IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.Nos.15500, 15524 and 15526 of 2024
and W.M.P Nos.16853, 16854, 16885,
16887, 16882 and 16884 of 2024

M/s.Suvali Real Properties LLP,
Represented by Designated Partner,
No.54, Mettupalayam Road,
G.N.Mills Post, Coimbatore - 641 029. ... Petitioner in W.P.No.15500/2024

Martin Leemarose,
No.101, 6th Street Extension,
Gandhipuram, Coimbatore - 641 012. ... Petitioner in W.P.No.15524/2024

Daisy Aadhav Arjuna,
No.19, Maharani Chinnammal Road,
Venus Colony, Alwarpet,
Chennai - 600 018. ... Petitioner in W.P.No.15526/2024

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: This Writ Petition is 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 petitioners on the file of the first respondent to quash the impugned notification under Section 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

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COMMON ORDER

The present Writ Petitions are filed for the issuance of a Writ of Certiorari, to call for the records of the writ petitioners on the file of the first 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 learned counsel for the petitioners submits that the impugned Notification was issued to transfer the petitioners' case to the Central Circle, Kolkata. He submits that in the present Writ Petitions, all are residents of Coimbatore having a registered office at Coimbatore. Under this circumstance, the show cause notification was issued by the 1st respondent on 26.12.2023 stating a Search and Seizure action was carried out under Section 132 of the Income Tax Act, 1961, 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 and therefore, they have requested to transfer the case to the Central Circle at Kolkata. The present show cause notice was issued for the purpose of calling for reply. Subsequent to the said show cause notice, the petitioner in W.P.No.15500 of 2024 had filed a reply on 28.12.2023 and the petitioners in W.P.Nos.15524 and 15526 of 2024 had filed their reply on 27.12.2023.

3. The main grievance of the petitioners is that their reply was not considered while issuing the Notification dated 25.04.2024. Further, no opportunity of personal hearing was provided. On 07.05.2024, 11.05.2024 and 13.05.2024 respectively, the petitioners requested for personal hearing. However, the personal hearing was not afforded to. Therefore, the learned counsel for the petitioners would contend that the impugned Notification was passed in violation of principles of natural justice and directly in 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. The learned counsel expressed the inconvenience of the petitioners particularly, with regard to having their registered office, the entire cost of litigation and also jurisdiction of the petitioners and also with regard to no business was carried out by the petitioners within the jurisdiction of Kolkatta office. 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 reply filed by the petitioners after affording an opportunity of

personal hearing and necessary orders may be passed with regard to the Notification.

4. Further, the learned counsel would submit that the petitioners have sent letters dated 07.05.2024, 11.05.2024 and 13.05.2024 respectively, requesting for personal hearing. But, these are all sent subsequent to the Notification dated 25.04.2024. On 21.05.2024, the first respondent replied to the letter sent by the petitioners stating that already they passed an order to transfer the case vide Notification No.01/2024-25, dated 25.04.2024. Thereafter only, the petitioners came to know about the impugned notification.

5. 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 stated that the petitioners are to be given an opportunity of personal hearing and to provide relevant documents indicating the basis for taking such 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.

6. Per contra, Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents strongly made an objection to the contention of the learned counsel appearing for the petitioners and filed a detailed counter to all the Writ Petitions. He would submit that in the present case, the petitioners have been carrying on business within the jurisdiction of Kolkata Zone. Particularly, the petitioners have been carrying on the Lottery Business in Calcutta, Nagaland, Sikkim, Bhutan and Assam and all other North Eastern States and they have come across some incriminating materials and therefore, the case has been transferred from Coimbatore to Kolkata. In this regard, the show cause notice to the petitioners was issued on 26.12.2023. In the said show cause notice, the respondents have narrated the situation in which, they intend to transfer the petitioners' case to Kolkata. Further, he would submit that in the show cause notice, the petitioners were requested to file their reply on or before 02.01.2024 and personal hearing opportunity was also provided to the petitioners on 02.01.2024. After filing the reply, the petitioners have failed to appear for personal hearing on 02.01.2024. After taking into consideration the

petitioners' reply, the Notification was issued on 25.04.2024 under Section 127 (2) of the Income Tax Act. Before issuing the Notification, all the contentions of the petitioners were considered by the respondents and accordingly, orders were passed. Therefore, he would submit that since the reply of the petitioners was 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, the petitioners are well aware and those documents affect the assessment of the petitioners. Further, in the show cause notice, other details are narrated. Therefore, he would submit that ultimately the respondents have found that the case, as per the schedule, falls under the category of either 133A or 153A / 153C of the Income Tax Act having impounding materials under FATCA / Benami or Black Money Act. Therefore, taking into account the seriousness of the violation and the petitioners have been carrying on business and other activities within the jurisdiction of the Kolkata Office and in the Kolkata Office, during the search, the respondents found the incriminating materials, the impugned Notification was issued. As stated above, since many materials are available, the case has been transferred. Therefore, the Writ Petitions are not maintainable and hence, the same may be dismissed.

