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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2277 OF 2023

Laxminath Investment & Management
Consultants Pvt. Ltd. .. Petitioner
Versus
Principal Commissioner of Income Tax-4 & Ors. .. Respondents

Mr. Shreyas Shah for the petitioner.

Mr. Subir Kumar a/w Mr. Abhinav Palsikar and Ms. Ashita Aggarwal for
the respondents.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**
DATE : 7 January 2025

PC. (M. S. Sonak, J.) :-

1. Heard learned counsel for the parties.
2. This petition challenges the order dated 22 February 2023, made under Section 127 (2) of the Income Tax Act, 1961, transferring the petitioner's case from the jurisdictional officer in Mumbai to the counterpart in New Delhi.
3. Mr. Shah, learned counsel for the petitioner, urges two contentions supporting this petition. Firstly, he submitted that the impugned order is bereft of reasons. He pointed out that the requirement to give reason, apart from one of the essential facets of principles of natural justice, is a statutory requirement under Section 127 (2) (a) of the Income Tax Act, 1961. In the absence of reasons, he submitted, the impugned order calls for interference.

4. Secondly, Mr. Gandhi submitted that there was no agreement between the Principal Commissioners of Mumbai and Delhi for the proposal of such a transfer. Again, he submitted that such agreement is a *sine qua non* for exercising powers under Section 127 (2) of the Income Tax Act and in the absence of such agreement, the impugned order becomes vulnerable.

5. Mr. Shah referred us to some of the documents on record to submit that the respondents' consent case was incorrect and was riddled with inconsistencies. He also relied upon the Supreme Court's decision in the case of *Noorul Islam Educational Trust vs. Commissioner of Income Tax-I*¹ in an attempt to make good his argument.

6. Mr. Subir Kumar, learned counsel for the respondents, defended the impugned order based on the reasoning reflected therein. He pointed out that there was full compliance with principles of natural justice and that the impugned order contained sufficient and cogent reasons. He pointed out that there was an agreement between two Commissioners, and this position is reflected in the documents on record, of which necessary cognisance has been taken in the impugned order. He submitted that a fair and transparent procedure was followed, and this transfer is not restricted only to the petitioner but, in all, to about 46 assesseees who had transactions with the "Pacific Group." He submitted that the coordinated and centralised investigation was imperative in this matter; therefore, there was no warrant to interfere with the impugned order.

7. The rival contentions now fall for our consideration.

8. Section 127 (2) of the Income Tax Act is relevant in the context of the challenge raised in this petition and, therefore, we transcribe this provision for the convenience of reference:-

1 (2016) 76 taxmann.com 144 (SC)

“127. Power To Transfer Cases -

(1)

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is transferred are not subordinate to the same [Principal Director General or] Director General] or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner,-

(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3)

(4)

9. Section 127 (2) thus contemplates an agreement between the two Commissioners, i.e., the Commissioner from where the proceedings are proposed to be transferred and the Commissioner of the place to where such proceedings are proposed to be transferred. The provision also contemplates granting a reasonable opportunity to the assessee to be heard in the matter wherever it is possible to do so and, further, recording reasons for the transfer.

10. On perusing the impugned order dated 22 February 2023, we are satisfied that it contains reasons. The petitioner’s objections were duly

considered, and because certain clarifications were found to be necessary at one stage, they were sought from the Commissioner at Delhi. Upon due consideration of the petitioner's objections and the clarifications received from the Commissioner at Delhi, the impugned order has been made, giving reasons for the transfer.

11. The impugned order notes that the cases are centralised with Central Circle for coordinated investigation in group cases to protect the interest of revenue. The convenience of the assessee is adverted to, but the impugned order observes that this aspect is secondary and may have to yield to the more significant interest of centralised and coordinated investigation. The order also records that the centralisation is for a limited period, and once the assessment concludes as per the norms, then there would be de-centralization. The impugned order also refers to certain precedents of the Hon'ble Supreme Court and the jurisdictional High Courts.

