IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 26503 of 2014
Date of agruments:- 21.05.2015
Date of Decision:- 08.07.2015

M/s. RSG Foods Pvt. Ltd. ......Petitioner(s)

vs.

Commissioner of Income Tax, Bathinda and others ......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sandeep Goyal, Advocate,
for the petitioner.

Mr. Suneel Ranga, Advocate,
for Mr. G.S. Hooda, Advocate,
for respondents no. 1 and 2.

G.S.SANDHAWALIA, J.

Challenge in the present writ petition is to the order dated 08.10.2014 (Annexure P-13) passed by respondent no. 1 under Section 127 (2)(a) of the Income Tax Act, 1961 (in short 'the Act') whereby, the petitioner's jurisdiction for the purpose of assessment proceedings has been changed from the Assessing Officer at Circle-III, Ferozepur to the Central Circle, Amritsar on the ground of a coordinated investigation of the concerned group of cases and in the interest of administrative convenience. The subsequent notices dated 11.12.2014 (Annexures P-14 and P-15) which have been issued in pursuance to the transfer of the case under Section 127 and asking for information by the Deputy Commissioner of Income Tax, Central Circle, Amritsar and to appear before the said officer are also subject matter of challenge.

The pleaded case of the petitioner is that it is engaged in the business of rice shelling at village Sandhe Hasham, Zira Road, Ferozepur. The company has two directors and 11 share holders closely related to each other. One of the family members of the Directors had sold certain portion of its land about 3-4 years back to the Narula Group of Companies (in short 'NGC'), who had set up a solvent plant by the name of Sat Kartar Solvex Pvt. Ltd. and the petitioner company is running a rice sheller and the said solvent plant had no similarity of business which was located adjoining the business premises of the petitioner-company. However, due to shortage of space, 31,589 bags of paddy had been stocked in the premises of M/s. Sat Kartar Solvex Pvt. Ltd. The rice bran, which is one of the by-products of the shelling, is also sold to the said company as a normal business transaction and there was otherwise no similarity or relationship with the NGC, who were not residents of Ferozepur.

On 05.12.2013, search and seizure operation under Section 132 of the Act was carried out on the said NGC which is based at Guru Har Sahai, Amritsar. The petitioner was thereafter served a notice dated 22/23.01.2014 (Annexure P-2) wherein, it was averred that the petitioner was sufficiently related to the NGC and, therefore, there was a proposal that the jurisdiction of its case was to be centralized with the DCIT/ACIT, Central Circle, Amritsar for purposes of coordinated investigation and administrative convenience. Objections were accordingly invited, to which the petitioner replied taking the plea that it was an independent company and having a separate PAN number and there were no common premises and neither their premises had been searched. There were no family members of the above said group who were share holders and neither there was an introduction of any capital loan from the group or vice versa. Reliance was also placed upon the judgment of this Court in ***Rajesh Mahajan and others vs. CIT and others, (2002) 257 (ITR) 577.*** Information was also sought from the respondents as to on what basis they had recorded a finding that the two groups were attached. Accordingly, the petitioner was supplied the 4 reasons on 22.05.2014 (Annexure P-7) due to which the centralization was sought to be done. That the petitioner thereafter replied on 24.07.2014 (Annexure P-10) that the reasons given were wrong and prayed for an opportunity of being heard. The said reasons were again objected to on 04.09.2014 (Annexure P-12) which lead to the passing of the order transferring the jurisdiction from Ferozepur to Amritsar, as noticed above. The reasons and reply thereto read thus:

Sr. No.	Reasons	Reply
1.	The Stock of Paddy of 31,589 Bags of the concern of M/s. RSG Foods Pvt. Ltd. was found lying at the premises of M/s. Satkartar Solvex Pvt. Ltd., in Village Sandhe Hasham, Ferozepur	That M/s. RSG Foods Pvt. Ltd. and M/s. Satkartar Solvex Pvt. Ltd. are dealing in the similar line of products doing regular business transactions and even the business premises of both the parties is opposite to each other. Hence, the bags of paddy relating to M/s. RSG Foods Pvt. Ltd. found in the premises of M/s. Satkartar Solvex Pvt. Ltd. was merely a normal business dealing made by them to store the stock in the godown of M/s. Satkartar Solvex Pvt. Ltd. due to lack of storage space in the premise of M/s. RSG Foods Pvt. Ltd. at that moment. **It cannot lead to any business relation/connection calling certralization of RSG Foods Pvt. Ltd. alongwith M/s. Satkartar Solvex Pvt. Ltd.**