7. I have given careful consideration to the submissions made by the learned counsel appearing for the petitioner as well as Dr.B.Ramaswamy, learned Senior Standing Counsel appearing for the respondents.

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

(1) whether the respondents have sufficient material for transfer of the case from Coimbatore to Central Circle, Kolkata? and (2) whether the respondents have provided an opportunity for filing a reply and for personal hearing? have to be decided.

9. As far as the first issue is concerned, the petitioners' are having registered office at Coimbatore. According to the petitioners, they have not carried out any business of lottery in Tamil Nadu and of course, the Lottery business is prohibited in Tamil Nadu. But, upon the search and seizure conducted by the respondents, they found some incriminating materials which are all connected to the petitioners and would directly affect the assessment of the petitioners and under these circumstances, they have no objection to centralise the case of the petitioners, in Central Circle, Coimbatore, instead of Central Circle, Kolkata. In this regard, a detailed show cause notice was issued.

The contents of the show cause notice 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 Office 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 co-ordinated investigation be undertaken to arrive at just assessment.

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

Your objections if any should reach this office either by Email (Coimbatore.pcit1@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 appeal 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.

10. A perusal of the said show cause notice reflects that a search and seizure action was carried out under Section 132 of the Income Tax Act, 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 involved in this act. Therefore, it will directly affect the assessment of the petitioners. Under these circumstances, they have issued the show cause notice and in the said show cause notice, the petitioners are requested to file a reply on or before 02.01.2024 and further, the petitioners are provided an opportunity of personal hearing on 02.01.2024. The petitioners have filed their replies on 27.12.2023 and 28.12.2023 respectively. Therefore, as contended by the learned Senior Standing Counsel, the respondents have provided the opportunity of personal hearing,

but, the petitioners have failed to participate in the personal hearing.

11. The reply filed by the petitioner in W.P.No.15500 of 2024 reads as follows:-

Date : 28.12.2023

To

The Principal Commissioner of Income Tax,
Coimbatore - 1,
63, Race Course Road,
Coimbatore 1, Tamil Nadu - 641 018.

Respected Sir,

Ref: PAN: ACTFS4390L / Our Own case.
Sub: Your Notice u/s.127 with DIN & Notice No.ITBA/COM/F/17/2023-24/1059045634(1) dt.26.12.2023.

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With reference to your above notice, we wish to know the finding to 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: ACTFS4390L).

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 Coimbatore 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, Coimbatore.

12. The reply filed by the petitioner in W.P.No.15524 of 2024 reads as follows:-

Date: 27.12.2023

To

The Principal Commissioner of Income Tax-1,
63, Race Course Road,
Coimbatore - 641 018.

Respected Sir,

Ref: PAN: ABAPL5087F / My Own case.
Sub: Your Notice u/s.127 with DIN & Notice No.ITBA/COM/F/17/2023-24/1059046332(1) dt.26.12.2023 received on 26.12.2023 - Reply filed.

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With reference to your above notice, we wish to know the finding in my case in connection with the search in the case of Lottery Group. I am of the view that there is no finding in my case warranting centralisation of my file (PAN: ABAPL5087F).

Even, if there is any finding warranting centralization of my file, I object to the proposal of centralization to Central Circle, Kolkata. I am settled with my family in Coimbatore for over 40 years. Therefore, if there is a necessity to centralize my case, I request you to centralise it in Central Circle, Coimbatore.

13. The reply filed by the petitioner in W.P.No.15526 of 2024 reads as follows:-

28 December 2023

To

The Principal Commissioner of Income Tax,
Coimbatore - 1.

Respected Sir,

Sub: Objection to the centralization of my case and change of jurisdiction - PAN: ASPPD7342F

Ref: Your Notice DIN.ITBA/COM/F/17/2023-24/1059046383(1) dt.26.12.2023.

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At the outset, I strongly object to the proposal of centralization of my file and change of my income tax assessment jurisdiction from Range 61, Corporate Circle 1, Coimbatore to the jurisdiction of any Central Circle in Kolkata, for the following reasons

i. It is stated in the above referred letter that a number of incriminating documents were seized. However, it may please be noted the neither document listed and recorded after the search prima facie did not have any incriminating documents as claimed by you there was any specific averment or any sustainable reasons, as to what are those incriminating documents which needs to be corroborated with my assessment and connect with any other proceedings. Hence, the statement made by you was purely on the basis of speculation connecting the undersigned with any other proceedings, and not based on any factual finding. The said reason stated will not validate the change of centralization of my files.

ii. Ever since I obtained the PAN, my assessments were carried out in Coimbatore jurisdiction and there was no difficulty faced in my assessments. Rather I was assured of a fair assessment till date. Further, my assessments conducted in the present jurisdiction has nowhere caused any prejudicial interest to the revenue.

