IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19194 of 2022 (O&M)
Date of decision: 04.09.2023

Main Land Finance Pvt. Ltd.

.....Petitioner

Versus

Principal Commissioner of Income Tax, Faridabad

.....Respondent

CORAM:HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Umang Goyal, Advocate,
for the petitioner.

Mr. Vaibhav Gupta, Junior Standing Counsel,
for the respondent.

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Ritu Bahri, J.

1. Petitioner-Main Land Finance Pvt. Ltd. is seeking quashing of the transfer order dated 22.06.2022 (Annexure P-3) passed under Section 127 of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that respondent-PCIT, Faridabad issued a show cause notice dated 01.06.2022 (Annexure P-1) under Section 127 of the Act to the petitioner-assessee. In this notice, there was a proposal to transfer the case from Ward 1 (3), Faridabad to Central Circle 2, Lucknow on the basis of coordinate investigation and administrative convenience. Upon receipt of the said notice, petitioner filed reply dated 06.06.2022 (Annexure P-2) requesting for opportunity of personal hearing. In the reply, petitioner had also asked that the relied upon material be provided to it.

However, on 22.06.2022, respondent-authority had passed the impugned order (Annexure P-3) under Section 127 of the Act without providing opportunity of personal hearing and relied upon material to the petitioner. Feeling aggrieved, the petitioner has challenged the impugned order on the following grounds:-

(i) As per Section 147 (2) (a) of the Act, where as transfer is made between two different Commissionerates, there must be positive agreement between the specified authorities and same must be part of the show cause notice and and final order passed under Section 127 of the Act. Reference has been made to the judgment passed by Hon'ble the Supreme Court in ***Noorul Islam Educational Trust vs. CIT,*** 388 ITR 489. The said judgment was, later on, followed by the Bombay High Court in ***Rent Works India Pvt. Ltd. vs. PCIT,*** 300 CTR 294.

(ii) In the present case, there is no positive agreement between the two Commissionerate and hence, it is against the provisions of Section 127 (2) (a) of the Act. Hence, the impugned proceedings cannot legally sustained.

(iii) No relied upon material was supplied to the assessee, even though a request, in this regard, was made vide reply dated 06.06.2022 (Annexure P-2) filed by the petitioner. Opportunity of personal hearing was also not provided to the petitioner. As per judgments passed by Hon'ble the Supreme Court in ***Reliance Securities Ltd. vs. SEBI,*** Crl. Appeal No.1167 of 2022 [Special Leave Petition (Crl.)

No.3417/2022] (decided on 05.08.2022) and ***T. Takano vs. SEBI,*** 2022 SCC OnLine SC 210, non supply of relied upon material would amount to serious lapse. Further reference has been made to the judgment passed by this Court in ***Deep Malhotra and others vs. The Chief Commissioner of Income Tax and others,*** CWP-17197-2008 (decided on 04.08.2009), wherein it has been held that as per Section 127 (2) of the Income Tax Act, 1961, if, a case is to be transferred, there has to be an agreement between the two Commissionerate. The assessee is required to be given reasonable opportunity of hearing and order has to be passed after giving him hearing and recording reasons for passing such order. On the same proposition, the petitioner has also relied upon a judgment passed by the Gujarat High Court in ***Nagindas Kasturchand and Bros. vs. PCIT,*** 445 ITR 50.

3. Upon notice, reply in the form of affidavit of Sh. Anand Kumar Kedia, Principal Commissioner of Income Tax, Faridabad, has been filed, wherein it has been stated that both the Principal Commissioners i.e. Principal Commissioner of Income Tax (Central), Lucknow and Principal Commissioner of Income Tax, Faridabad had consented to the transfer after due application of mind and there was an agreement, which had involved the positive state of mind of two jurisdictional Principal Commissioners. In this backdrop, due compliance was made under Section 127 (2) (a) of the Income Tax Act, 1961. The petitioner was given a notice dated 01.06.2022 and was provided a reasonable opportunity of being heard on 10.06.2022. The respondent had placed on record a letter dated 28.03.2022 (Annexure R-1),

