

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2017

CORAM:

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.35408 of 2016 & W.M.P.No.30475 to 30478 of 2016

Orders reserved on 17.11.2017	Orders pronounced on 05.12.2017
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M/s.Advantage Strategic Consulting
Private Limited, rep by its Director,
Mr.M.Rajesh, Flat 3-B, Bajaj Apartments,
7/4, Nandanam Extension Main Road,
Chennai-600 035. Petitioner

Vs.

1. The Principal Commissioner of Income
Tax, Chennai-1, Room No.701,
7th Floor, New Block No.121,
Income Tax Department,
Uthamar Gandhi Road, Chennai-600 035.
2. The Assistant Commissioner of
Income Tax, Central Circle 2(1),
Investigation Wing, Income Tax Department,
Room No.122, 1st Floor, New No.46,
M.G.Road, Chennai-600 034. ... Respondents

Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the first respondent relating to the Notification No.1/2016-17, dated 24.06.2016 having Ref.No.C.No.272-A/Centralisation/PCIT-1/2016-17 in the case of the petitioner and quash the same as ultra vires Section 127 of the Income Tax Act, 1961 vitiated by extraneous considerations, passed in violation of principles of natural justice, arbitrary and violative of Article 14 of the Constitution.

For Petitioner : Mrs.Nalini Chidambaram
Senior Counsel, for Ms.C.Uma
For Respondents : Mr.G.Rajagopalan,
Additional Solicitor General
assisted by Mr.A.P.Srinivas
Standing Counsel

COMMON ORDER

The petitioner has filed three Writ Petitions, viz., i) W.P.No.35408 of 2016, ii) W.P.No.2544 of 2017 and iii) W.P.No.11843 of 2017, one of which being W.P.No.35408 of 2016, was heard and is disposed of by this order.

2. i) In W.P.No.35408 of 2016, the petitioner seeks to quash the Notification dated 24.06.2016, issued by the first respondent, as ultra vires under Section 127 of the Income Tax Act, 1961, vitiated by extraneous considerations and in violation of principles of natural justice. ii) In W.P.No.2544 of 2017, the petitioner has challenged the notice issued by the first respondent, dated 31.03.2016, under Section 148 of the Income Tax Act, 1961 and the consequential notice, dated 19.12.2016, issued by the second respondent under Section 142 (1) of the Income Tax Act, 1961, and to quash the same. In the third Writ Petition, W.P.No.10896 of 2017, the challenge is to the order passed by the first respondent, dated 31.03.2017, under Section 263 of the Income Tax Act, 1961 for the assessment year 2012-13, on the ground that, it has been passed in gross violation of principles of natural justice, vitiated by legal malafides, lacking in bonafides, abuse of authority, wrongful exercise of discretion under Section 263 of the Income Tax Act, 1961 and to quash the same.

3. Mrs. Nalini Chidambaram, the learned Senior Counsel appearing for the petitioner submitted that, W.P.No.35408 of 2016 may be taken up for consideration at the first instance, as the result in this Writ Petition would have direct impact on the other two Writ Petitions (W.P.Nos.2544 of 2017 and W.P.No.10896 of 2017). Therefore, W.P.No.35408 of 2016 is taken up for disposal.

4. The petitioner is a Company, registered under the Indian Companies Act, stated to be engaged in the business of consultancy. The petitioner falls within the jurisdiction of the Deputy Commissioner of Income Tax, Central Circle-2(1), Chennai (DCIT), for the purpose of assessment. The Writ Petition has been filed, challenging a proceedings of the first respondent/The Principal Commissioner of Income Tax, Chennai-1, dated 24.06.2016, which is a notification issued, in exercise of his powers under Section 127 (2) of the Income Tax Act, 1961 (Act). By virtue of the impugned notification, cases of the petitioner have been transferred from the DCIT, Corporate Circle-1(1) Chennai to DCIT Central Circle-2(1), Chennai.

5. The facts, which are necessary for the disposal of the Writ Petition are as follows:

5.1 The Enforcement Directorate conducted search operations in the office premises of the petitioner/Company and the residences of its Directors under Section 37 of the Foreign Exchange Management Act, 1999 (FEMA) on 01.12.2015. Simultaneously, the Income Tax Department conducted a survey in the office premises of the petitioner and the residences of its Directors in exercise of the powers under Section 133(A) of the Act. While the matters were at that stage, the impugned notification has been passed by the first respondent/Principal Commissioner of Income Tax -1, transferring the petitioner's cases to a different Officer, who is within the City of Chennai.

5.2 In the subject column of the impugned notification, it is stated as "Centralization of Search and Seizure cases - in the group cases of Shri.A.M.Arun, M/s. Vasan Health Care (P) Ltd., - Notification - Reg". The reference column in the notification reads as "Letter of the DGIT (Inv.) (i/c), Chennai to the CCIT-1, Chennai in F.No. 2003/2016-17, dated 30.05.2016".

5.3 The learned Senior Counsel for the petitioner would contend that, the impugned notification suffers from errors apparent, as it has been issued under Section 127(2) of the Act, without giving the petitioner, reasonable opportunity of being heard in the matter and without recording the reasons.

5.4 It is submitted that, if the petitioner had been given an opportunity, they have valid reasons to object to the transfer, as they are in no way connected with the Search and Seizure cases relating to the group cases of Shri.A.M.Arun, M/s. Vasan Health Care (P) Ltd., except to the extent, owning certain shares in the Company and the petitioner cannot be considered as a group Company of M/s. Vasan Health Care (P) Ltd., and the entire proceedings, commencing from the survey proceedings, culminating in the impugned notification, dated 24.06.2016 are ultra-vires of the provisions of the Act. It is further submitted that, there is no material in possession of the first respondent to warrant clubbing of the petitioner's cases with Search and Seizure case of Shri.A.M.Arun, M/s. Vasan Health Care (P) Ltd. Further, principles of natural justice demands reasons to be recorded before passing the impugned notification and such reasons should be communicated to the petitioner.

