

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.19415 of 2018

and

WMP Nos. 22847 and 31827 of 2018

M/s.MRL Postnet Private Limited

(Represented by its Chief Financial Officer
Mr.B.Sundar),

8/17, B Block, 1st Floor,
Sunnyside, Shafee Mohammed Road,
Nungambakkam,
Chennai 600 034
PAN: AAECF7679M

... Petitioner

vs.

1.The principal Commissioner of Income Tax,
Chennai-4,
301, Wanaparthi Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle-1 (1), 3rd Floor,
Central Revenues Building,
Queen's Road, Bangalore 560 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of certiorari to
call for the records of the first respondent bearing
Notification No.03/2018-19 in C.No.27/Centralisation/PCIT-
4/2017-18 dated 26.06.2018 and quash the same.

For Petitioner : M/s.Sandeep Bagmar
For Respondents : Mrs.Hema Muralikrishnan
Standing Counsel

O R D E R

The petitioner is aggrieved against the order of the
first respondent dated 26.06.2018 passed under Section 127 in
transferring the assessee's case from ITO, Corporate Ward 4 (1),
Chennai to DCIT, Central Circle-1(1), Bangalore.

2. The case of the petitioner, in short, is as follows:

a) It is a Private limited Company engaged in the business of providing point of sale technology infrastructure to the Banks and consumer service providers. The petitioner was acquired by the Worldline Group, France through its Singapore subsidiary i.e. Worldline IT and Payment Services (Singapore) Pte. Ltd. (Worldline Singapore) in October 2017. Worldline Singapore acquired 72% stake held by Mr.Kishore Kothapalli (erstwhile Director), 5% stake held by M/s.Global Tech Park Pvt. Ltd. and 23% from other shareholders in the petitioner. As a result of this acquisition Worldline Singapore became 100% owner of the petitioner. Prior to the said acquisition, Mr.Kishore Kothapalli and Mr.Satish P Chandra were Directors of the petitioner. They resigned from the Directorship of the petitioner with effect from 25.10.2017.

b) On 01.02.2018, a survey under Section 133A of the Income Tax Act, 1961 was conducted at the office premises of the petitioner at Chennai by the Assistant Director of Income Tax (Investigation), Unit 3 and at office in Hyderabad, located at 620, Road No.33, Aditya Enclave, Venkatigiri, Jubilee Hills, Hyderabad. During the course of the survey proceedings, the petitioner produced certain documents. Pursuant to the said survey, show cause notice dated 04.06.2018 was issued by the first respondent asking the petitioner show cause as to why centralization of the petitioner's case should not be done with the Assessing Officer, Bangalore, the second respondent herein. The first respondent in the said notice dated 04.06.2018 barely stated that there are substantial linkages between the petitioner and Satish P Chandra and his Company M/s.GTPL without exactly stating as to what those linkages are with the petitioner. The petitioner sent their reply dated 13.06.2018 specifically stating that Satish P Chandra, Kishore K Kothapalli and M/s.GTPL did not play any part in the management of the petitioner ever since Worldline Singapore became its 100% owner. It was specifically stated that the petitioner has no connection with Satish P Chandra, Kishore K Kothapalli and M/s.GTPL as on the date of survey and declaration of capital gains by Satish Chandra on sale of shares of the petitioner. Therefore, the petitioner contended that the sale of share of the petitioner is not a ground necessitating centralization. However, the first respondent, through the impugned order, without considering the merits of the petitioner's reply and without providing any reason, transferred the petitioner's case from Chennai to Bangalore.

3. The respondents filed a counter affidavit along with vacate stay petition. The case of the respondents as stated in the counter affidavit is as follows:

The notice issued to the petitioner itself clearly shows the linkage between the persons searched in Bengaluru, Chennai and Hyderabad. The first respondent cannot be expected to spell out the investigation for the purpose of transfer of files. The reasoning that the materials seized or impounded need to be further investigated cannot be called as vague as that is why transfer of files is important. The reply filed by the petitioner was duly considered by the first respondent and after that, an opportunity of personal hearing was also granted to the assessee. The authorised representative of the petitioner appeared before the first respondent and made his submission. After due consideration of the submission, the impugned order was passed. Hence, the order is valid as per the provisions of the Income Tax Act. Section 127 is to facilitate the transfer of assessee's case for jurisdictional purpose. Though Worldline Singapore acquired the petitioner Company in December 2017, on account of this transfer, the said Satish Chandra had received sale proceeds and declared capital gains to the extent of Rs.19 crores. All these transactions took place in the financial year 2017-18. Hence the accounts of both parties involved required verification and investigation before reaching any conclusion. When huge amounts and numerous transactions between different parties are to be investigated, it is necessary to have co-ordinated investigation and therefore, the files of the petitioner necessarily to be transferred.

