

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 28482 of 2024

Reserved on : 10.01.2025
Pronounced on: 29.01.2025

M/s. Kvell Properties Private Limited

...Petitioner

-Vs-

The Principal Commissioner of Income Tax, Kolkata-9 & Ors.

...Respondents

Present:-

Mr. Avra Mazumder
Ms. Alisha Das
Mr. Samrat Das
Ms. Elina Dey
Mr. Sourendra Nath Banerjee
Mr. Alishan Hossain

... for the petitioner

Mr. Tilak Mitra

... for the State

Rajarshi Bharadwaj, J:

1. The Petitioner prefers the present petition challenging the impugned show cause notice dated February 23, 2024 that is in violation of the principles of natural justice. The facts of the case in a nutshell are that on September 5, 2023, Respondent No. 4 issued a summons under Section 131(1A) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"),

directing the Petitioner to provide documents related to its transactions with one Isprava Vesta (P) Ltd. and associated entities. The Petitioner, on September 7, 2023, submitted its books of accounts, bank statements, and relevant agreements.

2. On February 13, 2024, Respondent No. 1 issued a show cause notice under Section 127(1) of the Act, alleging that incriminating materials were found during search and survey operations conducted at the premises of entities related to the Isprava Group on June 12, 2023. The notice claimed that the Petitioner failed to account for the purchase of a 1671 sq. mt. plot, 'Alex 24K,' from one Fastgrowth Estates (P) Ltd. and made an unrecorded cash payment of ₹2.53 crores. Consequently, a transfer of jurisdiction over the Petitioner's PAN was proposed.

3. The Petitioner maintains that the transaction for the purchase of the said plot was duly recorded in its books of accounts and the conveyance deed, with the purchase price aligning with the circle value for stamp duty purposes. The allegation of unaccounted cash payments was denied as baseless.

4. The Petitioner raised objections to the proposed transfer through letters dated February 27, 2024 and October 9, 2024, requesting Respondent No. 1 to disclose evidence supporting the allegations. Despite repeated requests, Respondent No. 1 failed to provide any such evidence.

5. Respondent No. 1, in the impugned order dated October 18, 2024, stated that the Petitioner failed to appear for a hearing on October 14, 2024. However, the Petitioner had informed Respondent No. 1 via a letter dated October 9, 2024, that it received insufficient notice due to the Durga Puja holidays. A request for an extension and rescheduling was made but was disregarded, depriving the Petitioner of a fair opportunity to represent its case.

6. The impugned order failed to address the Petitioner's objections, cited vague and unsubstantiated reasons for the transfer and lacked compliance

with procedural requirements, including agreement between jurisdictional Principal Commissioners herein Respondent no. 1.

7. The Learned Counsel appearing for the Petitioner submits that the purchase of the 1671 sq. mt. plot was duly recorded in its accounts and supported by the conveyance deed, which aligns with the circle value. The allegation of unaccounted cash payment is unsubstantiated and cannot form the basis for the proposed jurisdictional transfer.

8. Respondent No. 1 has failed to disclose any incriminating material or evidence justifying the allegations against the Petitioner, despite repeated requests. The absence of credible evidence renders the allegations speculative and unsustainable.

9. The Petitioner was denied a reasonable opportunity to respond to the allegations due to insufficient notice and the failure of Respondent No. 1 to reschedule the hearing. This constitutes a gross violation of the principles of natural justice and procedural safeguards under Section 127 of the Act.

10. The impugned order lacks cogent reasoning and fails to address the objections raised by the Petitioner. The vague reference to "incriminating material" and coordination requirements is insufficient to justify the transfer of jurisdiction.

11. The transfer order is procedurally flawed due to the absence of documented concurrence between the jurisdictional Principal Commissioners as mandated under Section 127 of the Act.

12. The learned Counsel further cites a judgment of the Hon'ble High Court of Calcutta in **Pradeep Kumar Kajaria v. Union of India & Ors.** reported in **2024 (12) TMI 509** which quashed a transfer order under Section 127 of the Act for similar violations, reinforcing the statutory and procedural requirements.

13. In light of the above, the Petitioner respectfully submits that the impugned order dated October 18, 2024, be quashed for being arbitrary, procedurally defective and violative of the principles of natural justice.

