

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

% **Date of decision: 11th February, 2021.**

+ **W.P.(C) 1761/2021**

DEV WINES SALES CORPORATION Petitioner

Through: Mr. Arvind Kumar, Adv.

Versus

**PRINCIPAL COMMISSIONER OF
INCOME TAX-10**

.....Respondent

Through: Mr. Abhishek Maratha, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

CM No.5073/2021 (for exemption)

1. Allowed, subject to just exception and as per extant Rules.
2. The application is disposed of.

W.P.(C) No.1761/2021

3. The petition impugns the order dated 15th January, 2021, passed in exercise of powers under Section 127 of the Income Tax Act, 1961, of transfer of jurisdiction of the petitioner from ITO, Ward-29(1), Delhi to Deputy Commissioner of Income Tax, Central Circle-2, Faridabad.
4. It is the contention of the counsel for the petitioner, (i) that the petitioner, since its inception and since the Assessment Year 2014-15 has

been assessed at Delhi; (ii) that in the show cause notice issued prior to exercising the power, no reason whatsoever was given; and, (iii) that even in the impugned order, no reason whatsoever has been given.

5. Reliance is placed on *Pannalal Binraj Vs. The Union of India* (1957) 31 ITR 565 (SC), *Power Controls Vs. Commissioner of Income Tax, Delhi-VII* (2000) 241 ITR 807 (Delhi), *Ajantha Industries Vs. Central Board of Direct Taxes, New Delhi* (1976) 102 ITR 281 (SC), *Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax* (1991) 187 ITR 405 (AP), *Saptagiri Enterprises Vs. Commissioner of Income Tax* (1991) 189 ITR 705 (AP) and *ATS Promoters and Builders P. Limited Vs. Chief Commissioner of Income Tax* (2009) 308 ITR 65 (Delhi).

6. Per contra, the counsel for the respondents appearing on advance notice has referred to *Vishal Kumar Vs. Commissioner of Income Tax* (2014) 225 TAXMAN 203 (Delhi). He has also contended that both the partners of the petitioner are residents of Faridabad and which fact has been concealed from this Court. It is further stated that the address given of the petitioner at Delhi was found to be a fictitious address and else the information during the simultaneous raids at as many as 16 places has revealed Devender Kumar Gupta, who has filed this petition and who is the managing partner of the petitioner, to be the kingpin.

7. We have considered the rival contentions.

8. We will first deal with the argument of the counsel for the petitioner, of neither the notice preceding the impugned order nor the impugned order containing any reasons for transfer. Vide the notice dated 8th October, 2020, issued in exercise of power under Section 127(2) of the Act, the petitioner

was informed of the proposal received from the Principal Commissioner of Income Tax (Central) Gurugram regarding the centralization of the case of the petitioner from ITO Ward 29(1), New Delhi to ACIT/DCIT, Central Circle-II, Faridabad and the petitioner asked to submit its objections, if any and to participate in the hearing granted. Undoubtedly, the said notice did not set out any reasons for transfer. However, a perusal of Section 127(2)(a) shows the same to be requiring only giving the assessee a reasonable opportunity of being heard in the matter, that too "wherever it is possible to do so" and only requires reasons to be recorded, if directing transfer. Though there is no specific requirement for the notice to set out the reasons but the principles of natural justice require reasons to be stated, to enable the assessee to make effective use of the opportunity granted of hearing. The present is however not a case where though no reasons were set out in the notice but the petitioner was unaware of the reasons for proposed transfer. The petitioner, in its reply dated 26th October, 2020 to the notice referred to an earlier reply (but which has not been produced) and contended that the petitioner firm had been searched under Section 132A by the Investigation Wing, Faridabad on 19th February, 2020 and the department was in the process of jurisdictional change from New Delhi to Faridabad for centralization of the cases belonging to it; that Devender Kumar Gupta who on behalf of the petitioner was replying to the notice, was also a Director in five other private limited companies all of which also had their registered office at Delhi, at the same address in Delhi which was the address of the petitioner and all the said companies were also being assessed at Delhi; that since the material collected during the raid had not been disclosed, the notice was void. The petitioner was thus aware of the reason for which

