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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **DECIDED ON: 25.11.2016**

\+ W.P. (C) 8986/2016, CM APPL.36486 & 36489/2016

EVERGREEN VENEERS P. LTD. ..... Petitioner
Through: Mr. S. Krishnan, Advocate.

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI-03 & ANR. ..... Respondents
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel with Mr. Puneet Rai, Jr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR JUSTICE NAJMI WAZIRI

S.RAVINDRA BHAT, J. (ORAL)

1. The writ petitioner is aggrieved by an order made by the respondents (hereafter "the revenue") transferring its assessment case from ITO, Ward-8(4), New Delhi to DCIT, CC-2(4),Kolkata, under Section 127 of the Income Tax Act (hereafter "the Act").

2. The Petitioner company was incorporated at New Delhi, while its manufacturing facility is located at Vishakhapatnam. Since its inception in 1992, the income-tax authorities at New Delhi have regularly assessed it. One of the directors of the Petitioner company one Mr. Vijay Gupta, is also a director in certain companies of the 'BMA Group', which are engaged in the business of manufacture of steel items, with a manufacturing facility also at Vishakhapatnam. The 'BMA Group' was subject to a search action on

03.03.2015, because of the common director, the Petitioner's manufacturing facility at Vishakhapatnam was also subject to survey operation under Section 133-A of the Act on the same date, during the course of which its books of account were impounded. Mr. Vijay Gupta too was subject to a search action on the same date at his Vishakhapatnam address. On 17 August, 2015, the petitioner was issued with a notice under Section 127 (1) requiring it to show cause why its cases should not be transferred to Kolkatta. By reply dated 24 August, 2015, it resisted the move, contending that the revenue's claim that coordinated investigation would be facilitated, was not substantiated from the records, seized and furthermore, that it had no dealings of any sort whatsoever with the BMA group. It also highlighted that Mr. Vijay Gupta's presence as its director alone did not constitute sufficient cause for the transfer. A few days later, i.e., on 28 August, 2015, the petitioner addressed a similar letter, reiterating the same contentions.

3. It is submitted that after a long hiatus, the revenue, on 15 July, 2016, issued the impugned transfer order. The petitioner submits that this order is unreasoned, inasmuch as it does not address itself to the issues and concerns raised in the reply to the show cause notice. It is contended on behalf of the petitioner, by Mr. Krishnan, its counsel that the impugned order does not refer to a single document or transaction to establish the Petitioner's nexus with undisclosed income or transactions of such effect with the 'BMA Group', to support the transfer of the case to Kolkata. It is emphasized that the order only states that the Petitioner company and Mr. Vijay Gupta have transactions inter-se.

4. Mr. Krishnan relies on copies of ledger accounts of Mr. Vijay Gupta, M/s.BMA Stainless Ltd. (Kolkata), and M/s. Disha Paint (P) ltd., Kolkata, in

the Petitioner's books of account which are in the revenue's custody from March, 2015 onwards and urges that they demonstrate that besides two transactions of sale of plywood to M/s.BMA Stainless Ltd. in 2008 and transactions of loan on interest in the case of Mr. Vijay Gupta &his other company, i.e. M/s. Disha Paint (P)Ltd., the Petitioner company has had no dealings or transactions whatsoever with the 'BMA Group'. It is argued that there was therefore no substance in revenue' s insistence upon coordinated investigation, as is independently apparent from the impugned order dated 15.07.2016 also. The Petitioner's case is, that in the context of a transfer of case under section 127, the mere existence of transactions between two parties is not a material consideration. What is to be brought out, is the Revenue's need to assess the parties together. In the subject case, barring the transactions mentioned, the Petitioner had no dealings with any of the entities in the 'BMA Group'. Whatever transactions existed over the years, were disclosed. They are both routine transactions of sale or raising working capital on interest through a director, with periodic repayments, neither of which merit any cavil. These transactions neither require coordinated investigation, nor are they incapable of being investigated in Delhi.

5. It is highlighted that similar orders for transfer of jurisdiction have been passed in the case of Mr. Vijay Gupta also which are not being contested because the said individual is director in the 'BMA Group' which is under post-search investigation. It was argued that documents prepared by the tax department with regard to the search/survey actions, as provided to the Petitioner demonstrate that:

• The tenor of the investigation stems from the 'BMA Group' having raised share capital through entities that are in the opinion of the tax department, entry operators. This has nothing to do with the Petitioner company because it has neither raised any capital, nor subscribed to any capital;

• The tax department is operating under the erroneous premise that the Petitioner company has been subjected to a search action, which is contrary to the material adduced amply demonstrate that there is reference to seizure of a 'telly' (sic) account, while in the Petitioner's case does not refer to any such seizure.