6. The learned Senior Counsel submitted that, sub section (1) of Section 127 of the Act will not be attracted to the petitioner's case, and, as stated in the impugned notification and admitted in the counter affidavit, Section 127 (2) of the Act is applicable, and while exercising such power under the said provision, three requirements have to be fulfilled, viz., i) Two Principal Commissioners should agree, and such agreement should be in writing, ii) Assessee is entitled to a reasonable

opportunity of being heard in the matter, and iii) Reasons should be recorded in writing and communicated to the assessee.

7. Further, it is submitted that, the petitioner's case will also fall under Sub-section 3 of Section 127 of the Act, as the impugned order of transfer is within the same City (Chennai), and since it falls under the provisions of both sub-sections, viz., Section 127 (2) and 127 (3) of the Act, opportunity should have been granted to the assessee and reasons should have been recorded, and communicated to the assessee/petitioner. It is further submitted that, on receipt of the impugned notification, the petitioner submitted a representation to the first respondent, on 08.09.2016, requesting for a post decisional hearing, pointing out, as to how, the impugned notification is not sustainable. The said representation was not considered by the first respondent, and no orders have been passed. Referring to certain facts mentioned in the impugned notification, the learned Senior Counsel points out that, there is anomaly in the impugned notification, which would go to show that the impugned notification has been passed on the dictates of the superior officers of the first respondent, which per se shows that the first respondent has not applied his mind to the issue.

8. It is further submitted that, in the counter affidavit filed by the respondent, it is stated that, Principal Director of Income Tax (Investigation) Chennai addressed a letter, dated 19.03.2016, to the Director General of Income Tax (Investigation) Chennai, seeking centralization of the case, viz., that of the petitioner's cases to Central Circle for coordinated investigation. In para No.4, it has been stated that the Chief Commissioner of Income Tax -1, by his letter, dated 13.05.2016, had directed the Principal Commissioner of Income Tax -1/first respondent, to pass appropriate orders, notifying the petitioner's case from DCIT, Corporate Circle I (1), Chennai to DCIT Central Circle 2(1), Chennai, to facilitate coordinated investigation. However, this communication was sent by the Principal Commissioner of Income Tax, even before the DCIT (Investigation) addressed the Chief Commissioner of Income Tax-1 (which communication was sent only on 30.05.2016). Thus, it is clear that the first respondent did not apply his mind independently before issuing the impugned notification, and merely followed the dictates of the superior Officers. This anomaly will go to the root of the matter, rendering the proceedings as illegal. The learned Senior Counsel further submitted that, the petitioner holds a micro-minority share of less than 1% in M/s. Vasan Health Care (P) Ltd. as on date, and merely, by reason of such minuscule shareholding, the case of the petitioner cannot be centralized with the case of M/s. Vasan Health Care (P) Ltd. In this regard, the learned Senior Counsel

has referred to the factual averments set out in the representation, dated 08.09.2016, as well as in paragraph No.8 of the reply affidavit to the counter affidavit. Further, it is submitted that, the first respondent proceeds on the basis that, no inconvenience is caused to the petitioner, as the transfer is within the City of Chennai, without appreciating the contentions raised by the petitioner that, transfer is mala fide, as the petitioner's case cannot be clubbed along with Search and Seizure cases, relating to the group cases of Shri.A.M.Arun, M/s. Vasan Health Care (P) Ltd.

9. The learned Senior Counsel has referred to the following decisions in support of the propositions (mentioned infra).

a) Ajantha Industries and others Vs. Central Board of Direct Taxes A.I.R. (1976) SC 437, for the proposition that, 'reasons should be recorded in writing and communicated to the assessee to enable him to challenge the same before the Court of law'.

b) Mrs. Menaka Gandhi Vs. Union of India and another, reported in (1978) 1 S.C.C. 248 for the proposition that, the first respondent ought to have afforded an opportunity of post decisional hearing by considering the petitioner's representation, dated 08.09.2016.

c) The decision of High Court of Andhra Pradesh, in the case of Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and others (1991) 187 ITC 405, for the proposition that, 'when transfer is proposed to facilitate detailed and coordinated investigation, it is a vague reason and such order of transfer was set aside.

d) The decision of the High Court of Calcutta, in the case of Dilip Kumar Agarwal Vs. Commissioner of Income Tax, Kolkata, in W.P.No.200 of 2009, dated 17.03.2009, for the proposition that, 'the impugned notification should disclose the nexus with that of search and seizure cases in the case of Shri.A.M.Arun, M/s. Vasan Health Care (P) Ltd.

e) Noorul Islam Educational Trust Vs. The Commissioner of Income Tax-I and other (2016) 388 ITR 0489 (SC) for the proposition that, 'when transfer is effected, invoking power of Section 127 (2) (a) of the Act, there should be agreement between the two principal Commissioners and absence of disagreement, cannot tantamount to agreement, as visualized under Section 127 (2) (a) of the Act, which contemplates a positive state of mind of two jurisdictional Commissioners of Income Tax, and in the absence of such agreement, the order of transfer is vitiated.

10. Thus, on the aforesaid grounds, the learned Senior Counsel seeks for setting aside the impugned notification.

11. The learned Additional Solicitor General assisted by Mr.A.P.Srinivas, learned Senior Standing Counsel for the revenue prefaced his submission by contenting that the petitioner has an alternate remedy as against the order of assessment to be passed as a consequence to the transfer of files from one officer to another and therefore, the writ petition is not maintainable. In support of such submission, reliance was placed on the decision in the case of Dr.K.Nedunchezian vs. The Deputy Commissioner of Income-tax and another reported in (2005) 4 CTC 161.