notice had been issued. However owing to the notice dated 8th October, 2020 having been issued without Document Identification Number, a fresh notice dated 8th December, 2020 under Section 127(2) was issued and the petitioner submitted another reply dated 12th December, 2020, where the petitioner also objected to transfer for the reason of Faridabad being far away from the business premises of the petitioner. The impugned order of transfer records, (a) that the proposal of transfer was mooted for centralization of the case of the petitioner at Delhi and of Smt. Veena Jain, partner of the petitioner at Faridabad; (b) that though Smt. Veena Jain had submitted her no objection to the proposal for centralization but the petitioner had objected; and, (c) reproduces verbatim the objections taken by the petitioner to the transfer of jurisdiction. The impugned order thereafter proceeds to record the response of the Principal Commissioner of Income Tax, Gurugram to the objections of the petitioner, to the effect that (i) the petitioner is a key concern of the Chairman of the Group i.e. Devender Kumar Gupta; (ii) during the course of search proceedings, certain incriminating documents/materials found and seized, related to the petitioner; and, (iii) therefore for purposes of administrative convenience, better coordination, meaningful assessment, achieving uniformity of action and for effective and coordinated investigation, the case of the petitioner was required to be centralized in Central Circle-II Faridabad, wherein maximum number of cases related to this group had already been centralized at one place. Thereafter, the impugned order records that the objections of the petitioner had been duly addressed and there was no justifiable reason for not centralizing the assessment. The impugned order also reasons that Faridabad was within Delhi-NCR Region and in close proximity with Delhi

and large number of people working in Delhi are residing in Faridabad or visa-versa. It thus cannot be said that the impugned order is without any reason. The counsel for the petitioner has also not contended, what prejudice has been suffered by the petitioner from the notice not setting out any reasons for transfer. There is thus no merit in the contention of the counsel for the petitioner, of the statutory requirement of giving opportunity and the principles of natural justice having been violated.

9. Even otherwise, an order of transfer is more in the nature of an administrative exercise of power and the scope of interference wherein in any case is limited and unless the administrative power is shown to have been exercised without authority under the law and/or for *mala fide* reason, no case for interference is made out. In this context, reference may be made to ***Pannalal Binjraj*** supra cited by the counsel for the petitioner himself. The said judgment dismissed the challenge to the validity of the transfer order and to Section 5(7A) of the then Income Tax Act (and equivalent of Section 127 of the 1961 Act), reasoning that, (a) though convenience of the assessee is the main consideration in determining the place of assessment but exigencies of tax collection also have to be considered and the primary object of the Act, viz. the assessment of income tax, has got to be achieved; (b) in order to assess the tax payable by an assessee more conveniently and efficiently, it may be necessary to have the same assessed by an Income Tax Officer of an area other than the one in which the assessee resides or carries on business; (c) it may be that the nature and volume of his business is such or that the assessee is so connected with various other individuals or organisations in the way of earning his income as to render such extra territorial investigation necessary before he may be properly assessed; (d)

the determination of the question, whether a particular Income Tax Officer should assess the case of the assessee, depends on the convenience of the assessee as well as the exigencies of tax collection and it would be open to the prescribed authorities under the Act to transfer the case of a particular assessee from the Income Tax Officer of the area within which he resides or carries on business, to any other Income Tax Officer, if the exigencies of tax collection warrant the same; (e) infringement of the right to be assessed by the Income Tax Officer of the place where the assessee resides or carries on business is not a material infringement and is only a deviation of a minor character from the general standard and does not necessarily involve a denial of equal rights, for the simple reason that even after such transfer, the case is dealt with under the normal procedure prescribed in the Act; (f) the authorities under the Income Tax Act have to determine what are the proper cases in which such power should be exercised, having regard to the object of the Act and ends to be achieved; and, (g) however the principles of natural justice have to be complied before exercising the power.

10. All the other judgments cited by the counsel for the petitioner, are on the aspect of opportunity of hearing and turn on their own facts but we have hereinabove already held that in the fact of the present case there was sufficient compliance with the statutory provisions and the principles of natural justice.