14. Learned Counsel appearing for the Respondent authorities submits that the present writ petition is a frivolous attempt by the petitioner to obstruct the legitimate claims of the Revenue. The impugned order under Section 127 of the Income Tax Act, 1961, is administrative in nature, facilitating the transfer of jurisdiction for effective tax administration. It is neither an assessment nor a demand order and does not prejudice the petitioner's rights.

15. The jurisdiction transfer was necessitated by a search and seizure operation under Section 131(1A) of the Act and a notice dated September 5, 2023 was duly served. The petitioner responded but denied any connection with the entity involved in the search. The respondent authority, in its reply dated February 13, 2024 and final order dated October 4, 2024, provided detailed reasons for the transfer. A personal hearing was scheduled for October 14, 2024, but the petitioner failed to appear and the transfer order was passed on October 18, 2024, which was reflected on the ITBA portal.

16. It is further submitted that reliance on **Pradeep Kr. (supra)** is misplaced as that case involved procedural lapses, unlike the present case, where due process was followed and the transfer was justified by incriminating materials. The petitioner's failure to participate in the proceedings shows a deliberate attempt to impede the process.

17. Learned Counsel by citing judicial precedents, including **Pannalal Binjraj vs. Union of India** reported in **AIR 1957 SC 397** and **Kashiram Aggarwalla vs. Union of India** reported in **AIR 1965 SC 1028**, affirm that Section 127 transfers are administrative acts intended for the convenience of tax administration, with no fundamental right to be assessed in a specific jurisdiction. Moreover, the recent judgment of this Hon'ble Court in **Kamal**

Nath vs. Pr. CIT reported in **(2023) 149 taxman.com 369** further uphold the validity of such transfers, provided procedural safeguards are observed.

18. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition on the grounds that the transfer order issued under Section 127(2) of the Income Tax Act, 1961, is found to be procedurally flawed, arbitrary, and violative of the principles of natural justice. The respondent no.1 failed to adhere to the principles of natural justice. Despite the Petitioner's detailed objections to the proposed transfer and a request for the disclosure of incriminating material, no opportunity of being heard was provided and the requested material was not furnished. The petitioner was not provided with a reasonable opportunity to respond to the allegations due to inadequate notice for the hearing scheduled on October 14, 2024, coinciding with the Durga Puja holidays. Despite a valid request for rescheduling, Respondent No. 1 failed to accommodate the petitioner's concerns, effectively depriving the petitioner of a fair chance to present its case. Such omissions violate the procedural safeguards enshrined under Section 127(2), rendering the transfer order invalid.

19. The impugned order also lacked cogent reasoning and failed to address the specific objections raised by the petitioner. The allegations of unaccounted cash payments and irregularities in the transaction were vague and unsupported by any credible evidence. The respondent's reliance on vague references to "incriminating material" without disclosing the basis or specifics of the evidence rendered the transfer order speculative and unsustainable.

20. This Court also distinguished the present case from precedents cited by the respondent, such as ***Pannalal Binraj (supra)*** and ***Kashiram Aggarwalla (supra)***. It held that while Section 127 transfers are administrative acts intended for effective tax administration, the procedural safeguards and principles of natural justice must be adhered to.

21. The Respondents' argument that the transfer was necessitated for coordinated investigation and meaningful assessment holds merit only when supported by valid reasons and material evidence. In the present case, the purported need for coordination is not substantiated by specific or credible evidence linking the Petitioner's assessment to the alleged concealment of income by the partnership firm.

22. The Hon'ble Supreme Court in **Smt. Chandra Prabha Kushwaha & Ors. v. Commissioner of Income Tax and Anothers** reported in **(2014) 361 ITR 66** held that:

"6. We are not inclined to express any opinion on the merits of the issue as to whether the cases are required to be centralised since that has to be determined after following the procedure prescribed under section 127(2) of the Act. Moreover, the reasons have to be spelt out in the order which has been passed under section 127(2) of the Act which is admittedly not the case here."

23. For the foregoing reasons, this Court concludes that the impugned transfer order dated October 18, 2024 is legally unsustainable. All subsequent notices and actions taken by the respondent authorities, based on this invalid transfer, lack jurisdiction. Accordingly, the writ petition is allowed and the transfer order is set aside.

24. All pending applications are accordingly disposed of.

25. There shall be no order as to costs.

26. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata
29.01.2025
PA (BS)