IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

221 **CWP-4264-2019 (O&M)**
Date of Decision :9.9.2019

M/s. H.M.Steels Limited and another ......Petitioners

Versus

Principal Commissioner of Income Tax, Patiala ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Radhika Suri, Senior Advocate with
Mr. M.S.Kanda, Advocate
for the petitioners-assessees.

Mr. Kunal Sharma, Standing counsel
for the respondent.

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AJAY TEWARI, J. (Oral)

This petition has been filed challenging the order dated 2.1.2019 (Annexure P-6) passed by Principal Commissioner of Income Tax, Aaykar Bhawan, Patiala under Section 127 (2) of the Income Tax Act, 1961 transferring assessment of the case of the assessees from DCIT, Sangrur to DCIT, Karnal.

Admitted facts of the case are that the assessees started their operation in the year 2005-2006. In the year 2013-14, three Directors of M/s Jai Bharat Group were inducted as Directors of the petitioners' company (after acquiring adequate share holding). On 3.5.2018 a search and seizure was conducted at the residential premises of the M/s Jai Bharat Group and a lot of incriminating material was found there. Thereafter, a survey was conducted in the business premises of the assessees' group but nothing incriminating was found. Subsequently, a notice was issued to the petitioners' company on 27.6.2018. The operative part of which is as follows :-

> *"In this regard, it is informed that a search and seizure operation was carried out in the above group of cases by the Directorate of Income Tax (Inv), Chandigarh on 03.05.2018. Subsequently the Pr. Commissioner of Income Tax (Central), Gurgaon has proposed centralization in respect of your case to Assessing Officer Central Circle at Chandigarh which also includes-M/**s Jai Bharat Group,. Panipat.** All cases in the proposal have been covered under warrant of authorization u/s 132 (1) and survey u/s 133A of the Income Tax Act, 1961 and the books of accounts and other documents were found and seized/impounded in these cases. These are all core cases and directly connected with group and for proper and meaningful coordinated investigations; these required to be centralized with Assessing Officer."*

The petitioners filed reply in which it was averred that there is no direct or indirect connection with M/s Jai Bharat Group and in fact, it was only in the year 2013-14 that some Directors of M/s. Jai Bharat Group were inducted on the Board of the petitioners' company and the Directors of the petitioners' company have no stake in M/s. Jai Bharat Group and in fact, during the survey conducted on their premises nothing incriminating was found. Hearing was took place on 16.10.2018 before the Principal Commissioner of Income Tax, Patiala. Thereafter, the respondent could have passed the order but instead, he addressed a letter to the Deputy Director of Income Tax, Investigation on 24.10.2018, asking it for comments which were sent on 14.12.2018 Annexure R-2 and it was pointed out that during the course of search proceedings at the premises of M/s. Jai Bharat Group, some incriminating documents related to both the assessees were found and impound. It was further mentioned that the data of a computer installed at the premises also contained reference to bogus billing which had been indulged by both these groups. After receipt of this letter, ultimately, the impugned order dated 2.1.2019 Annexure P-6 was passed. A perusal of this order also states that there is no reason indicated therein, and rather the order proceeds on the basis of that both are 'related concerns'.

Learned Senior counsel for the petitioners has argued that notice issued to the petitioners indicates no reason and from the very beginning the petitioners have disputed that they are 'related concerns' and they have urged material arguments and averments to dispute this assertion but the impugned order proceeds on the assumption that they are 'related concerns' without dealing the objections of the petitioners regarding this identification.

Her further submission is that the comments which were submitted by DDIT also weighed with the respondent in passing the impugned order but no copy thereof was ever supplied to the petitioner before, so that they could get an opportunity to rebut the same. She has placed reliance upon the judgment of the Supreme Court passed in the matter of ***Ajantha Industries & others Vs. Central Board of Direct Taxes, New Delhi & others*** reported as ***AIR 1976 SC 437,*** the judgment of Bombay High Court in the matter of ***Global Energy Pvt. Ltd. vs. Commissioner of Income Tax,*** reported as ***(2013) 356 ITR 502 Bom.*** and the judgment of this Court in the matter of ***Rajesh Mahajan and others vs.***

CIT reported as ***2002 ITR 25 577.***

Counsel for the respondent-Revenue has argued that the petitioners were heard before the orders transferring their assessment was passed and that transfer from Sangrur to Karnal can hardly be deemed to be prejudice. He has relied upon the judgment of this Court in the matter of ***Charan Pal Singh vs. Commissioner of Income Tax and another*** reported as ***(2008) 307 ITR 132 (P&H)*** and the judgment of Supreme Court passed in the matter of ***Ambika Solvex and Ors vs. Commissioner of Income Tax and Ors*** reported as ***1976 CTR (SC) 79.***

In our considered opinion, petition must succeed. The notice did not contain any reason. The impugned order is cryptic and there was no earthly reason why the report of the DDIT could not having been put to the petitioner. On this limited ground, we set aside the impugned order and grant liberty to the Revenue to cure the illegality. For this purpose, the petitioners (who now have access to the copy of the letter dated 14.12.2018) may file further objections within three weeks from today and the respondent would be at liberty to pass a fresh order thereof, after giving them one more opportunity of hearing.

The petition stands disposed of.

Since the main case has been decided, the pending CM, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

9.9.2019
anuradha

Whether speaking/reasoned - Yes/No
Whether reportable - Yes/No