2004 for Barh Super Thermal Power Plant did not have any provision for payment of commission to any agent. Investigations have further revealed that more than \$ 20.7 million was paid by the Russian company to Ravina and Associates Private Limited as a percentage of the contract value.

11. The contention of the respondents both CBI as well as the Income Tax Department is that Ravina and Associates Private Limited did not include the commission payments in their declared returns of income till the registration of the case by the CBI on 6<sup>th</sup> March, 2006. The revised returns or statement of accounts were filed by Ravina and Associates Private Limited after the registration of the case. The allegation of the CBI is that the money received by Ravina and Associates Private Limited is corruption/bribe money meant to be transferred to public servants and, therefore, is liable to be confiscated. These, it is alleged, are illegal kickbacks. Investigations have further revealed that certain amounts were transferred to one M/s Prime Services International Ltd. at Riga, Latvia. There is also allegation that Ravina and Associates Private Limited had transferred funds to certain persons/firms in few other countries. The investigations for tracing out these funds are in progress.

12. For the sake of convenience it may be appropriate to reproduce below in form of a table/chart, date of filing of the original return, income declared and dates of filing of the two revised returns/statement of income with figures of returned income. The date 6<sup>th</sup> March, 2006, when the case was registered by the CBI has to be kept in mind while reading and appreciating the table/chart given below:

A.Y.	Date of filing original return	Income Disclosed (Rs.)	Date of filing 1 <sup>st</sup> revised return	Income Disclosed (Rs.)	Date of filing 2 <sup>nd</sup> revised return	Income Disclosed (Rs.)
2004-05	31.10.04	31,77,400	21.6.06	1,86,28,990	12.2.07	10,80,57,290
2005-06	31.10.05	49,97,160	21.8.06	3,90,10,580	12.2.07	4,60,13,040
2006-07	12.02.07	77,80,81,390	-	-	-	-

**Ravina Khurana**

13. Ms. Ravina Khurana had filed her income tax returns for the assessment years 2000-2001 to 2004-2005 declaring income from the business of providing consultancy. The original returns and income declared for these assessment years are as per the details given below:-

	A.Y	F.Y.	Date of filing return	Returned Income
1	2000-01	1999-00	30.08.2000	Rs.1,26,200/-
2	2001-02	2000-01	31.07.2001	Rs.1,27,100/-
3	2002-03	2001-02	01.08.2002	Rs.1,67,719/-

4	2003-04	2002-03	22.12.2003	Rs.1,79,390/-
5	2004-05	2003-04	21.09.2004	Rs.1,69,135/-

13. As noticed above, the criminal complaint was registered and investigation was started by the CBI on 6<sup>th</sup> March, 2006 and thereafter the letter of rogatory was issued by the Special Judge, CBI, Delhi. Information was received that in addition to bank accounts of Ravina and Associates Private Limited in NatWest Bank, London, Ravina Khurana has a personal account in the same bank. Subsequently, Ravina Khurana revised her returns on 12<sup>th</sup> February, 2007 as per the details given below:-

	<b>A.Y.</b>	<b>F.Y.</b>	<b>Date of filing of revised return</b>	<b>Income disclosed</b>	<b>Self assessment tax payable</b>
1	2000-01	1999-00	12.02.2007	6001100	1951730
2	2001-02	2000-01	12.02.2007	13017618	4532911
3	2002-03	2001-02	12.02.2007	3862130	1150193
4	2003-04	2002-03	12.02.2007	1336890	388570
5	2004-05	2003-04	12.02.2007	11079890	3622264

The self assessment tax was not paid.

14. These returns were filed after the period of filing of revised returns under Section 139 (5) of Act had expired and, therefore, proceedings for re-opening of assessment under Section 147 of Act were initiated against the said assessee. Ravina Khurana vide her reply dated 12<sup>th</sup> July, 2007 submitted that she was the regional representative of M/s Intersputnik International Organization of Space Communications in India and she had received retainership fees from them. She had also received receipts by way of bank interest, miscellaneous receipts and salary from Airoflot Tour India Pvt. Ltd. during these years. In response to the notice under Section 147, Ravina Khurana had declared a bank balance of Rs.6,83,31,926/- as on 31<sup>st</sup> March, 2000 in NatWest Bank, London, whereas in the original return for the relevant assessment year 1999-2000, no closing balance was shown. The investigations have further revealed that the following deposits made in her bank in London, which were not declared in her original returns:-

<b>A.Y</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>	<b>2004-05</b>
Receipts/deposition NatWest Bank	62372953	9652207	3778525	1241616	10609119

15. On the basis of the declared income, the following assessment orders have been passed and demands detailed below have been raised:-

A.Y	2000-01	2001-02	2002-03	2003-04	2004-05
Assessed Income	685031983	13146584	3991309	1466071	11222573
Date of Asstt	20.12.2007	20.12.2007	20.12.2007	20.12.2007	20.12.2007
Demand Raised	36395009	8661163	2100216	670811	5478261

These demands have not been paid.

