

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.10.2017

Coram:

The Honourable Mr. Justice T.S. Sivagnanam

W.P.Nos. 17620 to 17623 & 21007 to
21009 of 2017
and

W.M.P.Nos. 19115 to 19118, 21897 to
21899, 21900 to 21905 & 28485 to
28487 of 2017

Aircel Limited
Rep. by its Authorized Signatory, Mr. K. P. Varadharajan
Having Office at:
5th Floor, 769, Spencer Plaza
Anna Salai,
Chennai - 600 002.

...Petitioner W.P.No.17620 & 17623 of 2017

Dishnet Wireless Ltd. rep. by
its Authorised Signatory Mr.K.P.Varadharajan
office at 5th Floor 769 Spencer Plaza
Anna Salai Chennai 600 002

..Petitioner in W.P.No.17621 & 17622/2017

Aircel Smart Money Ltd
rep by Authorised. Signatory Mr.K.P.
Varadharajan Having Office at 5th Floor
Spencer Plaza 769 Anna Salai Chennai-02

..Petitioner in W.P.No.21007 & 21008/2017.

Aircel Cellular Ltd
rep by Authorised Signatory Mr.K.P.
Varadharajan Having Office at 5th Floor
Spencer Plaza 769 Anna Salai Chennai-02

..Petitioner in W.P.No.21009/2017.

Versus

The Deputy Commissioner of Income Tax
Corporate Circle - I(1),
121, M.G.Road,
Chennai - 600 034.

...Respondent in all the W.Ps

Prayer in W.P.No.17620/2017 & 17623/2017:

Praying to issue a writ of Mandamus directing the respondent
to expeditious process and issue the refund in respect of the

petitioner Income Tax Returns for the Assessment year 2015-16 & 2016-2017 to tune of Rs.28 83 93 600/- & Rs. 26,62,85,840 within a period of 4 weeks.

W.P.No.17621/2017:

Praying to issue a writ of Mandamus directing the respondent to expeditious process and issue the refund in respect of the petitioner Income Tax Returns for the Assessment year 2016-17 to tune of Rs.36 66 43 260/- within a period of 4 weeks.

W.P.No.17622/2017:

Praying to issue a writ of Mandamus directing the respondent to expeditious process and issue the refund in respect of the petitioner Income Tax Returns for the Assessment year 2015-16 to tune of Rs.29 10 85 760/- within a period of 4 weeks.

W.P.No.21007/2017

Praying to issue a writ of Certiorarified Mandamus calling for the records of the respondent comprised in the impugned order bearing No.Company/ CCI(1)/ AAACR5136R/ 2015-16 dated 18.07.2017 and consequent proceedings and quash the same as illegal and arbitrary and consequently forbearing the respondent from in any manner proceeding with the transfer of the petitioners files for assessment from its Chennai Office to Mumbai Office.

W.P.No.21008/2017

Praying to issue a writ of Certiorarified Mandamus calling for the records of the respondent comprised in the impugned order bearing No.Company/ CCI(1)/ AAACR5136R/ 2015-16 dated 18.07.2017 and consequent proceedings and quash the same as illegal and arbitrary and consequently forbearing the respondent from in any manner proceeding with the transfer of the petitioners files for assessment from its Chennai Office to Mumbai Office.

W.P.No.21009/2017

Praying to issue a writ of Certiorarified Mandamus calling for the records of the respondent comprised in the impugned order bearing No.Company/ CCI(1)/ AAACR5136R/ 2015-16 dated 18.07.2017 and consequent proceedings and quash the same as illegal and arbitrary and consequently forbearing the respondent from in any manner proceeding with the transfer of the petitioners files for assessment from its Chennai Office to Mumbai Office.

For Petitioner : Mr. P. S. Raman,
in all W.Ps. Senior Counsel for
Mr. R. Parthsarathy

For Respondent : M/s. Hema Muralikrishnan,

in all W.Ps.

Senior Panel Counsel (Income Tax)

C O M M O N O R D E R

Since the parties in these Writ Petitions are one and the same and the relief sought herein are inter-connected, all these Writ Petitions were taken together and disposed of by this common order.

