No. _____

In The Supreme Court of the United States

SABENA PURI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

APPENDIX

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TABLE OF CONTENTS

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-55132
D.C. No. 2:20-cv-07270-RGK-AGR

SABENA PURI,
Petitioner-Appellant,
v.

UNITED STATES OF AMERICA,
Respondent-Appellee.

Appeal from the United States District Court for the Central District of California R. Gary Klausner, District Judge, Presiding

Argued and Submitted March 9, 2022
Seattle, Washington

Before: NGUYEN, MILLER, and BUMATAY, Circuit Judges. Concurrence by Judge BUMATAY.

MEMORANDUM*

Sabena Puri appeals the district court's order granting the government's motion to dismiss and

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

denying her petition to quash an administrative third-party summons issued by the United States Internal Revenue Service ("IRS") to Citibank N.A. for information relating to her bank accounts. The summons was issued at the request of the tax authorities of the Republic of India pursuant to the Convention Between the United States of America and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Jan. 1, 1991, T.I.A.S. 90-1218. We have jurisdiction pursuant to 26 U.S.C. § 7609(h) and 28 U.S.C. § 1291, and we affirm.

As in domestic tax investigations, the IRS may issue third-party summonses to obtain relevant documents when requested by a tax treaty partner pursuant to the terms of the treaty. *See United States v. Stuart*, 489 U.S. 353, 355–56, 370 (1989). If the taxpayer objects by filing a petition to quash in the district court, the court applies the two-step framework set forth in *United States v. Powell*, 379 U.S. 48, 57–58 (1964). First, the IRS must make a prima facie showing of its "good faith" in issuing the summons. *Stuart*, 489 U.S. at 359. To satisfy this minimal burden, the IRS need only demonstrate its own good faith, not that of the requesting sovereign. *Id.* at 370. The burden then shifts to the taxpayer to challenge the government's evidence or show that the summons should be quashed "on any [other] appropriate ground." *United States v. Clarke*, 573 U.S. 248, 250 (2014) (citation omitted).

1. Puri does not dispute that the IRS satisfied its burden under *Powell* by establishing a prima facie case that it acted in good faith in issuing the summons at the Indian tax authorities' behest. The

burden therefore shifts to Puri to challenge the IRS's evidence or provide other "appropriate" grounds for quashing the summons. Puri contends that she has met this burden, or is at least entitled to further discovery in order to meet her burden, by presenting evidence that the Indian tax authorities' true purpose is to harass her family, who are prominent members of the Indian government's political opposition.

Puri cites no authority to support her argument that the court may look beyond a facially proper request to determine the true motivations of the requesting foreign government. Such an inquiry would run counter to what the Supreme Court said in *Stuart*, that "[s]o long as *the IRS itself* acts in good faith . . . and complies with applicable statutes, it is entitled to enforcement of its summons." 489 U.S. at 370 (emphasis added); *see also Clarke*, 573 U.S. at 254 (stating that "summons enforcement proceedings are to be 'summary in nature,'" and that courts "must eschew any broader role of overseeing . . . determinations to investigate [tax liabilities]" (cleaned up)).[1]

2. In any event, Puri does not present any plausible evidence suggesting that the Indian tax authorities acted in bad faith. The Indian authorities' stated purpose is to identify Puri's assets held in the United States to assess her income tax liability as an Indian tax resident between April

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[1] In the context of a domestic tax investigation, the Court has permitted a taxpayer an examination of the responsible IRS agent upon a plausible showing of the IRS's bad faith. *Clarke*, 573 U.S at 254–55. It has not, however, sanctioned discovery as to a foreign government's bad faith, which is unlike the limited examination allowed in *Clarke*.

2003 and March 2019. Puri does not dispute that she has a bank account with Citibank N.A. And Puri—who was a citizen of India prior to 2008, has spent more than half of each year in India since that time, and owns at least one residence in India—has filed Indian income tax returns as an Indian tax resident in at least 2008 and 2011 through 2017. Puri's purported evidence of an improper motive, namely allegations reported in the Indian press, is speculative. And as the court below correctly noted, Puri does not explain how her bank statements could be used to harass the political opposition.[2]

AFFIRMED.

BUMATAY, Circuit Judge, concurring:

I concur in all but paragraph two of the memorandum disposition. Because courts are categorically forbidden from inquiring into the bad faith of a foreign government when deciding whether to quash an IRS summons, I see no need for us to reach the "in any event" argument in paragraph two.

