IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5496 OF 2018

D.Y. Patil Education Society .. Petitioner

v/s.

Commissioner of Income Tax (Exemptions)
Pune and Anr. ..Respondents

Mr. J.D. Mistri, Senior Counsel a/w Mr. Niraj Sheth I/b MINT and for the appellant
for the respondent

CORAM : M.S. SANKLECHA &
SANDEEP K. SHINDE, J.J.

DATED : 9th AUGUST, 2018.

P.C.

1. At the request of the parties, the petition itself is being disposed finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the order dated 2nd April, 2018 passed by the respondent no.1 – Commissioner of Income Tax (Exemptions). The impugned order transfers the petitioner's case (assessment proceedings) from Kolhapur to Mumbai under Section 127 of the Income Tax Act, 1961 (Act).

3. The grievance of the petitioner is that the impugned order dated 2nd April, 2018 is without jurisdiction on the following amongst other grounds :-

(a) It seeks to transfer the petitioner's case from Kolhapur to Mumbai for coordinated investigation without setting out reasons in support thereof. Our attention is invited to the show-cause notice dated 23rd February, 2018 proposing the transfer of the petitioner's case from Kolhapur to Mumbai merely on the stated ground of facilitating better co-ordinated investigation. This it is submitted is without any particulars, thus making it impossible to meet the Revenue's case. This it is submitted is contrary to the binding decisions of this Court in ***Ramswaroop and Ors. Vs. Commissioner of Income Tax, 388 ITR 208*** and ***Global Energy P. Ltd. Vs. Commissioner of Income Tax, 356 ITR 502;***

(b) The impugned order dated 2nd April, 2018 which relies upon evidence in the form of report dated 21st December, 2017 to substantiate that the transfer of the case from Kolhapur to Mumbai without the same having been disclosed to the petitioner either in the show-cause notice nor in any time prior to the passing of the impugned order. Thus, in breach of principles of natural justice; and

(c) Other grounds such as no meeting of minds by the Authorities of the same rank and the notice not being signed by the Commissioner of Income Tax.

4. Mr. Walve, learned Counsel appearing in support of the Revenue submits that the decision to transfer the petitioner's case from Kolhapur to Mumbai was to facilitate better co-ordinated investigation as it was a part of the group of cases. Thus, that was the reason to seek the transfer and notice of the same was issued to the petitioner. Thus, he submits that there is no reason for interfering with the impugned order of transfer.

5. This petition could be disposed of at this stage on the challenge to the impugned order dated 2nd April, 2018 on the basis the grievance of being passed in breach of principles of natural justice without examining the other contentions raised by the petitioner. We find that the notice dated 23rd February, 2018 proposing the transfer did not give sufficient indication for the reasons to transfer the petitioner's case from Kolhapur to Mumbai. Therefore, making it impossible for a party to meet the Revenue's case and satisfy the Authority concerned that the proposed reasons for the transfer are not justified. In fact, this Court in

Ramswaroop and ors. (supra) while dealing with the requirement of the notice proposed transfer of a case observed as under :-

> *"Thus as already stated above, the show-cause notice, in fact should have contained specific reason based on material facts, which should be clear so that the petitioners in that case could exercise their right to have hearing on substantial questions in a meaningful manner."*

Therefore, merely stating that the transfer is proposed / being done for the purposes of co-ordinated investigation is not sufficient as held by this Court in Global Energy P. Ltd. (supra).

6. Moreover, the impugned order dated 2nd April, 2018 has admittedly placed reliance upon a report dated 21st December, 2017 of the Deputy Commissioner of Income Tax to justify the transfer of the petitioner's case. Not only no copy of the above report dated 21st December, 2017 was furnished to the petitioners at any time before the passing of the order but even the notice dated 23rd February, 2018 does not advert to it. Thus, this would be a classic case of breach of *Audi Aleram Partem* Rule.

7. In the above view, we set aside the impugned order dated 2nd April, 2018 as well as the Show-cause Notice dated 23rd February, 2018

(respondents rely upon the same in support of the impugned order). However, this setting aside of the impugned order dated 2nd April, 2018 and the Show-cause Notice dated 23rd February, 2018 would not in any manner prohibit the respondents from taking such action as is available to it for transfer of the petitioner's case, in accordance with law.

8. Accordingly, the petition is allowed in the above terms. All contentions are left open to be urged before the Authorities under the Act.

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