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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.1944 OF 2017

Rentworks India Private Limited ...Petitioner
vs.
Principal Commissioner of Income
Tax-14, Mumbai and another ...Respondents

Mr.Vikram Nankani,Senior a/w Mr.Nishant Thakkar,
Mr.Ravi Gandhi, Mr.Manek Kamdar, Mr.Rashmin Jain,
Mr.Hiten Chande and Mr.Rishab Ranka i/b Kanga and
Co. for the Petitioner
Mr.Suresh Kumar for the respondent

CORAM : A.S.OKA, &
 A.K.MENON,JJ.
DATE : OCTOBER 11, 2017

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 On 19th September 2017, notice for final disposal at admission stage was issued. Accordingly, today, we have taken up the writ petition for final hearing. The Commissioner of Income Tax, Mumbai issued notice dated 18th April 2017 to the petitioner taking recourse to sub-section 2 of Section 127 of the Income Tax Act,1961 (for short 'the Income Tax Act'). The petitioner-assessee was put to notice that there is a proposal to transfer the case of the petitioner to DCIT, Central Circle-2(1), Chennai for proper co-ordinated investigation. There was a reply filed to the said show cause notice by the petitioner on 8th May 2017. The impugned order was made by the Principal Commissioner of Income Tax, Mumbai under sub-section

2 of section 127 of the Income Tax Act by which the case of the petitioner was transferred to DCIT, Central Circle-2(1) at Chennai. It is this order which is subjected to a challenge in this writ petition under Articles 226 and 227 of the Constitution of India.

2 The first submission of the learned senior counsel appearing for the petitioner is that the show cause notice is vague. The second submission is that the impugned order is passed in breach of principles of natural justice as the contentions which are raised in the reply have not been adverted to. Next challenge is on the merits of the reasons assigned. There is one more important challenge which is based on non compliance of the requirements of sub-section (2) of Section 127 of the Income Tax Act. The submission which is supported by a specific ground is that the condition precedent for show cause notice is that there has to be an agreement between the first respondent (Principal Commissioner of Income Tax-14, Mumbai) and the Principal Commissioner of Income Tax, Circle-Chennai as contemplated by sub-section (2) of Section 127. In support of his contention, he relied upon the various decisions including the decision of the Apex Court in the case of Noorul Islam Educational Trust vs. Commissioner of Income Tax-1¹. The learned counsel for the respondent dealing with the last submission relied upon clause (o) of paragraph 4 of the affidavit in reply of

1 [2016] 388 ITR 489 (SC)

Ankit Verma, ACIT – HQ (Judicial), Pr.CIT-14, Mumbai. He submitted the existence of such agreement will have to be inferred on the basis of the material on record by necessary implication. He invited out attention to the first paragraph of notice dated 18th April 2017. He submitted that the request came from the investigation office at Chennai on 1st December 2015 to the Principal Commissioner of Income Tax, Mumbai for transfer of the case to Chennai. He submitted that this assertion in the notice shows that there is no lack of agreement between the two Principal Commissioners. While dealing with this aspect, he relied upon the decision of High Court of Judicature at Patna in the case of Jharkhand Mukti Morcha vs. Commissioner of Income Tax². He placed reliance on the paragraph 12 of the said decision.

3 The learned senior counsel for the petitioner invited out attention to the decision of a Division Bench of this Court in the case of Ramswaroop vs. Commissioner of Income Tax-II, Nagpur³.

4 We have given careful consideration to the submissions made across the bar. It will be necessary to advert to section 127 of the Income Tax Act which reads thus:

“127. (1) The [Principal Director General] or Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may

2 [1997] 95 Taxman 132 (PAT.)

3 [2016] 388 ITR 208 (Bombay)

after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or the Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner, -

(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or] Director General or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is impossible to do so, and after recording

his reasons for doing so, pass the order;
(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is

transferred.

Explanation- In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction respect of any year.]