2. The cases on hand can be categorized into two. The first set of cases, viz., the Writ Petitions bearing Nos.17620 to 17623 of 2017 have been filed, praying for a direction upon the respondent, viz., the Deputy Commissioner of Income Tax, Corporate Circle - I(1), Chennai, to issue refund in respect of the petitioner's income tax returns for the relevant assessment years. The other set in W.P.Nos.21007 to 21009 of 2017, the petitioner has challenged a communication sent by the respondent/Deputy Commissioner of Income Tax, informing the petitioner that, pursuance to their Letter, dated 05.08.2016 intimating change in their register office and on receipt of No Objection Certificate (NOC) from the Commissioner of Income Tax-9, Mumbai, the petitioner's cases have been transferred out of the office of the respondent to the Income Tax Office - 9 (1) - 2, at Mumbai, and henceforth, the petitioner may contact the Assessing Officer at Mumbai for any queries.

3. The first set of Writ Petitions were filed on 10.07.2017, and when the matters came up for admission before this Court on 12.07.2017, the learned Senior Counsel for the petitioner submitted that the Refund Application filed by the petitioner for the relevant assessment years has been pending for almost a year, and no orders have been passed, in spite of repeated representations, therefore, the petitioner sought for a direction upon the respondent to dispose of the Refund Application within a time frame. The learned Senior Standing Counsel for the Revenue Department accepted notice on behalf of the respondent, and sought time to get instructions in the matter. Accordingly, the case was adjourned to 26.07.2017. When the case was taken up on the said date (i.e. 26.07.2017) the learned Senior Standing Counsel for the respondent/Revenue Department again sought for an adjournment, and the case was adjourned to 10.08.2017. By then, the communication, dated 18.07.2017 has been sent to the petitioner, which necessitated the petitioner to file the second set of Writ Petitions, being W.P.Nos.21007 to 21009 of 2017, and this Court, while entertaining the said Writ Petitions, granted an order of Interim Injunction, restraining the respondent not to transfer the files to Mumbai, and those Writ Petitions were directed to be tagged along with Writ Petitions bearing Nos.17620 to 17623 of 2017. Thus, both the sets of Writ Petitions have been

clubbed together.

4. Heard Mr. P. S. Raman, the learned Senior Counsel assisted by Mr. Vishnu Mohan, the learned counsel for the petitioner and Mrs. Hema Muralikrishnan, the learned Senior Standing Counsel appearing on behalf of the respondent/Revenue Department, and perused the materials placed on record.

5. The issues, which falls for consideration in these Writ Petitions is as to whether, by virtue of the impugned communication, dated 18.07.2017, the respondents could have transferred the files from Chennai to Mumbai, and whether the petitioner is entitled for refund of the excess tax paid by them, as per the provisions of the Act.

6. The only stand taken by the respondent for issuance of the impugned communication is that, taking cognizance of the petitioner's letters dated 03.08.2016 and 08.08.2016, the petitioner's cases have been transferred from Chennai to Mumbai. But, on a reading of the petitioner's three letters, two of which, are dated 03.08.2016 and the other dated 08.08.2016, it is seen that, the petitioner, by the said letters has informed the respondent/Deputy Commissioner of Income Tax, that their Registered office of the Company is shifted to Mumbai, intimating the CIN Number allotted by the Registrar of Companies, Mumbai as 'U32201MH1994PLC284030, U67100MH2012PLC283932 and U74999MH1992PLC284457' and enclosing the copy of the Certificate of Registration of the Regional Director Order for change of State issued under Section 13(5) of the Companies Act, 2013 by the Registrar of Companies, Mumbai on 23.07.2016 as Annexure 1. The petitioner clarified that the correspondence address will remain unchanged, i.e., 769, 5th Floor, Spencer Plaza, Anna Salai, Chennai - 600 002 and requested the respondent to use the said address for any communication with them. Thus, it is clear that, by communication, dated 03.08.2016 and 08.08.2016, the petitioner did not seek for transfer of file to Mumbai, rather they specifically requested the respondent/Deputy Commissioner of Income Tax to send all the communications to the Chennai address. Therefore, the communications, dated 03.08.2016 and 08.08.2016 cannot be reckoned, as if, they are letters, requesting for change of assessment files to Mumbai.

