

IN THE HIGH COURT FOR THE STATE OF TELANGANA

***HONOURABLE SRI JUSTICE V. RAMASUBRAMANIAN**

AND

HONOURABLE SRI JUSTICE P. KESHA RAO

+ WRIT PETITION No.39812 OF 2018

% Date:- 09.04.2019

Between:

M/s. Soma Enterprise Limited,
AN AACCS8242F Corporate Office at
No.2, Avenue 4, HIPOINT, Road No.10,
Banjara Hills, Hyderabad 500 034,
rep.by its Managing Director Sri Ankineedu
Maganti S/o Rajendra Prasad Magan .. Petitioner

Vs.

\$ 1. The Principal Commissioner of Income Tax-3,
8th Floor, Signature Towers, Kothaguda,
Kondapur, Hyderabad - 500 084.
2. The Principal Commissioner of Income Tax,
Central -1, Mumbai Old, CGO Building,
Annexe, M.K. Road, Mumbai 400 020. .. Respondents

! For petitioner : Mr. C.P. Ramaswami

^ For respondents : Mr. T. Vinod Kumar
Special Standing Counsel.

< Gist :

>Head Note :

? Cases Referred :

1. W.P. No.9147/2018, dt.19.11.2018,
2. (1991) 187 ITR 405 (AP),
3. (1972) 83 ITR 130 (MP)
4. (1991) 189 ITR 705 (AP).

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HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HONOURABLE SRI JUSTICE P. KESHA VA RAO

WRIT PETITION No.39812 OF 2018

ORDER: (*Per Hon'ble Sri Justice V. Ramasubramanian*)

Challenging an order passed under Section 127 (2) (a) of the Income Tax Act, 1961 (for short 'Act, 1961'), transferring the case of the petitioner herein from the file of the Assessing Officer at Hyderabad to the file of the Assessing Officer at Mumbai, the Assessee under the Income Tax Act, 1961 has come up with the above Writ Petition.

2. Heard Dr. C.P. Ramaswami, learned counsel appearing for the petitioner and Sri T. Vinod Kumar, learned Senior Standing Counsel appearing for the Department.

3. It is the case of the petitioner that in the year 1996, the promoters of the petitioner company acquired all the equity shares of a Company by name, M/s. Dhananjaya Hotels Private Limited, incorporated in the year 1977 at Hyderabad and changed the name to M/s. Soma Enterprise Private Limited. In June, 1997, the petitioner was converted into a Public Limited Company. The Registered office of the petitioner was shifted from Hyderabad to Pune on 26.03.1998.

4. According to the petitioner, they are carrying on the business of execution of infrastructure works in various regions of the Country and their registered office is at Pune. According to the petitioner, they

located their registered office in the State of Maharashtra only for the purpose of becoming eligible to bid for infrastructure projects in the State of Maharashtra, as mandated by the local State Government, but their Corporate Office continued to be in Hyderabad. It is the case of the petitioner that they just have six employees in the registered office at Pune out of whom, two are Site Accounts Managers, one is a Material Manager, another a Regional H.R. Manager and the remaining two take care of filing Tenders. In contrast, the petitioner has 80 employees in their Corporate Office at Hyderabad.

5. Ever since the Assessment Year 1998-99, all the Income Tax Assessments have been completed only in Hyderabad. It appears that there was a search conducted in the offices of the petitioner in January, 2013 and the jurisdiction was centralized at Hyderabad temporarily. Currently, the jurisdiction is with the Deputy Commissioner of Income Tax, Circle - 3 (2), Hyderabad.

6. While so, the petitioner was issued with a letter, dated 21.11.2017, informing them that the Chief Commissioner of Income Tax (Central) - 1, Mumbai, has requested for centralization of the petitioner's case at Mumbai and that the petitioner may file their objections against such centralization under Section 127 (2) (a) and (3) of the Act, 1961. In response, the petitioner filed a detailed reply on 06.12.2017, objecting to the proposed centralization. But, the objections were overruled by the Principal Commissioner of Income Tax, Hyderabad by the order impugned in this writ petition dated

23.10.2018 on the ground that for the coordinated and effective investigation, it was necessary to centralize the case at Mumbai. Aggrieved by the said order, the petitioner is before this Court.

