202 **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

2024:PHHC:044287-DB
CWP-16680-2005 (O&M)
Date of Decision: 02.04.2024

Asia Resorts Ltd. …Petitioner

Vs.

Union of India and another …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present Mr. S.K. Mukhi, Advocate for the petitioner.

Mr. Ishaan Loomba, Advocate for
Mr. Vaibhav Gupta, Advocate for the respondents.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. This is a petition relating to the year 2005 and is pending before this Court since long.

2. While learned counsel for the petitioner argued but at the same time, he also requested for an adjournment. However, we are not inclined to accede to his request for adjournment and similar prayer was made by learned counsel appearing on behalf of the revenue which was also declined. Cases cannot be allowed to be kept pending for years together and at the asking of the lawyers cases are not required to be adjourned.

3. Learned counsel for the petitioner has submitted that vide order dated 5.10.2004 read with order dated 28.10.2004, the Director General of Income Tax (Investment) Chandigarh had transferred the case of the petitioner – Asia Resorts Limited, Parwanoo, from Central Circle, Chandigarh to Additional CIT, Range-I, Chandigarh. Thereafter, the Commissioner of Income Tax-I, Chandigarh could not have passed order transferring the case of the petitioner

from ACIT, Circle-1 (1), Chandigarh to ACIT, Circle Solan (Himachal Pardesh).

4. Learned counsel for the petitioner further submits that the entire place of business of the petitioner is situated at Chandigarh and Parwanoo and, therefore, there was no occasion to transfer the case to Himachal Pardesh as it would cause great inconvenience to the petitioner. It is also averred that the officer, who has passed the order, is subordinate to the Director General and that the order of the Director General of Income Tax ought not have been bye-passed by a subordinate officer.

5. Per contra, learned counsel for the respondents in their reply have submitted that the Chief Commissioner of Income Tax in terms of the powers under Section 127 of the Income Tax Act is exclusively empowered to transfer cases to appropriate place of adjudication after considering the aspects. It is submitted that in terms of the judgment passed by Hon'ble the Supreme Court in ***Ajantha Industries vs Central Board of Direct Taxes*** 102 ITR 281, reasons are required to be recorded after giving an opportunity of hearing to the concerned assessee before passing of the order under Section 127 (1) of the Income Tax Act. It is submitted that such exercise was conducted by the respondents and the order, therefore, does not warrant any interference.

6. We have considered the submissions and after carefully examining the order dated 05.10.2004 passed by the Director General of Income Tax (Investment), Chandigarh and the modification order dated 28.10.2004, we find that so far as the petitioner's case is concerned, which is at Sr. No. 42 in the order dated 05.10.2004 was not transferred from Solan Range, Solan to Additional CIT, Range-1, Chandigarh by the Director General of Income Tax (Investment), Chandigarh and the contention of learned counsel for the petitioner is found to be erroneous.

7. It is further noticed that before passing an order proposing to transfer the case to AICT, Solan, a notice was issued to the petitioner under Section 127 of the Act and an opportunity of personal hearing was also afforded, whereafter, a detailed order was passed giving detailed reasons for transferring the jurisdiction under Section 127 of the Act to AICT Solan by the Commissioner of Income Tax, Chandigarh. A look at the provisions of Section 127 of the Act also reflects that the power has to be exercised by the Commissioner of Income Tax and such power has to be exercised for the reasons to be recorded as has been held by the Hon'ble Supreme Court in the case of Ajantha Industries and others vs. CBDT and others 102 ITR 281 (SC).

8. Having noticed the reasons, this Court is satisfied that the order has been passed with due application of mind and no perversity exits in the order. It is also noticed that the convenience of the assessee cannot overreach the need of the revenue for better investigation of a case since the main place of business activities of the petitioner is in Himachal Pradesh and its hotels are in Parwanoo and Manali and the registered office is also situated at village Datyar, Himachal Pradesh. The decision taken by the Commissioner cannot be said to be unjustified. This Court further finds support of the aforesaid facts from the judgments delivered in Shri Rishikul Brahmacharya Ashram vs. Union of India and others 135 ITR 139 (Rajasthan), Mangal Chand and sons vs. CBDT 1985 155 ITR 344 (Calcutta), Peacock Chemicals (P) Ltd. vs. Commissioner of Income Tax 182 ITR 98 (Allahabad) and Jharkhand Mukti Morcha vs. Commissioner of Income Tax 225 ITR 284 (Patna).

9. In the reply filed by the respondents, it has been pointed out that as per the assessment proceedings in the year 2001-2002, the assessee bank accounts were found to be maintained with four different accounts while three different bank accounts were maintained at Delhi, Ludhiana and Chandigarh.

The concurrence was taken between the Chief Commissioner of Income Tax, Shimla and Chief Commissioner of Income Tax, Chandigarh, before passing the order under Section 127 of the Act. Thus, it is submitted that the power has been duly exercised in consonance with the law.

10. This Court, however, takes notice of the fact that vide interim order dated 20.10.2005, the operation of the order dated 28.09.2005 was stayed as we have reached to the conclusion that the order dated 28.09.2005 does not require to be interfered, we hold that if the respondents have continued to assess the taxation and returns of the petitioner at Chandigarh, in terms of the interim order such assessment would not be vitiated taking into consideration that after 2021 the new tax regime of faceless has been introduced and the decision of assessment at a particular place shall have no further effect. However, if the assessment has not been conducted, the effect of order dated 28.09.2005 shall come into force.

11. We are in agreement and find that the decision taken is in accordance with law and cogent reasons have come forward for transferring the case.

12. With the aforesaid observations, the writ petition is dismissed accordingly.

13. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

02.04.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No