**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

109+201 **CWP-15200-2019 (O&M)**
Date of Decision : 19.11.2019

M/s IDS Infotech Ltd. And another ...Petitioners

Versus

The Principal Commissioner of Income Tax Central-1, New Delhi and another
...... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
: HON'BLE MRS. JUSTICE ALKA SARIN
***

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

Mr. Urvashi Dhugga, Advocate
for the respondents.

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AJAY TEWARI, J. (Oral)

The present petition has been filed challenging the order Annexure P-7 whereby the assessment of the petitioners has been transferred from ACIT, Circle-5(1), Chandigarh to DCIT/ACIT, Central Circle-05, New Delhi.

As per the petitioners a survey was conducted on 3.8.2016 on their premises and then, after more than 1 ½ years notice dated 7.3.2018 was served upon them, asking them to file objections and giving them an opportunity of being heard with regard to the proposed centralization. The petitioners filed replies, one of which is Annexure P-6 but, as mentioned

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above the impugned order was passed.

The primary contention of the learned Senior Counsel for the petitioners is that the impugned order is completely cryptic and no reason has been assigned and she has relied upon various judgments starting from ***Ajanta Industries and others vs. Central Board of Direct Taxes, New Delhi & others*** reported as ***102 ITR 281 SC*** to the latest which is ***MAT 125 of 2019*** titled as ***M/s Energetic Investment & Consultants Pvt. Ltd. Vs. Principal Commissioner of Income Tax, Central 1 and others*** (which is a similar case). In Ajanta's case (supra), the Supreme Court held as follows :-

> *"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 are 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*

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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."

In M/s Energetic Investment's case (supra) the issue was whether the notice was ever served upon the assessee and that is why, the Division Bench of the Calcutta High Court directed the Principal Commissioner of Income Tax to give a hearing to that assessee and pass a fresh order. Between these two cases there is a host of judgments which reiterate what the Supreme Court said in the Ajanta case (supra).

Apart from that, learned Senior counsel for the petitioners has also drawn the attention of the Court to the subsequent circulars issued by Revenue itself emphasizing on the need to record reasons in the order and rather going to the extent of threatening officers who failed to record reasons with disciplinary actions.

Third contention of the learned Senior Counsel (which is corollary of the first contention) is that a written statement can never take the place of reasons in the order. She has relied upon the judgment of the Supreme Court in ***Mohinder Singh Gill Vs. Chief Election Commissioner*** reported as ***AIR 1978 SC 851*** as applied by this Court to a Single Bench decision under 127 (2) of the Income Tax Act, 1961 proceedings, in the

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case of ***Deep Malhotra & others vs. Chief Commissioner of Income Tax and others*** reported as ***334 ITR 232 (P&H).***

Fourth contention of the learned Senior counsel for the petitioners is that she has relied upon another **Circular No. F.No.286/88/2008-IT (Inv.II)** wherein the reasons to centralization of case was narrated in the following format :-

> *"a. Relationship/link of the said case with the persons searched.*
> *b. Status of the said case, viz. Employee, director, consultant etc.*
> *c. Role of the person in influencing business transactions of the person searched.*
> *d. Seizure of books/documents/electronic storage devices or cash or other asset belonging to such persons.*
> *e. Survey/enquiry conducted in case of such persons the findings of which are essential for determining concealment.*
> *f. Investigation potential of the cases in view of the findings of search suspicious nature of transactions between the said person & the search group.*
> *g. Any other issue found during search which is important for the investigation a prosecution of such persons"*

The learned counsel for the Revenue has argued that in the preliminary objections, it has been categorically stated by the Revenue department that the petitioners' companies were closely linked and had close connection with Gautam Khaitan Group. It has futher been stated that the involvement of the petitioners in the Augusta Westland scam and Gautam Khaitan Group cases was being probed and that FIRs had been filed by the Enforcement Directorate and Central Bureau of Investigation (CBI). Paragraph No.2 of the written statement filed by the Revenue Department in clear terms lists the nexus between the petitioners and the

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Gautam Khaitan Group. Learned counsel for the Revenue has further pointed out that a replication has been filed by the petitioners to the said reply wherein evasive replies have been given to the pleas raised in the written statement and in fact, the petitioners have not been able to make any categoric assertion and denial of being connected with the Augusta Westland and Gautam Khaitan Group of companies.

It has further been argued by the learned counsel for the Revenue that the Augusta Westland case has international ramifications and various proceedings are pending in different Courts including Criminal Courts, before Enforcement Directorate and there are some portions which are still being investigated by CBI. She has also handed over a questionnaire in a sealed cover which was put to the Chairman-cum-Managing Director of petitioner No.1 during the survey proceedings apart from other corroborative material which is also handed over to us in a sealed cover.