7. Before considering the grounds of attack to the impugned order of centralization, it may be necessary to take note of the background in which the order of centralization of assessment has been passed. The background facts are indicated in a letter of the Joint Commissioner of Income Tax, Mumbai and they are as follows:

- (a) that the petitioner company receives infrastructure contracts from various entities;
- (b) that the complete or the major scope of work of some of those contracts are sub-contracted by the petitioner to a group of companies known as ABIL Group;
- (c) that the ABIL Group of Companies, in turn, subcontract the actual work entrusted to them, to a partnership firm by name M/s. Maganti Constructions, of which the Directors of the petitioner company are partners;
- (d) that such back-to-back contracts lead to substantial profits in the hands of ABIL Group and artificial inflation of expenses in the hands of the petitioner;
- (e) that on the same day on which ABIL Group of Companies received payments for the sub-contracted works, the amounts were passed on to M/s. Maganti Constructions;

- (f) that the shareholding pattern of the petitioner and profit sharing ratio of M/s. Maganti Constructions indicate that almost all share-holders and Directors of the petitioner are partners of M/s. Maganti Constructions;
- (g) that investigation revealed that ABIL Group of entities did not execute any infrastructure projects, as they did not possess the domain expertise;
- (h) that Shri Avinash Bhosale, founder and promoter of ABIL Group of entities was holding approximately 13% of the equity shares of the petitioner till 2007-08 and thereafter he became the joint Managing Director of the petitioner till 2010;
- (i) that his son, Amit Bhosale was also a Director of the petitioner till 2013; and
- (j) that the members of the same family which hold shares of the petitioner, are also the partners in M/s. Maganti Constructions.

8. It appears that a search action was undertaken under Section 132 of the Act, 1961, on 24.07.2017 at Pune in the premises of one Avinash Bhosale and others and in the offices of some companies, viz., ABIL Infra Projects Limited and M/s. Splendor Developers Private Limited. According to the petitioner, the search conducted at Pune on 24.07.2017 did not lead to any incriminating material found against the petitioner. According to the petitioner, the proportion of

the work entrusted to ABIL Group from out of the contracts bagged by the petitioner, was abysmally low. It was only 1.79% of the business of the petitioner for the assessment year 2017-18.

9. It is in the light of the above background facts, that the impugned order for centralization of the assessment at Mumbai was passed. Therefore, the impugned order is assailed by Dr.C.P. Ramaswami, learned counsel for the petitioner primarily on three grounds, viz.,

- i) that no reasons were indicated in the show-cause notice, dated 21.11.2017 and hence the opportunity granted to the petitioner to show cause, turned out to be an empty formality;
- ii) that the only reason stated in the impugned order namely “coordinated and effective investigation” does not satisfy the statutory requirement; and
- iii) that without any incriminating material being found against the petitioner in the search conducted in July, 2017 in ABIL Group of entities, there was no justification for the so-called “coordinated investigation”, especially when the proposal for centralization would cause serious managerial and logistic stress on the petitioner whose Corporate Office is in Hyderabad.

10. The Principal Commissioner of Income Tax–3, Hyderabad, has filed a counter affidavit contending *inter alia* that the order

impugned in the writ petition is purely an administrative order passed after due consideration of both the material as well as the contentions raised by the petitioner; that the back to back contracts that the petitioner had with ABIL Group of Companies led to a claim for false deductions towards expenses; that the arrangement that the petitioner had with the aforesaid Group of Companies enabled the petitioner to inflate expenses artificially and strip off profits at every stage; that the primary concern of the Department is to avoid delay in the matter of investigation, which may be caused by multiple authorities in different locations getting involved; that during the course of investigation of the companies, the petitioner declared a huge amount of Rs.200.00 Crores as disallowance of expenses for the block period 2006-07 and paid tax on such income pursuant to a seizure operation conducted under Section 132 (a) of the Act,1961; and that since an order for transfer of assessment does not decide the rights of the parties, the same is not amenable to challenge; that after the completion of the investigation, the petitioner can always seek re-transfer of his file to the jurisdictional Commissioner.

