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

\+ W.P.(C) 12003/2019, C.M.A PPL. 49112-49113/2019

OTM JEWELLERY PVT LTD. ..... Petitioner

Through: Dr. Rakesh Gupta, Mr. Somil Agarwal, Ms. Monika Ghai, Ms. Tani Malik and Mr. Rohit Kumar Gupta, Advs.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX-7 &ANR. Respondents

Through: Mr. Raghvendra singh, Sr. Standing counsel with Ms. Easha Kadian, Standing counsel.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

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

% 15.11.2019

<u>CM APPL. 49113/2019 (exemption)</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>W.P.(C) 12003/2019</u>

3. The petitioner has preferred the present appeal to assail the order passed by the Principal Commissioner of Income Tax (PCIT) dated 23.10.2019 under Section 127 of the Income Tax Act, 1961 (hereinafter referred as 'Act') whereby, in exercise of the power conferred by the said provision, the Principal Commissioner of Income Tax has transferred the cases of the petitioner from the ACIT/DCIT, Circle 19(1), New Delhi to the ACIT/DCIT, Central Circle-II, Noida. The impugned order reads as

follows:

"ORDER UNDFR SECTION 127 OF THE I.T. ACT,1961
Consequent to the search & seizure operations u/s 132 of the I.T. Act. 1961 in Keshav Lal Group (Date of Search: 19.04.2017), the Pr. Commissioner of Income Tax (Central), Kanpur vide letter F. No. Pr. CIT(C)/KNP/184/Keshav Lal/ 2018-19/131 dated 20.05.2019 has given concurrence and requested for centralization of the following case related to Keshav Lal Group to DCIT/ACIT Central Circle-II, NOIDA for coordinated post search investigation & meaningful assessment.

Accordingly, in exercise of power conferred by sub-section (2) of Section 127 of the Income Tax Act, 1961 and under all other powers enabling me in this behalf. I, the Pr. Commissioner of Income Tax. Delhi-07. New Delhi hereby transfers the following case(s), particulars of which are mentioned hereunder in Columns (2) and (3) from the Assessing Officer mentioned in Column (4) therein, to the of the Assessing Officer mentioned in Column (5):

Sr. No.	Name & Address of the assessee	PAN	From Assessing Oficer	To Assessing Officer
1	2	3	4	5
1	M/s OTM Jewellery Pvt. Ltd	AAAC05115F	ACIT/DCIT, Circle 19(1) Delhi	ACIT/DCIT, Central Circle -II. NOIDA

This order shall come into force with immediate effect.

(Mukesh Mittal)
Pr. Commissioner of Income Tax,
Delhi-7, New Delhi"

4. The above order reflects that search and seizure operation under Section 132 of the Income Tax Act ("Act") was undertaken in respect of the Keshav Lal Group on 19.04.2017. In pursuance thereof the PCIT (Central), Kanpur vide letter dated 20.05.2019 gave its concurrence and requested for centralization of the cases related to the Keshav Lal Group to DCIT-ACIT, Central Circle –II, Noida "*for coordinated post search investigation & meaningful assessment.*"

5. A show cause notice under Section 127 of the Act was issued to the petitioners on 03.06.2019 which was responded to on 13.06.2019. It appears from the notice dated 03.06.2019 that the PCIT (Delhi) did not disclose as to in respect of which group, search and seizure operation had been undertaken under Section 132/133A of the Income Tax Act, 1961 and the petitioner accordingly, disputed and denied involvement with any group searched, and claimed that no search and seizure had been undertaken in respect of it. Thereupon, another communication dated 16.08.2019 was issued to the petitioner, forwarding the copy of the letter dated 10.07.2019 - which contained the reasons and the basis for the proposed centralization. The petitioner was asked to submit its objections, if any. The communication dated 10.07.2019, issued by the DCIT (Noida) to the Principal Commissioner of Income Tax, Delhi stated that search was conducted on the Keshav Lal Group on 19.04.2017. During the search, statements of Smt Indu Shrivastava were recorded under Section 132 (4) of the Income Tax. She claimed that she had received income from the petitioner on account of designing of jewellery. As per statement of Mrs. Indu Shrivastava and her daughter Ms. Shruti Shrivastava, they did not have any qualification or

experience in the matter of designing jewellery. It appeared that from the income received from the petitioner, they had acquired properties. It also appeared that the money received from the petitioner could be an attempt to channelize the unaccounted money in the guise of the income from M/s OTM Jewellery Pvt. Ltd. for jewellery designing. The communication also notes that Indu Shrivastava and Shruti Shrivastava admitted to not maintaining any books of account or bill book. The old gold was also shown to have been sold to the petitioner-M/s OTM Jewellery Pvt. Ltd by the members of the said Keshav Lal Group.

6. In the aforesaid context, the centralisation of investigation and assessment was proposed so that wholesome view could be taken of not only the activities and operations of the searched group, but also of the petitioner which had substantial transactions with the members of the searched group. Petitioner submitted its objections, which have been perused by us. A perusal thereof shows that they primarily relate to the contention that the transactions undertaken with the members of the Keshav Lal Group are genuine and bona fide.

7. The submission of the learned counsel for the petitioner is that merely because the Keshav Lal Group has been searched and assessment proceedings are underway in respect of the members of the said group, is no reason to centralize and transfer the assessments in respect of the petitioner with the assessment of the Keshav Lal Group. Learned counsel for the petitioner submits that the impugned order itself is devoid any of such reasons.

8. Mr. Raghvendra Kumar Singh, who appears on advance notice, submits that in consequence of the search undertaken under Section 132 (2) in respect of the Keshav Lal Group, notices have already been issued to the petitioner under Section 153C and thus assessment/re-assessment proceedings stand undertaken in respect of the petitioner as well, apart from the Keshav Lal Group, as a consequence of the search operation.

9. Having heard the learned counsel for the petitioner, we do not find any merit in the petitioner's submissions. The reasons for the proposed transfer under Section 127 are clearly set out in the inter department communication dated 10.07.2019, issued by the office of the DCIT Central Circle –II, Noida to the PCIT (Delhi). The PCIT (Delhi) has consented to the said transfer. There is no denying the fact that transactions were undertaken between the members of the Keshav Lal Group and the petitioner. Since the petitioner is in the other end of the said transaction undertaken by members of the Keshav Lal Group, which are under investigation, and the petitioner too has been issued notice under Section 153C, it is only reasonable and proper that the proceedings are centralized so that a wholesome view could be taken by the same officer who is undertaking the assessment. In fact, the centralization, in our view, would be to the advantage to the petitioner as well, since the petitioner would not have to deal with two sets of officers at Delhi and Noida. The submission that no reasons are to be found in the impugned order is not correct inasmuch, as, the reasons are contained in the proposal for centralization dated 10.07.2019 which was communicated to the petitioner and the petitioner's objections were also called for. The petitioner has been granted sufficient opportunity for hearing and has also

been apprised of the reasons for the said transfer.

10. In view of the above, we therefore, do not find any merit in this petition and accordingly, dismiss the same. However, we make it clear that we have not examined the merit of the petitioner’s defence that the petitioner may set up during the course of assessment in undertaking under Section 153C.

VIPIN SANGHI, J

SANJEEV NARULA, J

NOVEMBER 15, 2019
Pallavi