BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON: 19.06.2020
DELIVERED ON: 30.06.2020
CORAM:
THE HON'BLE MR. JUSTICE P.N. PRAKASH
and
THE HON'BLE MR. JUSTICE B. PUGALENDHI
W.A. (MD) No.417 of 2020 and C.M.P. (MD) Nos.2831 and 3158 of 2020

V.V. Minerals
represented by its Partner
S. Vaikundarajan
17C Keeraikaranthattu
Tisaiyanvillai
Tirunelveli District ... Appellant / Petitioner

vs.

1 The Principal Commissioner of Income Tax
2, V.P. Rathinasamy Nadar Road
Bibikulam,Madurai 625 002

2 The Assistant Commissioner of Income Tax
Central Circle – 2, Madurai
Kulamangalam Main Road
Meenambalpuram,Madurai 625 002

3 The Deputy Director of Income Tax
Central Circle – 2, Madurai
Kulamangalam Main Road
Meenambalpuram,Madurai 625 002 ... Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 28.02.2020 passed in W.P. (MD) No. 16869 of 2019.

Prayer in WP(MD)No.16869 of 2019

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court Calling for the records of the 1st respondent comprised in the impugned order No.8/2018-19 bearing C.No.337/Pr.CIT-2/MDU/2018-19 dt.19.2.2019 and quash the same.

For appellant	Mr.V. Lakshmi Narayanan for M/s. Kingsly Solomon
For R1	Ms. S. Srimathy Central Govt. Standing Counsel
For RR 2 & 3	Mr. T.R. Senthil Kumar Senior Standing Counsel for I.T. Dept. assisted by for Mrs. K.G. Usha Rani Standing Counsel for I.T. Dept.

JUDGMENT

(delivered by P.N. PRAKASH, J.)

The challenge in this intra-Court appeal is to the order dated 28.02.2020 passed by a learned Single Judge of this Court in W.P. (MD) No.16869 of 2019, refusing to quash the transfer of case order dated 19.02.2019 passed by the Principal Commissioner of Income Tax, Madurai - 2.

2 For the sake of convenience and better understanding of facts, the private parties are referred to by their names and the authorities are referred to by their designation.

3 To appreciate the rival submissions, it may be necessary to give a thumbnail sketch of the undisputed facts:

3.1 There are three V.V. Minerals referred to in the order passed by the Principal Commissioner of Income Tax, Madurai, impugned in the writ petition, with each having a distinct Permanent Account Number (PAN). Ergo, we designate them as follows:

1. V.V. Minerals No.1 (PAN AAGFS5361Q)
2. V.V. Minerals No.2 (PAN AAHFV2400N)
3. V.V. Minerals No.3 (PAN AACFV2265L).

3.2 Apart from the above three V.V. Minerals, the other juristic persons referred to in the order impugned in the writ petition, are as under:

1. V.V. Titanium Pigments Pvt. Ltd. (PAN AADCV7723P)
2. V.V. Marine Products (PAN AALFV2122R)
3. Shree Sanghvi Mills Pvt. Ltd. (PAN AAECS5431N)
4. V.V. Mart (PAN AAHFV2398H)
5. Ajax Media Tech Pvt. Ltd. (PAN AANCA0470G)

3.3 Thus, there are eight juristic persons and apart from them, there are the following 12 natural persons with individual PANs:

1. S. Vaikundarajan (PAN ABEPV0032E)
2. S. Jegatheesan (PAN ABXPJ7672F)
3. J. Subburajan (PAN CWJPS9725F)
4. V. Subramanian (ANVPS2304R)
5. J. Muthurajan (PAN AKZPM1405G)
6. J. Chenthilrajan (PAN AHZPC 0253F)
7. Subasaranya (PAN BRIPS 1638E)
8. V.Velmurugan (PAN AEDPV 5896G)
9. J. Renuka (PAN ABXPJ 7678R)
10. S. Karthiyayini (PAN BACPK 6338N)
11. V. Chandraboopathy (PAN AEUPC 3562R)
12. C. Simarna (PAN CSEPS2249P)

3.4 All the aforesaid 20 persons were registered for Income Tax purpose with the Assistant Commissioner of Income Tax, Tirunelveli. Even according to V.V. Minerals, they are a leader in Tamil Nadu in the mineral industry and they have established a sterling reputation in their business circles and are renowned for their commitment to quality and ethical business practices, *vide* paragraph no.3 of the affidavit filed in support of the writ petition.

