

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.12.2020

CORAM :

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.A. NO.1763 OF 2017
AND C.M.P.NO.22346 OF 2017

M/s.Advantage Strategic Consulting
Private Limited, Rep. by its
Director, Mr.M.Rajesh.

..Appellant

-vs-

1.The Principal Commissioner of Income Tax,
Chennai-1, Room No.701, 7th Floor,
New Block No.121, Income Tax Dept.,
Uthamar Gandhi Road, Chennai 600 035.

2.The Assistant Commissioner of Income Tax,
Central Circle 2(1), Investigation Wing,
Income Tax Department, Room No.122,
1st Floor, New No.46, M.G.Road,
Chennai 600 034.

..Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order dated 05.12.2017 passed in W.P.No.35408 of 2016 on the
file of this Court.

W.P.No.35408 of 2016 PRAYER:

Petition filed Under Article 226 of the Constitution of
India to issue a Writ of Certiorari, to call for the records of
the first respondent relating to the Notification No.1/2016-17,
dated 24.06.2016 having Ref.No.C.No.272-A/Centralisation/PCIT-
1/2016-17 in the case of the petitioner and quash the same as
ultra vires Section 127 of the Income Tax Act, 1961 vitiated by
extraneous considerations, passed in violation of principles of
natural justice, arbitrary and violative of Article 14 of the
Constitution.

For Appellant : M/s.Gladys Daniel
For Respondents : Mr.R.Sankaranarayanan
Addl. Solicitor General of India
assisted by Mr.A.P.Srinivas,
Special Panel Counsel.

JUDGMENT

(Delivered by Dr.Vineet Kothari, J.)

The Writ Appellant Assessee, M/s.Advantage Strategic Consulting Pvt. Ltd., represented by its Director, Mr.M.Ramesh, Chennai, has filed this intra-Court appeal aggrieved by the order of the learned single Judge dated 05.12.2017 dismissing the writ petition of the Appellant Assessee.

2.The Appellant Assessee, in the said writ petition, had challenged the transfer order and consolidation of cases of the Appellant Assessee vide order dated 24.06.2016 on account of centralisation of search and seizure cases. The said order dated 24.06.2016 was passed by M/s.Anu J Singh, IRS, Principal Commissioner of Income Tax, Chennai-1, Chennai and the proceedings of the Assessee, M/s.Advantage Strategic Consulting Pvt. Ltd., were transferred from DCIT, Corporate Circle-1(1), Chennai (CHE-C-251-1) to another parallel authority, DCIT, Central Circle 2(1), Chennai, (DLC-CC-52-1). The learned Single Judge did not find any ground to interfere with the said consolidation and transfer of cases from one Assessing Officer to another and therefore, dismissed the Writ Petition No.35408 of 2016 with the following observations:-

"62. As pointed out earlier, sub-section (3) of Section 127 of the Act does not commence with a non-obstante clause, but it is a clause providing for exclusion of certain procedures, which are required to be adhered to under circumstances not mentioned in sub-section (3) of Section 127 of the Act. Therefore, the theory of harmonious construction cannot be applied to the facts of this case, nor sub-section (3) of Section 127 of the Act, can be construed as a non-obstante clause, but a clause providing for exclusion of certain procedure in certain contingencies. The fact that the transferee and transferor officers are within the same city is not in dispute. This Court has found that there has been an agreement between the two Heads of Department and the petitioner cannot plead for an opportunity to be granted before an order of transfer, as there is no such statutory requirement

under the Act, rather, the said procedure has been specifically excluded. Furthermore, the Court is satisfied that there are reasons recorded, as has been mentioned by referring to the chain of events. In such circumstances, the impugned notification cannot be faulted on the grounds raised by the petitioner.

63.A contention was advanced on behalf of the petitioner that the exercise of the power of jurisdiction was a mala fide exercise based on newspaper gossips and made to appear as an innocuous order of transfer. In this regard, reference was made to the observations contained in an interim order passed on 19.02.2016, especially in paragraph 4 therein, I find what has been recorded by the Court is the submission made on behalf of the petitioner and not a finding rendered by the Court. In any event, the observations contained in the order dated 19.12.2016, was an order recording reasons while granting an interim order, which can hardly have any impact when the case is heard and decided finally.

64. Thus, for all the above reasons, the petitioner has not made out any case for interference. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed."

3. During the pendency of the writ petition, on 19.12.2016, an interim order was passed by the learned single Judge in the said Writ Petition No.35408 of 2016 and W.M.P.Nos.30475 to 30478 of 2016 and the operative part of the said interim order in Para 10 and 10.1 are also quoted below for ready reference:-

"10. For the moment, since, the Revenue says that the assessment would get time-barred, it is given liberty to conclude the assessment proceedings, with a caveat, that it would not be given effect to till further orders.

10.1. The assessment proceedings, if concluded, will, thus, be kept in a sealed cover, till further orders of the Court, as suggested by the counsel for the Revenue, as a protem measure."