In evaluating the enforceability of an IRS summons, the focus is on the IRS's underlying motives—not those of a foreign government. As the Supreme Court has expressed, "[s]o long as *the IRS itself* acts in good faith, . . . and complies with applicable statutes, [the IRS] is entitled to enforcement of its summons." *United States v.*

[2] Puri requests an "examination of the Indian taxation authority" (presumably, some form of discovery) to develop further evidence, but she fails to specify what procedures would be used to conduct the examination or how the tax authorities of a sovereign nation could be compelled to participate.

Stuart, 489 U.S. 353, 355–60, 370 (1989) (emphasis added). Our precedent points in the same direction. For example, we've said, "the IRS need not establish the good faith of the requesting nation" in tax treaty cases. *Lidas, Inc. v. United States*, 238 F.3d 1076, 1082 (9th Cir. 2001). *See also Mazurek v. United States*, 271 F.3d 226, 231 (5th Cir. 2001) ("As long as the IRS acts in good faith, it need not also attest to—much lest prove—the good faith of the requesting nation."); *Villarreal v. United States*, 524 F. App'x 419, 423 (10th Cir. 2013) (unpublished) ("Mexico's good faith is irrelevant; what matters is the IRS's good faith in issuing the summons.").

I have serious separation-of-powers concerns for even raising the prospect that courts can look through the Executive branch's decision to comply with an international treaty and surmise the motives of a foreign government. That is clearly beyond our competence. *See Alperin v. Vatican Bank*, 410 F.3d 532, 549 (9th Cir. 2005) ("[T]he management of foreign affairs predominantly falls within the sphere of the political branches and the courts consistently defer to those branches.").

I thus concur in all but paragraph two of the memorandum disposition.

FILED: January 12, 2021

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NO. CV 20-7270-RGK (AGRx)

SABENA PURI,
Plaintiff,
v.

United States of America,
Defendant.

ORDER ACCEPTING FINDINGS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition to Quash Third Party Summons to CitiBank, N.A. ("Petition"), Respondent's motion to deny and dismiss the Petition, the briefing and records on file, the Report and Recommendation of the United States Magistrate Judge ("Report"), the Objections and the Responses. Further, the Court has engaged in a *de novo* review of those portions of the Report to which objections have been made.

The Court accepts the findings and recommendation of the Magistrate Judge.

The Objections argue that the Report incorrectly rejected Petitioner's tax residency arguments as between India and the United States. Petitioner misunderstands the import of the Report. The

Exchange of Information ("EOI") Request under the treaty indicates that Petitioner is under examination in India for income tax liabilities relating to the tax periods April 1, 2003 through March 31, 2019, and that she was a tax resident of India during those periods. (O'Connor Decl. ¶¶ 3, 6-7.) Petitioner apparently filed tax returns in India for at least some of those years. (Goyal Opinion, Dkt. No. 21-4 at 11, 14 (noting Petitioner submitted USA and India tax returns to him).) Petitioner's expert witnesses noted that, to make a determination about tax residency, "we have to compare the personal and economic activities in India and USA." (Goyal Opinion, Dkt. No. 21-4 at 12.) Goyal, an expert witness, examined, among other things, Petitioner's financial documents including her Citibank 401(k) account. (*Id.* at 14.) Khare, another expert witness, looked at various factors, four of which were (1) brokerage accounts held in each jurisdiction and the relative percentage of funds invested in each jurisdiction; (2) detail of bank accounts held in each jurisdiction; (3) details of credit card payments in each jurisdiction; and (4) 401(k) retirement plans. (Khare Opinion, Dkt. No. 21-3 at 4, 8, 10-11, 16.) Thus, even according to Petitioner's own experts, the determination of tax residency requires consideration of the documents sought in the summons. The Report concluded that the petition to quash the summons should be denied.

Petitioner's remaining objections are without merit.

IT IS ORDERED that Petitioner's Petition to Quash Third Party Summons issued to Citibank, N.A. by the Internal Revenue Service is DENIED. Respondent's motion to deny and dismiss the

Petition is GRANTED. The Clerk is directed to close the case.