12. It is further submitted that on a plain reading of Section 127 (3) of the Act, it is clear that, nothing in sub-section (1) or sub-section (2) of Section 127 of the Act, 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) when the offices of all such officers are situated in the same city, locality or place.

13. It is further submitted that the question of reading sub-section (3) into sub-section (2) of Section 127 of the Act, cannot be done, as sub-section (3) of Section 127 of the Act, is very explicit and the concept of reading into it would arise only when there is no provision in the statute. In this regard, reliance was placed on the decision in the case of Mrs.Maneka Gandhi vs. Union of India and another reported in (1978) 1 SCC 248, wherein the statute was silent and therefore, the Constitution Bench has read into the concept of post decisional hearing.

14. Further, it is submitted that no prejudice would be caused to the petitioner/assessee because of exercise of power under Section 127 of the Act, as there is no civil consequence involved and all the objections raised by the assessee should be preserved to be agitated at the appropriate time.

15. With regard to the contention raised by the learned Senior Counsel for the petitioner that there is no agreement between both the Commissioners under whom, the transferee's and transferor's officers are functioning, it is submitted that the fact that notices have been issued by the transferor's officer itself is a clear indication that there is agreement between their respective Commissioners. It is further submitted that this contention was not raised in the affidavit filed in support of the writ petition and is raised before this Court for the first time and in this regard, the factual position would be explained by producing the original file.

16. The learned Additional Solicitor General referred to the decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Kashiram Aggarwalla vs. Union of India reported in (1965) 56 ITR 14 (SC) and submitted that when the transfer is from one officer to another, whose offices are situated in the same locality, the question of providing opportunity or recording of reasons is not required. To the same effect, the learned Additional Solicitor General placed reliance on the following decisions:

(i) M.A.E.K.K.Varma vs. Central Board of Direct Taxes reported in (1981) 129 ITC 131 (AP).

(ii) M/s.Karandhai Tamil Samgam vs. The Commissioner of Income Tax-II, and other in W.P.(MD).No.8062 of 2011 dated 24.08.2011.

(iii) T.S.Sujatha vs. Union of India reported in (1999) 239 ITR 488 (Ker.)

(iv) S.L.Singhanian vs. Assistant Commissioner of Income-tax/Wealth-tax reported in (1992) 65 Taxman 479 (Delhi)

17. During the course of argument, the learned Additional Solicitor General fairly submitted that though in the impugned notification, it has been stated that the assessee was given an opportunity under Section 127(2) of the Act to express objections, this is an inadvertent error and therefore, requested the Court to ignore the statement and record the stand that no opportunity was given, as it is not required to be given.

18. Further, with regard to the contention raised by the learned Senior Counsel for the petitioner that in the counter affidavit, the revenue has admitted that the Chief Commissioner of Income Tax-I, Chennai, has addressed a letter dated 30.05.2016, to the Principal Commissioner of Income Tax, Chennai, is incorrect and it is a typographical error and the date of the letter is 13.06.2016. The learned Senior Counsel for the petitioner accepted the said submission and therefore, the argument advanced by the learned Senior Counsel on the said contention stands eschewed, since the revenue has produced copy of the file and demonstrated it before the Court that the date of the letter is 13.06.2016 and not 30.05.2016.

19. Further, it is submitted that the Income Tax Act, being a taxing statute, very strict interpretation has to be given and in the absence of any prejudice caused to the petitioner, the challenge to the impugned notification has to be rejected.

20. It is submitted that the Director General of Income Tax (Notification), Chennai, addressed a letter to the Chief Commissioner of Income Tax-I, Chennai, dated 30.05.2016. Based

on such letter, the Chief Commissioner of Income Tax, has issued the impugned notification and the Deputy Commissioner of Income Tax, Central Circle-1(I), Chennai, having issued notice subsequently, would clearly show that there has been agreement between the two Commissioners under whom, the transferee's and the transferor's assessing officers are functioning.

21. By way of reply, the learned Senior Counsel for the petitioner contended that the Act does not provide for any alternate remedy against a notification under Section 127 of the Act and the contention raised by the Additional Solicitor General is not tenable. It was clarified by the learned Additional Solicitor General that as against the assessment order that may be passed by the transferor assessing officer, alternate remedy is available and he did not submit that as against the impugned notification, there is a remedy in the Act, rather his submission is that the writ petition is not maintainable, as no prejudice is caused to the petitioner.

22. Further, the learned Senior Counsel submitted that the decisions relied on by the revenue viz., Kashiram Aggarwalla (supra), M.A.E.K.K.Varma, (supra) M/s.Karandhai Tamil Samgam (supra), T.S.Sujatha (supra) and S.L.Singhania (supra) are all orders of transfer on administrative grounds and therefore, those decisions are not applicable.

23. So far as the decisions in the case of Chaudhary Skin Trading Co. vs. Principal Commissioner of Income-tax-21 reported in (2016) 76 Taxmann.com 169 (Delhi), Vishal Kumar vs. Commissioner of Income-tax reported in (2014) 44 Taxmann.com 180 (Delhi) and Ravneet Takhar vs. Commissioner of Income-tax-IX reported in (2016) 76 Taxmann. 210 (Delhi) are concerned, they are all cases where show cause notices were issued, objections were called for and thereafter, orders have been passed, which were subject matter of challenge. Therefore, those decisions are also factually distinguishable.

