IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1965 OF 2019

Darshan Jitendra Jhaveri
Non-Resident Indian, residing at 20A, Block 1, Caremen's Garden, 9, Cox Road, Cowloon, Hong Kong and presently in Mumbai at 3/11, Sea View, Dongersi Road, Walkeshwar, Mumbai – 400 006) ....Petitioner

V/s.

1. Commissioner of Income Tax (International Taxation) – 3 Mumbai, having his office at Room No.1601, 16th Floor, Air India Building, Nariman Point, Mumbai – 400 021)

2. Income Tax Officer (HQ) (International Taxation) – 3 Mumbai, having his office at Room No.1601, 16th Floor, Air India Building, Nariman Point, Mumbai – 400 021)

3. Union of India having its office at 3rd Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
Also
through Secretary, Ministry of Finance, North Block, New Delhi – 110 001) ....Respondents

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Mr. Vikram Nankani, Senior Advocate a/w. Mr. Prithwiraj Choudhary, Ms. Divya Shah, Mr. Kinnar Shah and Mr. Jimish Shah i/b. Divya Shah Associates for petitioner.
Mr. P. C. Chhotaray for respondents-Revenue.

CORAM : K.R. SHRIRAM &
M.S. KARNIK, JJ.
DATED : 22nd SEPTEMBER 2021

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.)

1 Since pleadings are completed, we decided to dispose this petition at the admission stage itself.

Rule.

Rule made returnable forthwith. Heard by consent of parties.

2 Petitioner is a non resident Indian since 2001 residing in Hong Kong. Petitioner has been conducting business through and in the name of various legal entities, of which petitioner was either the sole shareholder and/or one of the shareholders. These corporate entities were set up either in Hong Kong or in British Virgin Islands (BVI). It is stated in the petition that since 2013-2014 petitioner's only source of income is out of investments in India and outside India. Petitioner has been filing income tax returns as NRI since 2001. According to petitioner, all assessments are completed including in respect of the returns filed for Assessment Year 2018-2019.

3 Petitioner received an intimation dated 20th June 2019 under Section 127 (1) of the Income Tax Act, 1961 (the Act) informing petitioner that a search and seizure action under Section 132 of the Act was conducted on 27th July 2017 in the case of Salagaocar Group of Companies by Pr. DIT (Inv.) Panji and these cases are proposed to be centralized with ACIT (Central) Circle, Goa. Paragraphs 1, 2 and 3 of the intimation dated 20th June 2019 read as under :

> *A Search & Seizure action u/s. 132 of the IT Act, 1961 was conducted on 27.07.2017 in the case of Salagaocar Group of Companies, by Pr. DIT (Inv.) Panji, and these cases are proposed to be centralized with ACIT (Central) Circle, Goa. It is informed to this office that you are connected to this group therefore your case has been identified now for centralization. As per jurisdiction your case is lying with ITO(IT) 3(1)(1), Mumbai, which is also going to be*

centralized to ACIT Central Circle, Goa.

I am directed to request you to file your objections, if any to the proposed centralization, to this office either personally or through authorized representative or through a written submission on or before 25.06.2019.

This letter is an opportunity, prescribed u/s. 127(1) of the IT Act, 1961. As such, if nothing is heard from you till 01.07.2019, the matter would be decided on merits.

4 Petitioner filed a reply on 28th June 2019 stating that his only transaction with Salagaocar Group is purchase of iron ore by his companies based in BVI during the period before 2012, which iron ore were exported from India by the Salagaocar Group to these BVI companies and all payments were made by BVI companies through banking channels. He has also stated that he has stopped dealing with Salagaocar Group in or about June-July 2012 and his assessment has been completed until Assessment Year 2018-2019. Petitioner has also brought to the notice of the show cause notice issuing authority that he was at a loss to effectively defend his case in the absence of any reasons or grounds disclosed in the show cause notice as to how he was connected with the Salagaocar Group as alleged. Petitioner also has reserved his rights to file a further and detailed reply, if so advised, after reasons or grounds showing so called alleged connection between him and Salagaocar Group companies are communicated to him. He has also sought personal hearing before any decision was taken in the matter.