DATED: January 12, 2021

/s/ R. GARY KLAUSNER
United States District Judge

FILED: December 9, 2020

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

CV 20-07270-RGK (AGRx)

Sabena Puri v. United States of America

Present: The Honorable Alicia G. Rosenberg, United States Magistrate Judge

Proceedings: REPORT AND RECOMMENDATION RE: PETITIONER'S PETITION TO QUASH THIRD PARTY SUMMONS ISSUED TO CITIBANK, N.A. BY THE INTERNAL REVENUE SERVICE (Dkt. No. 1)

Pursuant to 26 U.S.C. § 7609, Petitioner filed a petition to quash the third party summons to Citibank N.A. by the Internal Revenue Service ("IRS"). (Dkt. No. 1.) Respondent filed a motion to deny and dismiss the petition. (Dkt. Nos. 16-17.) Petitioner filed a response. (Dkt. No. 21.) The court heard oral argument. (Dkt. No. 26.)

I. Procedural History

The United States and the Republic of India ("India") are signatories to the Convention Between the United States of America and the Government of

the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income ("Convention"). (Exh. B to Petition, Dkt. No. 1-2.)

Article 28 of the Convention provides, in pertinent part: "The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article I (General Scope)." (Article 28 ¶ 1, Dkt. No. 1-2 at 28.)

"If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes." (Article 28 ¶ 4, Dkt. No. 1-2 at 29.)

Pursuant to Article 28 of the Convention, India made an Exchange of Information Request ("EOI Request") that indicated Petitioner was a tax resident of India and is under examination by Indian tax authorities for income tax liabilities during the period April 1, 2003 through March 31, 2019. (O'Connor Decl. ¶¶ 3, 6-7, Dkt. No. 16-2.) The EOI Request states that an Indian tax resident must

report worldwide income and declare foreign bank accounts under her ownership or control to the Indian tax authorities. (*Id.* ¶ 7.) The EOI asks for information about Petitioner's accounts at Citibank, and represents that the requested information is "necessary to determine if a foreign bank account should have been disclosed and to assess the correct amount of income tax due from [Petitioner]" for the specified tax periods. (*Id.* ¶¶ 8-9.)

The IRS determined that the EOI Request is a proper treaty request. (*Id.* ¶ 15.) The IRS issued a third party summons to Citibank that seeks the following information about accounts owned, controlled, or under the signatory authority of Petitioner for the period April 1, 2003 through March 31, 2019:

* Account opening documents
* Account signature documents
* Know-Your-Customer and Customer Due Diligence records, as required to be maintained by law
* Correspondence and memorandum files related to the accounts (excluding marketing material)

The term "accounts" is defined to mean "all transactions between you and the Taxpayer, such as private banking accounts or activities, the purchase of certificates of deposit, or the leasing of a safe deposit box." (Exh. A to Petition, Dkt. No. 1-1.) The IRS gave notice to Petitioner. (Pham Decl. ¶ 5 & Exh. D, Dkt. No 17.)

II. Legal Standards

To obtain enforcement of the summons, the United States "must show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession, and that the administrative steps required by the Code have been followed." *United States v. Powell*, 379 U.S. 48, 57-58 (1964).

The *Powell* standard applies to an IRS summons issued at the request of a tax treaty partner. *United States v. Stuart*, 489 U.S. 353, 360 (1989). "In such case, the IRS need not establish the good faith of the requesting nation." *Lidas, Inc. v. United States*, 238 F.3d 1076, 1082 (9th Cir. 2001).

Once the United States satisfies this standard, "it is entitled to an enforcement order unless the taxpayer can show that the IRS is attempting to abuse the court's process." *Id.* at 360. "Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation. The burden of showing an abuse of the court's process is on the taxpayer, and it is not met by a mere showing, as was made in this case, that the statute of limitations for ordinary deficiencies has run or that the records in question have already been once examined." *Powell*, 379 U.S. at 58.

III. Discussion

A. The Powell Standard

The government's burden under the *Powell* standard is minimal and is generally satisfied as in this case by the sworn declaration of the IRS agent. *Crystal v. United States*, 172 F.3d 1141, 1144 (9th Cir. 1999) (citing *Powell*, 379 U.S. at 57-58). Petitioner argues that the IRS has not satisfied the first and second *Powell* factors.

As to the first factor, fulfilling the United States' obligations under a tax convention is a legitimate purpose. *Mazurek v. United States*, 271 F.3d 226, 230 (5th Cir. 2001); *United States v. Hiley*, 2007 U.S. Dist. LEXIS 73542, *8-*9 (S.D. Cal. Oct. 2, 2007). Petitioner argues India could not legitimately request information pursuant to a legitimate purpose, namely, "an investigation into unpaid tax liabilities of Petitioner, and particularly fraud or evasion by Petitioner." (Petition at 6 ¶ 11.)