24. Further, it is submitted that the five decisions relied on by the revenue are all orders of transfer on administrative grounds and the petitioner's case is not an order of transfer on administrative grounds, but the respondents wanted to club the matter along with the case of Shri.A.M.Arun vs. M/s. Vasan Health Care (P) Ltd., which was a case of search and seizure and the reason given is for centralization based upon a letter given by the DIT (Investigation). Further, it is submitted that the

respondents cannot rely upon the order passed under Section 263 of the Act, which has been challenged by the petitioner vide separate writ petition, as there is a gap of 10 months between the notice and the impugned notification for transfer.

25. Further, it is submitted that the impugned order of transfer is discriminatory, as persons holding more than 5% shares in Vasan Eye Care (P) Ltd., their cases have not been transferred and clubbed with the search and seizure cases. Referring to the decision of the learned Single Judge in the case of Noorul Islam Educational Trust vs. The Commissioner of Income Tax-I, in W.P.(MD).No.60 of 2009 dated 11.12.2009, it is submitted that merely because search was conducted under Section 132 of the Act in the premises of the other assesseees cannot be a reason for transfer when the incriminating materials found do not show the interlace and interconnecting transaction.

26. Learned Senior Counsel would emphasize that Section 127 (2) and 127(3) of the Act, should be harmoniously read and sub-section (3) of Section 127 of the Act, only obviates personal hearing, but the other ingredients required under sub-section (2) of Section 127 of the Act, namely the agreement between both Commissioners and the recording of reasons have not been dispensed with and therefore, it is essential that both sub-sections have to be read harmoniously, otherwise, the provisions would become redundant. For the above contentions, the learned Senior Counsel referred to the following decisions:-

(i) J.K.Cotton Spinning and Weaving Mills Co. Ltd., v. State of U.P. And others reported in AIR 1961 SC 1170,

(ii) Calcutta Gas Company (Proprietary) Ltd., vs. State of W.B. Reported in AIR 1962 SC 1044,

(iii) Ashoka Marketing Ltd. and others vs. Punjab National Bank and others reported in (1990) 4 SCC 406;

(iv) Smt.Parayankandiyal Eravath Kanapraavan Kalliani Amma and others vs. K.Devi and others reported in (1996) SC 1963 and

(v) Sultana Begum vs. Prem Chand Jain reported in (1997) 1 SCC 373.

27. Further, it is submitted that in the counter affidavit, especially in paragraphs 5 and 6, there is no averment that the transfer of the petitioner's case was on administrative grounds and in this regard, the learned Senior Counsel has drawn the attention of this Court to paragraph 8 of the reply affidavit.

28. Further, it is submitted that there is no basis for transfer and it is solely based upon newspaper gossips which were being published from September 2015 onwards, and that is why, the Court, while ordering transfer recording the submissions of the counsel in its order dated 19.12.2016, recorded that the order of transfer is not as an innocuous order, as it is made out by the revenue.

29. On the above submission, the learned Senior Counsel prayed that the writ petition may be allowed and the impugned order be quashed.

30. Heard Mrs. Nalini Chidambaram, the learned Senior Counsel appearing for the petitioner and Mr. G. Rajagopalan, the learned Additional Solicitor General assisted by Mr. A.P. Srinivas, the learned Standing Counsel for the respondents.

31. The petitioner is aggrieved by an impugned notification dated 24.06.2006, issued by the first respondent in exercise of its power conferred by sub-section (2) of Section 127 of the Income Tax Act, (hereinafter referred as "the Act"). The effect of the impugned notification is that the petitioner's income tax assessment file which was hitherto dealt with by the Deputy Commissioner of Income Tax, Corporate Circle-1(1), Chennai (hereinafter referred as "the Corporate Circle"), has been transferred to the Deputy Commissioner of Income Tax, Central Circle-2(1), Chennai (hereinafter referred as "the Central Circle"). The impugned notification in the subject column states that it is for centralization of search and seizure cases - in the group of cases of Shri A.M.Arun vs. Vasan Health Care (P) Limited. The first respondent has referred to a letter from the Director General of Income Tax (Investigation), (i/c), Chennai, to the Chief Commissioner of Income Tax-1, Chennai, dated 30.05.2016. The challenge to the impugned notification are on the following grounds:

(i) The notification is bad in law for not providing reasonable opportunity to the petitioner as required under Section 127(2) of the Act;

(ii) No reasons have been recorded by the first respondent for transferring the case as required to be done under Section 127(2) (a) of the Act;

(iii) The petitioner holds a minuscule number of shares as on date in Vasan Health Care (P) Limited and no way connected with the search and seizure operations conducted on the said group and there is no material available with the first

respondent warranting clubbing of the petitioner's case with the search and seizure case;

(iv) Section 127(2) of the Act mandates that the Commissioners to whom such Assessing Officers are subordinate should be in agreement with each other and absence of disagreement between the two Commissioners cannot tantamount to agreement;

(v) The reasons assigned in the impugned notification is vague and liable to be set aside;

(vi) Though the petitioner sought for a post decisional hearing by way of representation dated 08.09.2016, the same has not been considered by the first respondent. The respondents have admitted that the case of the petitioner would fall under Section 127(2) of the Act and seek to rely upon sub-section (3) of Section 127 of the Act, to state that no opportunity need to be given to the assessee nor any order be passed, which is an incorrect interpretation as Section 127(2) and Section 127(3) of the Act have to be harmoniously read and though Section 127(3) dispenses the opportunity to the assessee, the agreement between two Commissioners, recording of reasons have not been dispensed with.

(vii) Though in the impugned notification it has been stated that the assessee was given an opportunity under Section 127(2) of the Act, no such opportunity was granted and it is factually an incorrect statement.

32. Before the Court proceeds to examine the legal and factual contention raised before it, it is necessary to clear certain factual discrepancies, which have been focused before this Court. The first among them being that in the impugned notification, it has been stated that the assessee was given an opportunity under Section 127(2) of the Act to express objections.