5 In the present case, there is no dispute that sub-section 2 of section 127 is applicable. The condition precedent for exercising power under clause (a) of sub-section 2 of section 127 for passing an order of transfer is an agreement which is contemplated by clause (a) of sub-section 2 of section 127. In the present case, as far as the existence of the agreement is concerned, the submission is crystalised in clause (o) of affidavit in reply. Clause (o) reads thus:

"(o) With reference to paragraph (15) O,P and Q of the writ petition the agreement of the concerned jurisdictional Pr CITs is by necessary implication. Proceedings u/s 127 (2) were initiated in this jurisdiction upon receipt of reference from the office of the DGIT (Inv.), Chennai seeking notification of the case. This necessarily implies agreement

between the respective Pr.CITs. It is only in the case of lack of agreement that a separate procedure is provided in the Act. Further as the petitioner received notice u/s.143(2) from DCIT Central Cir 2(1), Chennai, which fact also underscores the agreement with the Pr.CIT Centra 2 Chennai."

(underline supplied)

6 The law on this aspect is laid down in the case of Noorul Islam Educational Trust (supra). Paragraphs 4 and 5 of the said decision reads thus:

"4 As the Income-tax/assessment file of the appellant – assessee has been transferred from one Assessing Officer in Tamil Nadu to another Assessing Officer in Kerala and the two Assessing Officers are not subordinate to the same Director General or Chief Commissioner or Commissioner of Income Tax under section 127(2) (a) of the Act an agreement between Director General, Chief Commissioner or Commissioner, as the case may be, of the two jurisdictions is necessary.

5 The counter affidavit filed on behalf of the Revenue does not disclose that there was any such agreement. In fact, it has been consistently and repeatedly stated in the said counter affidavit that there is no disagreement between the two Commissioners. Absence of disagreement cannot tantamount to

agreement as visualized under Section 127(2)
(2) (a) of the Act which contemplates a
positive state of mind of the two
jurisdictional Commissioners of Income Tax
which is conspicuously absent."

(underline supplied)

7 In view of the absence of the agreement as contemplated by clause (a) of sub-section (2) of section 127, the Apex Court proceeded to interfere with the order of transfer of goods by setting aside the same.

8 The Apex Court has categorically held that the absence of disagreement will not be tantamount to an agreement as visualized under section 127(2)(a) which contemplates positive state of mind of the two jurisdictional Principal Commissioners of Income Tax. The agreement contemplated by clause (a) of sub-section (2) of section 127 may not be a drawn up agreement. What is necessary is that there has to be an agreement which will involve positive state of mind of the two jurisdictional Principal Commissioners. Both of them must consent to the transfer after application of mind.

9 In the present case, it is not even the case made out in the show cause notice that the agreement as contemplated by the first part of clause (a) of sub-section (2) of section 127 exists. The existence of such agreement between two jurisdictional Commissioners is a condition precedent for passing

the order of transfer. Except for the request which came from the investigation office, Chennai of transferring the case, there is no reference whatsoever to any such agreement. Clause (b) of sub-section (2) of section 127 provides for consequences when there is no such agreement. When the jurisdiction to pass an order of transfer under clause (a) of sub-section (2) of Section 127 can be exercised only when there is such an agreement, the fact that such an agreement exists ought to have been stated in the show cause notice as the same is a jurisdictional fact. Apart from the failure to mention the same in the show cause notice, the only stand of the revenue is that there is an agreement by implication. This stand is completely contrary to paragraph 5 of the decision of the Apex Court in the case of Noorul Islam Educational Trust (supra). The decision in the case of Ramswaroop (supra) will also bind this Court for the reasons stated above.

10 Coming to the decision in the case of Jharkhand Mukti Morcha, relevant facts are in paragraph 12. In the said case, specific reliance was placed on a document dated 27th November 2016. It is on the basis of the written document that a finding was recorded that there was an agreement between the Jurisdictional Commissioners of Ranchi and Delhi. In the present case, even going by the case made out by the respondent, no such agreement is spelt out. In absence of any such agreement, the first respondent had no jurisdiction to pass the order of transfer.

11 As the impugned order cannot be sustained on above ground, it is not necessary to to into other challenges.

12 Accordingly, for the reasons quoted above, we pass following order :

. Impugned order dated 25th May 2017 (Exhibit-H to the petition) is hereby quashed and set aside. Rule is made absolute on above terms with no order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)