Petitioner's argument on this first factor is apparently based on her contention that she is not a resident of India for taxation purposes under the Convention. Article 28 provides for the exchange of information "concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes." (Article 28 ¶ 1, Exh. B to Petition, Dkt. No. 1-2 at 28.) Article 28 expressly states that "[t]he exchange of information is *not* restricted by Article 1 (General Scope)." *Id.* (emphasis added). Article 1, in turn, states that the Convention "shall apply to persons who are residents of one or both of the Contracting

States, except as otherwise provided in the Convention." (Article 1, Exh. B to Petition, Dkt. No. 1-2 at 6.)

The IRS' declaration states that India made the EOI Request pursuant to Article 28 of the Convention. The EOI Request indicates that Petitioner is under examination for income tax liabilities relating to the tax periods April 1, 2003 through March 31, 2019, and that she was a tax resident of India during those periods. (O'Connor Decl. ¶¶ 3, 6-7.) Petitioner apparently filed tax returns in India for at least some of those years. (Goyal Opinion, Dkt. No. 21-4 at 11, 14 (noting Petitioner submitted USA and India tax returns to him).) There is no dispute that Petitioner has account(s) at Citibank. The court concludes that the IRS has satisfied its burden of showing that the investigation will be conducted pursuant to a legitimate purpose.

Petitioner contends that the court must further decide whether she is deemed a tax resident of India under the tie-breaking rules of the Convention. Petitioner's argument cannot be squared with the Convention's language that the exchange of information is not restricted by Article 1. "'The clear import of treaty language controls unless "application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories."'" *Stuart*, 489 U.S. at 365-66 (citation omitted). Here, the plain words of the Convention do not effect a result inconsistent with the intent or expectations of the signatories. Moreover, when "a provision of a treaty fairly admits of two constructions, one restricting, the other enlarging, rights which may be

claimed under it, the more liberal interpretation is to be preferred." *Id.* at 368.

On the contrary, Petitioner's argument makes no sense. Petitioner attaches legal opinions that she is a resident of both Contracting States under Article 4. (Dkt. No. 21 at 26; Khare Opinion ¶ 3.2, Dkt No. 21-3; Goyal Opinion, Dkt. No. 21-4 at 15.) When, as here, an individual is a resident of both Contracting States, Article 4 provides the method for determining the individual's status. (Article 4 ¶ 2, Exh. B to Petition, Dkt. No. 1-2 at 9.) Under the first test,[1] Petitioner provides a legal opinion that she has permanent homes in both Contracting States. (Khare Opinion, Dkt. No. 21-3 at 4.) Therefore, the next inquiry under the first test is where her personal and economic relations are closer. To make that determination, "we have to compare the personal and economic activities in India and USA." (Goyal Opinion, Dkt. No. 21-4 at 12.) Goyal examined, among other things, Petitioner's financial documents including her Citibank 401(k) account. (*Id.* at 14.) Khare looked at various factors, four of

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[1] Under Article 4, the individual's status is determined as follows: "(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests); (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode; (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national; (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement." (Article 4 ¶ 2.)

which were (1) brokerage accounts held in each jurisdiction and the relative percentage of funds invested in each jurisdiction; (2) detail of bank accounts held in each jurisdiction; (3) details of credit card payments in each jurisdiction; and (4) 401(k) retirement plans. (Khare Opinion, Dkt. No. 21-3 at 4, 8, 10-11, 16.) In other words, at a minimum the court would have to examine the very documents requested in the summons in order to make this determination. (Even those documents would be insufficient because the court does not have records of any of Petitioner's bank accounts or investment activities in India.)

Legal authorities have understandably rejected Petitioner's arguments. *See Mazurek*, 271 F.3d at 231 (finding petitioner incorrectly focused on merits of Canadian tax authority's income tax liability determination rather than on legitimacy of IRS' compliance with treaty request); *Hiley*, 2007 U.S. Dist. LEXIS 73542, at *8-*9 (finding court was not required to analyze whether petitioner, who claimed to be charitable foundation, could have income tax liability under Canadian law).