4. Learned counsel appearing for the petitioner after reiterating the contentions raised in the affidavit filed in support of the writ petition further submitted that perusal of the impugned order would show that the first respondent has not assigned the specific reasons for transferring the case except stating that the objections raised by the assessee cannot be the basis for not centralizing the case and that the materials, which were seized and impounded need to be further investigated. Thus, the learned counsel submitted that the above observation made by the first respondent in the impugned order alone is not satisfying the requirement, as contemplated under Section 127(1) of the Income Tax Act, since the first respondent is duty bound to record his reasons for transferring the case. In support of his contention, the learned counsel relied on (1976) 102 ITR 281 (SC), Ajantha Industries vs. CBDT, (2013) 258 CTR 320 (Chhatisgarh), Ram Gopal Agrawal vs. UOI and (2016) 387 ITR 223 (Mum), Zodiac Developers (P.) Ltd. v. Pr.CIT.

5. On the other hand, the learned counsel appearing for the respondents submitted that the notice sent to the assessee seeking his objection against transfer contained the specific reasons for transfer and when those reasons undoubtedly drive to a conclusion that the co-ordinated investigation is necessary in this case, the first respondent cannot be found fault with in

passing the order of transfer. Therefore, she contended that the impugned order is passed in accordance with the provisions of law and the reason stated by the first respondent for transferring the case is enough to justify a co-ordinating investigation. In support of her contention, the learned counsel relied on a decision rendered by the learned Single Judge of this Court reported in (1999) 104 Taxman 566 (Madras), General Exporters vs. Commissioner of Income Tax.

6. Heard both sides and perused the materials placed before this Court.

7. It is seen that in pursuant to a survey conducted on 01.02.2018 and on impounding certain documents from the possession of the petitioner, a show cause notice dated 04.06.2018 was issued to the petitioner by the first respondent asking them as to why centralization of the petitioner's case should not be done with the Assessing Officer in Bangalore. It is true that the said show cause notice stated certain reasons, which are as follows:

" 1.A search operations under Section 132 of the Income Tax Act, 1961 was conducted on 01.12.2018 in the case of Mr.Satish Prphulla Chandra & M/s.Global Tech Park Private Limited (GTPL) & others at various locations. M/s.GTPL group of companies n Bengaluru is majorly into providing infrastructure solutions and Mr.Satish Praphulla Chandra is its Chairman & Managing Director.

2. As part of this operation, survey under Section 133 A was conducted on 01.12.2018 at the office premise of M/s.MRL Postnet Pvt. Ltd., at 1st Floor, No.8/17. Sunny Side Central Block, Shafee Mohammed Road, Nungambakkam, Chennai 600 034 and at #620, Road No.33, Aditya Enclave, Venkatagiri, Jubilee Hills, Hyderabad-500 033. Also, search under Section 132 was conducted on 01.12.2018 at the residence of Mr.Kishore K.Kothapalli, Promoter & Director of M/s.MRL Posnet Private Limited at House No.17. Whisper Valley, Raidurga, Hyderabad - 500 008. It is found from the records available with the Income Tax Department that your PAN:AAECP7679M is lying with the ITO. Corporate Ward 4(1), Chennai. Whereas. It is also seen that M/s.GTPL held 24-56% of shares in M/s.MRL Posnet Private Limited and Mr.Satish P Chandra is one of its directors also, that Mr.Kishore K.Kothapalli is a close associate of Mr.Satish P.Chandra and is involved in this financial affairs. During the course of search, it was found that M/s.MRL Posnet was acquired by a French company in the directors.

On account of this Mr.Satish P Chandra has declared Capital Gains to the extent of Rs.19 crores."

3. As there are substantial linkages between M/s MRL Posnet Private Limited and Mr.Satish P Chandra and his Company. M/s.GTPL which were covered u/s 132 of the Income Tax Act, 1961, your case along with the business concerns and individuals in which search was conducted is being proposed for centralization to the DCIT/ACIT Central Circle 1(1) Bengaluru so that a single Assessing Officer can do further investigation."

