

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Extra-Ordinary Jurisdiction)

DIVISION BENCH: HON’BLE MR. JUSTICE BISWANATH SOMADDER, CHIEF JUSTICE
HON’BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP (PIL) No. 01/2025

DR. DOMA T. BHUTIAPETITIONER (S)

VERSUS

UNION OF INDIA & ANOTHERRESPONDENT (S)

Appearance:

Dr. Doma T. Bhutia, Petitioner-in-Person.

Ms. Sangita Pradhan, Deputy Solicitor General of India for respondent No.1

Mr. Zangpo Sherpa, Additional Advocate General with Mr. S. K. Chettri, Government Advocate for respondent No. 2.

Date: 04/03/2025

JUDGMENT: (per the Hon’ble, the Chief Justice)

This writ petition has been filed by a designated Senior Advocate, Dr. Doma T. Bhutia, as a Public Interest Litigation (PIL), challenging the vires to Explanation (v) contained under clause (26AAA) of section 10 of the Income Tax Act, 1961, which was introduced by way of amendment in terms of the Finance Act, 2023, insofar as it deals with the definition of the term, “Sikkimese”. According to the writ petitioner, this amendment to the definition of the term “Sikkimese” under section 10 clause (26AAA) of Explanation (v) of the Income Tax Act, 1961, by the Finance Act of 2023, is in violation of Article 371F (k) of the Constitution of India. According to the writ petitioner, it is the responsibility of the State of Sikkim to ensure protection of the old laws including its preservation/protection as provided under Article 371F (k) of the Constitution of India, in public interest.



Without narrating or going into the details of other pleadings, as sought to be made by the writ petitioner, this Court is of the view that the crux of the matter which is sought to be raised by the writ petitioner in the instant Public Interest Litigation is required to be looked into and seen from an objective standpoint.

We find that the genesis of the amendment which was introduced in terms of the Finance Act, 2023, is a judgment of the Hon’ble Supreme Court of India, rendered in the case of *Association of Old Settlers of Sikkim and Others Vs. Union of India and Another* along with *Rapden Lepcha and Others Vs. Union of India and Another*, reported at (2023) 5 SCC 717. That judgment was passed on two writ petitions filed before the Hon’ble Supreme Court under Article 32 of the Constitution of India. One was Writ Petition (C) No. 59 of 2013, *Association of Old Settlers of Sikkim and Others Vs. Union of India and Another*. The other writ petition, being Writ Petition (C) No. 1283 of 2021, *Rapden Lepcha and Others Vs. Union of India and Another*. In the two writ petitions, the writ petitioners prayed for issuance of an appropriate writ, direction or order, striking down section 10 (26AAA) of the Income Tax Act, 1961, more particularly, the definition of “Sikkimese” as contained in section 10 (26AAA) to the extent it excludes Indians who have settled in Sikkim prior to the merger of Sikkim with India on 26th April, 1975. The petitioners also prayed before the Hon’ble Supreme Court for an appropriate writ, order or direction striking down the proviso to section 10 (26AAA) of the Income Tax Act, 1961, insofar as it excludes from the exempted category, “Sikkimese woman”, who marries a non-Sikkimese after 01st April, 2008. The Hon’ble Supreme Court dealt with the matter at length and delivered a judgment discussing the issues brought before it and disposed of both the writ petitions in the following terms:-

“.....

148.1. That the benefit of income tax exemption presently is restricted only to those Sikkimese who fall within the three clauses of the Explanation to Section 10(26-AAA) of the IT Act, 1961, or those persons domiciled in Sikkim, or are Sikkimese as covered under the 1961 Regulations.

148.2. In terms of the Sikkim (Citizenship) Order, 1975 as amended by the Sikkim (Citizenship) Amendment Order, 1989, issued by the Government of India any person who was a Sikkim Subject under the 1961 Regulations was to be deemed to be a citizen of India w.e.f. 26-4-1975. Conversely, it is held that all citizens of India, having a domicile in Sikkim on the day it merged with India i.e. 26-4-1975 must be covered under the Explanation in order to avail the benefit of the exemption under Section 10(26-AAA) of the IT Act, 1961.

148.3. The Union of India shall make an amendment to the Explanation to Section 10(26-AAA) of the IT Act, 1961, so as to suitably include a clause to extend the exemption from payment of income tax to all Indian citizens domiciled in Sikkim on or before 26-4-1975. The reason for such a direction is to save the Explanation from unconstitutionality and to ensure parity in the facts and circumstances of the case.

148.4. Till such amendment is made by Parliament to the Explanation to Section 10(26-AAA) of the IT Act, 1961, any individual whose name does not appear in the Register of Sikkim Subjects but it is established that such individual was domiciled in Sikkim on or before 26-4-1975, shall be entitled to the benefit of exemption.

