Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1901 OF 2016
IN
WRIT PETITION NO.6882 OF 2016

Jaipratapsingh Kotwalsingh Chauhan ..Applicant
Versus
Ms. Usha S. Nair,
Principal Commissioner of Income Tax-14
& Ors. ..Respondents

....
Mr. Jitendra Jain a/w Ganesh Ambekar i/b. M/s. Thakore Jariwala & Asso. for the Applicant.
Mr. Ashok Kotangle for the Respondents.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 10th AUGUST, 2016

P.C.:

This Civil Application has been taken out by the applicant to amend the petition no.6882 of 2016 so as to bring on record the delay in moving the petition and also explain the delay.

2. The impugned order of transfer under Section 127 of the Income Tax Act, 1961 (the Act) was passed on 9th October, 2015. By the impugned order the petitioner's assessment proceedings (case) was transferred from Pune to Chennai. The petition was filed on 6th June, 2016. The present application seeking to amend the petition was filed on

12th July, 2016.

3. On 13th July, 2016, the petition was adjourned to be heard along with this Civil Application. Both are on board, we first take up this Civil Application.

4. The explanation which is offered by the applicant in paragraph 3 of the application is that on the receipt of the impugned order dated 9th October, 2015 he made enquiries and learnt that Serenity Traders Pvt. Ltd. (of which he is a Director as mentioned in para 1 of the petition) in whose case also an order under Section 127 of the Act was issued for transfer of proceedings from Mumbai to Chennai was a subject matter of challenge before this Court. The applicant states that he bonafide believed that if the challenge by Serenity Traders Pvt. Ltd. to the transfer order made under Section 127 of the Act is allowed then the benefit of that order will enure to him. The application does not state how and why but presumably because he is a Director of Serenity Traders Pvt. Ltd. The application states that the petition filed by Serenity Traders Pvt. Ltd. was allowed by this Court by an order dated 2nd March, 2016. It was thereafter that the applicant consulted his Advocate and was informed that he should file an independent petition challenging the order of transfer under Section 127 of the Act in his case. Consequently, the accompanying petition was filed on 6th June, 2016. It may be mentioned

that on 1st March, 2016 the Assistant Commissioner of Income Tax at Chennai exercised jurisdiction consequent to the transfer and had issued notice to the applicant under Section 153A of the Act on 1st March, 2016.

5. This application does not even make any attempt to explain the delay from 2nd March, 2016 to 6th June, 2016 when the petition was filed. Further the averments with regard to the reasons for delay should have been stated in the petition as filed. In any case, the reasons sets out for the delay in filing the petition does not inspire confidence. It appears that the petitioner had accepted the order dated 9th October, 2015 transferring the petitioner's case from Pune to Chennai. However it is only when the Assistant Commissioner of Income Tax at Chennai exercised his jurisdiction under Section 153A of the Act on 1st March, 2016 by issuing the notice that this petition to challenge the order of transfer has been filed.

6. In the above view, we see no reason to allow the amendment sought by the applicant.

7. Thus, the Civil Application is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

wadhwa