8. The petitioner did not accept the proposal and on the other hand, filed their reply/objection dated 13.06.2018 by contending that as on the date of survey, the petitioner Company had no linkage with the said Satish Chandra and therefore, the case should not be transferred. Consequent to the said reply and after giving opportunity of personal hearing to the petitioner representative, the impugned order was passed on 26.06.2018. Perusal of the said order would show that the first respondent, after extracting the contents of the reply submitted by the petitioner in response to the show cause notice, has only stated in paragraph 6 of his order that he is of the opinion that the objections raised by the assessee cannot be basis for not centralizing the case and the materials, which were seized and impounded need to be further investigated. I am afraid whether such observation made by the first respondent itself is enough to conclude that the first respondent has recorded his reasons for transferring the case, as required under Section 127 (1) of the Income Tax Act, which reads as follows:

Power to transfer cases:

127(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 his reasons for doing so, transfer any 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."

9. No doubt, the show cause notice issued to the petitioner stated some reasons. But at the same time, when such reasons are opposed and a reply is filed by the assessee objecting the transfer, the first respondent has to necessarily record his reasons with certain facts and circumstances warranting the

transfer and to justify that centralised/coordinated investigation is required in a particular case. No doubt, the learned counsel for the respondents contended that since the reasons are clearly stated in the show cause notice, they need not be reiterated once again in the order rejecting the objections against transfer. I do not find any justification on such submission. If such view is accepted, then there would be no meaning or purpose in issuing the show cause notice. Needless to say that reasons stated in the show cause notice are only to be construed as a prima facie view of the Authority issuing such show cause notice and not as his conclusive view or finding in respect of the subject matter in issue. Therefore, any reason stated in the show cause notice is always subject to change or affirmation depending upon the consideration of the objection raised against the propose made in the show cause notice. Therefore, an order passed in pursuant to the show cause notice, should necessarily deal with the reasons stated in the show cause notice as well as the objections raised against those reasons. Thus, after considering the reasons and objections, the final view of the Authority should be made available evidently on the face of the order itself with reasons and discussions. If not, the order passed without recording reasons, would have to be construed as the one out of non application of mind.

10. At this juncture, the decision of the Apex Court relied on by the petitioner reported in (1976) 102 ITR 281(SC), Ajantha Industries vs. CBDT, is relevant to be quoted, wherein it is observed as follows:

It is submitted on behalf of the Revenue by Mr. Sharma that reasons were communicated to the assessee in the notice calling for objection against the proposed transfer. It is, therefore, manifest that the reasons given in that show cause notice, namely, "facility of investigation" can be read as a part of the impugned order although there is no mention of any reasons therein as such.

We are unable to accede to this submission. It appears section 5(7A) of the old Act came for consideration in Pannalal Binjraj and Another vs. The Union of India and others and this Court observed at page 589 as follows:-

".....it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under section 5(7A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced

however briefly to writing... There is no presumption against the bona fide or the honesty of an assessee and normally the Income-tax authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Section 64(1) and (2) of the Act is sought-to be made against him, be it a transfer from one Income-tax Officer to another within their State or from an Income-tax officer within the State to an Income-tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the order reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, to transfer his case under section 5(7A) of the Act and it will also help the Court in determining the bona fides of the order as passed if and when the same is challenged in Court as mala fide or discriminatory. It is to be hoped that the Income-tax authorities will observe the above procedure wherever feasible".

This judgment was rendered by this Court on December 21, 1956, and we find that in the 1961 Act section 127 replaced section 5(7A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved, That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement section 127(1). We are unable to accept this submission.

The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is based on irrelevant and extraneous condonations Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question We are clearly of opinion that the requirement of recording reasons under section 127 (1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."

11. The Chatisgarh High Court in a case reported in (2013) 258 CTR 320 (Chatisgarh), Ram Gopal Agrawal vs. UOI, has observed at paragraph 16 as follows:

"16. In the case in hand also the reason for proposed transfer was stated to be for "co-ordinated investigation". The assessee(s) was expected to object to this stock phraseology "co-ordinated investigation" which was bald and vague in its tenor. However, in the opinion of this Court, if the basic reasons and foundations which have compelled or have put the AO to such inconvenience where "co-ordinated investigation" is not possible at Raipur are not known to the assessee and against this, the assessee could not have made any possible objection, the reason for proposed transfer is not only vague but by mentioning such reason proper opportunity is also not afforded to the assessee for raising his objection in the matter."

