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

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DECIDED ON: 02.11.2016

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W.P. (C) 3837/2016, CM APPL.16315/2016

CHAUDHARY SKIN TRADING COMPANY Petitioner

versus

PR. COMMISSIONER OF INCOME TAX-21 Respondent

W.P. (C) 3839/2016, CM APPL.16318/2016

NASIRA BEGUM Petitioner

versus

PR. COMMISSIONER OF INCOME TAX-21 Respondent

W.P. (C) 3841/2016, CM APPL.16320/2016

ARSHIA AHMED QURESHI Petitioner

versus

PR. COMMISSIONER OF INCOME TAX-21 Respondent

W.P. (C) 3842/2016, CM APPL.16322/2016

M.K. LEATHER TRADING COMPANY Petitioner

versus

PR. COMMISSIONER OF INCOME TAX-21 Respondent

W.P. (C) 3843/2016, CM APPL.16324/2016

MOHD. KAMIL Petitioner

versus

PR. COMMISSIONER OF INCOME TAX-21 Respondent

W.P.(C) 9935/2016, CM APPL.39493-39495/2016

M. K. OVERSEAS PVT. LTD. Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX - 06 Respondent

Appearance: Mr. Jayant K. Mehta with Mr. Saurabh Dev Karan Singh and Mr. Shaurya Kuthiala, Advocates for petitioners in all matters.

Mr. Ashok K. Manchanda, Sr. Standing Counsel for revenue in item nos.18-22.

Mr. Rahul Chaudhary, Sr. Standing Counsel for revenue in item no.7.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J.(ORAL)

1. In this batch of writ petitions, the orders made by the revenue, i.e., Principal Commissioner of Income Tax under Section 127 have been challenged.

2. The assessee, one of the petitioners, M.K. Overseas Pvt. Ltd., Director and other associates/concerns related to it was subjected to search and seizure proceedings. Some others - who are also before this Court as the petitioners were on the very same day, i.e., 28.04.2015, subjected to survey proceedings under Section 133A.

3. The revenue proposed to centralize the cases. These cases were before the Central Circle, Ghaziabad and notice was issued to each of the assesseees under Section 127 (1) of the Income Tax Act. The rationale to justify the transfer was a common one - "search and seizure operation" under Section 132 of the Income Tax Act in the cases of M/s M.K. Overseas group of companies, Ghaziabad was carried out on 28.04.2015. As per communication received from Principal Commissioner of Income Tax, (Central) Kanpur, cases were required to be centralized for coordinated post search investigation and meaningful assessment. In the case of M.K. Overseas Pvt. Ltd., the petitioner in W.P.(C)9935/2016, the following reasons were given: -

"A Search & Seizure operation u/s 132 of the Income Tax, 1961 was carried out on 28.04.2014 in the M.K. Overseas Group of cases, Ghaziabad. Your case is proposed to be centralized with DCIT/ACIT, Central Circle, Ghaziabad under the administrative control of Pr. Commissioner of Income Tax (Central), Kanpur."

All the assesseees resisted notices contending that this process would cause

great hardship as their headquarters and principal place of business was not located in Ghaziabad and that its personnel would have to travel a long distance to attend the proceedings.

4. It was also stated *inter alia* by M.K. Overseas that it is an approved meat processing plant and that it was assessed to income tax regularly and that the entire management of the company was in Delhi.

5. The CIT after considering the responses rejected the submissions and directed the transfer of the proceedings in exercise of powers under Section 127. In the case of M.K. Overseas, the order - dated 13.07.2016 cited the following reasons: -

“4. The objections raised by the assessee company have been considered and rejected being not tenable. A Search & Seizure operation u/s 132 of the Income Tax Act, 1961 was carried out on 28.04.2015 by Meerut Unit of Director of Income Tax (Investigation), Kanpur in M.K. Overseas Group of cases. M/s M.K. Overseas Pvt. Ltd., is one of the group companies and was covered in the search and seizure proceedings. Authorisation u/s 133A of the Act was also issued in the name of Assessee Company. During survey proceedings various incriminating documents/loose papers and hard disk etc. Were found and impounded from the premises of M/s M.K. Overseas Pvt. Ltd., B-63-64, Site-IV, Sahibabad Industrial Area, District Ghaziabad, UP, for which coordinated investigation is required.

5. The assessee has raised objection that entire management of the assessee is in Delhi and centralizing its case to Delhi will help in saving the precious time which would be wasted in travelling to and from Ghaziabad, which is almost thirty five Km. from assessee's office. In this regard, it is pertinent to mention here that the entire set up of the factory/meat processing plant of the assessee company is located in Ghaziabad which is almost thirty five Km. from Delhi. When the assessee company can operate its factory/plant from Ghaziabad then why it is inconvenient for the assessee company to attend the income tax proceedings at Ghaziabad. Moreover, except administrative inconvenience, the assessee has not offered any explanation/justification for not centralizing its case to Central

Circle, Ghaziabad. Therefore, assessee's request for not centralizing its case to Central Circle, Ghaziabad, cannot be acceded to.