Petitioner cites the decision in *Escobedo*, but that case does not support her position. In *Escobedo*, the taxpayer filed a refund suit in the United States and the government filed a motion for summary judgment. The court denied the motion because it found that the taxpayer had created a genuine issue of material fact as to his center of vital interests. *Escobedo v. United States*, 2013 U.S. Dist. LEXIS 164678, *10-*16 (S.D. Cal. Nov. 14, 2013). The *Escobedo* case involved the merits of the taxpayer's refund claim in the United States and not the very different question of the enforcement of an IRS

summons for information pursuant to an EOI Request about income tax liabilities in a different country.

As to the second factor, Petitioner argues that the "United States law does not permit overbroad summons requests" and, therefore, such overbroad requests are not available under Article 28. (Petition at 6.) Petitioner cites *Yeong Yae Yun v. United States*, 2000 U.S. Dist. LEXIS 20188 (C.D. Cal. Nov. 13, 2000). In that case, however, the court concluded that the IRS summons was not overbroad in requesting account opening documents, signature cards, bank statements, deposit slips, canceled checks, and account transfers regarding bank accounts during the years in which Korean taxing authorities believed taxes may have been underpaid. *Id.* at *13-*14.

Here, the time period of the IRS summons is coextensive with the EIR Request's indication that Petitioner is under examination for income tax liabilities relating to the tax periods April 1, 2003 through March 31, 2019 and that the requested records are necessary to determine the correct amount of income tax due. (O'Connor Decl. ¶¶ 3, 6-7, 9.) The second factor is satisfied. Petitioner's argument is wholly conclusory. As discussed above, her experts examined such factors as a comparison of brokerage accounts in each jurisdiction, credit card payments made in each jurisdiction, bank accounts in each jurisdiction, and 401(k) or retirement accounts in each jurisdiction. At oral argument, the IRS argued that, if the question were Petitioner's income tax liabilities in the United States, the IRS would request the same type of information. Petitioner does not contend that she

has no ownership interest in the Citibank accounts. *See Banister v. United States*, 2010 U.S. Dist. LEXIS 154881, *14 n.19 (C.D. Cal. Jan. 26, 2010) (finding accounts in name of Petitioner and/or his spouse to be relevant to whether Petitioner received income during tax years at issue).

The IRS has satisfied the remaining factors. The IRS declaration states that the information requested is not in the possession of the IRS or India, and the necessary administrative steps were taken to issue the summons. (Pham Decl. ¶¶ 3-8; O'Connor Decl. ¶¶ 12-15); *see Stuart*, 489 U.S. at 360-61.

B. Abuse of Court Process

Once the *Powell* standard is satisfied, the petitioner may show that the IRS summons has been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation. *Powell*, 379 U.S. at 58.

"'[S]ummons enforcement proceedings should be summary in nature and discovery should be limited.'" *Stuart*, 489 U.S. at 369 (citation omitted). "[T]he taxpayer is entitled to examine an IRS agent when he can point to specific facts or circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge. But circumstantial evidence can suffice to meet that burden; after all, direct evidence of another person's bad faith, at this threshold stage, will rarely if ever be available. . . .

The taxpayer need only make a showing of facts that give rise to a plausible inference of improper motive." *United States v. Clarke*, 573 U.S. 248, 254 (2014).

Here, Petitioner do not show specific facts or circumstances plausibly raising an inference of improper motive on the part of the IRS.[2] The court declines to hold an evidentiary hearing.

Petitioner focuses on the bad faith of the Indian tax authorities. Petitioner contends that the Indian tax authorities (a) misrepresented in the EIR Request that they had exhausted the means reasonably available to them to obtain the information requested; and (b) sought 16 years of bank account information. Petitioner repeats her contention that she is not a tax resident of India. (Opp. at 6.)

Taking the last argument first, as discussed above, "the IRS need not establish the good faith of the requesting nation." *Lidas*, 238 F.3d at 1082. "So long as the IRS itself acts in good faith, as that term was explicated in [*Powell*], and complies with applicable statutes, it is entitled to enforcement of its summons." *Stuart*, 489 U.S. at 370 (rejecting argument that IRS was required to attest to whether Canadian tax authorities' investigation had progressed to stage analogous to Justice Department referral in United States); *Mazurek*, 271 F.3d at 231 ("It does not follow, simply because Mazurek challenges the FTA's residency determination, that the FTA's investigation is being conducted for an

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[2] The IRS re-issued a summons to Citibank to give Petitioner notice and an opportunity to object. This is not sufficient to show improper motive. *See Maxcrest Ltd. v. United States*, 703 Fed. Appx. 536, 537 (9th Cir. 2017).

