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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 12651/2019 & CM APPL. 51653/2019

M/S. VODAFONE IDEA LTD. ..... Petitioner

Through: Mr. Deepak Chopra, Mr. Harpreet Sigh Ajmani, Ms. Manasvini Bajpai and Ms. Rachana Yadav, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-9,.... Respondent

Through: Mr. Zoheb Hossain, Mr. Ajit Sharma and Mr. Piyush Goyal, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

<u>O R D E R</u>

% **02.12.2019**

The petitioner has preferred the aforesaid writ petition to assail the order dated 27.11.2019, passed by the respondents disposing of the objections raised by the petitioner to the proposed transfer of the case of the petitioner M/s Vodafone Idea Ltd., Successor of M/s Vodafone Mobile Services Limited as well as the transfer of all the proceedings along with the case records of M/s Vodafone Mobile Services Limited, which stands merged with M/s Idea Cellular Limited, (which is now known as M/s Vodafone Idea Limited) and other companies which have merged with M/s. Vodafone Mobile Services Limited to the jurisdictional A.O. at Mumbai.

The submission of learned counsel for the petitioner is that the earlier endeavour in this regard initiated vide notice dated 07.08.2019 remained inconclusive after the petitioner filed objections on 21.08.2019. The consent under Section 127(2)(b) had been denied by the Competent Authority on 12.11.2018. Learned counsel submits that even when the subject notice under Section 127 was issued to the petitioner on 26.11.2019, it was not claimed by the respondents that the consent of the competent authority was available, and it is only when the impugned order has been passed that it is recorded that the consent had since been obtained on 26.11.2019. The impugned order, inter alia, reads:

> "*This is to convey that No. Objection of the undersigned for transfer of the case of M/s Vodafone Mobile Services Ltd. (VMSL) PAN No.AACS4457Q to PCIT-5, Mumbai in terms of the provisions relating to the power to transfer cases u/s 127 of the Income Tax Act, 1961.*"

Learned counsel for the petitioner submits that the transfer of jurisdiction has been ordered with a view to scuttle the refund proceedings, as directed by this Court vide order dated 20.11.2019 and 25.11.2019 in W.P. (C.) Nos. 11933 of 2019 and 12404 of 2019.

Mr. Hossain, who appears on advance notice, submits that the petitioner had been granted ample opportunity to represent against the proposed transfer on earlier occasions when the notices were issued and objections invited. He submits that the objections of the petitioner, including with regard to the absence of consent of the competent officer – in terms of Section 127, has been considered and, as a matter of fact, consent has since been obtained, as noticed hereinabove. He submits that the nature of hearing contemplated under Section 127 of the Act to the assessee is summary, and the objections have been considered and order passed. He has placed reliance, in support of his submission, on the decision of this Court in ***ATS Infrastructure Ltd. v. Commissioner of Income Tax***, (2009) 183 ITR 299 (Delhi), ***Chaudhary Skin Trading Company v. Commissioner of Income Tax***, (2016) 290 CTR 533 and ***Sameer Leasing Co. Ltd. V. Chairman, CBDT and Others***, (1990) 185 ITR 129 (Del).

He further submits that the transfer ordered is to the correct jurisdictional A.O.

He further submits that so far as the petitioner's apprehension regarding refunds not being granted is concerned, the said aspect has already been considered in the impugned order, which, inter alia, reads as follows:

> *"The pending refunds of M/s VMSL can now be issued only in the name of M/s Vodafone Idea Ltd. using PAN of M/s Vodafone Idea Ltd. to the bank account of M/s Vodafone Idea Ltd. The PAN of M/s Vodafone Idea Ltd. is lying with the DCIT Circle 5(2)(2), Mumbai, and thus the ACIT, Circle 26(2), Delhi, cannot issue above refunds under existing instructions of the Department. Thus, the process of issuing of refunds would be much smoother on the transfer of jurisdiction to Mumbai*."

Having heard learned counsels and perused the record, it appears to us that the real objection of the petitioner to the transfer of jurisdiction emanates from the apprehension that the petitioner's refund claims may get stalled.

So far as the petitioner's right to make representation and be heard in the matter is concerned, we are of the view that sufficient opportunity has been granted to the petitioner, particularly in the light of the earlier proceedings, which were eventually dropped. The first show cause notice was issued to VMSL on 22.09.2017. VMSL responded to it on 09.10.2017.

Thereafter, VMSL and Vodafone India Ltd. merged into Idea Cellular ltd. with appointed date as 31.08.2018. Another show cause notice under Section 127 was issued on 07.08.2019. The petitioner again responded to it on 21.08.2019. Thus, the petitioner has had several opportunities to respond to the proposed transfer of jurisdiction from Delhi to Mumbai. While passing the impugned order, the objections of the petitioner have been considered. The fact remains that the consent of the competent authorities, admittedly, has been obtained before passing of the impugned order. Therefore, the earlier refusal on 12.11.2018 is of no significance.

So far as the aspect of refund is concerned, we have already issued directions in the aforesaid two writ petitions and we make it clear that the transfer of jurisdiction would not come in the way of the implementation of the orders passed by this Court.

We, therefore, do not find any merit in this petition.

Dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

DECEMBER 02, 2019

N.Khanna