12. In fact, I myself has considered the issue in W.P.No.847 of 2017 and passed an order on 05.06.2017, holding that it is the bounden duty of the Principal Commissioner of Income Tax to record the reasons for transfer, especially when Section 127(2) contemplates the recording of reasons. As it is seen that the observation made by the first respondent in paragraph 6 cannot be construed as the reasons recorded for transfer and on the other hand, it is only single line rejection of the objection raised by the assessee, this Court is of the view that the matter has to go back to the first respondent to necessarily state the reasons for transfer, as required under Section 127(1).

13. No doubt, the learned counsel for the respondents relied on a decision of this court reported in (1999) 104 Taxman 566 (Madras), General Exporters vs. Commissioner of Income Tax to contend that the transfer of a case for coordinated investigation cannot be found fault with. There is no quarrel that a case can be transferred for coordinated investigation. At the same time, it is also necessary for the authority to say that on what reasons, such co-ordinated investigation is required and that statement is to be clearly spelt out in the order transferring the case from one Officer to another Officer. When such reasoning is not available in the present case, this Court is inclined to set aside the impugned order and remit the matter back to the first respondent to pass a fresh order expressing the reasons for transfer. At this juncture, this Court makes it very clear that it is not expressing any view on the merits of the reasons stated in the show cause notice as well as the objections raised by the petitioner opposing such transfer, as it is for the first respondent to consider the matter afresh and pass order by stating reasons.

14. Accordingly, the writ petition is allowed and the impugned order dated 26.06.2018 is set aside. Consequently, the matter is remitted back to the first respondent to pass a fresh order on merits and in accordance with law with reasons within a period of two weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

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To

1.The principal Commissioner of Income Tax,
Chennai-4,
301, Wanaparthy Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

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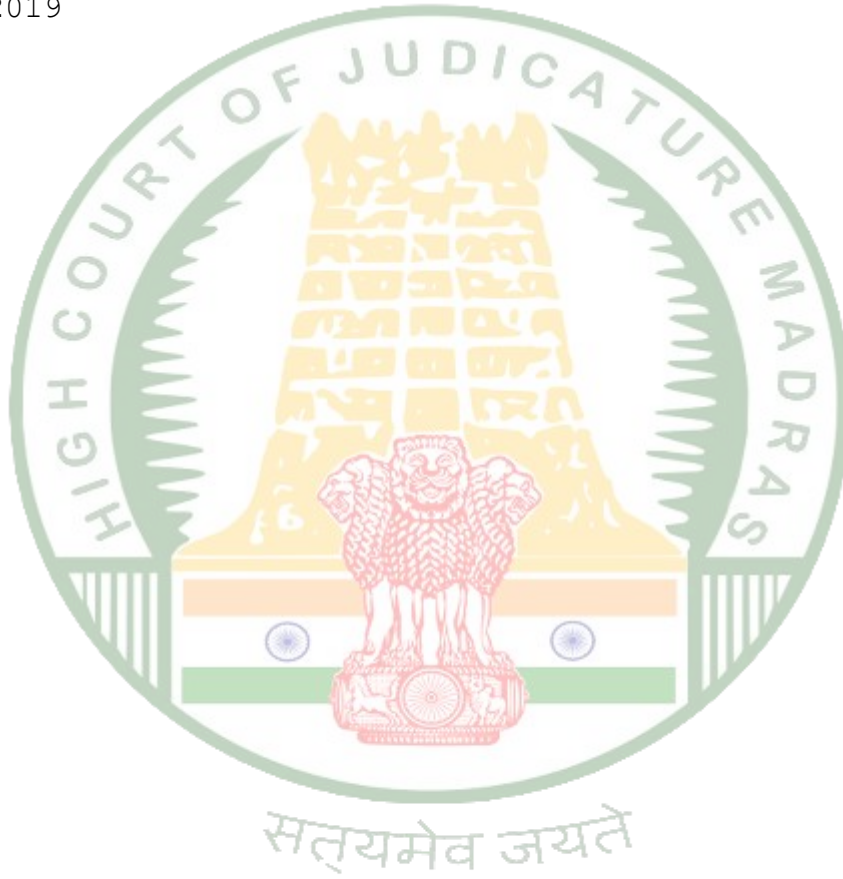
2.The Deputy Commissioner of Income Tax,
Central Circle-1 (1), 3rd Floor,
Central Revenues Building,
Queen's Road, Bangalore 560 001.

+1cc to M/s.Sandeep Bagmar, Advocate sr.no.85643

+1cc to Mrs.Hema Muralikrishnan, Advocate sr.no.86016

W.P.No.19415 of 2018

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