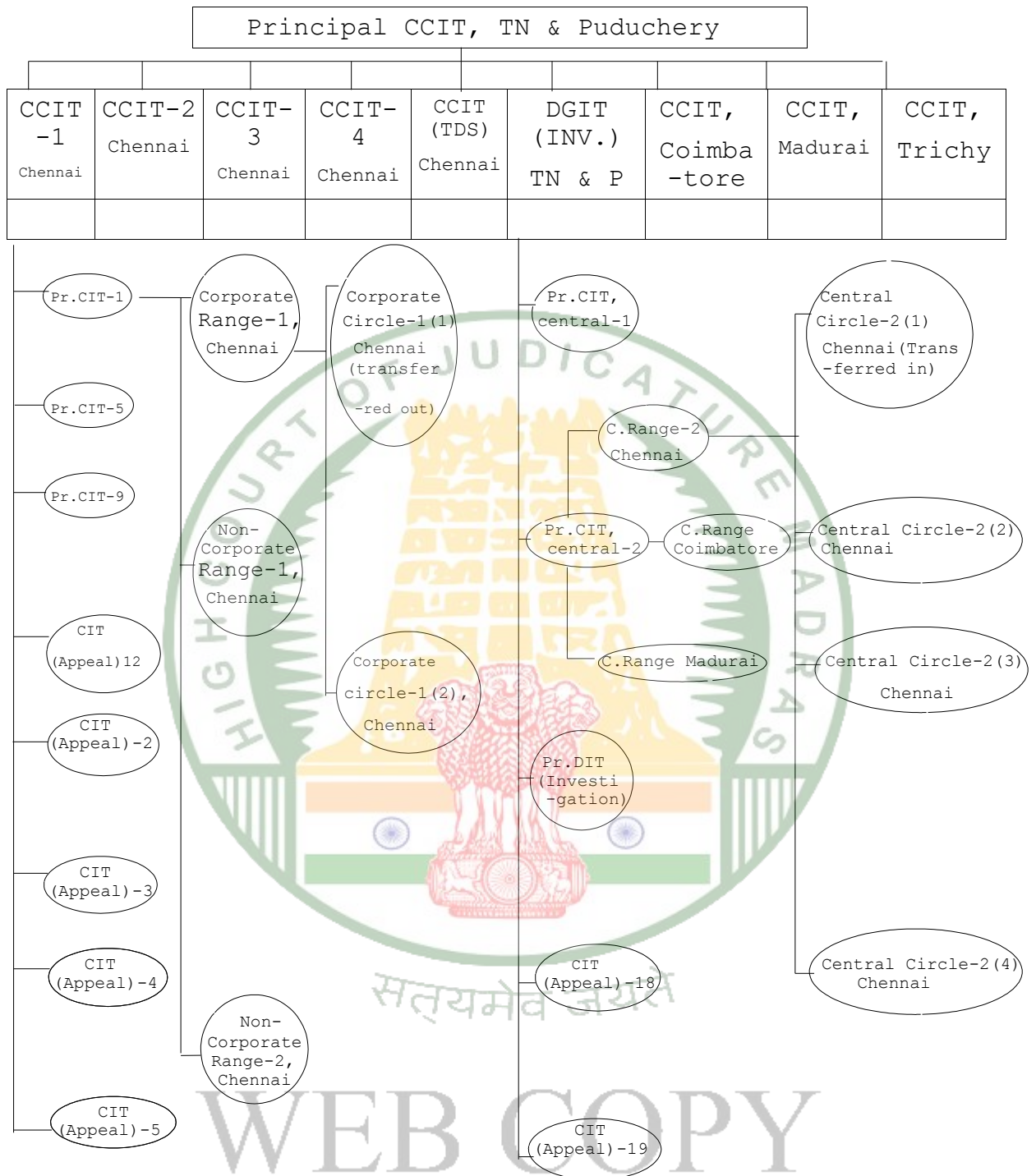
33. Learned Additional Solicitor General fairly submitted that the said observation in the impugned notification is factually incorrect and it is admitted that no opportunity was granted to the assessee, as it is not required to be granted. The next aspect is with regard to the averments made in paragraph 4 of the counter affidavit, which refers to a letter of the Chief Commissioner of Income Tax, dated 13.05.2016, it has been clarified that it is a typographical error and the correct date is 13.06.2010, and not 30.05.2016, and the copy of the original letter was produced before this Court. Thus, these two factual discrepancies have been duly explained and placed on record.

34. Section 127(2) of the Act states that where the Assessing Officer from whom the case is to be transferred and the Assessing Officer to whom the case is to be transferred, are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, the following procedures have to be adhered to. Clause (a) of Section 127(2) of the Act deals with cases where the Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate, are in agreement. Clause (b) of Section 127(2) of the Act refers to cases where the Principal Commissioners or Commissioners are not in agreement.

35. The petitioner's contention is that the entire process of transfer from Corporate Circle to Central Circle emanated from a letter addressed by the DGIT, TN & Puducherry, (i/c), Chennai to the Chief Commissioner of Income Tax-1, Chennai dated 30.05.2016. Pursuant to which, the first respondent has issued the impugned notification and the case has been transferred to the Central Circle and the Principal Commissioners of Corporate Circle and Central Circle have not agreed to the transfer or in other words, the notification does not show any agreement.

36. In order to examine the correctness of the stand, the Court at the conclusion of the hearing of the Writ Petition, directed the learned Additional Solicitor General to produce the necessary files and furnish details as regards the organisational set up of the Department. This direction was issued, since the petitioner did not raise such a contention in the affidavit filed in support of the Writ Petition and for the first time, the same was raised during the course of arguments advanced by the learned Senior Counsel.