3.5 Mr. V. Lakshmi Narayanan, learned counsel representing Mr.Kingsly Solomon, learned counsel on record for V.V. Minerals, submitted that except C. Simarna, the other 11 natural persons are Partners/Directors in the 8 juristic persons referred to above;

3.6 Concededly, from 25.10.2018, the Income Tax sleuths conducted simultaneous searches under Section 132 of the Income Tax Act, 1961 (for conciseness "the IT Act") in the business premises of the juristic persons and in the residential premises of the non-juristic and natural persons.

3.7 According to the Income Tax Department, the searches were conducted between 25.10.2018 and 24.12.2018 and incriminating materials tending to show huge tax evasions were recovered.

3.8 In South Tamil Nadu, the Madurai District has two Central Circles of the Income Tax Department, under which, Tirunelveli District also falls. The Principal Commissioner of Income Tax, Madurai, issued individual notices dated 28.01.2019 under Section 127 of the IT Act to all the 20 assessees calling for objections, if any, for the proposal to transfer their assessments files, from Tirunelveli to Madurai.

3.9 At this juncture, it will be appropriate to extract verbatim the relevant portion of the notice dated 28.01.2019 that was issued by the Principal Commissioner of Income Tax, Madurai, to V.V. Minerals No.2:

> *"It is proposed to transfer your case from the Assistant Commissioner of Income Tax, Circle - I, Tirunelveli, to the Deputy Commissioner of Income Tax, Central Circle-2, Madurai under Section 127 of the Income Tax Act, 1961. The reason for the proposed transfer is that detailed, coordinated and centralized investigation is necessary."*

3.10 In response to the aforesaid notice, V.V. Minerals No.2 addressed a letter dated 31.01.2019 asking for the relevant supporting documents to justify the transfer, besides seeking 30 days' time to submit their reply.

3.11 The Principal Commissioner of Income Tax, Madurai, sent a communication dated 11.02.2019 to V.V. Minerals No.2, fixing the date of hearing as 18.02.2019 at 4.30 p.m., in the Income Tax office, Madurai.

3.12 V.V. Minerals No.2 followed it up with a letter dated 16.02.2019 once again reiterating that they have not been furnished with the relevant documents for justifying the transfer of their case from Tirunelveli to Madurai.

3.13 Personal hearing was afforded to the assessees on 18.02.2019 at 4.30 p.m. The assessees took a stand that their Chartered Accountant is stationed at Tirunelveli and that he is 85 years old and therefore, it will cause hardship for them if their cases are transferred to Madurai.

3.14 The Principal Commissioner of Income Tax, Madurai, considered the objections and by order dated 19.02.2019, directed the transfer of the files of the 20 assessees from the Tirunelveli Circle to the Central Circle-2, Madurai. Thereafter, the Income Tax authorities at the Central Circle-2, Madurai, issued a notice dated 16.07.2019 under Section 153-A of the IT Act to all the assessees, including V.V. Minerals No.2, which is not under challenge here.

3.15 Calling into question the legality and validity of the transfer order dated 19.02.2019 passed by the Principal Commissioner of Income Tax, Madurai, V.V. Minerals No.2 filed W.P. (MD) No.16869 of 2019.

4 At the time of admission of W.P. (MD) No.16869 of 2019, a learned Single Judge of this Court granted stay of the transfer order dated 19.02.2019 on 05.08.2019 and after a prolonged battle, the matter was heard finally and disposed of by another learned Single Judge of this Court *vide* order dated 28.02.2020, dismissing the writ petition and sustaining the transfer order dated 19.02.2019, assailing the correctness of which, the instant intra-Court appeal has been preferred by V.V. Minerals No.2.

5 During the hearing of this intra-Court appeal, we rummaged through the papers in order to ascertain as to which of the three V.V. Minerals had filed the writ petition, because, there is no reference to the PAN in the affidavit filed in support of the writ petition. When we posed this pointed question to Mr.Lakshmi Narayanan, he submitted that V.V. Minerals No.2 (PAN AAHFV2400N) had filed the writ petition and accepting his word, we proceed further to continue referring to the appellant/writ petitioner as V.V.Minerals No.2, for the sake of convenience. When we asked Mr.Senthil Kumar, learned Senior Standing Counsel for the Income Tax Department, as to whether the other 19 assessees had filed any writ petition challenging the transfer of their cases, he answered in the negative. Therefore, we proceeded on the premise that out of the 20 persons referred to in the transfer order dated 19.02.2019 impugned in the writ petition, only V.V. Minerals No.2 is before us.