whereby the Principal Director of Income Tax (Inv.), Lucknow had sent a proposal to the Principal Commissioner of Income Tax (Central), Lucknow for centralization of cases in respect of search and seizure in the case of Raj Group & others. It was informed that out of 45 cases, 26 cases involved a change of station, including the petitioner, whose name figured at Serial No.5. Thereafter, the Principal Commissioner of Income Tax (Central), Lucknow, vide letter dated 11.04.2022 (Annexure R-2), had given his consent for the centralization of the case pertaining to the petitioner to the Principal Commissioner of Income Tax, Faridabad and asked him to pass the necessary order under Section 127 (2) of the Income Tax Act, 1961. After the letter dated 11.04.2022 (Annexure R-2), notice dated 01.06.2022 was given to the petitioner in accordance with the provision of Section 127 of the Act. It has been further stated that in the case of ***Rent Works India Pvt. Ltd.*** (supra), there was only a request, which had come from the investigation office, Chennai, however, in the present case, apart from the proposal by the Principal Director of Income Tax (Inv.), Lucknow, there was due application of mind by the Principal Commissioner of Income Tax (Central), Lucknow, as is evident from the letter dated 11.04.2022 (Annexure R-2). The orders have been passed by following the procedure, as laid down in Section 127 of the Act.

4. Heard, learned counsel for the parties.

5. Pursuant to the notice dated 01.06.2022 (Annexure P-1) under Section 127 of the Act, the petitioner was informed that on account of search conducted under Section 132 of the Act on 18.12.2021 in the case of Raj Group & others, some material of inter se transactions was found with the petitioner-company and in this backdrop, vide letter dated 28.03.2022

(Annexure R-1), a proposal was sent by the Principal Director of Income Tax (Inv.), Lucknow to the Principal Commissioner of Income Tax (Central), Lucknow for centralization of cases in respect of search and seizure in the case of Raj Group & others. A perusal of the letter dated 28.03.2022 (Annexure R-1) shows that out of the list of 45 cases, 26 cases would involve change of station and in this backdrop, as per guidelines contained in the instruction dated 17.09.2008 issued by the CBDT, New Delhi, a consent was sought for centralization of the above said cases with the Central Circle, Lucknow. Pursuant to the letter dated 28.03.2022 (Annexure R-1), a consent was given by the Principal Commissioner of Income Tax (Central), Lucknow to the Principal Commissioner of Income Tax, Faridabad for centralization of cases of Raj Group & others vide letter dated 11.04.2022 (Annexure R-2). This consent has been given after due application of mind. As far as reply dated 06.06.2022 (Annexure P-2) given by the petitioner is concerned, the petitioner has merely denied having any connection or transaction between the petitioner-company and Raj Group & others and had sought material, which was relied upon to transfer the jurisdiction of the assessee. As far as the ground of transfer is concerned, it is evident from the letter dated 28.03.2022 (Annexure R-1) that after the search was conducted, there was a proposal for centralization of cases. Vide this letter, detailed reasoning has been given for transfer of jurisdiction of the cases. Relevant portion the letter dated 28.03.2022 (Annexure R-1) is reproduced as under:-

> "3. As per the latest guidelines/instructions dated 18.09.2020 issued by the CBDT, New Delhi, all search assessments shall be compulsorily completed in the Central charges only. All these cases have a direct nexus with the

> above group and in the interest of proper and worthwhile well coordinated assessment, it is imperative that the same should be centralized with one Assessing Officer. Further, it is stated that 26 cases (mentioned at Sl. No. 3, 5, 6, 12, 13, 14, 16, 20, 21, 22, 25, 26, 28, 29, 31, 32, 35 to 40 & 42 to 45) out of the 45 cases mentioned above, involve a change of station. Accordingly, the draft show cause notices in these cases submitted by the Addl. Director of Income Tax (Inv.), Lucknow are being enclosed herewith along with copy to the jurisdictional transferor Pr. Commissioner of Income Tax for taking further necessary action at their end."