11. In response to the averments contained in the counter affidavit, the petitioner has filed a rejoinder. The rejoinder primarily seeks to answer the allegations of; (i) suppression of material facts; (ii) requirement under the Income Tax Act, 1961 to maintain the books of accounts in the place where the registered office of the company is situate; (iii) inflation of expenses; (iv) stripping off

profits; and (v) the probable delay in completion of investigation if multiple authorities are involved;

12. We have carefully recorded the pleadings as well as the contentions raised on both sides. We do not think that it is necessary to shift our focus to certain ancillary contentions, such as suppression of material facts, inflation of expenses, requirement under the 1961 Act to maintain the books of accounts in the place where the registered office is located etc. The main focus in the case on hand should only be on the scope of Section 127 of the Act, 1961 *vis-à-vis* the jurisdiction of this Court.

13. As pointed out by a Bench of this Court in its decision in **M/s. Nexus Feeds Limited v. The Principal Commissioner of Income Tax - 4¹**, to which one of us (VRS,J) was a party, the centralization and transfer of cases from one jurisdiction to another, would invariably result in some sort of inconvenience to the assessee. In paragraph Nos.15 to 17 of the said decision, this Court pointed out as follows:

“15. In the normal circumstances, we would go by this contention of the learned counsel for the petitioners. The centralisation and transfer of cases, should result in the least inconvenience to both parties. It is true that the assessee, are facing a mighty department of the Government. It is also true that the presence of the Department in the State capital, may be more pronounced than their

¹. W.P. No.9147/2018 & batch, dt.19.11.2018

presence in district headquarters. Therefore, if the cases are centralised and transferred to Hyderabad, it may not result in any inconvenience to the Department. On the contrary, the same may inconvenience the assessee, if the books of accounts are also in Hyderabad.

16. But in cases of this nature, the scope of judicial review of the decision taken by the competent authority to transfer cases, is confined only to the question of relative hardship. As pointed out by a Division Bench of the Bombay High Court in *Devidas v. Union of India* [(1993) 200 ITR 697 (Bom)], the test lies in a proportionate mix of considerations of the convenience of an assessee vis-a-vis the interest of Revenue. The Court should aim at striking a balance between private and public interests.

17. The Court has essentially to test the impugned orders - (i) on the touchstone of the procedure prescribed in Section 127(1), (ii) on the touchstone of the authority on whom the power of transfer is conferred under Section 127 and (iii) on the touchstone of relative hardship.

14. There is no dispute about the fact that in the case on hand, the procedure prescribed by Section 127 (2) (a) of the Act, 1961 was followed. The Assessee was given a reasonable opportunity of being heard in the matter and the reasons for ordering the transfer are also recorded. Therefore, the first and foremost requirement, namely that of following the procedure prescribed, has been duly complied with.

15. However, the contention of Dr. C.P. Ramaswami, learned counsel for the petitioner is that the show-cause notice did not indicate any reason. The show-cause notice, dated 21.11.2017, merely stated that the petitioner may file their objections against the centralization of their case. No reasons were indicated in the show-cause notice, dated 21.11.2107.

16. But, it is not as though the petitioner did not understand the reasons behind the show-cause notice. Though the show-cause notice merely called upon the petitioner to file their objections on the proposal for centralization, without furnishing any reasons, the petitioner gave a very detailed reply on 06.07.2017 objecting to the proposal and even explaining the background in which the proposal had emanated. It is needless to point out that the object of providing reasons in the show-cause notice is to enable the Noticee to formulate their objections point-wise. But, in cases where the noticee had understood the reasons and given an elaborate response, the objection relating to lack of reasons pales into insignificance.