2.	The statement of Sh. Ravi Narula (Director in Narula Group) and Sh. Pankaj Garg (family member of Director of M/s RSG Foods Pvt. Ltd.) were recorded and they both admitted that no lease money or rent is being paid by the concern M/s RSG Foods Pvt. Ltd to M/s Sarkartar Solvex Pvt. Ltd. for utilizing the space provided by the concern M/s Satkartar Solvex Pvt. Ltd. to M/s RSG Foods Pvt. Ltd. Thus it is clear that the stock of Paddy was not lying there due to landlord-tenant relation but due to close business relations between these concerns.	That, M/s RSG Foods Pvt. Ltd. is not related/connected even remotely with the said group Le. M/s Narula Foods Pvt. Ltd. And M/s Satkartar Solvex Pvt. Ltd and the lease agreement was not there because the storage was made for just a few days. Also, it is a normal business practise not to enter into as agreement for such a short period. **It cannot lead to any business relation/connected-calling centralization of RSG Foods Pvt. Ltd alongwith M/s Satkartar Solvex Pvt Ltd.**
3	Also the land from where the concern M/s. Satkartar Solvex Pvt. Ltd. is functional, was earlier owned by M/s RSG Foods Pvt. Ltd. This land was purchased by M/s. Satkartar Solvex Pvt. Ltd. from M/s. RSG Foods Pvt. Ltd. about 3 to 4 yers back. This fact has been admitted by Sh. Ravi Narula in his statement which was recorded during the course of Survey operations u/s 133A of the Income Tax Act, 1961.	That, the contention raised by the Assessing Officer regarding the sale of land by M/s. RSG Foods Pvt. Ltd. to M/s Satkartar Solvex Pvt. Ltd. has no nexus with the issue in hand and to conclude merely on this basis that the two parties are interlinked is totally baseless and unfair. Sale of land by *M/s* RSG Foods Pvt. Ltd. to M/s. Satkartar Solvex Pvt. Ltd. was a normal transaction. **It cannot lead to any business relation/connection calling centralization of RSG Foods Pvt. Ltd alongwith M/s $atkartar Solvex Pvt Ltd.**

4	Also the concerns M/s. RSG Foods Pvt. Ltd. and M/s. Satkartar Solvex Pvt. Ltd. are having business transactions relating to purchase and sale of Rice Bran with each other. The concern M/s. RSG Foods Pvt. Ltd. is selling Rice Bran to the concern M/s. Satkartar Solvex Pvt. Ltd.	That, the parties doing business transactions with each other is in normal course of business as is done by numerous business entities with Satkartar Solvex Pvt. Ltd. But we are unable to comprehend how two parties doing normal business transactions can be termed as "CLOSLY INTERLINKED". **It cannot lead to any business relation/connection calling centralization of RSG Foods Pvt. Ltd alongwith M/s Satkartar Solvex Pvt Ltd.** That, the **contention mentioned** in the letter- **"Two Concerns *are* closely interlinked"** is totally wrong & without any basis in view of evidences on the following basis : i) We are an Independent Company having Regd. Office at Vill Sandhe Hasham, Zira Road, Ferozepur having PAN-AABCR3974Q since its incorporation ii) That, at the time of search no premises of our company has ever been searched/or any summons/search warrant has ever been made/issued against our Company iii) That, our Company is regularly assessed with the ACIT, Ferozepur & our list of share holders is on the official records of the Department, in which there is **no family members/relatives of M/s Satkartar Solvex Pvt Ltd as a share holder.** iv) That, there is no introduction of any capital/loans from the said group or vice/versa. v) That, it is further evidenced from the bank loan raised by our Company, in which there is no documentation/guarantee by the said group/family members of that Group of cases.

In the written statement filed, it has been pleaded that there was no prejudice caused to the petitioner as it has only to appear before the Assessing Officer at Amritsar which is equidistantly placed from Bathinda. The petitioner was not a person of such small means as to be adversely affected and the determining factor was that land had been transferred to the NGC by the Directors and an opportunity of hearing was given after taking into consideration all the objections of the petitioner.

Counsel for the petitioner has submitted that no valid reasons as such have been given for transferring the case and the order is not sustainable whereas, counsel for the revenue, on the other hand, had defended the said order and said that the detailed reasons have been mentioned and a well reasoned and speaking order has been passed, which is liable to be upheld.

