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Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

Davendra Anand – PETITIONER[Pro Se]

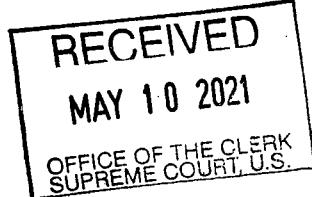
vs.

Commissioner of Internal Revenue - RESPONDENT

On Petition for a Writ of Certiorari to
The United States Court of Appeals
For the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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I. QUESTIONS PRESENTED

PRIMARY QUESTION:

Since both lower Courts ruled NO JURISDICTION over Treaties [Appendices A & C] - Will the Justices be bold to grant review, examine the wider implications of the fundamental TEXTUAL-faults in the USA-India-DTAA Treaty[Appendix-D], and also - take the necessary action to get the TEXTUAL-faults of the DTAA fixed, since it takes at least 67 Senators to amend the Treaty?

SECONDARY QUESTION:

Since both lower Courts Ignored the Precedent Law and Dismissed the Inheritance tax case of Mary Estelle Curran[Appendix-E] - What recourse does the Refugee-Petitioner[Appendix-F] have to get the Full Refund of \$229,568.99[Appendix-G], as a Fair Remedy for his Inherited-India-Property tax case?

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IV. Petition for Writ of Certiorari

Refugee-Petitioner Davendra Anand, respectfully petitions this court for a Writ of Certiorari to review the judgments of the 2nd Circuit Court of Appeals and the Tax Court - both of whom have ruled NO JURISDICTION [Appendices A & C] over the fault-ridden USA-India Double Taxation Avoidance Agreement [USA-India-DTAA as in Appendix-D], which represents a Treaty between the two nations.

This petition has been filed within ninety days of the 2nd Circuit Court of Appeals judgment that is attached at Appendix-A: Summary Order of 2nd Circuit Court of Appeals Stating NO TREATY JURISDICTION [4/16/2021].

V. Constitutional Provisions Involved

United States Constitution, (Article II/Section 2 & Article VI)

The United States Constitution provides that the president "shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur." Such Treaties are binding agreements between nations and become part of the International Law. And the Supremacy Clause or Constitution's Article VI, provides that "Treaties," like Statutes, count as "the Supreme Law of the Land."

United States Constitution, Amendment VIII

The Eighth Amendment of our Constitution bars the imposition of "excessive fines and penalties," and the Supreme Court has already recognized that the loss of personal property qualifies as a "fine" for constitutional purposes. It has also ruled that fines may not be "grossly disproportionate" to an offense.

VI. JURISDICTION

Unlike the 2 Lower Courts and as the Equal Branch of the tripartite government - the Supreme Court of The United States(SCOTUS) has the Jurisdiction over Treaties created by two-third majority of the Senate to review and rule on such matters. Specifically, the following wording lifted from the DTAA states that the income derived by the Refugee-Petitioner from the inherited "land & building" [immovable property] from his Refugee-parents is taxable in the Contracting State where it is located, and that State respectfully, is India.

"III Ad Articles 7, 10, 11, 12, 15, and 23: It is understood that for the implementation of paragraphs 1 and 2 of Article 7 (Business Profits); paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties and Fees for Included Services), paragraph I of Article 15 (Independent Personal Services), and paragraph 2 of Article 23 (Other Income), any income attributable to a permanent establishment or fixed base during its existence [is taxable in the Contracting State] in which such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist."

[Let me add – If Justice Scalia were to descend from Heaven and be here now – He for sure, as the Champion of Originalism & Textualism - He would be convinced of the argument and reasoning that the Refugee-Petitioner has been emphasizing since Day-1 and pushing for throughout his Double-Taxation Ordeal – and that is: **As per the Treaty - the United States {including US-Treasury/IRS, Fincen/FBAR, State-DRS, and all other such entities}** - they **DO NOT have territorial and taxation jurisdiction over such “land & building” or immovable property that is located in India.** Thus, it further violates Eighth Amendment since it renders unjustified taxation to be “excessive fines and penalties.”]

VII. Opinions Below

The decision by Judge Kenneth Ryskamp of Federal District Court in West Palm Beach regarding the inheritance tax case of Mary Estelle Curran [USA v. Curran] is attached at Appendix-E.

As per the Transcript[Docket# 12-80208-CR-RYSKAMP], IRS was reprimanded and got a black eye during the hearing in which the judge observed: “This is a tragic situation, and it seems to me the government has a lot of discretion, and the government decided they wanted to make a felon out of this woman.”

[Regarding Petitioner’s tax case - Both the 2nd Circuit Court and the Tax Court have IGNORED & DISMISSED the Precedent set by this Inheritance tax case, without giving any reason!]

VIII. STATEMENT OF THE CASE & FACTS

1. Primary Material Fact [Article 7 of USA-India-DTAA – Appendix-D]

According to Article 7 of USA-India-DTAA [Appendix-D] - IRS, has NO JURISDICTION over inherited-ancestral-refugee-property located in India that has NO USD investment. As per this article - taxation is ONLY in the Contracting State and that is India where the inherited property is located.