improper purpose."); *Hiley*, 2007 U.S. Dist. LEXIS 73542, at *10 (same). The Supreme Court's decision in *Stuart* does not support a requirement that the IRS determine whether Petitioner's "personal and economic relations are closer (centre of vital interests)." (Article 4 ¶ 2(a).) Ironically, such an analysis would require not only the production of information requested in the summons Petitioner's account information at Citibank in the United States but also additional financial information both in India and in the United States as described by Petitioner's experts. Petitioner provides no authority for the proposition that her income tax liability or nonliability in India must be analyzed here before the IRS summons can be enforced. Such an approach would put the cart before the horse.

Turning to Petitioner's other contentions, Petitioner argues that the Indian tax authorities made a misrepresentation when they stated, in the EIR Request, that they "exhausted all means available in their country to obtain the requested information, except those that would give rise to disproportionate difficulty." (O'Connor Decl. ¶ 11.) Petitioner states that India did not ask her for the bank records. (Puri Decl. ¶ 5.) Petitioner also argues that the Indian tax authorities' request for 16 years of bank accounts itself suggests improper purpose on their part.

Petitioner's argument again focuses on the good faith of the Indian tax authorities, not the IRS. Nothing in the Convention requires India to exhaust all means available in India to obtain the requested information. The *Powell* standard asks only whether Indian tax authorities have the information in their possession. *Stuart*, 489 U.S. at 360-61. No one

contends that the Indian tax authorities already have the requested information in their possession. For that matter, there is no evidence in the record that anyone, including Petitioner, has all of the requested information in their or her possession in India such that it would be available to Indian tax authorities using any legal process in India.[3]

Nor does the request for 16 years of bank records raise an inference of improper purpose on the part of the IRS. As discussed above, the time period of the IRS summons is coextensive with the EIR Request's indication that Petitioner is under examination for income tax liabilities relating to the tax periods April 1, 2003 through March 31, 2019. *See Kalra v. United States*, 2014 U.S. Dist. LEXIS 7449, *8 (N.D. Ill. Jan. 21, 2014) (holding petitioner failed to show IRS' bad faith in complying with Indian tax authorities' request; holding "*Powell* factors do not require the IRS to assess the adequacy of the Indian tax practices or the scope of its tax investigation before issuing the summonses for the requested information"). Petitioner suggests that bank records could conceivably contain private information such as personal expenses that may (or may not) be unnecessary to her income tax liability in India. As a threshold matter, there is nothing in the record that describes the nature of her Citibank accounts other than references to a 401(k) account(s). Petitioner's argument is wholly conclusory and her hypothetical does not make any concrete proposal for redaction of any expenses. Khare, one of her experts, examined such factors as a comparison of brokerage accounts in each jurisdiction, credit card payments made in

[3] Petitioner's declaration does not state that she has all of the requested information in India or United States.

each jurisdiction, bank accounts in each jurisdiction, and 401(k) or retirement accounts in each jurisdiction to assess her center of vital interests under the Convention. It is not clear that Petitioner redacted any information provided to the expert. Petitioner certainly has not provided the court sufficient information to assess any request for redaction. Although Petitioner argues that she has a family member who is in the political opposition, she does not suggest any way in which her bank account information in the United States could be used to harass the political opposition.

Finally, Petitioner's fear that the Indian tax authorities may attempt to share her financial information with other Indian government agencies not involved in income tax liability is conclusory and speculative. The IRS declaration states that any improper use of the information would be protested and, if continued, would lead to recommendations to terminate the Convention. (O'Connor Decl. ¶ 14.); *see Yun*, 2000 U.S. Dist. LEXIS 20188, at *9-*10 (noting IRS declaration that improper use of information would be protested was sufficient).

Although Petitioner requests discovery, she does not specify any discovery that would support her allegations of an improper motive on the part of the IRS. Her allegations focus on the Indian tax authorities whether she is a tax resident of India and whether they exhausted whatever legal process exists in India. The court is hard pressed to understand what discovery would be available from the IRS on these topics. The IRS' position is that it is not required to investigate the merits of her claims against the Indian tax authorities. To the extent she complains about privacy issues raised in her bank

records, that information is peculiarly within her own knowledge. Accordingly, Petitioner has not made the requisite showing for discovery or an evidentiary hearing.

