IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.10.2024

CORAM

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.15544, 15548, 15552 & 15556 of 2024 &
W.M.P.Nos.16913, 16915, 16921, 16922,
16926, 16927, 16935 & 16936 of 2024

M/s.Hrithvi Estates LLP,
Represented by Designated Partner,
No.54, Mettupalayam Road,
G.N.Mills Post, Coimbatore 641 029
PAN:AAIFH8771M ... Petitioner
in W.P.No.15544 of 2024

M/s.Majestic Townships LLP,
Represented by Designated Partner,
No.54, Mettupalayam Road,
G.N.Mills Post, Coimbatore 641 029
PAN:ABCFM4209L ... Petitioner
in W.P.No.15548 of 2024

M/s.Scintillating Homes LLP,
Represented by Designated Partner,
No.54, Mettupalayam Road,
G.N.Mills Post, Coimbatore 641 029
PAN:ADBFS0185L ... Petitioner
in W.P.No.15552 of 2024

M/s.Scintillating Housing Developers LLP,

Represented by Designated Partner,
No.54, Mettupalayam Road,
G.N.Mills Post, Coimbatore 641 029
PAN:ADBFS0184M ... Petitioner
in W.P.No.15556 of 2024

Vs.

1.The Principal Commissioner of Income Tax,
Coimbatore-1
Income Tax Department,
No.63, Race Course Road,
Coimbatore - 641 018.

2.The Income Tax Officer,
Non Corporate Ward 4(3), Coimbatore,
Income Tax Department,
No.63, Race Course Road,
Coimbatore - 641 018. ... Respondents
in all W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorari, to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned notification u/s 127 dated 25.04.2024 in C.No.142/PCIT-1/CBE/2024-25.

For Petitioner
in all W.Ps : Mr.A.S.Sriraman

For Respondents
in all W.Ps : Dr.B.Ramaswamy
Senior Standing Counsel

COMMON ORDER

The present Writ Petitions have been filed for the issuance of Writ of Certiorari, to call for the records of the writ petitioners on the file of the 1st respondent and to quash the impugned notification under Section 127 dated 25.04.2024 in C.No.142/PCIT-1/CBE/2024-25.

2. The petitioners are aggrieved by the aforesaid impugned Notification dated 25.04.2024 issued by the 1st respondent in exercise of its power conferred by the provisions of Section 127 of the Income Tax Act, 1961 (in short, 'the Act'), whereby, the income tax assessment files of the petitioners from the Office of the ITO, Non-Corp.Ward-4(3), Coimbatore have been transferred to the Office of the Deputy Commissioner of Income Tax, Circle-4(4), Kolkatta (herein referred to 'Central Circle'). This transfer order has been passed to centralize the case

of the petitioners for effective and co-ordinated investigation along with other cases.

3. The learned counsel for the Petitioners submits that the Petitioners concerns, having a registered office at Coimbatore and a show cause notice was issued by the 1st respondent on 26.12.2023, stating that a Search and Seizure action was carried out under Section 132 of the Act in the petitioners' case on 12.10.2023 by Authorized Officer under the control of the Principal Director of Income Tax (Investigation), Kolkata, where, they have seized number of incriminating documents, which are inter-connection and affect the assessment of the petitioner. Therefore, in order to centralize the petitioners' case for effective and co-ordinated investigation, they intended to transfer the cases of the petitioner to the DCIT Central Circle at Kolkata and thereby, called upon the petitioners to file the reply/objections in writing if any, on or before 02.01.2024. Subsequent to the said show cause notice, the petitioners had filed their reply on 28.12.2023. He would stated that while the petitioners are anticipating that their objections would be considered and the proposal to transfer of their case to DCIT Central Circle, Kolkata would be dropped,

however, by Notification dated 25.04.2024, the 1st respondent ordered transfer of the petitioners' cases to the DCIT, Central Circle, Kolkata.

4. Challenging the impugned Notification, the learned counsel for the petitioners would primarily contend that no opportunity of personal hearing as contemplated under Section 127 of the Act has been provided to the petitioners before passing the impugned Notification and thereby, violated the principles of natural justice. He would submit that 28.12.2023, the petitioners requested for personal hearing, but no personal hearing was not afforded to them. Therefore, the learned counsel for the petitioners would contend that the impugned Notification is liable to be set aside on the ground of violation of principles of natural justice and it is directly contrary to provisions of Section 127 (1) of the Income Tax Act. In terms of Section 127(1) of the Act, the 1st respondent was supposed to provide an opportunity of personal hearing. But, in the present case, the same was not provided.

