

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

WRIT PETITION NO. 869 OF 2016

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

v/s.

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

Mr. S.C. Tiwari a/w Ms. Rutuja Pawar for the petitioner
Mr. Nirmal Mohanty for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 18th APRIL, 2016.**

Oral Judgment : - (Per M.S. Sanklecha, J.)

1. This petition was admitted and Rule issued on 14th March, 2016. At the request of the Counsel, the petition was expedited and fixed for hearing on 16th April, 2016. Thus, the petition was partly heard on 16th April, 2016 and concluded today.

2. This petition under Article 226 of the Constitution of India challenges the order dated 21st December, 2015 passed by the Principal Commissioner of Income Tax. The impugned order passed under Section 127(2) of the Income Tax Act, 1961 (the Act) transfers the petitioner's case from an Income Tax Officer in Mumbai to A.C.I.T.

Central Circle-1, Aurangabad.

3. Brief facts :-

(a) The petitioner carries on business of Builders and Developers i.e. constructing flats for Sale in and around Mumbai. The petitioner is being assessed to income tax in Mumbai since Assessment Year 1996-97.

(b) By a communication dated 6th January, 2015, the Commissioner of Income Tax-8, Mumbai issued a show-cause notice to the petitioner proposing to transfer the petitioner's case under Section 127(2) of the Act from Mumbai to A-CIT, Central, Circle, Aurangabad. The basis for the proposed transfer is centralization of Jhaveri Group for purposes of co-ordinated investigation along with other cases and Administrative convenience.

(c) On 27th January, 2015, the petitioner responded to the show-cause notice *inter alia* pointing out that its principal place of business is in Mumbai with even its Directors residing and being assessed to tax at Mumbai. Further, it does not belong to Jhaveri Group of Companies. Therefore, the petitioner's case need not be transferred from Mumbai to Aurangabad. In any event, to respond more appropriately the details of the evidence for transfer the petitioner's income tax proceedings from

Mumbai to Aurangabad was sought.

(d) In response, the Commissioner of Income Tax by letter dated 6th February, 2015 *inter alia* pointed out during a search on the petitioner by the Directorate of Income Tax (Investigation), Nagpur, documents were recovered which would require further investigation along with that of Jhaveri Group of Companies, Aurangabad who are assessed at Aurangabad.

(e) On 16th February, 2015, the petitioner by its reply pointed out that no search was carried out at its premises. Further, it did not belong to the Jhaveri Group nor are they in any way related to them. The only connection with the Jhaveri Group was the fact that flats in a building constructed by them were booked by the members of the Jhaveri Group. This would not make them a part of Jhaveri group. In the above view, the petitioner requested for the withdrawal of the proposal to transfer the petitioner's case to Aurangabad.

(f) On 18th February, 2015, the Principal Commissioner of Income Tax passed an order under Section 127(2) of the Act transferring the petitioner's case from from Mumbai to Aurangabad. The basis of the transfer as recorded in the order dated 18th February, 2015 was letter from D.I.T. (Investigation) Nagpur, which purports to record that the search and seizure was carried out in the premises of the petitioner,

which is related to the Jhaveri Group. In the above view, for the purpose of co-ordinated investigation, the petitioner's case was transferred from Mumbai to A-CIT, Central Circle, Aurangabad.

(g) Being aggrieved, the petitioner challenged the order dated 18th February, 2015 before this Court by filing Writ Petition No.1204 of 2015. By an order dated 18th June, 2015, this Court quashed and set aside the order dated 18th February, 2015 passed by the Principal Commissioner of Income Tax under Section 127(2) of the Act. This on the ground that the order relied upon a letter from Directorate of Income Tax (Investigation), Nagpur for the purposes of transferring the petitioner's case from Mumbai to Aurangabad even without having made the same available to the petitioner. This resulted in the petitioner not making appropriate submissions with regard to the letter from the Directorate of Income Tax (Investigation), Nagpur. Thus, in breach of principles of natural justice. Further the order dated 18th February, 2015 was found by this Court to be a non-speaking order for the reason it did not deal with the submissions made by the petitioner. However, the Revenue was given liberty to pass a fresh order after following the principles of natural justice.

4. Consequent to the above, on 2nd July, 2015 a notice was issued to

the petitioner proposing to transfer the petitioner's case from Mumbai to Aurangabad under Section 127(2) of the Act. The basis for the transfer was co-ordinated investigation along with other connected cases for Administrative convenience. No reference was made to the letter from the Directorate of Income Tax (Investigation), Nagpur which was relied upon earlier.

5. On 14th July, 2015, the petitioner filed its reply to the show-cause notice *inter alia* pointing out as under :-

(a) It is in the process of constructing a building comprising of 78 flats at Vile Parle (W), Mumbai. Many of the flats are booked by during the construction stage.

(b) 3 out of 78 flats in the building being constructed have been booked for sale to the persons belonging to the Jhaveri Group. These persons appear to reside in Mumbai but are assessed to tax in Aurangabad due to business being at Aurangabad. Similarly, other flats have been booked by the persons who have business interest at places other than Mumbai such as Pune etc.