IV. Recommendation

For the foregoing reasons, it is recommended that the District Court accept this Report and Recommendation, deny the petition to quash the third party summons to Citibank N.A., and grant Respondent's motion to deny and dismiss the petition.

Initials of Preparer kl

U.S. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

26 U.S.C.A. § 7602

(a) Authority to summon, etc.—For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized—

(1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry;

(2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and

(3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense.—The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of

subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties.—

(1) General notice.—An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which—

(A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and

(B) except as otherwise provided by the Secretary, is provided to the taxpayer not later than 45 days before the beginning of such period.

Nothing in the preceding sentence shall prevent the issuance of notices to the same taxpayer with respect to the same tax liability with periods specified therein that, in the aggregate, exceed 1 year. A notice shall not be issued under this paragraph unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. The preceding sentence shall not prevent the issuance of a notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.

(2) Notice of specific contacts.—The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions.—This subsection shall not apply—

(A) to any contact which the taxpayer has authorized;

(B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person; or

(C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral.—

(1) Limitation of authority.—No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect.—For purposes of this subsection—

(A) In general.—A Justice Department referral is in effect with respect to any person if—

(i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws, or

(ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

(B) Termination.—A Justice Department referral shall cease to be in effect with respect to a person when—

(i) the Attorney General notifies the Secretary, in writing, that—

(I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,

(II) he will not authorize a grand jury investigation of such person with respect to such an offense, or

(III) he will discontinue such a grand jury investigation,

(ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

(iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for

any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in subparagraph (A)(ii).

(3) Taxable years, etc., treated separately.—For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income.—The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(f) Limitation on access of persons other than Internal Revenue Service officers and employees.— The Secretary shall not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to this section to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the Internal Revenue Service. No person other than an officer or employee of the Internal Revenue Service or the Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to this section.

26 U.S.C.A. § 7609

(a) Notice.—

(1) In general.—If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice.—Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even

if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons.—Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

(b) Right to intervene; right to proceeding to quash.—

(1) Intervention.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

(2) Proceeding to quash.—

(A) In general.—Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary.—If any person begins a proceeding under subparagraph (A) with respect to

any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention; etc.—Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

(c) Summons to which section applies.—

(1) In general.—Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

(2) Exceptions.—This section shall not apply to any summons—

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transactions or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar

arrangement) with a bank or other institution described in section 7603(b)(2)(A);

(D) issued in aid of the collection of—

(i) an assessment made or judgment rendered against the person with respect to whose liability the summons is issued; or

(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or
(E)(i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws; and

(ii) served on any person who is not a third-party recordkeeper (as defined in section 7603(b)).

(3) John Doe and certain other summonses.—Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records.—For purposes of this section, the term "records" includes books, papers, and other data.

(d) Restriction on examination of records.—No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made—

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

(e) Suspension of statute of limitations.—

(1) Subsection (b) action.—If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons.—In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period—

(A) beginning on the date which is 6 months after the service of such summons, and

(B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons.—Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

(1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,

(2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and

(3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources. The Secretary shall not issue any summons described in the preceding sentence unless the information sought to be obtained is narrowly tailored to information that pertains to the failure (or potential failure) of the person or group or class of persons referred to in paragraph (2) to comply with one or more provisions of the internal revenue law which have been identified for purposes of such paragraph.

(g) Special exception for certain summonses.—A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

(h) Jurisdiction of district court; etc.—

(1) Jurisdiction.—The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceeding brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g).—The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

(i) Duty of summoned party.—

(1) Recordkeeper must assemble records and be prepared to produce records.--On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such

portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate.—The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses.—Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons.—In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

(j) Use of summons not required.—Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

Convention Article 28

Exchange of Information and Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. The exchange of information is not restricted by Article 1 (General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes, but may disclose the information in public court proceedings or in judicial decisions. The competent authorities shall, through consultation, develop appropriate conditions, methods and techniques concerning the matters in respect of which such exchange of information shall be made, including, where appropriate, exchange of information regarding tax avoidance.

2. The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases, or otherwise. The competent authorities of the Contracting States shall agree from time to time on the list of information or documents which shall be furnished on a routine basis.

3. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and in the same form as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the

other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

5. For the purpose of this Article, the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered):

(a) in the United States, to all taxes imposed under Title 26 of the United States Code; and

(b) in India, to the income tax, the wealth tax and the gift tax.