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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 12438/2024 & CM APPL. 51748/2024**

HT GLOBAL IT SOLUTIONS HOLDINGS LIMITED

.....Petitioner

Through: Mr Percy Pardiwala, Sr Advocate with Mr Harsh Kapadia, and Mr Prakash Kumar, Advocates.

versus

COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION-2, DELHI & ORS.

.....Respondents

Through: Mr N Vankatraman, ASG, Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC and Mr Abhishek Anand, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

% **20.11.2024**

1. The petitioner has filed the present petition, *inter alia,* praying as under:-

> "i. issue a writ in the nature of Certiorari or any other order or appropriate direction to quash and set aside:
>
> (a)the impugned order dated 09.01.2024 passed by Respondent No.1 under section 127 of the Income Tax Act, 1961;
>
> (b) the impugned communication dated 25.06.2024 issued by Respondent No. 2; and
>
> (c) the consequential notices / communications/ actions sent/undertaken pursuant to the impugned order dated

09.01.2024 under section 127 of the Income Tax Act, 1961 by Respondent No. 2 and/or any other Revenue authority.

ii. Issue a writ in the nature of mandamus or any other order or appropriate direction to Respondent No. 1 and / or Respondent No. 2:

(a) to forthwith withdraw and/or cancel the impugned order dated 09.01.2024 passed by Respondent No. 1 under section 127 of the Income Tax Act, 1961;

(b) to forthwith withdraw and/or cancel the impugned communication dated 25.06.2024 issued by Respondent No. 2;

(c) to forthwith withdraw and/ or cancel the consequential notices / communications/ actions sent/ undertaken pursuant to the impugned order dated 09.01.2024 under section 127 of the Income Tax Act, 1961 by Respondent No. 2 and/or any other Revenue authority; and

(d) to forthwith forbear from taking any steps whatsoever pursuant to or in implementation of the transfer order dated 09.01.2024.

iii. Issue a writ of prohibition or a writ in the nature of prohibition, prohibiting Respondents from taking any steps or coercive action pursuant to the impugned transfer order dated 09.01.2024.

iv. Pending the hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay the operation of:

(a) the impugned order dated 09.01.2024 passed by Respondent No.
1 under section 127 of the Income Tax Act, 1961;

(b) the impugned communication dated 25.06.2024 issued by Respondent No. 2; and
(c) the consequential assessment proceedings undertaken by Respondent No. 2 pursuant to the impugned order dated 09.01.2024 passed under section 127 of the Income Tax Act, 1961.

v. To issue order(s), direction(s), writ(s), or any other relief(s) as this Hon'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice; and
vi. To award Costs of and incidental to this petition be paid by the Respondents."

2. Apart from other grounds, the petitioner claims that the impugned order dated 09.01.2024 (hereafter *the impugned order*) is vitiated as it has been passed in violation of the principles of natural justice.

3. Mr. Venkatraman, the learned Additional Solicitor General (ASG) countered the said submission. He submits that the petitioner has obtained the Permanent Account Number (PAN) incorrectly, without disclosing the company in which it has invested the funds is in Mumbai. The petitioner should have obtained the PAN from the Mumbai Commissionerate. He also submits that had the petitioner proceeded in accordance with law, the Income tax Authorities of the Mumbai Commissionerate would have the jurisdiction to complete the assessment proceedings under the Income Tax Act, 1961 (hereafter *the Act*).

4. It is also pointed out that in the event this court interferes with the impugned order at this stage, further proceedings may be barred by

limitation.

5. Mr. Pardiwala, the learned senior counsel for the petitioner submitted, during the course of his arguments, that if the petitioner is granted an opportunity to be heard, the petitioner would not raise the ground of limitation irrespective of any delay so occasioned.

6. Mr. Venkatraman, the learned ASG was agreeable to the same, subject to the condition that the period from the date of the impugned order (that is, 09.01.2024) and the date on which the order is passed pursuant to hearing, which may be afforded to the petitioner, be completely excluded from the period of the limitation.

7. Mr Pardiwala was also agreeable to the same. Therefore, on 05.11.2024, this court considered it apposite to grant the petitioner the time for filing an affidavit to the said effect. The affidavit has since been filed wherein it has been, *inter alia,* affirmed as under:-

> "4. As mentioned during the course of the hearing, the Petitioner hereby states that if the Order is set aside and an opportunity of being heard is provided to the Petitioner before transferring the case to any jurisdiction in accordance with the provisions of section 127 of the Act, it will not challenge the validity of the on-going assessment proceeding for the Assessment Year 2022-23 on the ground that such proceeding is barred by limitation provided under section 153 of the Act solely on the ground of Respondent No.2 exercising jurisdiction pursuant to the Order which is declared as being unlawful and bad in law for not following the mandate of the section 127 of the Act."

8. Mr. Vankatraman has some apprehension regarding the last sentence of paragraph no. 4 of the affidavit. In view of the consensus between the parties, this court had suggested that a consent order be passed without going into the dispute raised in this petition. The learned ASG had consented that the petitioner may be granted an opportunity to contest the issue of transfer of the jurisdiction to Mumbai, without the impugned order being declared as illegal or contrary to law. However, the last sentence of paragraph no.4 of the affidavit appears to be in variance with the aforesaid suggestion.

9. Undisputedly, a consensus between the parties on the lines as suggested by counsel, would obviate the requirement of examining the validity or legality of the impugned order in the present petition.

10. Mr Pardiwala, states on instructions, that the last line of paragraph no.4 be read as omitted. He submits that there is no ambiguity in the suggestion made during the course of the proceedings and the petitioner is agreeable to the said course.

11. Thus, without going into the question of validity of the impugned order, this court consider it apposite to dispose of the above captioned petition by granting the petitioner another opportunity to contest the issue of transfer of the jurisdiction to Mumbai.

12. The petitioner would file its representation regarding the transfer of the jurisdiction to Mumbai within the period of two weeks from date. The concerned officer shall after affording an opportunity to the petitioner of

being heard, pass an appropriate order, as expeditiously as possible and preferably within the period of four weeks thereafter.

13. It is clarified that the period from the date of the impugned order, that is, 09.01.2024 and the date on which the concerned officer passes the fresh order under Section 127 of the Act, would be excluded for the purpose of limitation for all purposes.

14. This order is passed with the consent of the parties.

15. The petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 20, 2024

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