5. The learned counsel would also submit that the inconvenience expressed by the petitioners in the reply, dated 28.12.2023, particularly,

with regard to having their registered office at Chennai/Coimbatore, cost of travel and litigation to represent their case before the authorities at Kolkatta Circle and no business activities were carried out by the petitioners within the jurisdiction of Kolkatta Circle, was not considered by the 1st respondent. Therefore, without considering all these aspects, the impugned Notification was issued. Hence, he prays to set aside the impugned Notification and direct the respondents to consider the matter afresh by affording personal opportunity to the petitioners and taking into consideration the reply dated 28.12.2023 filed by the petitioners.

6. The learned counsel for the petitioners relied on the judgment of the High Court of Bombay in the case of *“**Kamal Varandmal Galani Vs. Principal Commissioner of Income Tax**”* reported in [2023] 152 Taxmann.com 340 (Bombay) and the judgment of the High Court of Calcutta in the case of *“**Giridhari Lal Goenka Vs. Principal Commissioner of Income Tax**”* reported in [2023] 152 Taxmann.com 250 (Calcutta), wherein it has been held that an opportunity of personal in terms of Section 127 of the Act should be provided and to furnish all relevant documents indicating the basis for passing the order of transfer.

Therefore, he would submit that the impugned Notification is in clear violation of principles of natural justice and the same is not sustainable in law.

7. Mr.B.Ramaswamy, learned Senior Standing Counsel would submit that the petitioners has been carrying on business within the jurisdiction of Kolkata Zone, particularly, the petitioner involved in the Lottery Business in Kolkata and also in several States of India and the authorities, on a search and seizure action carried out under Section 132 of the Act, number of incriminating materials were seized, which were inter-connected and affect the petitioners' assessment and in such circumstances, the cases have been transferred from ITO, Non-Corp.Ward-4(3), Coimbatore to DCIT, Kolkata. He pointed out that before passing the impugned Notification, a show cause notice, dated 26.12.2023 was issued to the petitioners, wherein, the respondents have clearly narrated the circumstances by which, they intended to transfer the petitioner's case to DCIT Circle, Kolkata (Central Circle). Further, he would submit that in the show cause notices, the petitioners were requested to file their reply/objections on or before 02.01.2024. After

taking into consideration the petitioners' reply only, the Notification was issued on 25.04.2024 under Section 127 of the Act. Before issuing the Notification, all the objections of the petitioner were considered by the 1st respondent. Therefore, he would submit that since the objections of the petitioners were considered, there is no violation of principles of natural justice. He would submit that it is only the transfer of case and with regard to seizure of the incriminating documents and the petitioners are well aware and those documents would affect the assessment of the petitioner. Further, in the show cause notice, all relevant details are narrated. Therefore, taking note of the fact that the petitioners have been carrying out business operation of lottery and other activities within the jurisdiction of the Kolkata Circle and during the search, the respondents found the incriminating materials, the impugned Notification was issued since the centralization is essential for coordinated investigation. Therefore, he would submit that after affording the opportunity to the petitioner and on consideration of the objections, the impugned Notification was passed, which requires no interference and hence, he would urge this Court to dismiss the Writ Petitions as not maintainable.

8. I have given my anxious consideration to the submissions made by the learned counsel appearing for the petitioner as well as Mr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents.

9. The issues that arise for consideration are as follows:-

> 1. Whether the respondents have sufficient material to transfer the cases from Coimbatore to Central Circle, Kolkata? And
>
> 2. Whether the respondents have provided an opportunity for filing reply/objections and for personal hearing before passing the impugned Notification?

10. As far as the first issue is concerned, according to the petitioners, they are having their registered office at Chennai/Coimbatore and they have not conducted any business operations of lottery in Tamil Nadu. Of-course, the Lottery business is prohibited in Tamil Nadu, but the fact remains that upon the search and seizure conducted by the respondents, they found number of incriminating materials which are all inter-connected and would directly affect the assessment of the

petitioners and under these circumstances, as rightly mentioned by the respondents in the show cause notice that since the documents have been seized at different places during search, it is necessary that all the cases should be considered together at one place so that harmonious and co-ordinated investigation be undertaken to arrive at just assessment. It is relevant to extract the contents of the show cause notice, dated 26.12.2023, which read as follows:

> *"A search and Seizure action was carried out u/s 132 of the Income Tax Act, 1961, in your case on 12.10.2023 by Authorized Officer under the control of the Principal Director of Income Tax (Investigation), Kolkata. In this regard, a proposal to centralize your Income Tax file has been received in this office. Your proceedings under the Income Tax Act, 1961, is proposed to be centralized in any of Central Circle in Kolkata for the following reason:*
> *(a) As a result of the said search action a number of incriminating documents were seized. The documents are inter-connected and affect your assessment. It is necessary to see their effect together on the assessments. It can only be done after analyzing and investigating the documents found at different places together. As documents have been seized at different*

places, it is necessary that all the cases should be considered together at one place so that harmonious and coordinated investigation be undertaken to arrive at just assessment.