17. We may also look at it from another angle. If the petitioner was really aggrieved by a one-line show-cause notice which did not indicate any reasons for the proposal; the petitioner could have given a one-line reply demanding the reasons to be furnished. If the Department had failed to furnish reasons even thereafter, but proceeded to pass orders, then the same would have been a clear

violation of the procedure prescribed under Clause (a) of sub-section (2) of Section 127 of the Act, 1961.

18. But, in this case, the petitioner understood the reasons and countered those reasons in their response. Therefore, it is no more open to the petitioner to cite the lack of reasons in the show-cause notice as a ground for assailing the impugned order.

19. The next ground of attack to the impugned order is that a bald statement about the necessity for a “coordinated and effective investigation” cannot be the basis for centralization and transfer of assessment from one Circle to another.

20. But, we do not think that what is stated in the impugned order is a vague and bald claim. Even admittedly, a search was conducted in the offices of ABIL Group of Companies and its promoters on 24.07.2017. The same revealed that the petitioner gave back to back contracts to ABIL Group of Entities, who, in turn, entrusted the work to M/s. Maganti Constructions, whose partners are share-holders and directors of the petitioner company. Payments flowed from the petitioner to ABIL Group of entities and on the very same day, they made payments to M/s. Maganti Constructions. The Department suspected inflation of expenses and the reduction of the profits in the books of accounts. Therefore, if the Investigators thought a deeper probe was essential to find out the trail from the petitioner to ABIL Group of entities and from ABIL to M/s. Maganti Constructions, we do not think that the same can be found fault with.

In fact, our experience shows that different jurisdictional authorities, different benches of the Tribunal and even different High Courts take different views on certain complicated issues. Therefore, when multiple parties located at different places coming under different jurisdictional Officers are involved in an investigation, there is nothing wrong in the competitive authority taking a decision to centralize the assessment of all the parties. In a nutshell, this is described as “coordinated and effective investigation” and hence the allegation that the same is a bald and vague statement, cannot be accepted.

21. The last ground of attack to the impugned order is that when no incriminating material against the petitioner was found in the search conducted in ABIL Group of Companies in July, 2017, it is not fair to order centralization at Mumbai, especially when the Corporate office of the petitioner is in Hyderabad, and such centralization to Mumbai would cause serious financial, managerial and logistic stress.

22. It is true that centralization and transfer would result in some kind of hardship to every Assessee. But, the hardship is unavoidable. The only safeguard statutorily provided against such transfers is that there should be reasons recorded and that the transfer must be preceded by an opportunity of hearing. Once the statutory requirements are complied with, the question of hardship cannot take the front seat.

23. In any case, we do not think that this argument is available to the petitioner. Even as per the affidavit filed by the petitioner (paragraph No.3 of the affidavit), they originally had their registered office at Hyderabad and they shifted the same to Pune just for the purpose of becoming eligible to bid for infrastructure projects in the State of Maharashtra. An Assessee who faces no hardship in shifting their registered office to another State just for the purpose of bagging contracts in that State also, cannot plead that the centralization and transfer for the purpose of coordinated and effective investigation would cause hardship to them. If huge infrastructure projects can be undertaken by the petitioner in various States without causing financial, managerial and logistic stress, they cannot plead stress in so far as the centralization and transfer of assessment alone.

24. Relying upon the decision of a Bench of this Court in **Vijayasanthi Investments Private Limited v. Chief Commissioner of Income - Tax and others**², it is contended by Dr. C.P. Ramaswami, learned counsel for the petitioner that the facility of investigation cannot not be a sufficient reason for transfer of their case. It was held in **Vijayasanthi Investments Private Limited**²; (i) that the reasons for the proposed transfer should be mentioned in the notice; and (ii) that the expression “facility of a detailed and coordinated investigation” is too vague and general to justify a transfer.

². (1991) 187 ITR 405 (AP)

25. But, as we have pointed out earlier, the requirement for furnishing reasons in the show-cause notice, is to enable the Assessee to make an effective representation as against the proposal. In this case, the petitioner did in fact make an effective representation. The impugned order contains the very same reasons to which the petitioner has objected in his response to the show-cause notice. This Court explained in **Vijayasanthi Investments Private Limited**² that the requirement to record reasons is to enable the Assessee to make an effective representation. Once it is found that an effective representation has been made, the objection goes.

