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

WRIT PETITION NO. 67 OF 2016

Serenity Trades Pvt. Ltd. .. Petitioner

v/s.

D.V. Singh & Anr. .. Respondents

Mr. J.D. Mistry, Senior Counsel a/w Niraj Seth, Mr. Jariwalla, Ms. Mansi Patel i/b M/s. Thakore Jariwalla & Associates for the petitioner
Mr. Suresh Kumar a/w Sakshi Kanani for respondent nos. 1 and 2

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 2nd MARCH, 2016.

P.C.

1. Rule. The respondents waive service. Rule is made returnable forthwith. By consent of the parties, petition is taken up for final hearing.

2. This petition under Article 226 of the Constitution of India assails the order dated 28th September, 2015 passed under Section 127(2) of the Income Tax Act, 1961 (Act) by which the petitioner's proceedings pending with the Income Tax Officer (case) has been transferred from Mumbai to Chennai.

3. Brief Facts :-

(a) The petitioner is engaged in buying and selling online lottery tickets of State Governments. The petitioner purchases lottery tickets in bulk either directly from the State Government and / or persons authorized to sell lottery tickets by the State Government. On purchase, the petitioner in turn sells the lottery tickets to retailers, who sell the same to individual buyers of the lottery tickets.

(b) In the course of its business, the petitioner purchases lottery tickets in bulk from one Summit Online Trade Solutions Pvt. Ltd. (for short 'Summit') of the State of Mizoram for onward distribution / sale within the State as its authorized distributor. Summit is situated in Chennai and is a part of the Sugal and Damani Group.

(c) Some time in November, 2014, a search was conducted on the petitioner, consequent to a search conducted on Sugal and Damani Group, including Summit.

(d) On 3rd March, 2015, a show-cause notice was served upon the petitioner calling upon the petitioner to show cause as to why its case should not be transferred to Chennai for centralizing it along with the Sugal and Damani Group, so as to enable proper coordinated investigation. The petitioner responded to the notice by letters dated 9th March, 2015, 10th March, 2015, 23rd March, 2015 and 22nd

September, 2015 *inter alia* pointing out that except having business relationship with Summit, they are in no way connected with either Summit or any other part of Sugal and Damani Group of which Summit is a member. The petitioner pointed out that it is an independent company operating in Mumbai and except a business relationship they are not having any relations with Sugal and Damani Group. This is evident from the fact that there are no common Directors between the Directors in Summit or in Sugal and Damani Group and the petitioner. It is also pointed out that the reasons for proper coordinated investigation is vague and does not by itself justify the transfer of the petitioner's case from Mumbai to Chennai.

(e) On receipt of the petitioner's reply to the show-cause notice dated 3rd March, 2015, the Principal Commissioner of Income Tax sent a further Notice dated 14th September, 2015 seeking to centralize the petitioner's case with Sugal and Damani Group. The basis of the proposed transfer was that the petitioner is an authorized distributor of Summit and that they were searched consequent to the search carried out on the Sugal and Damani Group. Thereafter, a personal hearing was granted on 22nd September, 2015 to the petitioner wherein the petitioner filed its submissions and reiterated that they are in no way connected with Summit and / or the Sugal and Damani Group.

(f) On 20th September, 2015 the Principal Commissioner of Income Tax passed the impugned order transferring the petitioner's case from Mumbai to Chennai for the following reasons :-

> *"In response to the above, the assessee filed its objection vide letter dated 09.03.2015, 10.03.2015, 23.03.2015 and 22.09.2015 which are duly considered and in light of the fact that search u/s 132 of the I.T. Act was carried out in the premises of M/s. Serenity Trades Pvt. Ltd. and the Director of the Serenity Trades Pvt. Ltd. have signed the panchanama. It is established that it is an associate concern of Sugal & Damani Group."*

4. From the above, it is clear that the impugned order transferring the petitioner's case from Mumbai to Chennai is a non-speaking order inasmuch as it does not deal with any of the principal contentions of the petitioner that it is in no away related to the Sugal and Damani Group. This was evident by the fact that it is an independent company having its independent Directors, situate in Mumbai and has only a business relationship with Summit, which is a part of the Sugal and Damani Group. The aforesaid order indicates non application of mind to the objections raised by the petitioner. It is an accepted position that an assessee does not have a right to be assessed by a particular officer of the Revenue. Nevertheless, when a petitioner's case is being

transferred from one State to another then, while passing an order under Section 127(2) of the Act, the order must indicate *prima facie* consideration of the objections made by the person whose case is proposed to be transferred. Mere stating that the objections have been duly considered, cannot be itself negate the objections and uphold the notice for transfer. The *prima-facie* consideration must provide a link between the basis of the notice and the conclusion arrived at after *prima facie* consideration of the objections. This is clearly lacking in the impugned order dated 20th September, 2015. We also notice that the impugned order places reliance upon a *panchanama* to support the transfer when the same finds no mention in the show cause notices or even relied upon by the Revenue in the affidavit-in-reply filed. This is also a breach of principles of natural justice. In fact before us, no reliance was placed upon the *panchanama*.

5. In the circumstances, we set aside the impugned order dated 20th September, 2015. Needless to state that setting aside of the impugned order would not in any manner prohibit the Revenue from taking such proceedings as are available to it to transfer the case in accordance with law.

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

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**