12. The impugned order reasons that the contentions of the inconvenience raised by the assessee can always be addressed through modern technological advances, thereby obviating the necessity of extensive travel by the assessee or its representatives. The impugned order also refers to protecting the revenue's interest, which a coordinated investigation could fairly achieve. The impugned order records that all cases of Pacific Group are being assessed at Delhi in a centralised place. Consequently, there would be no good reason to exclude only the case of the petitioner-assessee.

13. At this stage, we cannot delve deeply into the arguments and counterarguments about the merits of such reasons despite Mr. Shah's persuasion. However, the charge that the impugned order is unreasoned must fail. At least prima facie, the reasons cannot be considered

irrelevant or extraneous. Therefore, we find no infirmity in the impugned order on the ground that it is bereft of reasons.

14. The second contention relates to the alleged absence of agreement between the two Commissioners. Again, for the reasons discussed hereafter, we are satisfied that the petitioner has not made out any such case to warrant interference with the impugned order on this ground.

15. From the affidavit-in-reply filed on behalf of the respondents, we now find that a proposal was made by the Chief Commissioner of Income Tax (Central), New Delhi, on 13 September 2022 to the Principal Commissioner of Income Tax (Central)-2, New Delhi regards the proposed transfer. Based upon the same, the Principal Commissioner of Income Tax-4 wrote to the Chief Commissioner of Income Tax-2, Mumbai, on 2 December 2022, seeking approval. The Chief Commissioner of Income Tax-2 granted such approval vide communication dated 8 December 2022. This communication dated 8 December 2022 grants specific consent in this regard, as is evident from the perusal of the communication. Thus, it is apparent that there was complete agreement between the two Commissioners on transferring the proceedings from Mumbai to Delhi.

16. Mr. Shah, however, relied upon certain other correspondence to submit that there was no agreement by 8 December 2022. In particular, he referred to the communications dated 29 December 2022 and 16 February 2023.

17. As noted earlier, Section 127 (2) of the Income Tax Act contemplates granting the assessee a reasonable opportunity to be heard. Such opportunity was given to the petitioner-assessee. In the objections filed by the petitioner-assessee, specific issues were flagged. Therefore, by communication dated 29 December 2022, the Principal Commissioner

of Income Tax-4, Mumbai, wrote to the Principal Commissioner of Income Tax (Central)-2, New Delhi, to provide evidence/documents so that the objections raised by the petitioner-assessee would be considered fairly and reasonably.

18. By response dated 16 February 2023, the Principal Commissioner of Income Tax in New Delhi clarified the matter. Reference was made to the bogus transaction allegedly undertaken by the petitioner as a service provider to the extent of Rs.1 crore during FY 2021-22. Reference was also made to the entities belonging to “Pacific Group” having claimed bogus expenses in their transactions with the petitioner-assessee. This communication records that the transactions, if assessed without considering the modus of evasion carried out by the Pacific Group, may result in a loss of revenue.

19. Thus, the communications dated 29 December 2022 and 16 February 2023 were in the context of the fair hearings offered to the petitioner. Based on these communications, we cannot sustain any argument regarding the alleged absence of agreement between the two Commissioners.

20. The decision in *Noorul Islam Educational Trust (supra)* turns on its own facts where no consent or documents evidencing any agreement between the two Commissioners was produced on record. The only contention raised in the counter affidavit was that there was no disagreement between the two Commissioners. In this context, the Hon’ble Supreme Court observed that Section 127 (2) (a) of the Income Tax Act contemplates a positive state of mind of the two jurisdictional Commissioners of Income Tax, which was conspicuously absent. As noted earlier, in the present case, the two jurisdictional Commissioners have applied their minds and consciously agreed to the transfer

proposal. Therefore, the decision in *Noorul Islam Educational Trust (supra)* would not apply and cannot be grounds for interfering with the impugned order.

21. Accordingly, we are satisfied that the impugned order is not vulnerable on the two grounds alleged by the petitioner. We see no infirmity in it that warrants interference in the exercise of our extraordinary jurisdiction.

22. For all the above reasons, we dismiss the petition without any order for costs. Interim relief, if any, is vacated.

(Jitendra Jain, J.)

(M. S. Sonak, J.)