37. Before I examine as to whether there has been agreement between the two Principal Commissioners/Commissioners, it is required to be seen as to who are the Heads of Department of the Corporate Circle and the Central Circle. The details furnished by the Department show that the overall control vests with the Principal Chief Commissioner of Income Tax, Tamil Nadu and Puducherry. Under his control, there are eight Chief Commissioners of Income Tax of which, we would be concerned only about two namely, the Chief Commissioner of Income Tax-1, under whom, the Corporate Circle and the Central Circle falls. The Chief Commissioner of Income Tax-1 has the following organizational set up:-



38. Thus, the Principal Commissioner of Income Tax-1, the first respondent, who issued the impugned notification falls within the jurisdiction of CCIT-1. Under the control of the

first respondent, there are three ranges, namely, Corporate Range-1, Chennai, Non-Corporate Range-1, Chennai and Non-Corporate Range-2, Chennai. Under Corporate Range-1, Chennai, there are two circles namely, Corporate Circle-1(1), Chennai and Corporate Circle-1(2), Chennai.

39. The petitioner's case has been transferred to Corporate Circle. Therefore, as per the organizational set up, the Chief Commissioner of Income Tax is required to be in agreement with his counterpart, who heads the Company Circle. The proposal for clubbing of the petitioner's case with the case of Vasan Health Care (P) Ltd., is pursuant to a letter dated 30.05.2016, issued by the DGIT (Investigation), Chennai addressed to the CCIT-1. It has been shown that DGIT (Investigation) TN & Pondicherry, is the Head of the Department within whose jurisdiction, the Principal Director of Income Tax (Investigation) functions.

40. Apart from that DGIT (Inv.) TN & P, has Central-1, Central-2, Appeal-18 and Appeal-19 under his control. During December 2015, survey was conducted by the Investigation wing of the Deputy Director of Income Tax Unit-1(3), Chennai. It is based on such survey, a proposal was sent to the DGIT (Investigation), Head of his Department, for centralization along with Vasan group. This report was forwarded by the Principal Director of Income Tax (Inv.) to DGIT (Inv.) vide letter dated 09.03.2016.

41. The DGIT (Inv.) vide his letter dated 30.05.2016, requested the CCIT-1, Chennai, for centralization of the case of the petitioner from Corporate Circle to Central Circle to facilitate co-ordinated investigation. Along with the said letter, the report of the DDIT (Inv.) Unit 3(2), Chennai, dated 25.02.2016, was forwarded to CCIT-1, Chennai. This is because Corporate Circle-1(1), Chennai, is within the jurisdiction of Principal Commissioner of Income Tax, who is subordinate to CCIT-I, Chennai. On 13.06.2016, the CCIT-1, Chennai, requested the Principal CIT, Chennai-1, who is a subordinate officer to notify the case of the petitioner for transferring the same from Corporate Circle to Central Circle for co-ordinated investigation.

42. In turn, the Principal Commissioner of Income Tax, Chennai-1, passed the impugned notification transferring the case from Corporate Circle-1(1) to Central Circle-2(1), Chennai. Thus, the two Heads of Department viz., DGIT (Inv.) TN & P, under whom the Central Circle falls, as well as the Principal

DGIT (Inv.) have concurred with the CCIT-1, Chennai, under whom is the Principal CIT-I under whom the Corporate Circle functions. Thus, by virtue of chain of events, as mentioned above, it is clear that the Heads of Department are in agreement with each other.

43. As mentioned earlier, this contention was not raised by the petitioner in the affidavit filed in support of the writ petition and raised for the first time during the course of arguments and therefore, this Court had to do the above exercise to find out as to who are the two Heads of Department, who had to concur. The nomenclature of the Department Heads has caused some confusion. This is so because, the Director General of Investigation not only heads the investigation, but he has two Central Circles under his jurisdiction apart from two appellate jurisdictions. Thus, he is the Head of Department of the Central Circle and he has concurred with the Head of Department of the Corporate Circle viz., CCIT-1 and therefore, I hold that both the Heads of Department were in agreement with each other for transfer. Thus, the requirement under Section 127(2)(a) of the Act stands satisfied.

44. In the light of the above factual position, the agreement between the two Heads of Department need not be inferred, as it is explicit from the chain of events. Thus, this issue is answered against the assessee and in favour of the revenue.

45. The next contention is that sub-section (3) of Section 127 of the Act, only obviates the opportunity to be given to the assessee before effecting an order or transfer, but does not dispense with the other two requirements viz., agreement between both the Commissioners and recording of reasons have not been dispensed with. So far as the agreement between both the Commissioners is concerned, this Court is satisfied for the reason recorded above that there has been agreement. Thus, it has to be seen as to whether when transfer has been effected by referring to sub-section (3) of Section 127 of the Act, should reasons to be recorded.

46. Sub-section (3) of Section 127 of the Act does not commence with a non-obstante clause, but rather it excludes certain procedure contemplated under sub-section (1) and sub-section (2) of Section 127 of the Act, when both the transferee and transferor officers are situated in the same city, locality or place. The provision commences by stating "nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given". Therefore, when there is a total

exclusion of an opportunity, the question of communicating the reasons to the assessee cannot be insisted upon and that is not required under the statute. Therefore, the assessee cannot seek to read something into the statute, which is not found therein.

47. In the case of K.P.Mohammed Salim, the Court pointed out that the power of transfer infact provides for a machinery provision and it must be given its full effect and it must be construed in a manner so as to make it workable. It should be construed to effectuate a charging section so as to allow the authorities concerned to do so in a manner what for the statute was enacted.