148.5. This direction is being issued in exercise of powers under Article 142 of the Constitution so as to eliminate discrimination and disparity in respect of the aforesaid category of Sikkimese, who subsequently have become citizens of India w.e.f. 26-4-1975 and to save the Explanation from being rendered unconstitutional vis-à-vis such individuals who form a small percentage of Sikkimese.

148.6. The proviso to Section 10(26-AAA), insofar as it excludes from the exempted category, *"a Sikkimese woman who marries a non-Sikkimese man after 1-4-2008"* is hereby struck down as being ultra vires Articles 14, 15 and 21 of the Constitution of India".

149. Parties to bear their respective costs."

The above judgment of the Hon'ble Supreme Court was rendered on 13th January, 2023.

Consequently, the Finance Act, 2023, was enacted on 31st March, 2023.

The relevant amendment which was introduced by the Union of India through the Ministry of Law and Justice (Legislative Department) reads as follows:-



"(I) for clause (26AAA), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 1990, namely:—

'(26AAA) in case of an individual, being a Sikkimese, any income which accrues or arises to him-

(a) from any source in the State of Sikkim; or

(b) by way of dividend or interest on securities.

Explanation.—For the purpose of this clause "Sikkimese" shall mean—

(i) an individual, whose name is recorded in the register maintained under the Sikkim Subjects Regulation, 1961 read with the Sikkim Subject Rules, 1961 (hereinafter referred to as the "Register of Sikkim Subjects"), immediately before the 26th day of April, 1975; or

(ii) an individual, whose name is included in the Register of Sikkim Subjects by virtue of the Government of India Order No. 26030/36/90-I.C.I., dated the 7th August, 1990 and Order of even number dated the 8th April, 1991; or

(iii) any other individual, whose name does not appear in the Register of Sikkim Subjects, but it is established beyond doubt that the

name of such individual’s father or husband or paternal grand-father or brother from the same father has been recorded in that register; or
(iv) any other individual, whose name does not appear in the Register of Sikkim subjects but it is established that such individual was domiciled in Sikkim on or before the 26th day of April, 1975; or
(v) any other individual, who was not domiciled in Sikkim on or before the 26th day of April, 1975, but it is established beyond doubt that such individual’s father or husband or paternal grand-father or brother from the same father was domiciled in Sikkim on or before the 26th day of April, 1975;’:

During the course of hearing of the matter, the learned Additional Advocate General representing the State of Sikkim has drawn our attention to a Press Release dated 04th April, 2023, issued by the Government of India, Ministry of Finance, Central Board of Direct Taxes (Tax Policy & Legislation Division). The said Press Release is quoted hereinbelow in its entirety:

“.....
New Delhi, 04th April, 2023

PRESS RELEASE

Amendment to section 10(26AAA) of the Income-tax Act, 1961 by the Finance Act, 2023

Following the Hon’ble Supreme Court’s decision in Writ Petition (C) No. 59/2013 with 1283/2021, certain amendments have been made in clause (26AAA) of section 10 of the Income-tax Act, 1961 by the Finance Act, 2023.
For the purposes of removal of doubts, it is hereby clarified that the term “Sikkimese” defined for the purposes of the said clause, is **only for the purposes of the Income-tax Act, 1961, and not for any other purpose.**
.....”

It appears that the writ petitioner has also referred to the above clarification in paragraph 34 of her writ petition. However, according to her, the said clarification is insufficient and is without any legal basis. According to the writ petitioner, this arbitrary inclusion of Explanation (v) of Section 10 (26AAA) of Income Tax Act, 1961, undermines the sanctity of the rights and privileges reserved for genuine indigenous Sikkimese as protected under Article 371F of the Constitution of India. The said Explanation (v) of section 10 (26AAA) of the Income Tax Act, 1961, therefore requires to be struck off from the Income Tax Act, 1961 and the Finance Act, 2023.

On a careful reading of the clarification provided as per the “Press Release” dated 04th April, 2023, makes it abundantly clear that the term **“Sikkimese”**

defined for the purpose of clause (26AAA) of section 10 of the Income Tax Act, 1961, by the Finance Act, 2023, is only for the purpose of Income Tax Act, 1961, and **not for any other purpose** (emphasis supplied).

In that view of the matter, we do not find that this clarification or explanation touches upon the sanctity of the rights and privileges reserved for genuine indigenous Sikkimese which are carefully preserved and protected under Article 371F (k) of the Constitution of India.

In such circumstances, we do not find any justifiable reason to entertain the writ petition, which is liable to be dismissed and stands accordingly dismissed.

(Meenakshi Madan Rai)
Judge

(Biswanath Somadder)
Chief Justice

jk/ds/ab/ami

