

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.459 OF 2020

Parappurathu Varghese Mathai ... Petitioner  
Vs.  
Principal Commissioner of Income Tax-28 & others ... Respondents

WITH  
WRIT PETITION NO.690 OF 2020

Sarakutty Mathai ... Petitioner  
Vs.  
Principal Commissioner of Income Tax-28 & others ... Respondents

WITH  
WRIT PETITION NO.492 OF 2020

Olive Builders ... Petitioner  
Vs.  
Principal Commissioner of Income Tax-28 & others ... Respondents

Mr. Devendra H. Jain for Petitioner.

Ms Shehnaz (Sheroo) Vispy Bharucha (Daruwalla) for Respondent  
Nos.1 to 3.

**CORAM : UJJAL BHUYAN,  
MILIND N. JADHAV, JJ.**

**DATE : MARCH 13, 2020**

**P.C. :**

This order will dispose of Writ Petition Nos.459, 492 and 690 of 2020.

2. Heard Mr. Jain, learned counsel for the petitioner and Ms Bharucha, learned standing counsel Revenue for the respondents.

3. On consent of learned counsel for the parties, we have taken up Writ Petition No.459 of 2020 as the lead case.

4. By filing this petition under Article 226 of the Constitution of India, petitioner seeks quashing of orders dated 09.08.2019 and

09.12.2019 relating to transfer of assessment jurisdiction from Mumbai to Kochi.

5. Brief reference to the relevant facts is considered necessary.

6. Petitioner is an individual and a partner of the partnership firm M/s. Olive Builders engaged in the business of development and construction of buildings. It is stated that he is an assessee assessed to income tax under the jurisdiction of respondent No.1.

7. It appears that a search and seizure operation was carried out in the premises of Olive Builders on 16.05.2019 at Kochi where the partnership firm is engaged in the business of development and construction of buildings.

8. Thereafter an order dated 09.08.2019 was passed by respondent No.1 - Principal Commissioner of Income Tax-28, Mumbai under sub-section (2) of Section 127 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) transferring the case of the petitioner from Assistant Commissioner of Income Tax-28(2), Mumbai to Deputy Commissioner of Income Tax / Assistant Commissioner of Income Tax, Central Circle-1, Kochi for administrative convenience and co-ordinated investigation as the territorial jurisdiction of the case was with the assessing officer. It was also mentioned that relevant case records under the Gift Tax Act as well as Wealth Tax Act, if any, would also stand transferred accordingly and that the said order was to come into effect on and from the date of issue of the order.

9. It may be mentioned that order dated 09.08.2019 was a common order in respect of the present petitioner as well as petitioner in Writ Petition No.492 of 2020 (M/s. Olive Builders) and petitioner in Writ Petition No.690 of 2020 (Sarakutty Mathai).

10. It appears that an objection was raised by the petitioner before

respondent No.1 on 22.08.2019 regarding the order dated 09.08.2019 by contending that the procedure prescribed under Section 127(2) of the Act was not complied with thereby rendering the order dated 09.08.2019 invalid.

11. In response to the said notice, petitioner was informed by the office of respondent No.1 *vide* letter dated 30.08.2019 that petitioner's case was also covered by the search and seizure operation carried out in the premises of M/s. Olive Group under Section 132 of the Act by the Investigation Wing of the Income Tax Department at Kochi. It was mentioned that a proposal was received from the Principal Director of Income Tax (Investigation), Kochi for centralization of the case of the petitioner at Kochi for co-ordinated investigation of the group to protect the interest of the revenue. To afford an opportunity of hearing, petitioner was asked to attend the office of respondent No.1 either personally or through his authorized representative on 11.09.2019.

11.1. This led to submission of representation by the petitioner before respondent No.1 on 11.09.2019 requesting respondent No.1 to retain the assessment jurisdiction over the petitioner at Mumbai.

11.2. Further representation was submitted on 16.09.2019.

12. Thereafter respondent No.1 passed an order dated 09.12.2019 stated to be in modification of the earlier order dated 09.08.2019 passed under Section 127 of the Act. By the said order passed in exercise of powers conferred by sub-section (2) of Section 127 of the Act, respondent No.1 transferred the case of the petitioner from the jurisdiction of the assessing officer Assistant Commissioner of Income Tax, 28(2), Mumbai to Deputy Commissioner of Income Tax / Assistant Commissioner of Income Tax, Central Circle-1, Kochi.

13. Aggrieved, the present writ petition has been filed.

14. As already noticed above, the other two assessee namely, Olive Builders and Sarakutty Mathai have filed the related writ petitions.

