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

WRIT PETITION NO. 1204 OF 2015

M/s Zodiac Developers Pvt. Ltd. ..Petitioner

Vs.

Principal Commissioner of Income Tax-8,
Mumbai ..Respondent

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Mr. S.C. Tiwari, Advocate for Petitioner.
Mr. Nirmal Mohanty, Advocate for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 18th JUNE 2015

P.C.:

At the request of the Counsel, the petition itself is being disposed of at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 18 February 2015 passed by the Principal Commissioner of Income Tax under Section 127(2) of the Income Tax Act, 1961 (the 'Act'). By the impugned order, the petitioner's case i.e. income tax proceedings pending with the

Income Tax Officer, Mumbai have been transferred to Assistant Commissioner of Income Tax (the 'ACIT'), Aurangabad.

3. The petitioner carries on business as Builders and Developers in Mumbai. On 6 January 2015, the office of the Chief Commissioner of Income Tax issued a show cause notice to the petitioner calling upon the petitioner to show why the petitioner's proceedings (case) pending with the ITO, Mumbai should not be transferred to ACIT, Aurangabad for the sake of co-ordinated investigation. As the above notice was bereft of particulars, the petitioner by letter dated 27 January 2015 requested the Commissioner of Income Tax for better particulars in support of the proposed action of transfer of its case from Mumbai to Aurangabad. In response, the office of Principal Commissioner of Income Tax by letter dated 6 February 2015 pointed out that the basis of centralization of petitioner's case to Aurangabad was the search carried out by the Director of Income Tax, Nagpur and the papers obtained during the course of the search carried out at Jhaveri Groups of Companies. It was on the aforesaid ground that the

revenue sought centralization of all the cases dealing with the Jhaveri Group of Companies for coordinated inquiry and investigation.

4. The petitioner responded to the show cause notice by its reply dated 16 February 2015 and pointed out that they are in no manner connected with the Jhaveri Group of Companies. They are independent group carrying on the business as developers in Mumbai and the only connection they have had with the Jhaveri Group of Companies is that certain flats in buildings developed/constructed by them have been sold by them to the members of the Jhaveri Group of Companies. In the aforesaid circumstances, it was submitted that the transfer of its case from Mumbai to Aurangabad was not warranted.

5. Thereafter, a personal hearing was granted to the petitioner by the Principal Commissioner of Income Tax. At the hearing, the petitioner reiterated the submissions in its reply. Consequent thereto, the Principal Commissioner by impugned order

dated 18 February 2015 allowed the transfer under Section 127(2) of the Act for the following reasons:

> *"I have gone through the letter of DIT (Investigation), Nagpur along with its Annexure and I have also carefully considered the submissions of the assessee pertaining to objection against centralization of this case. Having done so, I am of the considered view that in view of the fact as clearly stated in the letter of DIT (Investigation), Nagpur that search and seizure action was carried out in respect of premises of Zodiac Developers Pvt. Ltd. and this Group is related to Jhaveri Group."*

6. From the above, it is clear that the impugned order does not deal with any of the submissions made by the petitioner resisting the transfer of its case from Mumbai to Aurangabad. Besides, Mr. Tiwari, the learned Counsel appearing for Petitioner informs us that the letter of Director of Income Tax (Investigation), Nagpur which forms the basis of transfer of the petitioner's case was not made available to the petitioners even though the impugned order has been passed relying upon the same. Thus we find that the impugned order has been passed in breach of principles of natural

justice in as much as evidence in the form of DIT (Investigation) letter which has been relied upon the impugned order was never furnished to the petitioners. Therefore the petitioner was unable to make appropriate submission with regard to the same. Further, the impugned order is a non-speaking order as it merely states that the submission of petitioner has been considered and having done so, it is concluded the transfer of the case is warranted. Thus the impugned order is a non-speaking order and in breach of principles of natural justice in as much as it relies upon evidence of which no notice was given to the petitioners.

7. Accordingly we set aside the impugned order dated 18 February 2015. Needless to state it would be open to the revenue to pass fresh order after following the principles of natural justice. The petition is disposed of in the above terms. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**