Petitioner relied on the advice of his India-CPA and their interpretation of Articles 7(1) and 7(7) of the DTAA. Articles 7(1) and 7(7) state the following:

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to

(a) that permanent establishment;

(b) sales in the other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or

(c) other business activities carried on in the other State of the same or similar kind as those effected through that permanent establishment.

7. For the purposes of the Convention, the term “business profits” means income derived from any trade or business including income from the furnishing of services other than included services as defined in Article 12 (Royalties and Fees for Included Services) and including income from the rental of tangible personal property other than property described in paragraph 3(b) of Article 12 (Royalties and Fees for Included Services).

Coupled with:

“III Ad Articles 7, 10, 11, 12, 15, and 23: It is understood that for the implementation of paragraphs 1 and 2 of Article 7 (Business Profits); paragraph 4 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties and Fees for Included Services), paragraph I of Article 15 (Independent Personal Services), and paragraph 2 of Article 23 (Other Income), any income attributable to a permanent establishment or fixed base during its existence [is taxable in the Contracting State] in which such permanent establishment or fixed base is situated even if the payments are deferred until such permanent establishment or fixed base has ceased to exist.”

Justice Scalia, the Giant of textualism and originalism, would be turning in his grave to see such gross misinterpretation of the term “is taxable in the Contracting State” since that State in this case is India, where the inherited/refugee immovable property is located, and NOT the United States. If Justice Scalia were to descend from Heaven and be here now – He for sure, as the Champion of Originalism & Textualism - He would be convinced of the argument and reasoning that the Refugee-Petitioner has been emphasizing since Day-1 and pushing for throughout his Double-Taxation Ordeal!

Thus, this Article 7 VOIDS and REJECTS the taxation jurisdiction of the United States pertaining to this immovable property located in India, and that will include entities like: US-Treasury/IRS, Fincen/FBAR, State-DRS and other tax authorities of USA, who are misusing their powers by not following

and thus violating – The Spirit, The Meaning, The Intent, and The Letter of the DTAA Treaty.

2. Article 6 of USA-India-DTAA [Appendix-D]

Petitioner is claiming that the use of word “MAY” in the Article 6(1) and throughout the DTAA - is Confusing, Misleading and has caused Ambiguity, Vagueness and Imprecision in the determination of taxation jurisdiction regarding inherited property located in New Delhi, India – Which, according to Article 7 is ONLY taxable in the Contracting State, and which State is India.

ARTICLE 6 Income from Immovable Property (Real Property)

1. Income derived by a resident of a Contracting State from immovable property (real property), including income from agriculture or forestry, situated in the other Contracting State “may” be taxed in that other State.

Again, Justice Scalia, the Giant of textualism and originalism, would be laughing in his grave to see such egregious misinterpretation of the word “MAY” that it requires the Petitioner to substitute “MAY” with “MUST” to be compliant with his U.S. tax filings!

Lawmakers are elected and given the authority to create Laws and Treaties that state their purpose in a clear and unambiguous manner. If this is not accomplished, it is within the Court’s judicial as well as their moral authority to perceive and feel the plight of the common citizen subject to such flawed

laws/treaties, and who is unable to clearly fathom and follow such laws/treaties due to their ambiguity. Tax payers expect Lawmakers to create cogent and clearly understandable tax laws, and when they do not, the fault should be accordingly placed on their burden, not on the burden of the already confused taxpayer, unable to accurately discern and follow ambiguous laws and treaties.

The idea of Textualism/Originalism that emanated from the United States Constitution and its interpretation is that: *The Constitution or any other legal document like a Treaty means no more or less than what it meant to those who originally wrote and ratified it.*

Justice Scalia, the Master of Constitution language gymnastics – He described himself as an originalist, meaning that he interpreted the United States Constitution as it would have been understood when it was adopted. According to Scalia in 2008, *"It's what did the words mean to the people who ratified the Bill of Rights or who ratified the Constitution."*

Similarly, for this tax case, the Petitioner is asking *"what did the word MAY mean to Two-Thirds of Senators, who created and ratified the USA-India-DTAA Treaty?"* Since most of Congress is made up of people with legal background, one cannot even surmise that over 66 Senators out of 100 – those

Senators who ratified the Treaty – they, implied the word MUST when using the word MAY, and that to make it crystal clear of their original INTENT – they, the 66+ Senators - could not have instead used the actual words MUST or SHALL !

3. Precedent of Mary Estelle Curran Inheritance Tax Case [Appendix-E]

Petitioner is claiming that the rulings by both the 2nd Circuit Court[Appendix-A] and the Tax Court[Appendix-B] are grossly negligent – these rulings have ignored and rejected the application of this inheritance tax case and thereby – they have contravened the Precedent Law! As a Precedence - the Inheritance tax case of Mary Estelle Curran - MUST be applied to Petitioner's inheritance-related tax case.