15. Basic contention of learned counsel for the petitioner is that there was no agreement between the competent / designated authorities leading to transfer of jurisdiction as per requirement of clause (a) of sub-section (2) of Section 127 of the Act. That apart, reasons were not disclosed. It was only after petitioner lodged objection that reasons came to be disclosed in the form of the second order dated 09.12.2019, which is stated to be in modification of the earlier order dated 09.08.2019. Therefore, it is a case of post-decisional hearing which is not contemplated under the statute. Final contention is that prior to issuance of order dated 09.12.2019, reasons were never provided to the petitioner. Mr. Jain would therefore contend that above procedural infirmities have vitiated the decision making process warranting interference by the writ court.

16. *Per contra*, Ms Bharucha, learned standing counsel Revenue has referred to the averments made by respondent Nos.1, 2 and 3 in their common affidavit in reply filed on 03.02.2020. Referring to the averments made in paragraphs 5 and 6 of the said affidavit, she submits that proposal was received from the Directorate General of Investigation (Investigation), Kochi dated 25.06.2019 for centralization of assessment jurisdiction at Kochi in the group cases relating to Olive Builders including that of the petitioner. Similar proposal was also received from the Principal Director of Income Tax (Investigation), Kochi dated 27.06.2019. Thereafter consent for transfer of jurisdiction was received from the Chief Commissioner of Income Tax-6, Mumbai on 05.07.2019. Accordingly, the order dated 09.08.2019 was passed under Section 127 of the Act. After the petitioner raised objection, the same was duly considered whereafter opportunity of hearing was given to the petitioner. Representative of the petitioner was heard and comments from the concerned assessing officers were called for and considered. At this

stage, we may mention that the affidavit in reply of respondent Nos.1, 2 and 3 also deals with the merit of the case relating to the search and seizure operation carried out on 16.05.2019 and the reasons for transfer of jurisdiction. Therefore, submission of Ms Bharucha is that the procedural requirements contemplated under Section 127(2) of the Act have been complied with and thus, there is no error or infirmity in the decision taken by respondent No.1 for transfer of jurisdiction. After passing of the subsequent order dated 09.12.2019, the initial order dated 09.08.2019 would no longer subsist as the same has merged with the subsequent order dated 09.12.2019, which is in reality and substance, the order passed under Section 127(2) of the Act. In the circumstances, writ petition should be dismissed.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court.

18. Short point for consideration is whether impugned decision of respondent No.1 to transfer assessment jurisdiction of the petitioner from Mumbai to Kochi is in accordance with law, more specifically as per the requirement of Section 127 of the Act?

19. To appreciate the issue, Section 127 may be adverted to. For ready reference, we may extract Section 127 of the Act, which reads as under:

**“Power to transfer cases.**

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent

jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-

(a) Where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or

without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

*Explanation.*-In section 120 and this section, the word “case”, in relation to any person whose name is specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.”

20. As would be evident from the heading of the section it deals with power to transfer cases. Apparently this is a case falling within the ambit of sub-section (2) since both the assessing officers are not subordinate to the same higher authority, one being at Mumbai and the other at Kochi. Therefore, we may analyze the requirement of sub-section (2). Sub-section (2) visualizes two situations - clause (a) and clause (b). Sub-section (2) says that where the assessing officer from whom the case is to be transferred and the assessing officer to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in the event they are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after

recording his reasons for doing so, pass the order. This is the requirement of clause (a) of sub-section (2). In other words, clause (a) deals with a situation where the designated higher authorities of both the areas to whom the respective assessing officers are subordinate are in agreement. Once they are in agreement that the assessment jurisdiction has to be transferred then the designated higher authority from whose jurisdiction the case is to be transferred may provide the assessee a reasonable opportunity of being heard wherever it is possible to do so and after recording the reasons for doing so, pass the order of transfer.

21. Before adverting to the situation contemplated under clause (b), we are of the view that notwithstanding use of the expression 'may' in clause (a) to sub-section (2), the requirement to provide reasonable opportunity of hearing to the assessee is fundamental to the assumption of jurisdiction under Section 127(2)(a). If that be so then the expression 'may' would contemplate an obligatory requirement on the designated higher authority to provide opportunity of hearing to the assessee. Careful reading of clause (a) would further reveal that such reasonable opportunity of hearing has to be provided before passing an order under Section 127(2). This is clear from the language of the section itself. Thus, this section does not provide or contemplate providing of post-decisional hearing. In any event, a post-decisional hearing is to be provided only in exceptional cases and not in a routine manner.

22. Insofar reasons are concerned, the section only provides for recording of reasons and not furnishing of reasons to the assessee. Therefore, the order passed under Section 127(2) must indicate that the assessee was provided a reasonable opportunity of hearing and must also record the reasons for transfer of assessment jurisdiction.