6 When this intra-Court appeal came up for admission, a Division Bench of this Court, *vide* order dated 16.03.2020, granted interim stay of the order dated 28.02.2020 passed by the learned

Single Judge, till 30.03.2020.

7 The Income Tax Department filed C.M.P.(MD) No.3158 of 2020 in this intra-Court appeal for having the stay order dated 16.03.2020 vacated. When the vacate stay petition came up for hearing before another Division Bench on 01.06.2020, adjournment was sought by V.V. Minerals No.2, but, the learned counsel for the Income Tax Department strongly objected for grant of adjournment. Recording the objection so made by the learned counsel for the Income Tax Department, the Division Bench ordered as under:

> *"2. Having regard to the practical difficulties expressed by the learned counsel appearing for the respondent, this Court is inclined to adjourn the matter to 15.06.2020. It is made clear to the learned counsel for the respondent that he or his Senior Counsel engaged by him must be <u>ready to argue the main case on 15.06.2020</u> either by making physical appearance or through Video Conference. In case, the learned counsel for the respondent is unable to bring his Senior Counsel from Chennai to Madurai, he should inform the Registry earlier, so that the matter will be listed for hearing through Video Conference.*
>
> *3. The interim order granted earlier is extended till then."*
>
> *(emphasis supplied)*

8 The matter was not listed on 15.06.2020, but, was listed only on 19.06.2020.

9 Mr. Senthil Kumar, learned Senior Standing Counsel for the Income Tax Department, submitted that there is absolutely no infirmity in the order passed by the learned Single Judge and that the writ petition has been filed only after the issuance of notice dated 16.07.2019 under Section 153-A of the IT Act by the Central Circle-2, Madurai, in order to stall the further proceedings.

10 Mr. Lakshmi Narayanan, learned counsel for V.V. Minerals No.2, submitted that the show cause notice dated 28.01.2019 does not contain reasons for the proposal to transfer the cases from the Tirunelveli Circle to the Central Circle-2, Madurai and therefore, the transfer order dated 19.02.2019 founded upon such a defective notice cannot be sustained. He further took this Court to the preamble portion of the transfer order dated 19.02.2019 and submitted that the Principal Commissioner of Income Tax, Madurai, has not acted on his own, but has acted on the letter dated 03.01.2019 of the Director General of Income Tax (Investigation), Chennai. Building upon his argument, he drew the attention of this Court to Section 127(1) of the IT Act and submitted that the whole lot of officers have the power to effect transfer, which includes the Director General of Income Tax (Investigation), Chennai and the

Principal Commissioner of Income Tax, Madurai and when both of them have concurrent powers, the exercise of power by the latter at the request of the former, is bad in law. In this context, it is profitable to extract Section 127(1) of the IT Act 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."*

11 Mr. Lakshmi Narayanan drew the attention of this Court to the Division Bench judgment of the Gauhati High Court in **Shri Mul Chand Malu vs. Union of India and 8 others**[1], wherein, it has been held that a show cause notice should contain reasons for transfer, so that the assessee is in a position to give an effective representation to it. He placed further reliance upon the Division Bench judgment of the Andhra Pradesh High Court in **Vijayasanthi Investments Pvt. Ltd. vs. Chief Commissioner of Income Tax and Others**[2] and the judgment of the High Court of Calcutta in **Chotanagpur Industrial Gases (P) Ltd. and others vs. Commissioner of Income Tax and others**[3].

12 This Court gave its careful thought and anxious consideration to the rival submissions.

13 It is an admitted fact that the road distance between Tirunelveli and Madurai is just 158 kms. V.V. Minerals and their associates were being assessed by the Tirunelveli Circle. Searches were conducted from 25.10.2018 to 24.12.2018 and huge materials were seized. According to the Income Tax Department, from 25.10.2018, searches were conducted in 63 premises spread across various parts of Tamil Nadu and also in other parts of the country relating to V.V.Minerals and the Department has unearthed undisclosed income to the tune of Rs.2,262 crores.

