2024:MHC:6482

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **21.02.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.4247 of 2024
and W.M.P.Nos.4564 & 4565 of 2024

Sindhu Shree Charles ... Petitioner

-vs-

1.The Principal Commissioner of Income Tax,
Chennai-3, Income Tax Department,
No.121, Nungambakkam High Road,
Chennai-600 034.

2.The Income Tax Officer,
Non Corporate Ward 10(1),
Chennai Income Tax Department,
No.121, Nungambakkam High Road,
Chennai-600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the 1st respondent to quash the impugned order under Section 127 read with Section 120 of the Income Tax Act, 1961 dated 08.02.2024 in DIN and Letter No.ITBA/COM/F/17/2023-24/1060673119(1).

For Petitioner : Mr.A.S.Sriraman
For Respondents : Ms.S.Premalatha, Junior Standing Counsel

ORDER

A transfer order dated 08.02.2024 by which the assessing officer of the petitioner was changed from ITO, Non Corporate Ward-10(1), Chennai to DCIT, Central Circle-4(4), Kolkata is the subject of challenge in this writ petition.

2. A notice dated 14.12.2023 was received by the petitioner stating that a number of incriminating documents were seized pursuant to search and seizure action under Section 132 of the Income Tax Act, 1961 (the Income Tax Act). Since such documents are interconnected and affect the petitioner's assessment, it was stated that it is proposed to transfer the assessment and centralise assessment relating to the transactions under consideration with the Central Circle, Kolkata. The petitioner was given three days to respond to the notice. By reply dated 15.12.2023, the petitioner objected to the transfer proposal on the ground that she previously lived in Chennai and currently lives in Coimbatore after marriage. The impugned transfer order came to be issued in the said facts and circumstances.

3.Learned counsel for the petitioner referred to Section (2) of Section 127 of the Income Tax Act and contended that the provision envisages a reasonable opportunity being given to the person whose assessment is proposed to be transferred. By pointing out that only three days was given, learned counsel contends that such opportunity was not reasonable. Moreover, learned counsel submits that the notice dated 14.12.2023 did not refer to the role of the petitioner in the transactions of the Lottery Group, whereas the impugned transfer order refers to her as one of the key persons. By relying on the returns of income filed by the petitioner for several years, learned counsel submits that the income returned by the petitioner was below the taxable limit during those years. He also submits that the petitioner is completely unconnected to the relevant transaction except for being the daughter-in-law of one of the directors of Lottery Group.

4. Ms.Premalatha, learned junior standing counsel, accepts notice for the respondents. By referring to Section 127 of the Income Tax Act, learned counsel contends that it is not necessary to provide a reasonable opportunity of being heard unless it is possible to do so. In any event, she submits that

such reasonable opportunity was provided under notice dated 14.12.2023. By referring to paragraphs 5 and 6 of the impugned order, she points out that several reasons have been set out therein for transferring the assessment and centralising it with interconnected assessments. Hence, she submits that the writ petition is liable to be rejected.

5. Since the dispute turns on Section 127 of the Income Tax Act, the said provision, in relevant part, is set out below:

> *"**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;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or]

> *Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.”*

Both sub-sections (1) and (2) of Section 127 clearly envisage providing the assessee concerned a reasonable opportunity of being heard in the matter, wherever it is possible to do so. In the case at hand, the notice dated 14.12.2023 evinces that the PCIT was of the view that it is possible to provide a reasonable opportunity to the assessee before taking a decision.

6. This leads to the question as to whether such reasonable opportunity was provided. By notice dated 14.12.2023, only three days was provided to the assessee to respond thereto. The said notice refers to the search and seizure action and the documents seized as a consequence thereof. It also refers to the interconnected nature of the documents. Conspicuous by its absence is any reference to the role of the petitioner in this transaction. By contrast, the impugned order refers to the petitioner as one of the key persons. When these facts and circumstances are considered cumulatively, I am of the view that reasonable opportunity was not provided

to the petitioner. For such reason, the impugned order calls for interference.

7. Hence, the impugned order is quashed and the matter is remanded for reconsideration. The petitioner is permitted to file a fresh reply to notice dated 14.12.2023 setting out her objections and enclosing all relevant documents. This shall be done within a maximum period of 15 days from the date of receipt of a copy of this order. Upon receipt thereof, the 1st respondent is directed to issue a fresh order after providing an opportunity of personal hearing to the petitioner.

8. The writ petition is disposed of on the above terms. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

21.02.2024

Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

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SENTHILKUMAR RAMAMOORTHY,J.

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