11. Rather, the facts of ***Vishal Kumar*** supra referred to by the counsel for the respondent are more akin to the facts of the present case. The notice preceding the order of transfer in that case, also from Delhi to Faridabad, was in the same format as the notices in the present case and the objection to

the transfer also was on the ground of the petitioner therein being at Delhi and being a nominee Director. However, this Court dismissed the challenge reasoning (a) that the proposal for transfer arose from previous investigation of the revenue and search and seizure under Section 132 of the Act; (b) that there was undoubtedly a link in the business at two places; (c) that the assessment of all those who were associated, by the same Assessing Officer was important; (d) that it was not in the Court's domain to second guess the Revenue's reasoning or sit in appeal; (e) that the admitted nexus between the businesses at Delhi and Faridabad satisfied the limited scrutiny permitted under Article 226 of the Constitution of India; (f) that the purpose of Section 127 of the Act is not to subject the assessee to any liability other than in regular assessment and a Section 127 order does not cause any prejudice to the assessee; (g) that the requirement of opportunity of hearing before transfer is also subject to "wherever it is possible to do so"; and, (h) that the assessee will have full opportunity to represent in front of the Assessing Officer to whom the case is transferred.

12. In this respect, the argument of the counsel for the respondent, of the partners of the petitioner residing at Faridabad and which is not controverted, is also relevant. The only response thereto is that it was not relevant for the assessee to so disclose. We are unable to agree. A partnership firm, as the petitioner is, as distinct from a company incorporated under the Companies Act, 1956, is not a legal entity and is merely a compendium name for its partners. It is also not disputed that Devender Kumar Gupta, who has filed this petition on behalf of the petitioner, is also a resident of Faridabad. It is thus obvious that this petition is *mala fide* and to take an unfair advantage in the matter of assessment of

income tax by not permitting assessment of all related persons by one Officer.

13. Though the counsel for the petitioner has also contended that the change of jurisdiction is not limited from Delhi to Faridabad but would also change the jurisdictional High Court from this Court to the High Court of Punjab & Haryana but once we find the partners of the petitioner to be residents of Faridabad and assessed at Faridabad, we agree with the reasoning given in the impugned order, of administrative convenience for exercise of the power of transfer. It is not the case that the partners of the petitioner residing at Faridabad are assessed at Delhi. If the partners for their own assessment have to participate in the proceedings at Faridabad and Chandigarh, we see no prejudice from the firm of the said partners also being assessed at Faridabad.

14. We are also of the view that the petitioner was required to disclose that its partners were residing at Faridabad and the same was a relevant fact. We do not agree with the counsel for the petitioner that the petitioner was not required to disclose the residence of its partners. The petition is supported by the affidavit of Devender Kumar Gupta, where he has given his address of Delhi, when it is admitted that he is residing at Faridabad. Once the matter concerns territoriality, the place of residence cannot be said to be not relevant. The petitioner, to that extent has indulged in suppression of material facts and for this reason alone is not entitled to any equitable relief from this Court. Suppression of material facts, in *Kishore Samrite Vs. State of U.P.* (2013) 2 SCC 398 has been reiterated to be an abuse of the

process of the Court. The petition is liable to be dismissed on this ground alone.

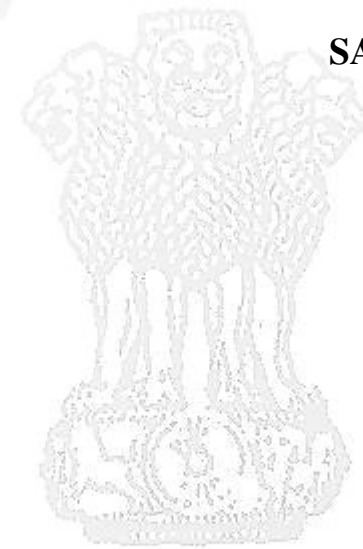
15. There is no merit in the petition.

16. Dismissed.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 11, 2021
'gsr'

SANJEEV NARULA, J.



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