26. Insofar as the expression “facility of detailed and coordinated investigation” is concerned, this Court followed in **Vijayasanthi Investments Private Limited**² the decision of the Madhya Pradesh High Court in **Sagarmal Spinning and Weaving Mills Ltd. v. CBDT**³.

27. But the facts in **Vijayasanthi Investments Private Limited**² were very shocking. In that case, neither in the show-cause notice nor in the order for transfer, were any reasons recorded or communicated. It was only in the counter-affidavit that reasons were sought to be mentioned. In other words, the so-called facility of detailed and coordinated investigation did not find place in the show-cause notice and in the impugned order and the same was not even supported by any material. But, in the case on hand, the requirements

³. [1972] 83ITR 130 (MP)

for coordinated and effective investigation are justified by various facts mentioned in the impugned order. They include the back to back contracts, the share holding pattern etc. Therefore, the petitioner cannot pick up one statement in the impugned order that summarized the position and attack the same as bald and vague.

28. In the next decision in **Saptagiri Enterprises v. Commissioner of Income-Tax and others**⁴ relied upon by Dr. C.P. Ramaswami, learned counsel for the petitioner, this Court followed the decision in **Vijayasanthi Investments Private Limited**² and held that the phraseology “coordinated investigation” would not convey any intelligible reason, from the Assessee’s point of view.

29. But, as we have pointed out earlier, the phraseology “coordinated and effective investigation” is not used in the impugned order as a *mantra*. The background facts commencing from the search conducted in ABIL Group of Companies in July, 2017, the nexus between the Promoters and Directors of the ABIL Group of Companies and the Promoters of the petitioner, the back to back contracts that led to the alleged inflation of expenses and stripping off of profits, are all explained in the impugned order and it is only as a statement of the summary of those facts that the phraseology of “coordinated investigation” is used in the impugned order. In fact, this Court was cautious to hold in **Saptagiri Enterprises**⁴ that the use of the phraseology “coordinated investigation” without anything more

⁴. (1991) 189 ITR 705 (AP)

alone would vitiate the order. This shows that if the phraseology is supported by something-else, the ratio laid down therein will not apply.

30. As we have indicated earlier, the respondents have not taken any decision arbitrarily to transfer the investigation to Mumbai. The decision is a fall out of a search conducted in the Offices of ABIL Group of entities and their Promoters. It may be true that the percentage of the work sub-contracted by the petitioner to ABIL Group of entities may be abysmally low. But the magnitude of the projects undertaken by the petitioner are so huge that even the small percentage sub-contracted to ABIL, with an obligation on their part to entrust the work to one of the partnership firms promoted by the promoters of the petitioner company runs into several Crores. This is found from a tabular statement furnished by the petitioner themselves in their reply to show-cause notice, dated 06.12.2017. The statement reads as follows:

(Rupees in Crores)

Asst.Year	Annual Turnover	Work Done		Total	% age of total receipts
		ABIL	Splendor		
2010-11	2,500.16	-	-	-	-
2011-12	3,193.93	-	-	-	-
2012-13	3,916.48	20.87	-	20.87	0.53%
2013-14	2,113.98	204.52	54.22	258.74	12.24%
2014-15	1,345.80	87.48	9.49	96.97	7.21%
2015-16	1,499.46	21.42	34.11	55.53	3.70%
2016-17	2,014.81	23.58	31.33	54.91	2.73%
2017-18	1,744.61	22.86	8.29	31.15	1.79%

31. Therefore, we do not think that the respondents can be accused of acting arbitrarily. Once it is found that the respondents

have followed the procedure prescribed by law and once it is found that there was no arbitrariness, it may not be possible for us to interfere with the decision, in cases of this nature. Therefore, the Writ Petition is liable to be dismissed and, accordingly, it is dismissed. However, there shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

V. RAMASUBRAMANIAN, J

P. KESHA VA RAO, J

April 09, 2019

Note:

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(B/O.)Mgr