7. Thus, it is a clear misreading of the petitioner's letters, that resulted in issuance of the impugned communication, by which, the petitioner's files have been transferred to the file of the Assessing Officer at Mumbai. This, in fact, would be sufficient to hold that the impugned communication dated 18.07.2017, is un-sustainable and issued with total non-application of mind. Nevertheless, since arguments were advanced by both sides on the merits of the

matter, the Court proceeds to consider the same.

8. The petitioner's contention is that, the impugned communication, transferring the files from Chennai to Mumbai is nothing but a method adopted by the respondent to circumvent the petitioner's request for refund with an intention either to delay in considering such request or to defeat the refund claim made by the petitioner, which remain unprocessed. The respondent is well aware of the fact that the petitioner had approached the Court praying for appropriate directions in this regard, and the Revenue had also accepted notice in the said Writ Petitions and despite the same, the respondent has hurriedly issued the impugned communication dated 18.07.2017.

9. The second contention of the petitioner is that, the order of transfer stands vitiated for non-compliance of mandatory requirement under Section 127 of the Income Tax Act, 1961. Sub-section(1) of Section 127 deals with the Power to transfer cases, where, the Principal Director General or Director General or Principal Chief Commissioner 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 reasons for doing so, transfer the 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. Similarly, sub-section (2) of Section 127 deals with the Power to transfer in respect of the case outside the jurisdiction. Thus, in either case, the assessee should have reasonable opportunity of being heard in the matter and after recording the reasons for doing so, the case may be transferred. Admittedly, the petitioner had no opportunity of being heard in the matter, nor there is any material placed by the Revenue to show that, opportunity was given to the petitioner before issuing the impugned communication. That apart, the respondent has not recorded any reasons for transfer, and he has merely stated that, taking cognizance and pursuance to the petitioners' letter dated 03.08.2016, which has been misconstrued and misunderstood by the respondent.

10. Thus, the order of transfer has been effected in violation of the statutory provision. This view is supported by the decision of the Honourable Supreme Court in the case of (Ajantha Industries Vs. Central Board of Direct Taxes) reported in (1976) 102 ITR 281 (SC) followed in the case of (General Exporters Vs. Commissioner of Income Tax) reported in (1998) 98 Taxman 257 (Madras). This is one more reason to hold that the order of transfer is not sustainable.

11. The Revenue seeks to sustain the order of transfer

by referring to the instructions given by the Central Board of Direct Taxes No.1739, dated 19.12.1986. These instructions covers more than three category of cases and what has been pressed into service is as mentioned hereinbelow:

"However, in the case of the assessee having large business income in many cases the change of residence/business places is manipulating with a view to avoid proper scrutiny. Taking into account the above facts, the Board have decided that in partial modification of Board's Instruction No.1555 dated 25.02.1984, as a result of the change of residence/business places of the assessee, the records of the assessee except those indicated below should automatically be transferred without getting the consent of the Income Tax Officer(I.T.O) to whom the case is proposed to be transferred."

12. On a perusal of the above instructions, it is evidently clear that the instructions would apply to cases, where, there is a change of residence or place of business of the assessee, and these instructions appear to have been issued, when it came to the notice of the Board that there are manipulations with a view to avoid proper scrutiny, and as a result of change of residence or place of business of the assessee, the records of the assessee, except, those indicated in the instruction should automatically be transferred without getting the consent of the Income Tax Officer(I.T.O), from whom the case is proposed to be transferred.