4. Mr. R. Sankaranarayanan, learned Additional Solicitor General of India, submitted before us that the Assessment Order for the Assessment Year 2014-15 was passed after the said interim order dated 19.12.2016 on 30.12.2016 itself and the same, however, could not be served upon the Assessee awaiting

the disposal of the writ petition itself, which was finally dismissed on 05.12.2017 by the learned single Judge and thereafter, the said Assessment Order was sought to be served upon the Assessee along with a communication dated 21.01.2019 which was duly acknowledged by an e-mail of the assessee and thereafter followed by a letter dated 07.02.2019 which is also placed on record before us. The learned Additional Solicitor General of India submitted that the tenor of the letter of the Assessee unduly caused an impression on the Assessing Authority as if he was not entitled to serve the Assessment Order passed even after the dismissal of the writ petition relying on the interim order passed by the Division Bench dated 20.12.2017 in W.A.No.1763 of 2017, which was quoted in the said communication of the Assessee is quoted below for ready reference:-

"Mr.G.Rajagopalan, learned Additional Solicitor General appears on behalf of the respondents/Income Tax Department.

The respondents are directed to produce the records pertaining to the impugned order of transfer and in particular, the reasons recorded for the transfer.

Let the appeal be listed as 'for orders' on 03.01.2018.

Any action taken in the meanwhile will abide by the result of the appeal."

The said interim order passed by the Division Bench only said that any action taken in the meanwhile will abide by the result of the appeal.

5.The Assessee in the said communication emphasized that the Assessment Order was said to be kept in a sealed cover and since it was to abide by the order of the Division Bench, the Assessing Authority could not have passed the said order and he has requested the Assessing Authority to withdraw the said Assessment Order dated 30.12.2016 and merely on account of the pendency of this Writ Appeal, the Assessee neither chose to pay the demand raised in pursuance of the said Assessment Order nor filed any regular appeal against that before the Commissioner of Income-tax (Appeals).

6.The learned Additional Solicitor General of India, therefore, submitted that the writ petition and the present writ appeal against the transfer orders under Section 127 of the Income Tax Act, 1961, in any case have become infructuous, as the Authority to whom the proceedings were transferred has already passed the Assessment Order and the same has been served on the Appellant Assessee also.

7.Ms.Gladys Daniel, the learned counsel for the Appellant Assessee, however, submitted that the Assessee was not served with the said Assessment Order and the Assessing Officer may be directed to serve the said Assessment Order on the Assessee even now. She also sought to assail the impugned Transfer Order under Section 127 of the Income Tax Act, 1961.

8.The learned Special Panel Counsel appearing for the Revenue, Mr.A.P.Srinivas, submitted that the entire set which is placed on record dated 30.11.2020 has been sent by e-mail to rbalaca@gmail.com and has now been forwarded to M/s.Gladys Daniel also on her e-mail provided before us, i.e., legal@danielandgladys.in.

9.Having heard the learned counsel for the parties, we are of the opinion that the Writ Appeal has become infructuous in view of the Assessment Order having been passed by the Assessing Authority in pursuance of the impugned transfer order under Section 127 of the Income Tax Act, 1961, dated 24.06.2016. We are further of the opinion that the Transfer Order passed under Section 127 of the Income Tax Act, 1961, is more in the nature of an administrative order rather than quasi-judicial order and the Assessee cannot have any right to choose his Assessing Authority, as no prejudice can be said to have been caused to the Assessee depending upon which Authority of the Department passes the Assessment Order. The Assessee can only be concerned with getting an opportunity of hearing before the concerned Assessing Authority and adduce his evidence and make his submissions before the concerned Assessing Authority. The Income Tax Department has recently introduced a Scheme of Faceless Assessments which will avoid personal hearing and physical interaction of Assessee and Assessing Authority altogether. The Assessee need not even know the name of the Assessing Authority who will deal with his case. The process of hearing appears to have been undertaken by the Assessing Authority who passed the order on 30.12.2016 during the pendency of the writ petition with the permission of the Court, and the Assessment Order to be kept in sealed cover and which was served on the Assessee after the dismissal of the Writ Petition on 05.12.2017.

