IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.847 of 2017 and
W.M.P.Nos.871 & 872 of 2017

M/s. Aditya Birla Money Limited
Ali Centre, 53, Greams Road,
Chennai - 600 006.
Represented by its Authorised Signatory
Thiru.L.R.Muralikrishnan

... Petitioner

Vs.

1. The Principal Commissioner of Income Tax, Chennai - 1.
Room NO.701, 7th Floor, Wanaparthy Block,
121, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.

2. The Director General of Income Tax (Investigation),
Aayakar Bhavan,
108, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

3. The Deputy Commissioner of Income Tax,
Corporate Circle - 1(1),
#121, Nungambakkam High Road,
Nungambakkam, Chennai - 600 034.

4. The Director General of Income Tax (Investigation),
Room No.304, Scindia House,
Ballard Estate, Mumbai - 400 038.

5. The Chief Commissioner of Income Tax, Central Circle - 2,
Room No.108, Aayakar Bhavan,
M.K.Road, Mumbai - 400 020.

6. The Deputy Commissioner of Income Tax,
Central Circle - 3 (4), Aayakar Bhavan,
M.K.Road, Mumbai - 400 020.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records in C.No.272-B/4/Centralisation/PCIT-1/2015-16 dated 04.04.2016 on the file of the first respondent and quash the same.

For Petitioner : Mr.M.P.Senthilkumar

For Respondents : Ms.Hema Muralikrishnan

O R D E R

The Petitioner is aggrieved against the order passed by the 1st respondent dated 04.04.2016, transferring the case of the petitioner from DCIT,Cor.Cir.1(1), Chennai to DCIT, Central Circle - 3 (4), Mumbai, by exercising the power conferred under Section 127 of the Income Tax Act, 1961.

2. The petitioner is a stock broking entity registered with SEBI and an assessee before the respondent Department, more particularly, on the file of the Deputy Commissioner of Income Tax, Corporate Circle - 1(1), Chennai, the 3rd respondent herein. The petitioner was issued with a notice dated 23.02.2016 calling upon them to file their reply under section 127(2) of the Income Tax Act for the proposed centralisation of the group case of Radford Group with Mumbai. By their communication dated 02.03.2016, the petitioner, after expressing their stand that they have no client registered under the name and style "RADFORD/RADFORD Group, has, however, stated that they have no objection for centralisation of the above case with Mumbai. Thereafter, the impugned order was passed by the 1st respondent, transferring the case of the petitioner from Chennai to Mumbai as stated supra.

3. Mr.M.P.Senthilkumar, learned counsel appearing for the petitioner submitted that when the petitioner has no connection whatsoever with the Radford Group, their consent given for centralisation of the above Group Case with Mumbai cannot be construed as the consent given by them for transferring their own case from Chennai to Mumbai, in the absence of any specific details furnished in the notice dated 23.02.2016 to that effect viz., about the proposal of transferring the petitioner's own case to Mumbai. He further submitted that when section 127 (2) specifically contemplates that reasons must be recorded in writing while transferring the case, the first respondent has not stated any reason in the impugned order and therefore, the same is a non-speaking one.

4. On the other hand, the learned counsel appearing for the respondent Department submitted that the very issuance of notice under section 127(2) giving an opportunity to the petitioner to file their reply would undoubtedly indicate that the Department wanted to transfer the petitioner's own case to Mumbai to be tagged along with Radford Group cases and therefore, the contention of the petitioner before this Court is not correct. She further pointed out that the petitioner having given No Objection for centralisation of the case with Mumbai, is not entitled to maintain this writ petition before this Court. It is her further contention that once the petitioner has given no objection for transfer, the 1st respondent is not expected to give any reason in the impugned order for transferring the case from Chennai to Mumbai.

5. Heard both sides.

6. Admittedly, the petitioner is an assessee on the file of the 3rd respondent herein namely, the Deputy Commissioner of Income Tax, Corporate Circle - 1(1),Chennai. It is not in dispute that except the notice dated 23.02.2016, no other communication was issued to the petitioner indicating the proposal of transferring the petitioner's own case from Chennai to Mumbai. Thus, the only communication dated 23.02.2016 given under section 127(2) of the Income Tax Act, which is available before the petitioner,reads as follows:

"To
M/s. Aditya Birla Money Ltd
55, Ali Tower,
Greams Road,
Chennai - 600 006.
Sir / Madam,

Sub: Centralisation of search & seizure cases - your own - M/s.Radford group cases - reg.

Consequent on the search/survey conducted in the above group case, the DGIT (Inv.), Chennai has granted approval for centralization of the above group case with Mumbai. Accordingly, you are hereby given an opportunity u/s.127(2) to file your reply.

I am directed to request you to file your reply in this regard by 01.03.2016.

Yours faithfully,

K BASKARAN
Income Tax Officer (Hqrs)
O/o. Pr. Commissioner of Income tax
Chennai-1, Chennai-34."

7. A perusal of the above said communication does not anywhere indicate the intention of Department to transfer the petitioner's own case from Chennai to Mumbai. On the other hand, a careful perusal of the said notice would only show that the respondent Department sought to centralize the Radford Group case with Mumbai, for which, they sought a reply from the petitioner under Section 127 (2) of the said Act. No doubt, the petitioner has stated in their reply dated 02.03.2016 that they have no objection for centralization of the above cases with Mumbai. As rightly pointed out by the learned counsel for the petitioner, a thorough perusal of the reply dated 02.03.2016 would undoubtedly indicate that the petitioner has given their no objection for centralization of the Radford case with Mumbai, also by specifically stating that they have no client registered under the name and style "RADFORD/RADFORD GROUP. In other words, it seems that the petitioner has given such no objection only for centralization of the Radford Group cases at Mumbai and there is no indication whatsoever in their reply expressing their willingness for transferring their own case from Chennai to Mumbai. Therefore, I am of the view that the very notice issued under section 127 (2) to the petitioner dated 23.02.2016 is bereft of material particulars indicating specifically that the petitioner case is sought to be transferred from Chennai to Mumbai to be tagged along with the Radford Group cases. In the absence of such material particulars, I do not think that the No Objection given by the petitioner, that too, for centralization of the Radford Group cases can have any barring or relevance on the impugned transfer order. Apart from the above said fact, it is curious to note that the 1st respondent, while passing the order on 04.04.2016 has not at all referred to the reply given by the petitioner on 02.03.2016. Hence, it is the bounden duty of the 1st respondent to record the reasons for transfer, especially, when section 127 (2) contemplates the recording of such reasons. In this case, it has not been done so.

8. Considering all these aspects, I am of the view that the matter has to go back to the 1st respondent for passing fresh order after issuing notice to the petitioner with material particulars and after hearing their objections. Accordingly,, the writ petition is allowed and the impugned order of 1st respondent dated 04.04.2016 is set aside. Consequently, the matter is remitted back to the 1st respondent for passing fresh orders after issuing due notice to the petitioner. The 1st respondent shall issue such notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said notice, the petitioner shall give their reply within a period of two weeks thereafter. On receipt of such reply, the 1st respondent shall pass an order under

section 127 (2) within a period of three weeks thereafter, after giving an opportunity of personal hearing to the petitioner. It is made clear that this Court is not expressing any view on the merits on the matter, touching upon the reasons for transferring the petitioner's case from Chennai to Mumbai, as it is for the 1st respondent to consider and decide after considering the objections raised by the petitioner. No costs. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Vsi/cgi

To

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+1cc to Mr.G.Baskar, Advocate Sr.39803
+1cc to M/S.Hemamurali Krishnan, Advocate Sr.40231

W.P.No.847 of 2017

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srg 19/06/2017