13. The instructions (referred to above) would not apply to petitioner's case for more than one reason. Firstly, there is no allegation against the petitioner that there is any avoidance of scrutiny. Secondly, there is no change of business place of the petitioner, and only their registered office has been changed and the same has been intimated to the Department, which shows the bona fide on the part of the petitioner. Though it is the contention of the respondent that, they have obtained the consent from the Income Tax Department at Mumbai regarding transfer of the petitioner's file, they cannot take shelter on the aforesaid instructions, as the petitioner's case does not fall within any one of two categories (mentioned above). The reliance placed by the Revenue, in this context, on the decision of the High Court of Delhi, in the case of the (Commissioner of Income Tax, Delhi - XVI Vs. S.S.Ahluwalia) reported in (2014) 46 taxmann.com 169 (Delhi) is clearly distinguishable on facts, as, in the said case, the Court considered the matter, as to what would be the true merit and

meaning of the word, "residence", and held that residence can mean permanent residence as well as current or temporary residence of some permanence. Equally so, is the decision of the High Court of Kerala, in the case of (Redwood Hotel (P.) Ltd., Vs. Chief Commissioner of Income-Tax reported in (2012) 125 Taxman 644 (Kerala), wherein, it was held that, where, group cases are handled, it is always desirable to have one officer, handling all the assessments together. Similarly, the decision in the case of (P.A.Ahmed Vs. Chief Commissioner of Income-tax) reported in (2006) 151 Taxman 223 (Kerala) relied upon by the Revenue is also not applicable to the facts of the case on hand.

14. It is interesting to note that the Assistant Commissioner of Income Tax, Chennai, had issued a notice to the petitioner under Section 143(2) of the Act for the Assessment Year 2016-17 stating that the said assessment has been selected for scrutiny. The notice is dated 06.07.2017. Admittedly, the said notice was served on the petitioner only on 27.09.2017. The date, on which, the petitioner was required to file the return of income is printed in the said notice as ''28.07.2017'' which has been corrected manually as ''29.09.2017''. Thus, it appears that the Department itself was in a quandary what was the exact position of the petitioner's case. Furthermore, it is submitted by the learned Senior Counsel that, all the files have not been transferred, and this required to be done in case of transfer, and this issue was pointed out in the decision referred by the Revenue in the case of (P.A.Ahmed Vs. Chief Commissioner of Income Tax) (supra) wherein, by referring to Section 127, it was held that, when transfer is effected, the entire files will get transferred to the officer, to whom the file is ordered to be transferred.

15. Thus, the transfer of the files of the petitioner to Mumbai is completely flawed, and it is contrary to statutory provisions and the same should be set aside. Further, it is not disputed that the petitioner has not been put on notice, prior to transfer of their files and straightaway the impugned communication dated 18.07.2017 has been issued intimating that the transfer has been effected and he may contact the Income Tax Office, Mumbai for any queries. Therefore, by the quashing the impugned communication dated 18.07.2017, it has to be necessarily held that the order of transfer, if any, is also unsustainable.

16. As a consequence thereof, necessary directions are required to be issued in first set of Writ Petitions viz., W.P.Nos.17620 to 17623 of 2017, where, the petitioner seeks for a direction for refund of the excess tax paid by them. In this regard, it is submitted that, several representations and letters have been sent by the petitioner, but the petitioner was

not favoured with any reply. When the Act provides for a remedy for refund, in case of excess tax paid or collected, it is bounden duty for the respondent to pass orders on the petitioner's refund claim without delay.

17. In the result, Writ Petitions bearing Nos.21007 to 21009 of 2017 are allowed and the impugned communication, dated 18.07.2017 is set aside and the files are directed to be re-transferred to Chennai. Insofar as Writ Petition bearing Nos. 17620 to 17623 are concerned, the same are disposed of, by directing the respondent/Deputy Commissioner of Income Tax, Corporate Circle I(1), Chennai to consider the petitioner's refund claim and after affording an opportunity of personal hearing to the authorized representative of the petitioner, and pass orders within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

mrr/kas

To

The Deputy Commissioner of Income Tax
Corporate Circle - I(1),
121, M.G.Road,
Chennai - 600 034.

+1 cC to Mr.Hema Muralikrishnan, Advocate sr 73891.
+1 CC to Mr.R. Parthasarathy, Advocate sr 73759.

W.P.Nos. 17620 to 17623 &
21007 to 21009 of 2017

SKV(CO)
sp(27/10/2017)

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