23. Having discussed the above, we may now advert to the situation contemplated under clause (b). Clause (b) visualizes a situation where the designated higher authorities of the two areas are not in agreement. In such a situation, the order transferring the case may similarly be passed by the

Central Board of Direct Taxes or by such designated higher authority as the Board may, by a notification in the Official Gazette, authorize in this behalf. Therefore, what clause (b) visualizes is a situation where the two designated higher authorities are not in agreement regarding transfer of assessment jurisdiction. In such a situation, the order is to be passed by the Central Board of Direct Taxes or by the designated higher authority as may be authorized by the Central Board of Direct Taxes by a notification in the Official Gazette on its behalf. We may however mention that the expression 'similarly' is used in clause (b) of sub-section (2). As noticed above, sub-section (2) would come into play when the two designated higher authorities are not in agreement. If they are not in agreement then the Central Board of Direct Taxes steps in and shall pass the necessary order either by itself or through the authorized designated higher authority by similarly following the procedure provided in clause (a). Therefore, the expression 'similarly' would mean that the Board or the authorized designated higher authority follow the same procedure as provided in clause (a) before passing the order of transfer.

24. Having discussed the legal provisions as above, we may now advert back to the first order dated 09.08.2019 passed by respondent No.1 under Section 127(2) of the Act. Perusal of this order does not disclose that the two designated higher authorities were in agreement for transfer of assessment jurisdiction. Further, this order also does not indicate or disclose that reasonable opportunity of hearing was granted to the petitioner. That apart, the only reason mentioned for transfer of jurisdiction is administrative convenience and co-ordinated investigation which on the face of it is quite vague and indeterminate. It was only after petitioner submitted objection that respondent No.1 passed the second order dated 09.12.2019 under Section 127(2) of the Act stating to be in modification of the earlier order dated 09.08.2019. In paragraph 2 of the second order, it is stated that a proposal was received from the Principal Director of Income Tax (Investigation), Kochi on 25.06.2019 for centralization of cases at Kochi. This was construed by respondent No.1 as consent for transfer of the cases. At the same time, respondent No.1 also mentions that consent for

transfer was received from the Chief Commissioner of Income Tax-6, Mumbai on 05.07.2019. Accordingly, it was decided to centralize the cases to facilitate detailed and effective co-ordinated investigation of the group cases. Similar is the stand taken in the affidavit of the respondents.

25. The view taken by respondent No.1 that receipt of proposal from the Principal Director of Income Tax (Investigation), Kochi was construed as consent for transfer of the case is highly debatable. Thus in the context of specific consent received by respondent No.1 from the Chief Commissioner of Income Tax - 6, Mumbai, forwarding of a proposal for centralization of assessment in a group of cases may not amount to a consent for transfer within the meaning of clause (a) to sub-section (2). In fact the expression used in clause (a) to sub-section (2) is 'agreement'; 'agreement' *per se* would mean that the concerned parties have to agree to a specific course of action. There has to be a positive meeting of mind to the suggested proposed course of action. The dictionary meaning of the expression 'agreement' is harmony in opinion or feeling; a manifestation of mutual assent by two or more persons. Therefore, furnishing of a proposal, in our view, may not amount to an agreement of the designated higher authorities as contemplated under clause (a) to sub-section (2) of Section 127 of the Act. In *Noorul Islam Educational Trust Vs. CIT*, (2016) 76 taxmann.com 144, Supreme Court considered transfer of assessment jurisdiction under Section 127(2)(a). Supreme Court held that agreement between the two designated higher authorities was necessary. Revenue took the stand that there was no disagreement between the two Commissioners. Rejecting this stand, Supreme Court held that absence of disagreement cannot tantamount to agreement as visualized under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners.

26. From the above, it is quite evident that before passing the impugned order on 09.08.2019, no opportunity of hearing was granted to the petitioner. Hearing was granted after the said decision was taken culminating in the second order dated 09.12.2019. That apart, from the

second order it is discernible that there was no agreement between the two jurisdictional Principal Commissioners to transfer assessment jurisdiction from Mumbai to Kochi. Evidently, the procedure prescribed under Section 127(2)(a) of the Act has not been complied with. It is trite that when a statute requires a thing to be done in a particular manner, then it has to be done in that particular manner.

27. In the light of the above discussions, we are of the view that the decision making process leading to passing of the two impugned orders has been vitiated for non-compliance to the statutory procedural requirements. Consequently, both the orders dated 09.08.2019 and 09.12.2019 passed by respondent No.1 cannot be sustained; those are hereby set aside and quashed.

28. Since we have set aside the above two orders, all consequential actions shall also stand interfered with.

29. It is open to the Central Board of Direct Taxes, New Delhi to step in and take action as per clause (b) to sub-section (2) of Section 127 of the Act in accordance with law keeping in mind the discussions made above.

30. We make it clear that we have not expressed any opinion on merit and in the event Central Board of Direct Taxes decides to intervene, all contentions of the parties would be open.

31. In view of the above order, all the three petitions are accordingly allowed.

**(MILIND N. JADHAV, J.)**

**(UJJAL BHUYAN, J.)**