16. It is clear from the aforesaid facts that the two petitioners viz., Ravina and Associates Private Limited and Ravina Khurana have accepted and admitted their liability to pay tax including the amounts/incomes deposited in their bank accounts in NatWest Bank, London. The said amounts had not been declared in their original returns filed by Ravina and Associates Private Limited for the assessment years 2004-2005 and 2005-2006 and by Ravina Khurana for the assessment years 2000-2001 to 2004-2005. The said amounts were later on included in the revised returns filed by Ravina and Associates Private Limited on 21<sup>st</sup> June, 2006 for assessment years 2004-2005 and on 21<sup>st</sup> August, 2006 for assessment years 2005-2006. These returns were subsequently revised for a second time on 12<sup>th</sup> February, 2007. Return for the

assessment years 2006-2007 by Ravina and Associates Private Limited were filed only on 12<sup>th</sup> February, 2007.

17. The petitioners have raised a contention that they were not aware and had no knowledge that the money received by them abroad is to be accounted for and taxed in India. The said contention per se and ex facie is too far-fetched to be accepted or even considered. The accounts of the two petitioners are audited and they had/have access to expert and professional advice. The amounts involved are substantial. The plea raised is preposterous, especially, keeping in view the amount involved. The present case is apparently one wherein funds have not been brought to India, have been slashed and kept abroad in a clandestine manner. The contention of the CBI is that this is corruption or bribe money. This aspect, however, is to be examined in the criminal proceedings.

18. The contention of the two petitioners that the Income Tax department should recover the taxes due along with interest from the bank account at NatWest Bank, London, on the basis of the principles of equity and fair play, has no merit. The conduct of the two petitioners has already been referred to and hardly justifies exercise of equitable and discretionary jurisdiction in their favour. The petitioners do not have any regard for law. Further, the money in the NatWest Bank, London is

subject matter of the restraint order passed by the court of U.K. on the letter of rogatory of the Special Judge, Delhi. The petitioner may not have any right to claim the said money if it is corruption or bribe money. The said money may be forfeited under the foreign exchange law or Prevention of Corruption Act or Money Launderings Act etc. The facts of the present case do not compel and commend us to accept the contention of the petitioners.

19. The last question, which arises for consideration, is the effect of sub-section 7 of the Section 220 of the Act and whether it comes to the protection and aid of the petitioners. The said section reads as under:-

**Section 220: When tax payable and when assessee deemed in default :**

(7) Where an assessee has been assessed in respect of income arising outside India in a country the law of which prohibit or restrict the remittance of money to India, the Assessing Officer shall not treat the assessee as in default in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax until the prohibition or restriction is removed.”

20. The aforesaid provision is an equitable provision and states that when an assessee has to be assessed and taxed on income arising in a

third country outside India, where the laws of that country prohibit or restrict remittance of money to India, the Assessing Officer shall not treat the person as an “assessee as in default” in respect of such income which by reason of such prohibition or restriction, cannot be brought into India.

21. For the Section to apply, the following conditions should be satisfied:-

(i) The assessee should be assessed in respect of income which arises in another country i.e. in a country outside India.

(ii) The laws of the country where the income arises should prohibit or restrict remittance of money to India.

(iii) The Assessing Officer shall not treat the assessee as in default in respect of that part of the tax equal to the amount of income, which by reasons of such prohibition or restriction cannot be brought to India from the country where the income had arisen.

22. In the present case, income had arisen in Russia and not in U.K. There was/is no bar or restriction of transfer of that income and remittance thereof from Russia to India. No such bar is pleaded or urged.

The petitioners have not relied upon, claimed or stated that there was any bar and embargo in the laws of Russia against the remittance of the said

income to India. In fact, it cannot be so pleaded because admittedly payments have been made by the Russian company to the petitioners and have been deposited abroad in a third country in the NatWest Bank, London. Nothing prevented or prohibited the petitioners from bringing the proceeds to India, but the petitioners-assesseees by their own conduct have slashed away and kept the money in their bank accounts in London. In such circumstances, we do not think that the petitioners are entitled to protection or benefit under Section 220(7) of the Act.

23. In view of the aforesaid, we do not find any merit in the present writ petitions and the same are accordingly dismissed. The petitioners will pay consolidated costs of Rs.20,000/- to the respondents.

**(SANJIV KHANNA)**  
**JUDGE**

**( DIPAK MISRA )**  
**CHIEF JUSTICE**

**APRIL 20<sup>TH</sup>, 2011**  
**NA**