IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **29**.08.2024

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THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P.No.17325 of 2024
and W.M.P Nos.19106 and 19107 of 2024

M/s.Fortune Media Private Limited
Represented by Director
No.166, Triplicane High Road,
Thiruvallikeni,
Chennai 600 005
PAN:AAACF5261H ... Petitioner

Vs.

1. The Principal Commissioner of Income Tax
   Central -2, Chennai,
   Income Tax Department,
   No.121, Nungambakkam High Road,
   Chennai 600 034.

2. The Deputy Commissioner of Income Tax
   Central Circle 2, Coimbatore
   Income Tax Department
   No.63, Race Course Road,
   Coimbatore 641 018. ... Respondents

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 petitioner on the file of the first respondent to quash the impugned u/s 127 of the Act dated 08.02.2024 in DIN & Letter No:ITBA/COM/F/17/2023-24/1060672932(1).

For Petitioner : Mr.A.S.Sriraman
For Respondent : Mrs.S.Premalatha
Junior Standing Counsel
for Mr.V.Mahalingam
Senior Standing Counsel

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ORDER

The present Writ Petition is filed for the issuance of a Writ of Certiorari, to call for the records of the writ petitioner on the file of the first respondent and to quash the impugned notification under Section 127 dated 08.02.2024 in Letter No:ITBA/COM/F/17/2023-24/1060672032.

2. The petitioner is aggrieved by the afore said impugned Notification dated 08.02.2024 issued by the first respondent in exercise of its power conferred by Sub Sections 2 and 3 of Section 127 of the Income Tax Act, 1961 (in short, 'the Act'), whereby, the income tax assessment file of the petitioner from the Office of the Deputy Commissioner of Income Tax, Non Corporate Circle-10(1), Chennai has 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 petitioner for effective and co-ordinated investigation along with other cases.

3. The learned counsel for the Petitioner submits that the Petitioner is the resident of Chennai, having a registered office at Chennai. A show cause notice was issued by the 1st respondent on 14.12.2023, stating that a Search and Seizure action was carried out under Section 132 of the Act in the petitioner's 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 petitioner's case for effective and co-ordinated investigation they intended to transfer the case case to the Central Circle at Kolkata and thereby, called upon the petitioner to file the objections in writing if any, within 3 days. Subsequent to the said show cause notice, the petitioner had filed their reply on 21.12.2023.

4. Challenging the impugned Notification, the learned counsel for the petitioner would primarily contend that no opportunity of personal hearing as

contemplated under Section 127 of the Act has been provided to the petitioner before passing the impugned Notification and thereby, violated the principles of natural justice. Therefore, the learned counsel for the petitioner would contend that the impugned Notification is liable to be set aside on the ground of 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.

5. The learned counsel would also submit that the inconvenience expressed by the petitioner in the reply, dated 21.12.2023, expressed their inconvenience particularly, with regard to having their registered office at Chennai, cost of travel and litigation to represent their case before the authorities at Kolkatta Circle and no business activities were carried out by the petitioner within the jurisdiction of Kolkatta Circle. 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 petitioner and taking into consideration the reply dated 21.12.2023 filed by the petitioner.

6. The learned counsel for the petitioner 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.A.N.R.Jayaprathap, learned Junior Standing Counsel appearing for the respondents would submit that in similar writ petitions in W.P.Nos.15500, 15524 and 15526 of 2024 dated 19.08.2024, Mr.B.Ramasamy, learned Senior Standing Counsel has already advanced arguments on legal aspects and he also adopted the same arguments and on facts, he would submit that in the present case, the petitioner 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 petitioner's assessment and in such circumstances, the case has been transferred from DCIT, Coimbatore to DCIT, Kolkata. He pointed out that before passing the impugned Notification, a show cause notice, dated 14.12.2023 was to the petitioner, 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 notice, the petitioner was requested to file their reply/objections, within 15 days from the date of receipt of the Show Cause Notice. After taking into consideration the petitioner's reply only, the Notification was issued on 17.05.2024 under Section 127 (2) of the Act. Before issuing the Notification, all the contentions of the petitioner were considered by the 1st respondent. Therefore, he would submit that since the reply of the petitioner 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 and the petitioner is well aware and those documents would affect the assessment of the petitioner.

Further, in the show cause notice, all other details are narrated. Therefore, taking note of the fact that the petitioner has 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 cetralization is essential for co-ordinated 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 Petition 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.A.N.R.Jayaprathap, 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 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 personal hearing before passing the impugned Notification?

