IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2484 OF 2018

Shri. Herambh Anandrao Shelke
204/E/KH/26, Behind Hotel Pearl
New Shahupuri, Kolhapur
416 003

....Petitioner

V/s.

1. Mr. M.L. Karmakar
Pr. Commissioner of Income
-Tax-2 having his office at
Aayakar Bhavan, 31,C/2,
Tarabai Park,
Kolhapur-416003

2. Union of India,
Through the Secretary,
Ministry of Finance,
Government of India,
North Block, New Delhi
110 001.

...Respondents

* * * * *

Mr. Jehangir Mestri, Senior Counsel a/w. Mr. Niraj Sheth i/by. MINT & CONFRERES, Advocate for the petitioner.

Mr. N.N. Singh, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

RESD ON:- 21ST JUNE, 2018.

PRON. ON : 13TH JULY, 2018.

JUDGMENT (PER : SANDEEP K. SHINDE, J)

1. This Writ Petition, filed under Article 226 of the Constitution of India impugns the order dated 2nd January, 2018 passed by respondent no.1 purportedly under Section 127(2) of the Indian Income-Tax Act, 1961 (the Act) transferring his case from Kolhapur to Mumbai, on the ground that it is without jurisdiction. Thus liable to be quashed by issuing appropriate writ, order and/or directions.

2. Heard Mr. Mistri, Learned Senior Counsel for the petitioner and Mr. Singh for the respondents.

3. With the consent of the parties, the petition is taken up for final hearing.

4. It is the petitioner's case that the Principal Commissioner of Income-Tax-II-respondent no.1 herein

who has a jurisdiction over the petitioner's case issued a notice dated 14th February, 2017 and proposed to transfer the petitioner's case from Kolhapur to Mumbai. The said notice refers to a meeting of Centralised Committee held on 16th November, 2016 wherein it was decided to centralise the cases relating to D.Y. Patil Group to DCIT/ACIT, Central Circle-7(1), Central Range-7, Mumbai in the charge of Principal Commissioner of Income-Tax (Central-4), Mumbai. It was alleged in the said notice that the petitioner's case belonged to the said group. Vide the said notice, the petitioner was called upon to intimate in writing any objection that he may have to the proposed transfer. This notice called upon the petitioner to submit his objections to the proposed transfer/centralisation. It is the petitioner's case that the notice dated 14th February, 2017 did not refer to any agreement being reached by the officers of equal rank at Mumbai and Kolhapur as required under Section 127(2) of the said Act.

5. The petitioner raised objections to the proposed transfer vide reply dated 20th February, 2017 and pointed out the difficulties which he may have to face if the case is transferred from Kolhapur to Mumbai.

6. It appears that in reply to the petitioner's objection to the proposed transfer, respondent no.1 addressed a letter dated 27th October, 2017 to the petitioner informing the petitioner that his objections were conveyed by respondent no.1 to Chief Commissioner of Income Tax (CCIT), i.e. CCIT- Pune, who inturn conveyed the objections to CCIT, (Central, Mumbai) who then forwarded the same to the Additional DIT (Investigation), Mumbai. Petitioner was conveyed that DDIT (Investigation) overruled all his objections having found, to be not acceptable and proposed to be rejected. He was also informed that since his case is connected to the D.Y. Patil Group, for coordinated investigation/verification, necessary order under Section 127 of the Act, was proposed to be passed and as such he was called upon to attend the office and submit his

objections, if any, on 6th November, 2017.

7. The petitioner vide letter dated 6th November, 2017 raised further objections to the proposed transfer. However, without considering any of the objections, respondent no.1 had passed the impugned order dated 2nd January, 2018 under Section 127(2) of the said Act and transferred the petitioner's case from Kolhapur I.T.O. Ward 2(2) Kolhapur to DCIT/ACIT Central Circle 7(1), Mumbai vide order dated 2nd January, 2018.

8. Being aggrieved by order dated 2nd January, 2018 this Petition is preferred seeking appropriate writ to quash and set aside the impugned notice dated 14th January, 2017 and order dated 2nd January, 2018 passed by respondent no.1.

9. This petition came up for hearing for the first time on 1st March, 2018 along with another Petition No.2699 of 2018 and after hearing the petitioner and the

Revenue, vide order dated 1st March, 2018 the respondents were restrained from transferring petitioner's case to Mumbai and acting in any manner whatsoever in pursuance of impugned order dated 2nd January, 2018.

10. Mr. Mistri, Learned Senior Counsel appearing for the petitioner in support of the petition made the following submissions :

(i) that the impugned order is bad in law since the requirements of Section 127(2) of the Act have not been complied with inasmuch as the agreement envisaged by Section 127(2) between CCIT (Pune) and the CCIT, Central Mumbai has not been arrived at.

(ii) that the condition precedent for show-cause notice, as well as, the order under Section 127(2) of the Act is that, there has to be an agreement between CCIT (Pune) and the CCIT-Mumbai and without there being an express agreement, the principal conditions for invoking the provisions of Section 127(2) cannot be treated as having been met.

(iii) that neither show cause notice nor impugned transfer order, even remotely suggest about the agreement between CCIT, Mumbai and CCIT, Pune and/or Pr. Commissioner of Income Tax, Kolhapur.

(iv) That show-cause notice dated 14.2.2017 as well as impugned order dated 2.1.2018, clearly indicate transfer proceedings were initiated not at the instance/request of officers, in terms of Section 127(2) of the Act, but, in pursuance to decision taken on 27th July, 2016 in meeting of the Centralised Committee.