6. Mr. Krishnan argues that despite the impugned order dated 15.07.2016, the petitioner is now in receipt of notices dated 02.08.2016 under Sections 142(1) & 143(2) of the Act from the Deputy Commissioner, Circle 8(2),New Delhi (Respondent No.2 herein), demonstrating the lack of coordination between the revenue as to *situs* of jurisdiction. It is argued that the impugned order was made in a mechanical order in this case, which betrays a non-application of mind. Reliance has been placed on various decisions, including *Y.K. Agarwal v Commissioner of Income Tax* 283 ITR 532 (All), *P.S. Housing Finance (P) Ltd. v Union of India* 290 ITR 316, *Rajesh Mahajan v Commissioner of Income Tax* 2002 (257) ITR 577, *Saptagiri Enterprises v Commissioner of Income Tax* (1991) 189 ITR 705 (AP), and *Global Energy Pvt. Ltd. v. CIT*, 365 ITR 502, for the proposition that merely mentioning that the transfer is required for the purpose of coordinated investigation or administrative convenience is insufficient to justify an order under Section 127 . Furthermore, learned counsel argues that the impugned order is totally silent on the nature of the proposed investigation sought to be conducted.

7. The revenue resists the petitioners' submissions and urges that this court should reject the present petition. It also argues – on the basis of the record that

the requirement under Section 127 is to grant opportunity against the proposal to transfer, through a show cause notice and depending upon the reply, issue reasons for the order exercising discretion or not to transfer. A further examination of the merits of the reasons, to conclude that it is insubstantial or contrary to law or that there are other facts, is unwarranted.

8. In *Ajantha Industries v Central Board of Direct Taxes* 102 ITR 281 (SC) it was held that adherence to natural justice before a transfer is resorted to, is mandatory. The court held that it was *"clearly of opinion that non-communication of the reasons in the order passed under section 127 (1) is a serious infirmity in the order for which the same is invalid". Surya Pharmaceuticals Ltd. vs Commissioner Of Income Tax* (2008) 214 CTR Del 538, a Division bench ruling of this court, is an authority for the proposition that so long as opportunity to represent against the proposed transfer is given, and reasons are recorded, the courts would not interfere with orders made by the revenue.

9. This court is of opinion that the petitioner's grievance is not that it was not afforded reasonable opportunity to represent against the proposed transfer; it does not say that the impugned order is bereft of reasons. What it however, says - based on some decisions- is that reasons such as the revenue being facilitated to have a coordinated approach are vague and no reasons at all and that there should be some specificity about the materials seized and the assessee's link to those documents or materials.

10. Section 127 reads as follows:

"127. Power to transfer cases.

(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub- section (2) may be made at any stage of the proceedings, and shall not render necessary

the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.-In Section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

In *Kashiram Aggarwalla Vs Union of India and others* (1965) 56 ITR 14 (SC), the transfer order was under 127(1) of the Act; unlike the present cases, where the transfer orders are under Section 127 (2) of the Act. The question involved was, whether the transfer order in that case was invalid as no reasons were recorded. The Supreme Court held that the mandatory requirement of recording reasons was not to be applicable, as the transfer orders were in the same city and only wards were changed but the Court did observe about the nature of transfer orders under section 127. It was also observed that transfers are made on grounds of administrative convenience and are in nature of administrative order. A division bench of the Gujrat High Court in *Arti Ship Breaking vs DIT* (2000) 244 ITR 33, where transfer order was upheld though reasons were not indicated on the ground that transfer was on administrative reasons.

11. In this case, a search was held at different places and documents were seized. Survey too was conducted in the petitioners' premises. It is necessary to see them together before passing the order of assessment. The transfer order is for administrative convenience for making coordinated investigation. The court has to be mindful that the concerned official exercises administrative though statutory power, but it is not quasi-judicial in nature. The judicial power is to be

exercised after coordinated investigation, while passing search assessment orders. Undoubtedly, the order would incommode the petitioner. That *ipso facto* cannot vitiate it, so long as the executive grants fair opportunity to represent against the order of transfer. In this court's considered view, the revenue's order has not resulted in irreparable prejudice by not "linking" the material found and seized with the assessee; that is the subject matter of investigation. Therefore, the mere recital of coordinated investigation could not be a red rag for the court to hold it invalid; nor can the court be expected to carry out a deep scrutiny of the kind needed, where the consequence would arise from a quasi judicial or judicial order.

12. For the foregoing reasons, this court holds the petition to be meritless; therefore it is dismissed.

S. RAVINDRA BHAT
(JUDGE)

NAJMI WAZIRI
(JUDGE)

NOVEMBER 25, 2016