iii. Most of my personal business activities are in Tamil Nadu and my books of accounts are being maintained only in Tamil Nadu. I have made the said arrangement for operational and administrative convenience.

iv. My permanent establishment is in Chennai and Coimbatore. Hence, I will not be able to travel back and forth to Kolkata as it would affect both my personal and official commitments. Hence, it is needless to say that the centralization to Kolkata will cause under hardship and inconvenience to the undersigned.

v. Hence, for the reasons explained above, it would be only a righteous arrangement that my jurisdiction is retained/continued in Coimbatore and if at all for any valid reason if the centralization is essential, I might agree for centralization of my files in Central Circle, Chennai.

14. A perusal of the above replies filed by the petitioners, the petitioners expressed their personal difficulties citing the age factor, costs of litigation as well as they are having the registered office at Coimbatore and the availability of documents at Coimbatore, etc. Therefore, they made an objection for transferring the case to Central Circle, Kolkata.

15. The petitioners are having their registered office at Coimbatore, but, they have a place of business directly or indirectly at Kolkata. Therefore, these are all the facts that have been known upon search and seizure conducted on 12.10.2023 by the Kolkata Circle. Only the Kolkata Office Circle had seized some incriminating materials, which were directly linking the involvement of the petitioners into the business of Lotteries, which was carried out within the jurisdiction of Kolkata Office Circle. Therefore, they have requested the

Coimbatore Office Circle to transfer the cases to Kolkata. Thereafter, the show cause notice was issued and a reply was also filed. Taking into consideration of all these aspects and non appearance of the petitioners for the personal hearing held on 02.01.2024, the Notification dated 25.04.2024 was issued, wherein it is stated that the case falls under the category of either 133A or 153A / 153C of the Income Tax Act having impounded materials or under FATCA / Benami or Black Money Act.

16. As all the materials have been collected in Kolkata Office, the respondents, taking into consideration of the replies filed by the petitioners, have decided to transfer the petitioners' case to Central Circle, Kolkata. Of course, in the present case, since the incriminating materials were found by the Kolkata Office against the petitioners, connected with the search conducted with regard to Lottery business, it was closely linked with the assessment of the petitioners.

17. I do not find any material to show that the respondents failed either to provide an opportunity of personal hearing or sufficient materials to transfer the case from Coimbatore to Central Circle, Kolkata. Even if it is so, it

will not alter in anyway the final decisions to transfer the cases to Calcutta Circle and it would not affect in any manner. Accordingly, Issue Nos. 1 and 2 answered.

18. Thus, this Court is of the opinion that if any search was conducted based on the place of business of an Assessee, though the Registered Office is situated at different place, it will be appropriate to make the assessment through the Circle, where the incriminating materials have been seized based on the place of business of the Assesee, irrespective of situation of registered office. This is what happened in the present case. Further, Section 127 also empowers under the circumstances of these nature, for transfer of cases from one place to other place. If the contention of the petitioner is accepted and allowed, the Coimbatore jurisdictional Officer will be directed to proceed with the assessment and it will be difficult for those officers to complete the assessment, since they neither have any material nor have any place of business within their jurisdiction. Hence, it would be appropriate to transfer the cases in the present matter, since the Kolkata Circle Officer have traced out and seized some incriminating material with regard to the involvement of the petitioner in the Lottery business for the evasion of taxes within their jurisdiction.

Therefore, the respondent has rightly transferred the cases from Coimbatore jurisdiction to Kolkatta jurisdiction. Hence, I do not find any reasons to interfere with the notification dated 25.04.2024. In such case, the present writ petitions are liable to be dismissed.

19. I do not find any prejudice would be caused due to the present notification because no adverse order was passed except the transfer of the petitioners' case by the respondents from Coimbatore to Central Circle, Kolkata, and no show cause notice was issued for the purpose of making any assessment, whereby to affect the petitioners' interest.

20. The learned counsel had also raised an issue with regard to the delay in receipt of the notification by stating that the petitioner has only received the said notification around 20.05.2024, whereas the notification was originally issued on 25.04.2024. Consequent to the said Notification, no further actions have been taken till 20.05.2024, even as on today. Therefore, the interest of the petitioners is in no way get affected due to the delay in receipt of the information pertaining to the issue of Notification dated 25.04.2024.

21. Since the case laws referred by the petitioner will not be applicable for the facts and circumstances of the present case, the same were not considered by this Court.

22. Therefore, I do not find any merit in these Writ Petitions and they are dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petitions are closed.

19.08.2024

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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,
   Coimbatore - 641 018.

KRISHNAN RAMASAMY, J.

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W.P.Nos.15500, 15524 and 15526 of 2024
and W.M.P Nos.16853, 16854, 16885,
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