Since this transfer of your case would involve change of station/City of the Assessing Office, you are hereby given an opportunity to file your objections to the proposed transfer, if any, with reasons and documentary evidence.

Your objections if any should reach this office either by Email (Coimbatore.pict1@incometax.gov.in) or letter to the Principal Commissioner of Income Tax-1, 63, Race Course Road, Coimbatore on or before 02.01.2024. Alternatively, if required you can appear in person or through any Authorized representative to file/submit any objection to the proposed centralization by 02.01.2024.

In case of no objections/response is filed by you till the given date viz. 02.01.2024, it will be construed that you don't have any objection for the proposed transfer of your case to Central Circle, Kolkata and your case will be transferred to Central Circle, Kolkata."

11. A perusal of the said show cause notice, would reveal that a search and seizure action was carried out under Section 132 of the Income Tax Act, 1961 on 12.10.2023 by Authorized Officer under the control of the Principal Director of Income Tax (Investigation), Kolkata. As a result of the said search and seizure in Kolkata Office, the respondents found many incriminating documents and they have come to a conclusion that the petitioners were conducting business operations of lottery in the jurisdiction of Kolkata Central Circle. Therefore, the said documents are inter-connected and will directly affect the assessment of the petitioners. Under these circumstances, the respondents have issued the show cause notice and called upon the petitioners to file their reply/objections or before 02.01.2024. Pursuant to the same, the petitioners have also filed their reply on 28.12.2024. Therefore, as rightly contended by the learned Senior Standing Counsel, the respondents have provided sufficient opportunity to the petitioner file reply/objections for passing the order under Section 127 of the Act.

12. The reply, dated 28.12.2023 filed by the petitioners to the show cause notice, dated 26.12.2023 reads as follows:-

Date : 28.12.2023

To

The Principal Commissioner of Income Tax

Coimbatore-1

63, Race Course Road,

Coimbatore, Tamil Nadu-641 018.

Respected Sir,

Ref: PAN: AAIFH8771M/ Our Own case.

Sub: Your Notice u/s.127 with DIN & Notice No.ITBA/COM/F/17/2023-24/1059046200(1) dt.26.12.2023.

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With reference to your above notice, we wish to know the finding in our case in connection with the search in the case of Lottery Group. We are of the view that there is no finding in our case warranting centralisation of our file (PAN: AAIFH8771M).

Further, our registered office is located in Coimbatore, Tamil Nadu, it is not possible for us to travel to Kolkata to present our case before the authorities there. It will also be very expensive for us to travel or hire a local lawyer to defend our case. The authorities in Chennai are well competent enough to undertake the assessment proceedings in

> our case which they have already been doing over the years.
>
> We, therefore, reiterate that centralization of our case at Kolkata shall devoid our right to fair and natural justice and therefore we request you not to transfer our file to Kolkata. If centralization of cases is required, we have no objection in having the case centralised with Central Circle, Coimbtore.

13. A perusal of the above reply filed by the petitioner reveals that the petitioners expressed their personal difficulties citing the costs of litigation as well as they are having their registered office at Coimbatore, the availability of documents at Coimbatore, etc. Therefore, the petitioner raised objections for transferring the case to DCIT, Central Circle, Kolkata. Further, the petitioners vide letter dated 11.05.2024, also requested to provide personal hearing as well as effective opportunity of hearing in order to make detailed submissions in relation to the proposal made in terms of Section 127 of the Act.

14. Though the learned counsel for the petitioners contended that the petitioners concerns are having their registered office at Coimbtore

and no business activities were carried out at Kolkata, but upon search and seizure carried out under Section 132 of the Act on 12.10.2023 by the Authorised Officer under the control of the Principal Director of Income Tax (Investigation), Kolkata, number of incriminating documents and materials came to be seized, which were directly connecting with the involvement of the petitioner in the business operation of Lottery in the state of West Bengal in different capacities such as Sub-distributors, Stockist, Printing press, etc. Therefore, for the sake of coordinated and meaningful assessment of entire block, it was proposed by the respondents that assessment of all such related individuals/concerns be conducted together. Accordingly, after issuing the show cause notice and on consideration of the reply/objections raised by the petitioners, the Notification dated 17.05.2024 was issued.