6. At this stage, reference can be made to the judgment passed in ***Genus Electrotech Ltd. vs. Union of India,*** (2017) 86 taxmann.com 39 (Gujarat), wherein the High Court of Gujarat was examining the power under Section 127 of the Income Tax Act, which are concerned with larger public interest on one end and personal inconvenience on the other. However, as long as such powers are exercised *bona fide*, for public purpose and in the interest of Revenue, the role of the Court to dissect such reasons and to come to a different conclusion would be extremely limited. The orders passed for transfer under Section 127 of the Act are administrative orders and the Court has to examine that such orders can only be interfered if, the transfer has been made in wholly arbitrary ground. Reference has been made to a decision given in ***Shree Ram Vessel Scrap (P) Ltd. vs. CIT,*** (2013) 32 taxmann.com 120/215 Taxman 203 (Guj).

7. As regard the argument of learned counsel for the petitioner that the reply dated 06.06.2022 (Annexure P-2) filed by the petitioner has not been considered, the respondents in their reply has categorically stated that in the present case, apart from the proposal given by the Principal Director of Income Tax (Inv.), Lucknow, there was due application of mind by the

Principal Commissioner of Income Tax (Central), Lucknow, which is evident from the letter dated 11.04.2022 (Annexure R-2). In ***Kamlesh Rajnikant Shah vs. Principal Commissioner of Income-tax,*** (2022) 138 taxmann.com 59 (Gujarat), The High Court of Gujarat has observed as under:-

> “21. In *Pannalal Binjraj vs. Union of India,* (1957) 31 ITR 565, the Supreme Court observed while upholding the power of transfer that, inconvenience to the assessee or likelihood of misuse of the provision could not be a ground to declare the said provision to be vioid, but if there was abuse of the power, appropriate remedy could be taken. The relevant observations reads thus:
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> > “It follows, therefore, that section 5 (7A) of the Act is not violative of article 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental right to carry on trade or business enshrined in article 19 (1)(g) of the Constitution. If there is any abuse of power it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution and what can be struck down is not the provision contained in Section 5 (7A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights. This challenge of the vires of Section 5 (7A) of the Act, therefore, fails.”
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> 22. In the light of the aforesaid judicial pronouncements, we are of the view that facility of investigation or coordinated investigation can be a substantial ground for transfer from one officer to another Officer, more particularly, when the department has csome material to establish nexus of the writ applicant with the searched person. One cannot overlook the fact that the writ applicant is suspected to be involved in dubious transactions, whereby as an angadia is found to be habitually claiming ownership of cash seized at various places across the country. In fact, the request seeking transfer has been made

from two offices of the department i.e. PCIT, Mumbai and Kolkata. It appears from the materials on record that the main purpose of transfer on the ground of centralization of cases is to investigate the dubious transactions of the writ-applicant with various related entites during the relevant period.

At this stage, we may refer to the order disposing of the objections raised by the assessee with regard to transfer passed by the Principal Commissioner dated 30.09.2020, which reads thus:

> "In consequence to search and seizure action under Section 132 (3) of the IT Act conducted in the case of Shri Gauray Krishnakant Laddha & Shri Kamleshkumar) Prajapati, Proprietor of M/s Kamleshkumar Mahendrakumar & Co. on 17.04.2018 by the DGIT (Inv), Mumbai centralization of above mentioned assessee with DCIT, Central Circle-8 (1), Mumbai in the charge of Pr. CIT (Central)-4, Mumbai was proposed to facilitate proper inquiry and coordinated investigation. Accordingly, this office *vide* letter No.PCIT-4/HQ/Centralization/KS/G K Laddha Group/2019-20 dated 04.11.2015 gave an opportunity of being heard to the assessee conveying the proposed transfer of his case.
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> 2. In response to the above letter dated 04.11.2019, the assessee submitted his reply dated 14.11.2019 objecting to the proposal of pan transfer. Further, due to change of incumbent, one more opportunity was offered to the assessee *vide* letter No.AHD/PCIT3/HQ/Cent'n/KS/G K L Group./2020-21 dated 23.09.2020 to furnish his submission by 25.09.2020. The assessee submitted his reply via email dated 28.09.2020, again objecting to the proposal of centralization of his case with DCIT, Cent. Cir-8 (1), Mumbai under the charge of PCT (C)-4, Mumbai.
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> 4. The objection raised by the assessee has been considered but the same is not acceptable. It is seen that

> the assessee is an angadia and involved in practice of claiming ownership of the cash intercepted at various places as his own by submitting false affidavits. In such circumstances, the objection of the assessee that the case may not be centralized as his accounts and other relevant documents are at Ahmedabad is not acceptable. The case is being centralized at one place i.e. with PCIT (Central)-4, Mumbai to facilitate proper inquiry and coordinated investigation.
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> 5. In view of the above facts, the objection raised by the assessee against the proposal for PAN migration hereby stands rejected."