(c) It has no business connection with Jhaveri Group (i.e. purchasers of 3 flats from Aurangabad) or does it have any business activity in Aurangabad.

(d) There is no relationship between the Jhaveri Group and the petitioner, save and except the purchase of 3 flats in the building being constructed by members of the Jhaveri Group.

(e) The transfer of the cases would cause them acute hardship as all its activities are centered around Mumbai coupled with no connection to Aurangabad.

(f) Lastly, the co-ordinated investigation and Administrative convenience for transfer of the case from Mumbai to Aurangabad is only for the purpose of sale of 3 flats out of 78 flats to persons belonging to the Jhaveri Group who are assessed in Aurangabad. The Assessing Officer situated in Bombay is competent to assess the petitioner in respect of its income. Thus, no transfer of the case is made out.

6. Thereafter, on 3rd November, 2015, at the personal hearing granted to the petitioner by the Commissioner of Income Tax, two pages of seized documents namely 72 and 74 along with the statements of one Abhishek Jhaveri and one Mr. Vipul Rajnikant Khona dated 20th August, 2014 and 14th October, 2014 respectively were given to the petitioner. Consequent to receipt of these documents on 24th November, 2015, the petitioner filed a further reply resisting the

proposed transfer of the petitioner's case from Mumbai to Aurangabad. In its reply the petitioner further pointed out that it appears that the entire basis of transferring the case are two loose papers discovered while carrying out search of the Jhaveri Group. In the circumstances, it would be unreasonable to transfer the entire assessment jurisdiction of the petitioner's to Aurangabad.

7. On 21st December, 2015, the Principal Commissioner of Income Tax passed the impugned order transferring the petitioner's case from Mumbai to Aurangabad. This essentially, on the ground that one of the buyers namely Abhishek Jhaveri had become a witness for the Department having admitted to paying cash money to the petitioner. It is on the basis of the above admission that investigation is required to be done in the case of the petitioner and for that purpose it would be necessary to transfer the petitioner's case from Mumbai to Aurangabad.

8. The petitioner challenged the impugned order dated 21st December, 2015 and in support thereof submits as under :-

(a) The impugned order dated 21st December, 2015 transferring the petitioner's case from Mumbai to Aurangabad is an order in breach of principles of natural justice inasmuch as the show-cause notice issued

to the petitioner does not indicate the basis of the transfer save and except stating that the same is necessary for co-ordinated investigation and Administrative convenience.

(b) The impugned order dated 21st December, 2015 is a non-speaking order inasmuch as it does not consider and deal with the petitioner's objections as recorded in its letter dated 14th July, 2015.

(c) The impugned order dated 21st December, 2015 seeks to transfer the petitioner's case from Mumbai to Aurangabad on a completely new and different ground than that recorded in its show-cause notice dated 6th January, 2015 and 6th February, 2015 which led to the order dated 18th February, 2015. The order dated 18th February, 2015 was set aside by this Court as it relied upon a letter from D.I.T. (Investigation) Nagpur to transfer the petitioner's case from Mumbai to Aurangabad, without having given the petitioner's an opportunity to meet the contents of the aforesaid communication.

9. Mr. Mohanty, learned Counsel for the Revenue submits as under :-

(a) The order dated 21st December, 2015 is a speaking order as the same has been passed after giving reasonable opportunity to the petitioners and considering the submissions made by the petitioners;

(b) The impugned order is of an administrative nature and it is passed only after following the principles of natural justice. Thus, no interference is called for, in support, reliance was placed upon the decision of Punjab and Haryana High Court in the case of *Kuantum Papers Ltd. Vs. Union of India*, 57 Taxmann 60.

(c) Lastly, a transfer of case would undoubtedly involve some inconvenience of the assessee. However, such inconvenience cannot over-ride the need of the Revenue for detailed and co-ordinated investigation. In support, reliance was placed upon the decision of Rajasthan High Court in *Rishikul Vidyapeeth Vs. Union of India*, 136 ITR 139.

10. We have considered the rival submissions. We find that the Commissioner of Income Tax had originally passed an order dated 18th February, 2015 transferring the petitioner's case from Mumbai to Aurangabad on the basis of a letter of D.I.T. (Investigation), Nagpur informing the Commissioner of Income Tax that a search and seizure operation was carried out in respect of the petitioner who in turn is related to the Jhaveri group of Aurangabad. The aforesaid order dated 18th February, 2015 of the Commissioner of Income Tax was set aside as copy of the aforesaid intimation was not given to the petitioner by the

Revenue. Further, the petitioner's submissions / objections to the proposed transfer was not considered in the order dated 18th February, 2015. This Court while setting aside the order dated 18th February, 2014 by an order dated 18th June, 2015 granted liberty to the Revenue to pass a fresh order after following the principles of natural justice.