10. As far as the first issue is concerned, according to the petitioner, they are having their registered office at Chennai 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 petitioner 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, 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 14.12.2023, 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 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.

2. It is requested that, 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.

3. In the presence system of assessment procedure, the jurisdictional Assessing Officers would not be having jurisdiction over the cases where searches/surveys have been conducted and they are required to be centralized with the central charges. Even jurisdiction over other Assessments would not lie with jurisdictional Assessing Officer (other than Central & International transaction) but only with the Faceless Assessing Officer who may be located at different places. In the said circumstances, the centralization would help the assessee in getting proper representation in person before Assessing Officer along with connected cases.

4. At present the PAN:AAACF5261H is lying with the Deputy Commissioner of Income Tax, Non Corporate Circle-10(1), Chennai. Hence, it is proposed to centralise you case to Central Circle, Kolkata to facilitate coordinated investigation and assessment.

5. Your objections, if any, on the above proposal may be communicated either in person or through Authorized Representative or through e-mail id (chennai.pcit3@incometax.gov.in) within 3 days on receipt of this letter, otherwise it will be construed that you do not have any objection for the proposed centralization and your case will be centralised as per law."

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 petitioner was 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 petitioner. Under these circumstances, the respondents have issued the show cause notice and called upon the petitioner to file a reply within a period of 3 days. Pursuant to the same, the petitioner has also filed their reply on 21.12.2023. Therefore, as rightly contended by the learned Junior 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 filed by the petitioner to the show cause notice, reads as follows:-

Date : 21.12.2023

To

The Principal Commissioner of Income Tax (Central),
Chennai-2,
Room No.410, Main Building-IV Floor,
Investigation Building
No.121, Mahatma GandhiRoad
Nungambakkam, Chennai-600034.

Respected Sir,

Ref: PAN: AACF5261H/ Our Own case.
Sub: Your Notice u/s.127 with DIN & Notice No.ITBA/COM/F/17/2023-24/1058748853(1) dt.14.12.2023 received on 20.12.2023-Reply filed.

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With reference to your above notice received on 20.12.2023, 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: AAACF5261H).

Further, our registered office is located in Coimbatore, 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, Chennai.

13. A perusal of the above reply filed by the petitioner reveals that the petitioner expressed their personal difficulties citing the age factor, costs of litigation as well as they are having their registered office at Chennai, the availability of documents at Chennai, etc. Therefore, the petitioner raised objections for transferring the case to DCIT, Central Circle, Kolkata.

14. Though the learned counsel for the petitioner contended that the petitioner is having their registered office at Chennai 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 co-ordinated 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 objections raised by the petitioner, the Notification dated 08.02.2024 was issued.

15. Therefore, since all the materials have been collected in Kolkata Central Circle, the 1st respondents, taking into consideration of the reply filed by the petitioner, decided to transfer the petitioner's case to the Central Circle, Kolkata.

16. I do not find any substance in the contentions raised by the learned counsel for the petitioner that the respondents failed either to provide an opportunity or lack of sufficient materials to transfer the case from DCIT, Central Circle, Chennai 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 petitioner is situated at Chennai and they had not carried out any business activities at Kolkata, 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 the registered office. 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 Chennai 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 petitioner's case to DCIT, Central Circle, Koltaka since the Income Tax authorities have traced out and seized number of

incriminating documents which reveal the involvement of the petitioner 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 Chennai jurisdiction to Kolkatta jurisdiction. Hence, I do not find any reasons to interfere with the impugned Notification dated 08.02.2024.

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 assessee has its 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 petitioner's case by invoking Section 127 of the Act from DCIT, Central Circle, 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 Petition is liable to be dismissed.

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

29.08.2024

arr/asi/suk

Index: Yes/No
Internet: Yes/No

To

1. The Principal Commissioner of Income Tax
   Central -2, Chennai,
   Income Tax Department,
   No.121, Nungambakkam High Road,
   Chennai 600 034.

2. The Deputy Commissioner of Income Tax
   Central Circle 2, Coimbatore
   Income Tax Department
   No.63, Race Course Road,

Coimbatore 641 018.

KRISHNAN RAMASAMY, J.

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W.P.No.17325 of 2024
and W.M.P Nos.19106 and 19107 of 2024

29.08.2024