8. In the facts of the present case, as per letter dated 28.03.2022 (Annexure R-1), it has been specifically stated that out of 45 cases, 26 had to be transferred to Faridabad, so that centralized investigation could be carried out in respect of search and seizure, which took placed on 18.12.2021. Hence, proper reasons have been given in the notice dated 28.03.2022 (Annexure R-1). The request for transfer of cases had been accepted vide letter dated 11.04.2022 (Annexure R-2), so that consistent investigation could be carried out and the orders have been passed on administrative ground to achieve the object of transfer as per Section 127 (1) (2) (3) of the Act.

9. As far as the request made by the petitioner vide reply dated 06.06.2022 (Annexure P-2) that necessary documents should be supplied to it is concerned, the petitioner is not to be given the documents at the stage of consideration of transfer of jurisdiction by the competent authority, who was passing the administrative order, so that the investigation could be carried out in a correct manner. As per Section 127 of the Act, a notice is required to be issued, so that the assessee can get the information/reasons for transfer

of the cases. Judgment passed in ***Deep Malhotra and others vs. CCIT & others,*** CWP No.17197 of 2008 (decided on 04.08.2009), which has been relied upon by learned counsel for the petitioner, will not be applicable to the facts of the present case. In this case, the reasons for transfer have been given in detailed in the letter dated 28.03.2022 (Annexure R-1). Moreover, the impugned order dated 22.06.2022 (Annexure P-3) also reflects that the objections filed by the petitioner were carefully considered and notice has only been issued for the purpose of centralization. The assessee could ask for the documents during assessment proceedings. Hence, for all intents and purposes, reply dated 06.06.2022 (Annexure P-2) filed by the petitioner has been duly considered by the competent authority. After the decision given in ***Deep Malhotra's*** case (supra), the High Court of Gujarat has examined, in detail, that the orders under Section 127 of the Act are administrative orders and the Court has limited scope of interference in those orders unless they are arbitrary and *malafide*. Further, the judgment referred to by learned counsel for the petitioner in ***Kundan Rice Mills vs. PCIT,*** CWP No.28808 of 2019 (decided on 11.08.2020) will not be applicable to the facts of the present case, as in that case, no reasons had been given while rejecting the objections of the petitioner. However, in the facts of the present case, vide reply/objection dated 06.06.2022 (Annexure P-2), the petitioner-assessee had sought materials relied upon in the proceedings, so that it can submit a detailed response to the notice. The said objection has been rejected vide impugned order dated 22.06.2022 (Annexure P-3) on the ground that the notice was issued for the purpose of centralization of the case and the assessee could ask for the documents during assessment proceedings.

10. As far as application of mind for granting the consent for transfer

is concerned, a detail reasoning was given as to why the proposal for centralization with respect to the search and seizure of cases of Raj Group & other was considered. This fact is evident from the letter dated 28.03.2022 (Annexure R-1). After going through this letter, the consent has been given by the Principal Commissioner of Income Tax, Lucknow, for centralization of the cases. The object for centralization of the cases, as per Section 127 of the Act, is to carry out the investigation proceedings correctly.

11. In view of the above discussion, this Court is of the view that in the present case, the impugned order dated 22.06.2022 (Annexure P-3) is an administrative order and the same has been passed after due application of mind, as is evident from the reasons given in letter dated 28.03.2022 (Annexure R-1). Therefore, no ground is made out to interfere in the same.

12. Resultantly, finding no merits, the present petition is dismissed.

(RITU BAHRI)
JUDGE

04.09.2023
ajp

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No