11. We find that consequent thereto neither the show-cause notice nor the impugned order dated 21st December, 2015 make any reference to the communication received from D.I.T. (Investigation), Nagpur. The Revenue has also filed its affidavit-in-reply and the respondent has not mentioned the reason as to why no reliance is being placed upon the communication received from D.I.T. (Investigation), Nagpur for the purposes of transferring the petitioners' case from Mumbai to Aurangabad. In the above circumstances, we asked Mr. Mohanty the reason why the Revenue is not now placing reliance upon the letter received from D.I.T. (Investigation), Nagpur. Mr. Mohanty informs us that the letter from D.I.T. (Investigation), Nagpur was not correct and therefore, not relied upon any further. We find this attitude of the Revenue strange, as the letter from D.I.T. (Investigation), Nagpur was the basis of seeking to transfer the petitioner's case from Mumbai to

Aurangabad. In all fairness, once the letter from D.I.T. (Investigation), Nagpur was incorrect, the proposal to transfer the proceedings ought to have been withdrawn. Further, this should have been pointed out to the Court when the order dated 18th June, 2015 was passed. Thus, there would have been no occasion to leave the issue open for the Revenue to pass a further order after following the principles of natural justice. The attitude of the Revenue seems to be once a transfer under Section 127(2) of the case is proposed, come what may, they would transfer the case.

12. Further, we find that the notice dated 21st December, 2015 issued consequent to the order of this Court dated 18th June 2015 is bereft of any particulars, save and except that the transfer is required for the sake of co-ordinated investigation along with other connected cases for administrative convenience. The show-cause notice does not indicate the reasons for the proposed transfer. Thus, making it impossible for the petitioners to effectively respond to the show-cause notice. Mr. Mohanty, learned Counsel for the Revenue emphasized the fact that the two seized documents were given to the petitioner before passing of the impugned order and this was sufficient compliance with the principles of natural justice. We are unable to appreciate the above

submission. It is the show-cause notice which must refer to the documents and the inferences drawn from the documents by the Commissioner of Income Tax supporting the proposed transfer. By mere giving of the documents relied upon without the party knowing what inference is being drawn therefrom, the requirement of natural justice is not met. This is so as the party is left guessing as to the inference drawn by the Commissioner of Income Tax from documents for proposing the transfer from Mumbai to Auranbagad. This itself would lead to a breach of principles of natural justice.

13. Moreover, we find that the impugned order does not deal with the petitioner's submissions as contained in its letter dated 14th July, 2015 inter alia pointing out that only 3 flats out of 78 flats in the building being constructed in Vile Parle had been sold by the petitioner to the members of the Jhaveri Group. In case, the petitioner's assessments are to be transferred to the places where its customers (purchaser of its flats) are being assessed, then, the petitioner's cases would have to be transferred to at various places where its customers resides. This is an impossibility. Further, where transaction take place in the course of its business and a search takes place on such other persons at the place where such person is assessed, it would not

necessarily result in the transfer of petitioner's case to the place where the person it is dealing with in the normal course is being assessed. The aforesaid submission as contained in letter dated 14th July, 2015 has not even been adverted to in the impugned order dated 21st December, 2015. Nor was the fact that there would be inconvenience to the petitioner as emphasized in its subsequent letter dated 24th November, 2015 even adverted to in the impugned order much less dealt with. Thus, the order itself is a non-speaking order. The basic and minimal requirement of the petitioner being given a personal hearing and the opportunity to respond to the proposed transfer is to enable the Authority to consider whether in the facts and circumstances of the case, the transfer of the case from Mumbai to Auranbagad is warranted. Particularly, bearing in mind that the petitioner has otherwise no connection with Aurangabad except for having sold 3 out of 78 flats in the building being constructed to the persons who are being assessed at Aurangabad.

14. The reliance placed by the Revenue upon the order of the Punjab and Haryana in *Kuantum Papers Ltd. (supra)* in which the Court refused to stop the transfer as it had come to a finding that the order sanctioning the transfer of the case under Section 127(2) of the Act

was an speaking order and not *mala fide* and / or arbitrary is not applicable in this case. This is so as in the present facts the impugned order is not only a non-speaking order but is also arbitrary. Similarly, the decision of Rajasthan High Court in *Rishikul Vidyapeeth (supra)* relied upon by the respondent Revenue for sustaining the impugned order under Section 127(2) of the Act is inappropriate. This for the reason that it was passed in the above case in the context of the petitioner therein not adverting in its objections to the reasons for the transfer disclosed in the show-cause notice issued to it. This is not so in the present case. In fact, in this case the show-cause notice is itself bereft of particulars save and except merely co-ordinated investigation and administrative convenience making it impossible to effectively respond. Nevertheless, the petitioner had itself pointed out the inconvenience which would be caused to it and the arbitrary nature of the transfer of petitioner's assessment to Aurangabad. This objection was not appropriately considered and dealt with in this case. Therefore, the aforesaid decision also has no application to the present facts.

15. In the above view, the petition succeeds. We set aside the impugned order dated 21st December, 2015 passed by the Principal

Commissioner of Income Tax, Mumbai.

16. Rule made absolute in the above terms. No order as to costs.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)