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

\+ **W.P.(C) 10912/2016 & CM Nos.42729-30/2016**

M/S UNITED ASSOCIATES ..... Petitioner
Through: Mr. A.P. Sinha, Advocate.

Versus

PRINCIPAL CIT-17 & ORS. ..... Respondents
Through: None.

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

O R D E R

% **21.11.2016**

CM No. 42730/2016 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed off.

W.P.(C) 10912/2016 & CM No.42729/2016 (for stay)

3. The petitioner challenges an order under Section 127 (2) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') made by the Principal Commissioner of Income Tax-17 of 31.08.2015.

4. The petitioner was issued notice under Section 127(1) of the Act on 15.07.2015 proposing to centralize the cases of Sh. Tilak Raj Sharma & others' group at Kanpur and also sought transfer of its case on the ground that "its case was also part of cases and that the competent authorities were of the opinion that all cases of the group were to be centralized with ACIT/DCIT, Central Circle-1, Kanpur". The assessee objected on 03.08.2015/05.08.2015 that no search in his premises took place and that it

was the assessee who was taxed for last many years within the jurisdiction of the Delhi Circle and that for Assessment Year 2014-15, it had changed its office address to a Calcutta Circle.

5. The assessee's objections were rejected and the order under Section 127(2) of the Act was made. The operative portion of that order reads as follows:-

> *"The cases of M/s United Associates is assessed to tax in Delhi. Since the case was to be centralized at Kanpur and it involved an intercity transfer, the assessee was asked to file his objection, if any, against the transfer of the case with ACIT/DCIT, Central Circle, Kanpur. The assessee, through its authorized representative filed an objection dated 3.8.2015 wherein the assessee stated that till A.Y. 2013-14, it had filed its return of income with ACIT/DCIT, Cir. 50(1), New Delhi. From A.Y. 2014-15, the assessee has changed its address to 181/39, Dakkhin Dare, Kolkata and that the return which he has filed has the address of Kolkata only. In the letter, A.R. of the assessee also stated that since the address of the assessee has changed, the notice for the transfer of case u/s 127 is without jurisdiction. Further, the AR has also stated that no search was conducted in the case of the M/s United Associates and the assessee has no establishment in Kanpur and hence, it will be difficult for the assessee to attend the proceedings at Kanpur.*
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> *The plea of the assesse is not tenable in the face of the facts. The search was conducted in the case of MIs United Associated and also at the residential premises of its main managing partners. The assessee has its main activities located in the Kanpur and Lucknow area and its main managing directors are also staying in these cities only. The assessee has not been able to give even a single cogent plea for retaining its case in Delhi. It has not even shown that the assessee's bank accounts are operative in Delhi."'*

6. Learned counsel submits that the expression ‘meaningful and coordinated investigation’, cited in the notice under Section 127(1) of the Act is vague and *per se* unauthorized in terms of the Statute. Reliance is placed upon Power Controls Vs. Commissioner of Income Tax [2000] 109 Taxman 27 (Delhi) of this Court, Naresh Kumar Agarwal Vs. Union of India [2010] 320 ITR 361 (Calcutta) of Calcutta High Court, Anil Kumar Kothari Vs. Union of India [2010] 191 Taxman 203 (Gauhati) of Gauhati High Court and Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax [1991] 56 Taxman 190 (Andhra Pradesh) of Andhra Pradesh High Court.

7. It is emphasized that the expression “meaningful and coordinated investigation”, which was finally accepted and even the reasons adduced in the order under Section 127(2) of the Act are untenable in the facts of this case. For a valid order of transfer, the Commissioner has to adduce cogent reasons and not cite vague propositions which would go to establish convenience of the Revenue as opposed to the inconvenience of the assessee.

8. What is in issue, therefore, is whether the order under Section 127(2) of the Act satisfies the requirements spelled out in the Statute?

9. This provision was interpreted by the Supreme Court in Ajantha Industries & Ors. Vs. Central Board of Direct Taxes [1976] 102 ITR 281 (SC). In that case, the Supreme Court had emphasised that since the order would have some moment, it has to be preceded by a notice to the assessee and furthermore that some opportunities to be given before an order is made. The Andhara Pradesh High Court in Vijayasanthi’s case (*supra*) had

explained the ratio cited in Ajantha Industries's case (*supra*) and added that the order under Section 127(2) of the Act must be a reasoned one as it has some consequences and is of moment to the assessee. The judgement in Naresh Kumar Aggarwal's case (*supra*), has, no doubt, emphasized that use of the expression "coordinated investigation and assessment", is vague. Likewise, there are certain decisions of other High Courts which have found fault with the Revenue for stating reasons which have been characterized judicially as no reasons at all. What has to be remembered here is that the conflict between the two cities – is one of the assessee, who is undoubtedly inconvenienced to a certain extent if he/it denied the opportunity of presenting his/its point of view before the "normal authority", which he/it used to. A transfer order would mean that the authority to which the assessee is faced, points have to be canvassed, would be somewhere else then this would also undoubtedly be important on its part. As against this, the Revenue's interest would be to ensure that a holistic and cohesive view of all is taken with regard to a series or pattern of transactions or investments involving multifarious parties.

10. In a case, like the present one, search and seizure proceedings have been taken place and notices have been issued under Section 153C of the Act, it would ordinarily be in the interest of justice of all i.e. the assessee and the Revenue alike, that if parties are scattered across the different Cities and States, a common view is taken by one Assessment Officer, that must be the intent and objective. In the process, the inconvenience to the assessee would be to a large measure would be obviated because the Assessment Officer – or for that matter, the assessee would not be put to inconvenience in referring back and forth the orders of each of the other properties that

have been searched and the view taken. This would also avoid possible conflicting views that may spell chaos.

11. In view of the foregoing reasons, the Court finds no merit in this petition. The writ petition alongwith pending application is accordingly dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

NOVEMBER 21, 2016
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