48. The often quoted decision of the Constitution Bench of the Hon'ble Supreme Court in the case of Kashiram Aggarwala vs. Union of India reported in [1965] 56 ITR 14 (SC), considered the power of transfer of cases under Section 127 of the Act. The two appeals before the Hon'ble Supreme Court arose out of two Writ Petitions filed by the appellant in the Punjab High Court, challenging the validity of two orders passed by the Central Board of Revenue, which had directed the income-tax proceedings, then pending against the appellant should be transferred from the ITO of one ward to ITO of another. The two orders of transfer were challenged on the ground that the Board had failed to comply with the mandatory requirements prescribed under Section 127(1) of the Act. The Writ Petitions were dismissed by the High Court. On appeal before the Hon'ble Supreme Court, it was contended that the impugned orders of transfer did not record any reasons, why the Board thought it necessary to transfer the cases from one ITO to another. While considering the said contention, the Hon'ble Supreme Court pointed out that there is another consideration, which would be relevant namely, Section 127(3) of the Act, which provides that within the limits of the area assigned to him, the Income Tax Officer shall have jurisdiction. Explaining further, it was held that the said provision indicates that where the transfer is made under proviso to Section 127(1) from one ITO to another is purely an administrative order passed for considerations of convenience of the Department and no possible prejudice can be involved in such a transfer. It was further pointed out that when assessment cases pending before an officer in one ward, are transferred to an officer in another ward in same place, there is hardly any occasion for mentioning any reasons as such, because such transfers are invariably made on grounds of administrative convenience, and that shows that on principle in such cases neither can the notice be said to be necessary nor would it be necessary to record reasons for transfer.

49. In Pannalal Binjraj vs. Union of India reported in [1957] 31 ITR 565 (SC) was taken note of where the validity of Section 5(7A) of the 1922 Act was challenged. The said Section provided that the CIT may transfer any case from one ITO subordinate to him to another and the Central Board of Revenue may transfer any case from any one ITO to another. The argument, which was urged before the Court in challenging the validity of the provision was that it infringes the citizen's fundamental rights conferred under Articles 14 and 19(1)(g) of the Constitution. In support of such argument, reliance was placed on the fact that Section 64(1) and Section 64(2) of the Act conferred a right on the assessee to have his tax matter adjudicated upon by the respective officers mentioned in that provision and since Section 5(7A) of the Act authorized the transfer of the assessee's case from one ITO to another that involved infringement of his fundamental rights. The transfer in exercise of powers under Section 5(7A) of the Act is from one officer to another not necessarily within the same place. The Court repelled the plea raised against the validity of the said section on the ground that the right conferred on the assessee by Section 64(1) and Section 64(2) of the Act was not an absolute right and must be subject of the primary object of the Act itself, viz., the assessment and collection of the income tax; and it was also held that where the exigencies of tax collection so required, the CIT or the Central Board of Revenue had the power to transfer his case under Section 5(7A) of the Act to some other officer outside the area, where the assessee resides or carried on business. While examining the effect of proviso under 127(1) of the Act, which is in para materia with Section 127(3) of the Act as it now stands, it was pointed that the object of the proviso is taken into account and relevant provisions in the background are borne in mind and it will also seem reasonable to hold that in regard to cases falling under the proviso, an opportunity need not be given to the assessee and the consequential need to record reasons for the transfer is also unnecessary and this view is plainly consistent with the scheme of the provision and the true intent of its requirement. If the above mentioned decision is to be applied to the case on hand, the only plausible conclusion that can be arrived at is to hold that if the transfer is within the same city, no reasons are required to be recorded in writing and no opportunity need be given to the assessee.

50. The learned Senior Counsel for the petitioner sought to distinguish the judgment by contending that it is a case of transfer for administrative convenience and not as in the instant case, where the case is to be clubbed along with the search and seizure case of M/s.Vasan Health Care Private Limited. The impugned notification states that the reasons for

transfer is for centralization of search and seizure cases in the group of M/s.Vasan Health Care Private Limited. Obviously, centralization is part of an administrative process and the contention advanced by the assessee stating that the impugned notification is not administrative convenience does not merit consideration. The note file shows reasons have been recorded for transfer, upon perusal of the enclosures regarding the survey which was conducted on the petitioner and investigation to be carried out along with other cases of the Vasan group. Apart from the petitioner's case, two other cases were requested for transfer, who are assesseees on the file of ACIT Circle-1(1), Trichy and ITO Ward-1(4), Salem. The request for centralisation has emanated on account of search and seizure operations under Section 131 of the Act and survey under Section 133A of the Act, during which it is alleged that documents indicating bogus/inflated expenditure were found and some of the corresponding parties have confirmed the inflated/bogus expenditure was booked. Further, it is averred in the proforma for centralisation that on verification of facts and account statements among the cases is required, and centralisation of the case will facilitate smooth and easy proceedings.

51. The above referred decisions were referred to by this Court in the case of M/s.Karandhai Tamil Sangam vs. the Commissioner of Income Tax-II, & Ors., in W.P(MD).No.8062 of 2011, dated 24.08.2011, which was filed challenging an order of transfer raising similar contentions which were rejected.

52. As noticed above, providing reasonable opportunity to the assessee, while invoking Section 127(3) of the Act, does not arise and therefore, the decision in the case of Ajantha Industries vs. CBDT reported in [1976] AIR 437, would have no application to the facts of the present case.

53. The concept of post decisional hearing cannot be incorporated into Section 127 of the Act, as it would amount to re-writing the statute. The statutes specifically exclude an opportunity to the assessee when the case stands transferred to an officer in the same city. Therefore, the request made by the petitioner for a post decisional hearing is of little avail and precisely for such reason, the petitioner cannot draw any inspiration from the decision in the case of Mrs.Menaka Gandhi vs. Union of India and another reported in [1978] 1 SCC 248.