14 In this backdrop, the Director General of Income Tax (Investigation), Chennai, appears to have addressed a letter dated

1 W.P. (C) No.5828 of 2015 decided on 25.02.2016
2 (1991) 187 ITR 405
3 (1998) 233 ITR 377 (Cal)

03.01.2019 to the Deputy Commissioner of Income Tax, Central Circle-2, Madurai, suggesting transfer of cases of 20 assessees from the Tirunelveli Circle to the Central Circle-2, Madurai. The Principal Commissioner of Income Tax, Madurai, issued a show cause notice dated 28.01.2019 under Section 127 of the IT Act, wherein, it is stated that the reason for the proposed transfer is that, detailed, coordinated and centralised investigation is necessary. Thus, it is manifest and limpid that this is not a case where no reason has been assigned in the show cause notice for transfer of the cases. In the cases relied upon by Mr.Lakshmi Narayanan, be it noted that the Income Tax authorities transferred the cases from one State to another State, whereas, in the case on hand, the cases have been transferred from the Tirunelveli Circle to the neighbouring Central Circle-2, Madurai and not out of Tamil Nadu.

15 To expatiate, in **Shri Mul Chand Malu** (supra), the cases were transferred from Gauhati to New Delhi. In **Chotanagpur Industrial Gases (P) Ltd.** (supra), the case was transferred from Calcutta to Patna. In **Vijayasanthi Investments Pvt. Ltd.** (supra), the case was transferred from Vishakapatnam to Bombay. Thus, the judgments relied upon by Mr. Lakshmi Narayanan are distinguishable on facts.

16 We are aware that Section 127 of the IT Act does not create any geographical classification. Nevertheless, the judgments of Courts should not be read as Euclid's theorem, but, should be understood in the context in which they were rendered, and a blind and pedantic following of precedents is not expected of Constitutional Courts.

17 Coming to the assigning of reasons in the show cause notice, in **Shri Mul Chand Malu** (supra), the Division Bench of the Gauhati High Court has held as under:

> "18. . . . To facilitate a fair opportunity, the show cause notice must disclose the reason or <u>the gist thereof</u> as to why the transfer of jurisdiction to an officer at New Delhi is necessitated.
>
> 19. Moreover, the ground of transfer must have nexus towards "administrative convenience" and "coordinated investigation", as is relfected in the impugned transfer order. But, unfortunately, these twin reasons of "administrative convenience" and "coordinated investigation", are not reflected in the show cause notice and therefore, in our opinion, the assessees were denied of a reasonable opportunity of hearing a envisaged by law. In our view, the principles of natural justice have to be complied at every stage and violation at the initial stage cannot be cured through additional reasons incorporated in the final order." (emphasis supplied)

18 From the above judgment, it can be inferred that a show cause notice should disclose the reason or the gist thereof, which was absent in the said case. Whereas, in the case on hand, the show cause notice has spelt out the reasons for the proposed transfer of the cases. Whether the reasons so given are sufficient or insufficient, cannot be the subject matter of judicial review. To be noted, this is not a case of preventive detention, where, the personal liberty of a person is sought to be stifled by keeping him in custody. This is a case where the assessment files are being transferred from one city to a neighbouring city hardly 158 kms. away, in the same State. What inconvenience can this cause to V.V. Minerals No.2, especially when they have business and offices in several cities?

19 Mr. Senthil Kumar contended that after the cases were transferred to the Central Circle-2, Madurai, the Central Circle-2, Madurai, has issued notice under Section 153-A of the IT Act and those proceedings have to be completed within the time stipulated therein and that the stay granted by this Court is impeding the process.

20 As a riposte, Mr. Lakshmi Narayanan made two fold submissions. According to him, firstly, the stay granted by the Court will bring to a halt, the running of limitation period and secondly, due to the COVID-19 pandemic, the Central Government itself has extended the limitation period upto 31.12.2020.

21 With regard to the first submission of Mr. Lakshmi Narayanan, Mr. Senthil Kumar submitted that V.V. Minerals No.2 had challenged only the transfer order, that too belatedly, and had obtained the order of stay and not the proceedings under Section 153-A of the IT Act and therefore, in the absence of stay of the proceedings under Section 153-A, *ibid.*, the stay that has been granted in respect of transfer of proceedings will not save running of the period of limitation of the proceedings under Section 153-A of the IT Act. This Court finds sufficient substance and force in the submission of Mr. Senthil Kumar.