15. Therefore, since all the materials have been collected in Kolkata Central Circle, the 1st respondent, taking into consideration of the reply filed by the petitioner, decided to transfer the petitioners' case to the Central Circle, Kolkata. It is pertinent to note that apart from the petitioners' case, there were eight other cases, which were found

indulging in similar activities as that of the petitioners in conducting with the business operations of lottery, the 1st respondent ordered transfer of all cases to the Central Circle of Kolkata for the purpose of coordinated investigation in Lottery Group.

16. I do not find any substance in the contentions raised by the learned counsel for the petitioners that the respondents failed either to provide an opportunity or lack of sufficient materials to transfer the case from ITO, Non-Corp.Ward-4(3) Coimbatore to DCIT, Central Circle-4(4), Kolkata. Accordingly, the Issue Nos. 1 and 2 are answered.

17. Thus, this Court is of the considered opinion that although the registered office of the petitioners are situated at Coimbatore and they had not carried out any business activities at Kolkata, it will be appropriate to make the assessment through the Central Circle, where the incriminating materials have been seized based on the place of business of the Assesees, irrespective of situation of the registered offices. This is what had taken place in the present case.

18. The issue of jurisdiction and change in jurisdiction under Section 127 of the Income Tax Act, 1961 is a pivotal aspect of tax administration and litigation. This Section provides a legal frame work for the transfer of cases from one Assessing Oficer (AO) to another and is crucial in ensuring the smooth functioning of the tax administration system. If the contentions raised by the petitioner are accepted and allowed, the Coimbatore jurisdictional Assessing Officer has to finalize the assessment of the petitioner and in such event, certainly, it will be difficult for him to complete the assessment in the absence of material documents, which were seized upon search by the Income Tax (Investigation) authorities of Kolkata Central Circle. Hence, it would be appropriate to transfer the petitioners' case to ITO, Non-Corp.Ward-4(3), Coimbatore since the Income Tax authorities have traced out and seized number of incriminating documents which would reveal the involvement of the petitioners in conducting the business operations of lottery and deciding the issue of evasion of taxes is within their jurisdiction. Therefore, the 1st respondent has rightly transferred the cases from Coimbatore jurisdiction to Kolkatta jurisdiction. Hence, I do not find any reasons to interfere with the impugned Notification dated 25.04.2024.

19. In fact, Section 127 does not contain the grounds on which a case is to be transferred. It has been left to the discretion of the authority which has to be exercised by it in public interest. It is neither possible nor desirable to enumerate the grounds which can be said to be valid grounds for transfer u/s 127 of the Act. However, the paramount consideration for transfer should be the public interest and the power is to be guided and controlled to serve the purpose of the Act. If the transfer is being made for the purpose of co-ordinated investigation for the purpose of assessment and collection of tax in a more convenient or efficient way, then it will be a good ground for transfer. In the present case, this Court does not find any irregularity or infirmity in passing the impugned Notification by the 1st respondent ordering transfer of the case of the petitioner to DCIT, Central Circle, Kolkata along with other cases only for the purpose of co-ordinated investigation in Lottery Group. No doubt, transfer of a case from the place where the assessees have their place of residence or business to another place causes inconvenience but if it is necessary in the public interest then the transfer on the ground of proper and co-ordinated investigation cannot be held to be impermissible in law.

20. Moreover, I do not find any prejudice that would be caused due to the present notification to the petitioner because no final assessment order adverse to the petitioner was passed, except the transfer of the petitioners' case by invoking Section 127 of the Act from ITO, Non-Corp.Ward-4(3), Coimbatore to DCIT, Central Circle, Kolkata. The Income Tax Act, being a taxing statute, very strict interpretation has to be given and in the absence of any prejudice caused to the petitioner, the challenge to the impugned notification has to be rejected.

21. The case laws referred to by the learned counsel for the petitioner would not persuade this Court to take a different view contrary to the decision of the 1st respondent and hence, the said case laws would not improve the case of the petitioner.

22. In the light of the above discussion, this Court is of the view that the Writ Petitions are liable to be dismissed.

23. Accordingly, these Writ Petitions are dismissed as devoid of merits. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

01.10.2024

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No

jd/suk

To

1.The Principal Commissioner of Income Tax,
Coimbatore-1
Income Tax Department,
No.63, Race Course Road,
Coimbatore - 641 018.

2.The Income Tax Officer,
Non Corporate Ward 4(3), Coimbatore,
Income Tax Department,
No.63, Race Course Road,
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KRISHNAN RAMASAMY.J.,
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