54. Having steered clear of the above legal position, the assessee is not justified in stating that the transfer for the

purposes of centralization is hardly a reason for transfer. The administrative exigencies and the manner in which, the investigation has to proceed are all matters into which this Court exercising power under Article 226 of the Constitution would refuse to probe and refrain itself from doing so, as it would be stepping into an arena, which is not called for especially when, the matter is at the threshold.

55. Therefore, the decisions relied on by the learned Senior Counsel for the petitioner in the case of G.Mohandas and another vs. Commissioner of Income Tax and others reported in [2000] 244 ITR 32 Mad and Dilip Kumar Agarwal vs. CIT in W.P.No.200 of 2009, dated 17.03.2009, are all of no assistance to the case of the petitioner. Relying upon the decision of the Hon'ble Supreme Court in the case of Noorle Isam Educational Trust vs. Commissioner of Income Tax and ors reported in [2016] 388 ITR 0489, it was submitted that absence of disagreement cannot tantamount to agreement as visualized under Section 127(2) (a) of the Act.

56. In the preceding paragraph, this Court has narrated chronology of events and it would be worthwhile to reiterate the same at this stage. Based on the strength of survey findings, a proposal dated 25.02.2016, was submitted by the Deputy Director of Investigation Unit-3(2) Chennai, to the Director General of Income Tax (Inv.) Chennai. The reason being for centralization of the petitioner's case with the Assessing Officer where M/s.Vasan Health Care was centralized.

57. This report is a proforma along with necessary proposals. The said report was forwarded by the Deputy Director of Income Tax (Inv.) Unit-3(2) through proper channel, which was endorsed by the Principal Director of Income Tax (Inv.) Chennai, vide letter dated 09.03.2016, while forwarding it to the DGIT (Inv.) Chennai. The DGIT (Investigation) in turn by letter, dated 30.05.2016, addressed the Chief Commissioner of Income Tax-1, Chennai requesting for centralization of the case of the petitioner from Corporate Circle-1(1) to Central Circle-2(1), to facilitate co-ordinated investigation.

58. The report of the DDIT (Investigation) Unit-3(2), dated 25.02.2016, was forwarded to the CCIT-I, Chennai. The reasons for addressing the CCIT, Chennai was because Corporate Circle-1 (1) was within the jurisdiction of Principle CIT, Chennai-1, who is subordinate to CCIT-I, Chennai. The CCIT, Chennai-I, vide letter dated 13.06.2016, requested the Principal Commissioner of

Income Tax, Chennai-1, to notify the case of the petitioner transferring the same from Corporate Circle-1(1) to Central Circle-2(1), Chennai for the sake of co-ordinated investigation. The principal Commissioner of Income Tax, Chennai-1, on receipt of a letter from the DGIT (Investigation) dated 30.05.2016, through his Chief Commissioner of Income Tax, passed the impugned notification, transferring the case from Corporate Circle to Central Circle. Thus, the agreement between the two heads of Department is explicit and vivid and nothing more is required.

59. A plea of discrimination was raised by the petitioner contending that cases pertaining to persons holding more than 5% shares with Vasan Health Care Private Limited, has not been transferred and cannot be a reason, as this Court cannot step into the realm of investigation and as pointed out earlier, these issues are premature, as the impugned notification is an innocuous order of transfer and the petitioner cannot be stated to be prejudiced. Apart from the petitioner's case, two other cases were also sought for centralisation.

60. Referring to the newspaper reports, it was submitted that the transfer itself is on account of gossip, which appeared in the newspapers. On the strength of newspaper reports, this Court cannot test the correctness of the notification issued in exercise of statutory power, which has been held to be a valid exercise.

61. Several decisions were cited by the learned Senior Counsel for the petitioner to drive home the concept of harmonious construction.

62. As pointed out earlier, sub-section (3) of Section 127 of the Act does not commence with a non-obstante clause, but it is a clause providing for exclusion of certain procedures, which are required to be adhered to under circumstances not mentioned in sub-section (3) of Section 127 of the Act. Therefore, the theory of harmonious construction cannot be applied to the facts of this case, nor sub-section (3) of Section 127 of the Act, can be construed as a non-obstante clause, but a clause providing for exclusion of certain procedure in certain contingencies. The fact that the transferee and transferor officers are within the same city is not in dispute. This Court has found that there has been an agreement between the two Heads of Department and the petitioner cannot plead for an opportunity to be granted before an order of transfer, as there is no such statutory

requirement under the Act, rather, the said procedure has been specifically excluded. Furthermore, the Court is satisfied that there are reasons recorded, as has been mentioned by referring to the chain of events. In such circumstances, the impugned notification cannot be faulted on the grounds raised by the petitioner.

63. A contention was advanced on behalf of the petitioner that the exercise of the power of jurisdiction was a mala fide exercise based on newspaper gossips and made to appear as an innocuous order of transfer. In this regard, reference was made to the observations contained in an interim order passed on 19.02.2016, especially in paragraph 4 therein, I find what has been recorded by the Court is the submission made on behalf of the petitioner and not a finding rendered by the Court. In any event, the observations contained in the order dated 19.12.2016, was an order recording reasons while granting an interim order, which can hardly have any impact when the case is heard and decided finally.

64. Thus, for all the above reasons, the petitioner has not made out any case for interference. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

abr/pbn
To

1. The Principal Commissioner of Income
Tax, Chennai-1, Room No.701,
7th Floor, New Block No.121,
Income Tax Department,
Uthamar Gandhi Road, Chennai-600 035.

2. The Assistant Commissioner of
Income Tax, Central Circle 2(1),
Investigation Wing, Income Tax Department,
Room No.122, 1st Floor, New No.46,
M.G.Road, Chennai-600 034.

+1cc to Mr.R.Parthiban, Advocate, S.R.No.86216

W.P.No.35408 of 2016

CS/19/12/17