5 Respondent no.1, thereafter issued an order dated 3rd July 2019, which is impugned in this petition, in which respondent no.1 says that he is passing the order in exercise of powers conferred by Sub Section 2 of

Section 127 of the Act and at the same time, an opportunity was provided to the assessee under Section 127 (1) of the Act regarding objections, if any. In the impugned order, respondent no.1 only says petitioner has stated that transferring his case to Goa will create genuine hardship in case any compliance in future is required to be made and that objection raised by petitioner is not acceptable since petitioner is connected with Salagaocar Group of companies. Respondent no.1 has not dealt with any other points that petitioner raised in his reply dated 28th June 2019 like seeking details as to how he was connected with Salagaocar Group, or that he has stopped dealing with Salagaocar Group in 2012, or how could a buyer of goods, who has no share holding in the seller organisation, can be stated to be connected to the seller and, that a personal hearing is required to be granted. The impugned order has been passed without granting a personal hearing though petitioner had requested for the same.

Sub-Section 1 and 2 (a) of Section 127 which is relevant to the case at hand read as under :

> *127. Power to transfer cases :*
>
> *(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.*

6 Sub Section (1) of Section 127 is not applicable to the case at hand because the transfer proposed is from one commissionerate to another commissionerate. Sub Section 1 applies only where a transfer is proposed to be made from one Assessing Officer subordinate to the same Commissioner to any other Assessing Officer also subordinate to the same Commissioner. In this case, the transfer was proposed to be made by one Commissioner to an Assessing Officer under another Commissioner and both Assessing Officers are not subordinate to the same Commissioner. Sub Section 2 (a) also requires that such an order can be passed after giving the assessee a reasonable opportunity of being heard in the matter and after recording his reasons for doing so. In our view, reasonable opportunity would mean that the show cause notice or the intimation issued should contain such details that would enable the assessee to know the reasons for which the case is being transferred. In the intimation notice dated 20^{th} June 2019, apart from stating “you are connected to this group” there are no other details as to how petitioner is connected to the Salagaocar Group. The word “connected”

has varied and a wide meaning. Respondents ought to have mentioned in the show cause notice how petitioner was connected to Salagaocar Group of companies. The purpose of show cause notice is to enable a party to effectively deal with the case made out by respondent. If a vague show cause notice is given without specifying anything or the grounds, then it can be held that reasonable opportunity of showing cause against an order of transfer being made by the Commissioner was not given, because the assessee would be totally unaware of the grounds which prompted the Commissioner to arrive at *prima faci*e conclusion that the power under Section 127 (2) of the Act was required to be exercised. Issuance of show cause notice is the preliminary step which is required to be undertaken before giving opportunity of hearing under Section 127 (2) of the Act. It is not an empty formality. We find support for this opinion in ***Om Shri Jigar Association V/s. The Union of India and Ors***[1].

We have to also note that the show cause notice issued is under Section 127 (1) when all applicable provisions are under Section 127 (2) (a) of the Act. Even in the order impugned, respondent no.1 states that the assessee was provided opportunity under Section 127 (1) but he exercised his powers under Sub Section 2 of Section 127. In our view, that also shows non application of mind by respondent no.1. Respondent no.1 also should have dealt with all the points raised by petitioner in his reply, which he has failed to do. Moreover, the show cause notice has been issued by one

1. (1994) SCC Online Guj. 77

Income Tax Officer (HQ), International Taxation – 3 and not by the Commissioner of Income Tax, who was exercising his power. On that ground also the show cause notice itself is defective.

7 Mr. Chhotaray states that petitioner had also been raided in connection with the investigation against Salagaocar Group of companies and therefore, he should be aware as to how he is connected to Salagaocar Group of companies. In our view, when the statute states a reasonable opportunity of being heard in the matter, the show cause notice should spell out all details to enable the recipient of the show cause notice to effectively respond to the show cause notice. We cannot accept that petitioner should be aware in view of the past events as to what respondents mean by "connected with the Salagaocar Group". In any event, petitioner had sought a personal hearing, which has not been granted.

8 Therefore, in our view, the order impugned has to be quashed and set aside and is hereby quashed and set aside. It is open to respondents to take such steps as advised in accordance with law but in any show cause notice they may issue, all details will have to be provided to petitioner and once the reply is filed, petitioner shall also be given a personal hearing. All rights and contentions of petitioner are also kept open.

9 Petition disposed.

10 Mr. Chhotaray states that the file has already been transferred to Goa. Respondents are directed to re-transfer the file back to its original

Assessing Officer on or before 27th September 2021. Mr. Nankani states that even the PAN card of petitioner has been transferred to Goa. Even that shall be transferred back to the original office on or before 27th September 2021. Until that is done, the concerned office in Goa shall not take any further action on petitioner's case.

11 All to act on authenticated copy of this order.

(M.S. KARNIK, J.) **(K.R. SHRIRAM, J.)**