She has also relied upon the **Circular No. F. No.299/107/2013-IT (Inv.III)/1568** Annexure R-4 wherein in paragraph No. 3 it has been mentioned as follows :-

> *3. While it is neither feasible nor desirable to draw an exhaustive list of categories of non-search cases which may also be centralized, cases falling in the following categories (only illustrative) could be considered for the purpose :*
>
> "*i. Non-search cases connected with the search cases where findings of the search have material bearing and needs of coordinated investigation/interest of revenue require such cases to be assessed in the Central Charge.*
>
> *ii. Survey cases or enquiry cases (whether such enquiries were conducted by any wing of the department or an outside agency) wherein some organized/systematic manipulation of*

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accounts/fraud/substantial revenue is involved and/or coordination with outside agencies or a large number of officers within the department is required.

iii. Cases arising out of a scam as a result of investigation/enquiry conducted by some other Law Enforcement Agency where needs of coordinated investigation/interest of revenue require centralization.

iv Complex cases of substantial revenue implication requiring in-depth investigation.

v. Any other case which is required to be centralized for administrative requirement or other reasons stated by the DsGIT/CCsIT, as the case may be."

But the sum and substance of the case of the respondents is that the reasons for the centralization are well within the knowledge of the petitioners and those reasons are such, which if publicly disclosed may have an impact on the other cases which have been mentioned above. Further, the subject of the show cause notice Annexure P-5 and the subject of the final order Annexure P-7 meets the test laid down by the Supreme Court in Ajanta case (supra) in the facts of the present case.

She has further relied upon the judgment of Gujarat High Court passed in ***Shree Ram Vessel Scrap Pvt.Ltd. vs. CIT-VI*** reported as ***2014 (266) CURTR 274*** wherein it was held as follows :-

"*7. The contention of the petitioner that the Department should have furnished information with them (as claimed by them in their reply) is not at all sound as the Department cannot be compelled or required at the initial stage to disclose the "material" or "information" as it may "embarrass or prejudice" the assessment. The legal position is crystal clear and settled by a catena of the decisions of this Court and the apex court on this issue. this Court cannot go into the "sufficiency" of the reasons : There is no pleading that the impugned order of transfer is due to "bias" or "mala fide" or otherwise "arbitrary". The reasons*

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indicated in the impugned order cannot be said to be irrelevant. Reference may be made to the decision of this Court in the case of Madhav Sharan Agrawal v. CIT . We may refer to our judgment rendered today, i.e., February 23, 2006 in Writ Petition No. 355 of 2005 : Trimurti Fragrances P. Ltd v. CIT [2006] 283 ITR 547, wherein we had an occasion to deal with this aspect in detail."

She has also relied upon the judgment of this Court passed in ***Charanpal Singh versus CIT Bathinda*** reported as ***307 ITR 132.***

We have heard the learned counsel for the parties and we are of the considered opinion that the present petition is devoid of any merit. In the present case, when the survey was conducted on 3.8.2016 a detailed questionnaire was put to the Chairman-cum-Managing Director of the petitioner, and the replies he had given to the questions clearly indicate that he was well aware of the reasons for which the exercise was being carried out. It is not a case where the assessee was left in the dark, not knowing what the reasons were for the centralization of its case. A perusal of the pleadings and the documents shown to us (in a sealed cover) reveal that the petitioners had full and complete knowledge of the reasons which had weighed with the competent authority while passing the order of centralization of the cases. The petitioners in the replication have also strangely not denied any of the averment made by the Revenue in the preliminary objections of their written statement. In fact, as rightly pointed out by counsel for the Revenue, totally vague and evasive replies have been given to paragraph No.2 of the written statement and there is no categoric denial to the averment that the petitioners were connected in some manner to the Augusta Westland case and to the Gautam Khaitan Group of companies.

In our considered opinion, because of the possibility of the

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involvement of the assessee in a scam having international ramifications it may not have been possible for the Revenue department to have expressed or given more reasons than what were given in the impugned order and, in the facts of the present case this would be in the larger public interest; particularly when we find that the reasons were well knows to the petitioners.

In view of the discussion above and in the peculiar circumstances of the case, we do not deem it a fit case to exercise our jurisdiction under Article 226 of the Constitution of India.

Consequently, the petition stands dismissed.

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

(AJAY TEWARI)
JUDGE

(ALKA SARIN)
JUDGE

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

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