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.17761 of 2024
and W.M.P Nos.19504 and 19507 of 2024

M/s.Arise Industries and Agency Private Limited
Represented by Director
No.54, Mettupalayam Road,
Gnanambika Mills, Coimbatore North,
Coimbatore 641 029
PAN:AACCT6738K ... Petitioner

Vs.

1. The Principal Commissioner of Income Tax
   Central -2, Chennai,
   Income Tax Department,
   No.108, 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 notification in Notification No.01/2024-25 u/s 127 of the Act dated 17.05.2024 in DIN & Letter No:ITBA/COM/F/17/2024-25/1064981571(1).

For Petitioner	:	Mr.A.S.Sriraman
For Respondent	:	Mr.A.N.R.Jayaprathap Junior Standing Counsel

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ORDER

The present Writ Petitions are 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 17.05.2024 in DIN & Letter No:ITBA/COM/F/17/2024-25/1064981571(1).

2. The learned counsel for the Petitioner submits that the impugned Notification was issued to transfer the petitioner's case to the Central Circle, Kolkata. He submits that in the present Writ Petition, the Petitioner is the resident of Coimbatore having a registered office at Coimbatore. Under this circumstance, the show cause notification was issued by the 1st respondent on 09.04.2024 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 had filed their reply on 13.04.2024.

3. The main grievance of the Petitioner is that their reply was not considered while issuing the Notification dated 17.05.2024. Further, no opportunity of personal hearing was provided. On 11.05.2024, the petitioner requested for personal hearing. However, the personal hearing was not afforded to. Therefore, the learned counsel for the petitioner 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 petitioner 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. 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 stated that the Petitioner is 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.

5. Per contra, Mr.A.N.R.Jayaprathap, learned Junior Standing Counsel appearing for the respondents strongly made an objection to the contention of the learned counsel appearing for the Petitioner. He would submit that in the present case, the petitioner has been carrying on business within the jurisdiction of Kolkata Zone. Particularly, the petitioners have been carrying on the Lottery Business in Kolkata and several States of India 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 petitioner was issued on 09.04.2024. In the said show cause notice, the respondents have narrated the situation in which, they intend to transfer the petitioner's case to Kolkata. 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 petitioners' reply, the Notification was issued on **17.05.2024** under Section 127 (2) of the Income Tax Act. Before issuing the Notification, all the contentions of the petitioner was considered by the respondents and accordingly, order came to be

passed. 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, the petitioner is well aware and those documents affect the assessment of the petitioner. Further, in the show cause notice, other details are narrated. Therefore, taking into account the seriousness of the violation and the petitioner 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 Petition is not maintainable and hence, the same may be dismissed.

6. I have given careful 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.

7. 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.

8. As far as the first issue is concerned, the petitioner is having registered office at Coimbatore. According to the petitioner, 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 petitioner and would directly affect the assessment of the petitioners and under these circumstances, they have no objection to centralise the case of the petitioner, 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.

In view of the above, you are hereby being show caused as to why order u/s 127 of the Income Tax Act, 1961 should not be passed to centralize your case for effective and co-ordinated investigation in your case. Accordingly, you are granted an opportunity to convey your objection in writing, if any, within 15 (Fifteen) days from the date of receipt of this letter."

09. 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 petitioner. Under these circumstances, they have issued the show cause notice and in the said show cause notice, the petitioner is requested to file a reply within a period of 15 days. The petitioner has filed their reply on 13.04.2024. Therefore, as contended by the learned Junior Standing Counsel, the respondents have provided the sufficient opportunity to file reply/objections to the Petitioner.

10. The reply filed by the petitioner reads as follows:-

Date : 13.04.2024

To

The PCIT (Central), Chennai-2,
Room No.302, NewBuilding-III Floor,
Investigation Building
No.46(OldNo.106), Mahatma GandhiRoad
Chennai-600034.

Respected Sir,

Ref: PAN: AACCT6738K/ Our Own case.

Sub: Your Notice u/s.127 with DIN & Notice No.ITBA/COM/F/17/2024-25/1064008600(1) dt.09.04.2024.

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With reference to your above notice received on 09.04.2024, 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: AACCT6738K).

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, Coimbatore.

11. A perusal of the above reply filed by the petitioners, the petitioner 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.

12. The petitioner is 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 petitioner 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, the Notification dated 17.05.2024 was issued.

13. As all the materials have been collected in Kolkata Office, the respondents, taking into consideration of the reply filed by the petitioner, 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 petitioner, connected with the search conducted with regard to Lottery business, it was closely linked with the assessment of the petitioner.

14. I do not find any material to show that the respondents failed either to provide an opportunity 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.

15. 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 Coimbatore, 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 17.05.2024. In such case, the present writ petition is liable to be dismissed.

16. 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 petitioner's 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.

17. 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.

18. 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.

29.08.2024

arr/asi

To

1. The Principal Commissioner of Income Tax
   Central -2, Chennai,
   Income Tax Department,
   No.108, 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.

<u>KRISHNAN RAMASAMY, J.</u>

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