

LEGAL UPDATES

DELHI HC: BASED ON REVENUE'S SUSPICION, HC QUASHED LOC ISSUED AND EXTENDED; FOUND VIOLATION OF RIGHT TO LIFE AND LIVELIHOOD

A writ was filed for a case where the MHA issued the LOC i.e., Look Out Circular and its extensions at the appeal of the Revenue to halt the Petitioner from traveling overseas due to the risk of fines and legal action for unreported foreign assets and interests in foreign corporations under the Income Tax Act, the Black Money Act, and the Prevention of Money Laundering Act. The Delhi High Court's Single Judge Bench, which was directed by Justice Rekha Palli held that the Petitioner's right to personal liberty and right to a living, as guaranteed by Article 21 of the Constitution, were constrained. The petitioner argued that the impugned LOC, which was granted based solely on the assumption that the petitioner has unreported overseas assets and financial stakes in foreign companies, is untenable in law. The respondent argued that the contested LOC was issued and initially argued that because the issuing of a LOC is administrative in nature, this Court shouldn't intervene with that decision because it is well-established that the scope of judicial review in these situations is very constrained. The Court explained that LOC must only be granted under extraordinary circumstances where the individual against whom it is issued is not charged with any crimes that are subject to prosecution. According to the Court, a person's mere presumption of opening accounts with banks abroad and of making an investment in a foreign business cannot be used as justification for concluding that allowing the Petitioner to travel internationally would be harmful to India's economic interests, especially given that it is undeniable that this suspicion has persisted for about three years. The Court further held that Office Memorandum (OM) issued on December 5, 2017, only made changes to the OM dated October 27, 2010, by adding, among other things, a clause to prevent the person from traveling abroad if it is determined that doing so will harm India's economic interests; as a result, the OM dated October 27, 2010, continues to be in effect. The Court concluded that it cannot be assumed that the Revenue never meant to rely on the clause included in the OM dt. Dec. 5, 2017, which made reference to the OM dt. Oct. 27, 2010, in the OM dt. Dec. 5, 2017, clause. For the upcoming year, the Court ordered the Petitioner to notify the revenue

whenever he enters or leaves the country. As part of a search operation on one "Kochar Group," the Assessee-Individual, a director of private businesses involved in exporting clothing, was subjected to a search, and as a result, the Petitioner was assessed for the AYs 2019–20 and 2020–21 on an extra income of Rs. 21.40 Cr. According to an OM dated October 27, 2010, the LOC was released on February 25, 2019, and the Petitioner was allowed to travel internationally with the exception of the United Arab Emirates. However, there were some restrictions placed on it by the Additional Chief Metropolitan Magistrate in specific circumstances. The search which started on February 12, 2019, was completed on April 5, 2019. The Additional District Judge overturned the ruling of ACMM, and the Petitioner filed a writ petition in protest. Given the negative impact that LOC may have on an individual's life, the HC ruled that there cannot be a general prohibition against judicial review of LOC and that this case is appropriate for the jurisdictional exercise under the Constitution's Article 226. Based on the dispute that doing so would be disadvantageous to India's economic interests, the High Court accepted Revenue's argument that the LOC was sanctioned by OM dated October 27, 2010, but was prolonged by OM dated 5 December 2017. Whenever the aforementioned clause was applied, One of the requirements, according to HC, is that the originating authority must reasonably believe that a person's departure would be so detrimental that it warrants limiting their fundamental right to go abroad and ending the LOC and its growth. By nullifying the contested LOC, the writ was granted.