Section 127 of the Act provides the power to transfer cases after giving the assessee reasonable opportunity of being heard in the matter wherever it is possible to do so.

In the present case, there is no denying the fact that the assessee has been heard. The issue that arises as to whether the reasons recorded for transfer of the case from Ferozepur to Amritsar is on the basis of some rationale which is sought to be justified merely on the ground that there was close nexus between the petitioner and the NGC. The reasons which have prevailed were that there were 31,589 bags of the petitioner firm lying in the premises of M/s. Sat Kartar Solvex and in the absence of any consideration and on account of no rent being charged, it is presumed that they are closely inter linked. The same land had been sold to M/s. Sat Kartar Solvex by the petitioner-assessee 3-4 years back and if there was shortage of land, why was it sold and since both entities were doing the similar business of manufacturing rice and its by-products and, therefore, the question of sale and purchase from each other did not arise.

The said reasoning, as noticed, cannot be merely on the basis of the fact that a coordinated investigation is required for looking into the transactions of NGC, who apart from being a purchaser of the adjoining land, is having normal business dealings without coming to any valid conclusion that the parties are inter se deeply connected as such and that the petitioner itself was also a party to evasion of tax alongwith the NGC. Only if the authorities came to a valid conclusion such as on the basis of some substantiated material, either in the form of material documents or in the form of statements, the authorities would have a valid justification to transfer the cases under Section 127 of the Act. Merely because some stock of paddy was lying on the adjoining premises which is not disputed and there was no rent agreement as such inter se the parties would not be a ground to link the parties in such a manner as has been sought to be done by respondent no. 1. The fact that the land had earlier belonged to the petitioner and had been sold could not as such be questioned in the manner in which it has been done that if there was shortage of space, why the land was sold. If the petitioner has sold the land for business or commercial exigency, the same cannot be questioned merely due to storage of the said paddy bags and it could not be a valid ground for the authorities to come to a conclusion that the jurisdiction of the assessment proceedings had to be transferred to Amritsar. No finding had been recorded that the Directors of the petitioner-company were also Directors in the NGC and that there were large number of transactions inter se vide which the tax had been evaded and that the petitioner was a key associate. Merely because the parties were doing business in the normal course inter se, would not be a ground as such to transfer the assessment in the absence of any major financial nexus, as such, a ground would result in transferring other assessments of assessees who were doing business with the NCG. The reasoning, thus, which has been resorted to by respondent no. 1 cannot be held to be justified in any manner as the serious rights of the petitioner are involved as assessment is to be transferred for all purposes to a far off place to its detriment. In similar circumstances, a Single Bench of this Court in *Rajesh Mahajan's case (supra)* has held that even if the transferee is one of the Directors, it was not a valid justification for the transfer of income tax proceedings. Firstly, it is essential, that the show-cause notice issued under Section 127 of the Act, discloses to the assessee the reasons/basis of the contemplated action in terms of the mandate of the rules of natural justice. Exceptions to this essential ingredient would be the same as the exceptions to the rules of natural justice. Secondly, an assessee has the right to file objections on the receipt of a show-cause notice issued under Section 127 of the Act. In the absence of such liberty, the assessee cannot be stated to have been afforded a "reasonable opportunity" as is contemplated by the aforesaid provision. Thirdly, the reasons recorded in the final order passed under Section 127 of the Act (by which the concerned/competent authority decides to execute the proposed action contemplated in the show-cause notice), must not only take into consideration the objections raised by the assessee, but the reasons recorded in the order must also have a direct nexus/bearing to the object sought to be achieved. Fourthly, belief/suspicion even though bona fide cannot be sufficient justification for taking recourse to any of the actions contemplated under Section 127 of the Act. For a valid order under Section 127 of the Act, the reasons expressed must disclose an actual financial, commercial or other relevant nexus justifying the action. Thus, in the absence of any independent finding recorded by the authorities below that the parties were as such linked in such a manner where there was major flow of finances from one side to the other, respondent no. 1 was not justified in transferring the proceedings and the said action cannot be held to be justified.

Accordingly, the present writ petition is allowed and order dated 08.10.2014 (Annexure P-13) is quashed. Resultantly, the notices issued from the respondents at Amritsar Annexures P-14 and P-15 are also set aside.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

08.07.2015
shivani