10.We are a bit surprised by the audacious response of the Assessee to the Departmental Authorities even after the service of the said Assessment Order vide its letter dated 07.02.2019 to the effect that merely because the Writ Appeal is pending and the Division Bench of this Court has observed in the interim order that any action will abide by the final orders passed by the Division Bench, the Assessee chose to ask the Assessing Authority to withdraw the same and maintain a silence on the said Assessment Order and even the service of the said Assessment Order on the Assessee does not seem to have been

brought to the knowledge of the learned counsel who appeared on behalf of the Assessee before us, as, on the last occasion on 27.11.2020, when the matter was heard by this Court, it was only pointed out by the learned counsel for the Revenue that the Assessment Order was passed on 30.12.2016, but the learned counsel for the Assessee still submitted that no such order has been served on the Assessee. We are also not very much impressed or happy with the tenor of the response of the Assessee to the Assessing Authority in his letter dated 07.02.2019. The Assessee cannot entertain a misplaced impression that merely because the Transfer Order under Section 127 of the Income Tax Act, 1961, is under challenge in the Writ court or in the Writ Appeal proceedings, the Authorities are not expected to act in accordance with provisions of the Act and pass orders which is subject to limitation prescribed in the Income Tax Act itself. We do not see anything wrong in the Assessing Authority passing the Assessment Order dated 30.12.2016 in the present case and for other years with the due permission of the Court itself and keeping that in a sealed cover until the writ petition was dismissed on 05.12.2017. Even thereafter, the orders were sought to be served only along with a communication dated 21.01.2019 to which the Assessee responded by his letter dated 07.02.2019 and thereafter, another letter by the Chartered Accountants of the Assessee, Mr.R.Balachandran, a response for payment of outstanding tax was given by stating that they were not liable to pay the tax as assessed in the orders in question merely because the Writ Appeal was pending before this Court. It is made clear that there was no stay order from the Division Bench of this Court either against the recovery or passing of the order itself or service thereof on the Assessee.

11. In our opinion, therefore, there was an abuse of process of the Court in the writ proceedings by the Assessee and taking advantage of the pending litigation, the Assessee has tried to ride roughshod over the Departmental Authorities which it was not entitled to do. An assessment of the tax liability under the Income Tax Act is an obligation of the Assessing Authority and equally obliged is the Assessee to abide by it subject to his right to avail remedy by way of appeals as provided in the Law. Instead of choosing either availing of those remedies or paying the tax as assessed by the Assessing Authority, the Assessee seems to be resting upon the pendency of the litigation in this Court which in our considered opinion was wholly misconceived in the first instance, and infructuous in any case with the passing of the Assessment Order on 30.12.2016.

Therefore, we dismiss this Writ Appeal without interfering with the order of the learned Single Judge in any manner or the Assessment Order passed by the Assessing Authority or the

Transfer Order passed by the Revenue Authorities under Section 127 of the Income Tax Act, 1961. There shall be no order as to costs.

Sd/-
Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

sra

To

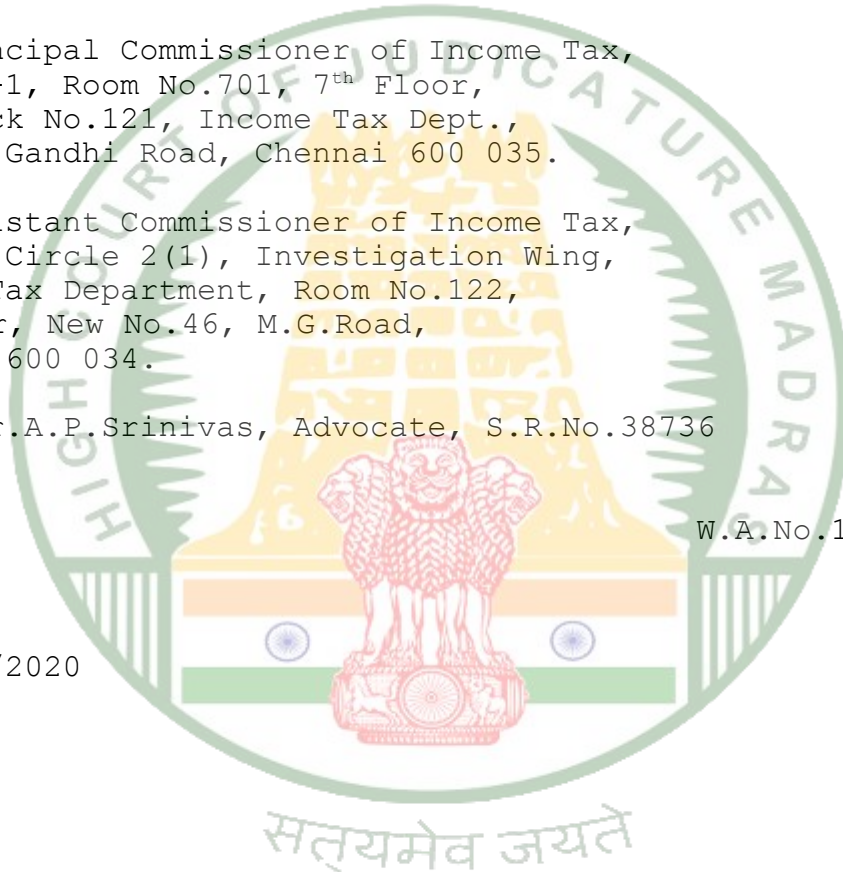
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+lcc to Mr.A.P.Srinivas, Advocate, S.R.No.38736

W.A.No.1763 of 2017

EV(CO)
KKV/22/12/2020



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