11. He would therefore submit that, the invocation of the provisions of Section 127(2) of the Act itself is illegal, void and in absence of any positive agreement being arrived at between the authorities of equal rank, the impugned order is bad in law.

12. In support of his submissions, Mr. Mistri has relied on the judgment of the Supreme Court in the case of **Noorul Islam Educational Trust V/s. Commissioner of Income-Tax and Ors, [2016] 388 ITR 489 (SC)** and the judgment of the Bombay High Court in **Rentworks India Private Limited V/s. Principal Commissioner of Income-Tax-14 and anr (Writ Petition (L) No. 1944 of 2017) renderred on 11th October, 2017**.

13. In affidavit-in-reply, Mr. M.L. Karmarkar, Principal Commissioner of Income-Tax (2), Kolhapur while dealing with the contention of petitioner, about "absence of Agreement" between the officers of equal rank has stated thus :

"This office has passed order under Section 127 after proper communication and deliberations between the concern authorities having jurisdiction over the case. In the D.Y. Patil group, search action was conducted on 27.07.2016 and the Centralization Committee in the meeting held on 16.11.2016 decided to centralize the cases of this group with the DCIT/ACIT, Central Circle-7(1), Central Range-7, Mumbai in the charge of Pr. Commissioner of Income-Tax (Central)-4, Mumbai for the purpose of coordinated investigation. As already mentioned earlier, the process of centralization of the case of petitioner was started after receipt of written communication vide letter dtd. 19.12.2016 from the Chief Commissioner of Income-Tax (Central)-1, Mumbai to CCIT, Pune (copy enclosed as per Annexure-2). Thereafter, CCIT, Pune has issued letter dtd. 25.01.2017 to Pr.CIT-1 & 2, Kolhapur seeking consent for centralization of cases (copy enclosed as per Annexure-3). Thereafter PCIT-1 & 2, Kolhapur has issued letters to Shri. Dilip Tanaji Kashid seeking consent/objection from the assessee to transfer

his case from ITO, Ward 2(2), Kolhapur to ACIT/DCIT, Central Circle-7(1), Mumbai. Since the assessee has objected for transfer, the objections were communicated to CCIT, Pune who in turn communicated the same to CCIT, Central-1, Mumbai who again forwarded the same to Addl.DIT (Inv), Mumbai. The concerned DDIT (Inv), Mumbai has explained detailed reasons for rejection of assessee's contentions/objections (received in this office through proper channel) which has been again communicated to the assessee. After obtaining his further explanation, order u/s. 127 has been passed by the undersigned i.e. Pr.CIT-2, Kolhapur, after giving detailed reasons. In para-8 of 127 order, it is specifically mentioned that it is inconvenient to bifurcate/shift seized material between different assessing officers located at different places and hence the case required to be centralized with the one officer i.e. DCIT/ACIT, Central Circle-7(1), Mumbai for co-ordinated investigation. Therefore, all the procedures are duly followed and accordingly 127 orders were passed after giving adequate opportunities to the assessees. From the above, it is clear that there was no dissenting note

> *<u>from the undersigned or hierarchical officers for the proposed transfer</u>. There was complete agreement between the concerned CCsIT and PcsIT. All the communication were received through proper channel, which also indicates that there was proper co-ordination and communication between various authorities of the Income-Tax Department on this issue. Therefore, the above grounds raised by the petitioner are factually incorrect and not acceptable.* (emphasis supplied)

14. It is discernable from the reply that;

(a) Centralised Committee in its meeting held on 16th November, 2016 decided to centralise the 13 cases including that of the petitioner herein for the purpose of co-ordinated investigation.

(b) Centralisation Committee is not the authority, envisaged under Section 127(2) of the Income-Tax Act.

(c) vide letter dated 19th December, 2016 the CCIT (Central)-I sought consent of CCIT (Pune) in accordance with the decision of the Centralisation Committee.

(d) that CCIT, Pune forwarded letter dated 19th December, 2016 to respondent no.1 alongwith letter dated 25th January, 2017.

(e) Principal Commissioner of Income-Tax-2, Kolhapur is subordinate to CCIT, Pune.

(f) CCIT (Central), Mumbai and Principal Commissioner of Income-Tax, are not officers of equal rank.

(g) that there is nothing on record to even suggest CCIT, Pune has consented or agreed for transfer.

(h) that “absence of dissenting note” is construed or sought to be construed as an Agreement.

15. Thus, the counter-affidavit on behalf of Revenue does not disclose that there was any such agreement between the authorities of equal rank.

. In the case of ***Noorul Islam Educational Trust* (supra)** , Supreme Court has held that :

> *“Absence of disagreement” cannot tantamount to agreement as visualised under Section 123(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income-Tax which is conspicuously absent.”*

16. Herein, the Revenue has not placed anything on record to show, that CCIT, Pune has given a consent to request of CCIT (Central), Mumbai so as to constitute agreement as a pre-condition for invoking powers under Section 127 of the Income-Tax Act. “Absence of dissenting

note" from officer of equal rank who has to agree to the proposed transfer would not constitute Agreement, envisaged under Section 123(2)(a) of the Act. Thus, making the impugned order dated 2nd July, 2018 without jurisdiction.

17. Accordingly, for the reasons stated hereinabove, we pass the following order :

O R D E R

. The impugned order dated 2nd January, 2018 and the impugned notice dated 14th February, 2017 are hereby quashed and set aside. Petition allowed in above terms with no order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**