From a quick analysis of the Precedent law, one can argue that IRS was quite irresponsible to say the least for ignoring the Curran inheritance case, and if IRS had correctly applied Ms. Curran Inheritance case to Petitioner's inheritance case - All past tax obligations of Petitioner from Years 2004-2011, would have been removed and Petitioner refunded \$229,568.99, whose details are provided in Appendix-F. ***From this, one begs to question – Did IRS Misuse their Taxation Powers in this tax incident?***

In fact, the Refugee-Petitioner's tax case is quite unique - IT IS A DOUBLE WHAMMY[Article 7 + Inheritance] that will render the seminal SCOTUS-Ruling not just an ironclad Decision, but rather - a Landmark Decision for all such Treaty & Inheritance tax cases relative to All the Refugees of the World !

REASONS WHY INHERITANCE CASE MATTERS

Precedence in COMMON LAW

Precedent is a principle or rule established in a previous legal case that is either binding on or persuasive for a court or other tribunal when deciding subsequent cases with similar issues or facts. The doctrine of precedent is one of the principles that underpin U.S. common law that is used in deciding legal matters with the principle of "stare decisis ('stand by that decided')" at its core, making the concept of precedent extremely important. Stare decisis dictates that when interpreting the law, the courts should look to precedents on an issue when overseeing an on-going case with similar circumstances.

The use of precedent provides predictability, stability, fairness, and efficiency in the law. When a precedent establishes an important legal principle, or represents new or changed law on a particular issue (for example taxation on Inherited properties and assets), that precedent is often known as a "landmark decision," which the Mary Estelle Curran inheritance case [Appendix-E] represents, getting the label of "watershed case."

IX. REASONS FOR GRANTING THE WRIT

Refugee-Petitioner's tax case is very unique to say the least. He inherited immovable property[Land & Building] from his refugee parents that is taxable in the Contracting State as per Article 7 of the USA-India-DTAA Treaty. Article 7 has been argued and discussed at great length in section VIII of this Writ.

Our research DOES NOT indicate or produce any earlier cases that the SCOTUS has dealt with or weighed in, which have characteristics of Petitioner's tax case [Article 7 + Inheritance], with the exception of Controlled Foreign Corporations as in:

<https://www.ibdt.org.br/RDTIA/en/1/tax-treaty-interpretation-by-supreme-courts-case-study-of-cfc-rules/>

Therefore - this is one very important reason that the Highest Court of the land must admit this Writ Petition so that justice is rendered to the Petitioner and all similar cases in the future, as more and more refugees enter this great country, and call it their home!

The second reason to grant this Writ comes from the Moral Authority and Responsibility of the United States Supreme Court. Even though the two lower courts ruled "No Jurisdiction over Treaties" - the Highest Court of the Land,

especially as a source of guidance or an exemplar of proper conduct [Judicial Restraint as well as Judicial Excellence] – It not only has the legal jurisdiction, it has a moral authority and responsibility to see through the facts and arguments made by the Refugee-Petitioner regarding [Article 7 & Inheritance] so that Fairness prevails in the end.

X. CONCLUSION

For the foregoing reasons, Refugee-Petitioner respectfully pleads that this Court grant a Writ of Certiorari to review the judgments of both the lower courts in light of the Petitioner's argument about Article 7, his Primary Material Fact[Appendix-D], and the Inheritance case of Mary Estelle Curran [Appendix-E].

Petitioner sincerely believes that such a REVIEW by the Highest Court of the Land will result in a seminal ruling to accomplish the following:

- Temporarily eliminate all the confusion created by the ambiguous and fundamentally flawed USA-India-DTAA Treaty[Appendix-D].**
- Put a cover on IRS mishandling and misuse of its taxation power, and who repeatedly ignored both the Article 7 of the Treaty as well as the Mary Estelle Curran Inheritance Tax Case[Appendix-E].**

- Avoid Eighth Amendment violation by IRS since their unjustified taxation has resulted in an “excessive fines and penalties” situation for the Petitioner.
- Give relief to Petitioner in the same manner as the Swiss Inheritance tax case ruling provided to the 79-year-old widow Ms. Mary Estelle Curran [Appendix-E].
- Rectify the mistake Petitioner made by including in his USA tax returns the income from inherited, immovable property located in India, which according to Article 7 of DTAA Treaty, is to be taxed only in the State where it is located, and that State is - India.
- Get the fundamentally flawed USA-India DTAA Treaty document fixed by the responsible Party[The Congress] – so, it is crystal clear in the use of words, their meaning, interpretation, and application, especially with regard to Article 7 [“is taxable in the Contracting State”] and Article 6 [the use or misuse of the word MAY].
- Finally, SINCE IT IS A DOUBLE WHAMMY[Article 7 + Inheritance] – these two forces should render the seminal SCOTUS-Ruling not just an ironclad Decision, but rather - a Landmark Decision for all such Treaty & Inheritance tax cases relative to All the Refugees of the World, WHO ALL WANT TO COME TO AMERICA, this, the Greatest, Law-abiding Nation with its visionary Constitution !

Submitted with due respect on this day: May 3, 2021.

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Appendices A - G Follow