22 Coming to the contention of Mr. Lakshmi Narayanan that the Director General of Income Tax (Investigation) and the Principal Commissioner of Income Tax, Madurai, have concurrent powers under Section 127(1) of the IT Act for transfer of cases and therefore, the decision of the Principal Commissioner of Income Tax, Madurai, to transfer the cases, based on the proposal given by the Director General of Income Tax (Investigation) shows non application of mind on the part of the latter and failure on his part to exercise the jurisdiction under Section 127(1) *ibid.*, a perusal of Section 127 (1), *ibid.*, extracted supra does not show that the Director General of Income Tax (Investigation) has the power under the said provision. Had he had the power, he himself would have taken steps for transfer of the cases. Assuming for a moment that he has the power, the sending of proposal by him to the Deputy Commissioner of Income Tax, Circle-2, Madurai, suggesting transfer of cases, will not lead to the inference that he had abdicated his power and that the Principal Commissioner of Income Tax, Madurai, had not applied his mind independently. A reading of the transfer order shows that the Chief Commissioner of Income Tax, Madurai, has approved the proposal *vide* letter dated 21.01.2019 and thereafter, the show cause notice under Section 127(2), *ibid.*, was issued on 28.01.2019. This Court does not find any reason whatsoever to infer that the Principal Commissioner of Income Tax, Madurai, had blindly towed the line of the Director General of Income Tax (Investigation), as contended by Mr. Lakshmi Narayanan.

23 It is the case of V.V. Minerals No.2 that they have not been supplied with the documents for effectively giving reply to the show cause notice dated 28.01.2019 issued under Section 127 of the IT Act. It is indeed hard to fathom for this Court as to what documents V.V. Minerals No.2 want from the Department. If they want search and seizure documents, that cannot be furnished to them in a proceedings under Section 127 of the IT Act. Yet another grievance of V.V. Minerals No.2 is that their Chartered Accountant is a very elderly person domiciled in Tirunelveli and that he will find it difficult to come to Madurai. This grievance is also imaginary, because, the Income Tax returns are now filed online. The case of the Department that the Central Circle-2, Madurai, has better infrastructure like strong rooms to keep the seized documents, *etc.* cannot be simply wished away.

24 After hearing both sides extensively, when this Court expressed its mind that it would pass final orders in the intra-Court appeal itself, Mr.Lakshmi Narayanan firmly and resolutely, but, of course, politely, submitted that he has argued only the Vacate Stay Petition and that he has not argued the main case. The Registry also placed before us, an e-mail sent by Mr. Kingsly Solomon, learned counsel on record for V.V. Minerals No.2, wherein, he has stated that he is not in a position to appear through Video Conferencing without accessing the case bundles. We do understand the predicaments and compulsions of advocates, especially when they perceive that the sailing before a Court is rough. However, since Mr.Lakshmi Narayanan, learned counsel engaged by Mr. Kingsly Solomon, argued extensively before us citing all the above rulings, we politely negatived their request for adjournment of the main case to another date for the following reasons:

- At the time of admission of this intra-Court appeal on 16.03.2020, this Court granted interim stay till 30.03.2020 and posted the matter for orders. In the meanwhile, the Income Tax Department filed C.M.P. (MD) No.3158 of 2020 for vacating the order of interim stay granted on 16.03.2020 and when the matter was listed on

01.06.2020, the Income Tax Department was ready for arguments, but, the learned counsel for V.V. Minerals No.2 sought adjournment. This has been recorded by the Court in the order dated 01.06.2020 and the matter was adjourned to 15.06.2020 specifically for taking up of the main case *(See paragraph no.7 above, wherein, the relevant portion of the order dated 16.03.2020 has been extracted).* Therefore, V.V. Minerals No.2, who are enjoying an order of stay passed by this Court, know full well that the matter will be taken up finally on 15.06.2020. For some reason or the other, the matter was not listed on 15.06.2020 and was listed on 19.06.2020 and we heard both sides elaborately. Therefore, we found no justification in acceding to the request of the learned counsel for V.V. Minerals No.2 to adjourn the main case to another date. Hence, we reserved orders in the main case on 19.06.2020. Thereafter, the Registry received written submissions by e-mail from both sides which we took on record. We are not passing orders on the Vacate Stay Petition and keeping the intra-Court appeal pending for another day, because, the dispute falls in a very narrow compass requiring no further hearing.

In view of the aforemade discussion, the instant intra-Court appeal fails and is accordingly dismissed. Costs made easy. Connected C.M.Ps. are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

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Sub Assistant Registrar(CS)

cad

To

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