6. *For the foregoing reasons, objections of the assessee company are hereby rejected. The transfer of jurisdiction over the case to the charge of Pr. Commissioner of Income Tax (Central), Kanpur, will facilitate co-ordinated post search and meaningful assessments."*

In the case of other five assesseees, common order was made on 2.2.2016 which *inter alia* stated as follows: -

"2. Thus, in exercise of the power conferred under section 127 of the Income Tax Act, 1961 and all other enabling powers in this behalf. I, Pr. Commissioner of Income Tax, Delhi-21, New Delhi, hereby transfer the case, the particulars of which are mentioned in Column No.2 from the Assessing Officer mentioned in Column No.4 to the Assessing Officer mentioned in Column No.5 and direct that the powers of the Assessing Officer mentioned in Column No.4 in respect of this case shall be exercised by the Assessing officer mentioned in Column No.5 functioning under PCIT mentioned in Column No.16. This transfer is effected for the purpose of conducting coordinated post search investigation and meaningful assessments and also keeping in view the Board's instructions that the search cases should be centralized with Central Charge."

6. The petitioners urge that the failure to mention any reason in the notice under Section 127 vitiates the entire transfer and rely upon the authority of the Supreme Court in *Ajantha Industries v. CBDT* (1976) 102 ITR 281 (SC) and the judgment of the Calcutta High Court in *Chotanagpur Industrial Gases Pvt. Ltd. v. CIT* 233 ITR 377. It is submitted that the mere mention of the search and seizure proceedings and the conclusion, i.e., proposal to centralize all pending proceedings in the Ghaziabad office cannot be considered as a reason. It does not provide any clue as to why the revenue wishes to transfer the assessments and collect them at one

place. It was urged next by learned counsel, Mr. Jayant K. Mehta that even on the merits, the mere mention of “coordinated post investigation and meaningful assessments” as a common feature or reason to transfer *juxta posed* with the grounds opposing the transfer were insufficient and did not justify the order under Section 127. In this regard, learned counsel relied upon the judgment in *Global Energy Pvt. Ltd. v. Commissioner of Income Tax*, (2013) 356 ITR 502 (Bom) where it was held that the mere reference to administrative convenience as a ground for transfer did not justify the exercise of power.

7. Counsel for the revenue submitted that the writ proceedings are without merit. It was stated that the mention of the fact, i.e., search and seizure operation and the proposal to centralize it were reasons enough for which a valid notice could be given. Furthermore, the assesseees did not express prejudice or substantial prejudice at the stage when they had responded to the notice. On the merits, it was urged that the rationale, i.e., of coordinating the post investigation efforts and meaningful assessments were sufficient compliance with law. It was highlighted that the search has yielded incriminating documents and in this context coordination in regard to the block assessment with respect to post search investigation was relevant and could be efficaciously carried out at one place. It is evident from the above discussion that the petitioners’ grievance as articulated is twofold, firstly whether the notice was vitiated and secondly if not whether the reasons given in the transfer order are of the nature that can stand scrutiny under Section 127.

8. The narrative would disclose that none of the assesseees voiced any prejudice at the stage when they were issued notices. The record shows that all of them responded to the notice and gave their own justification why the final order under Section 127 should not be made. The assessee

has no doubt relied upon the authority to say that this omission does not stop it from contending that the notices were void at the same time; the Court is not unmindful of the fact that two stages are separate. The substantiality of prejudice for lack of reasons or otherwise has to be independently considered given the fact of each cases. In the present case it is not as if the notice did not contain the reasons at all. The assessee's contentions that the notice did not contain reasons is fallacious, the reference to search and seizure operations and the proposal to centralize the cases in Ghaziabad cannot be considered no reasons. If these had been omitted, the assessee would have been within their rights that the notices did not contain reasons. The assessee was fully aware of the search and seizure operations and the fact that its premises in Ghaziabad too were subject to such proceedings. Having regard to all these facts, the Court hereby rejects the first contention that the ingredients of the notice did not exist when the proposal to transfer was first notified to these assessee.

9. As far as the rationale to transfer, i.e., conduct of coordinated post search investigation and meaningful assessment goes, we are of the opinion that like in the case of first contention, the assessee has failed here as well. The kind of reasoning required by an order under Section 127 cannot be compared or likened to a quasi judicial order that has adverse consequences. One can understand if additions are made on sketchy or bare minimum reasons, they cannot be upheld. However, what is proposed by an order under Section 127 is the transfer of one or several assessments from one circle to another, to that extent inconvenience undoubtedly ensue; however, to say that this leads to grave prejudice if detailed reasoning were not given is something that the Court cannot countenance. The consequence would only be that the assessee's contentions would have to be taken into account by another Assessing

Officer who would also have before him or her all other related assessments. In these circumstances, the Court is unprepared to hold that the brief reasons relied upon by the revenue does not amount to reasons at all or that they are vague. In such exercise in every case where an order under Section 127 is challenged, there are two interests - those of the assesseees who invariably plead inconvenience and hardship and that of the revenue which would inevitably cite public interest. The Court's task is to unravel whether in fact the revenue's contentions are correct and if so reject the assesseees' contentions. On the other hand, if there is no real public interest and if there are no reasons even the briefest one, the order cannot be sustained. Conversely, if there is reasoning and the public interest is discernable, as in this case, the only result can be rejection of the assesseees' contentions.

10. In view of the forgoing analysis, we are of the opinion that these petitions have no merit; they are accordingly dismissed along with pending applications.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

NOVEMBER 02, 2016
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