(2015) 01 KAR CK 0478

In the Karnataka High Court

Case No : Writ Appeal No. 3460 of 2013 (T-IT)

Commissioner of Income Tax and Others APPELLANT

Vs

Span Design and Development (P.) Ltd. RESPONDENT

Date of Decision : 12-01-2015

Acts Referred:
Income Tax Act, 1961 — Section 127, 132, 133A, 143(1), 143(2)

Citation : (2015) 372 ITR 432 : (2015) 232 TAXMAN 633

Hon'ble Judges : N. Kumar, J;B. Veerappa, J

Bench : Division Bench

Advocate : K.V. Aravind, for the Appellant; S. Parthasarathi, Advocates for the Respondent

Judgement

N. Kumar, J.

1. The Revenue has preferred this appeal against the order passed by the learned single judge1 transferring the case of the assessee to the Deputy Commissioner of Income-tax, Central Circle-3, Hyderabad and remitting the proceeding for fresh consideration. The assessee is a company. A search under section 132 of the Income-tax Act, 1961 (for short hereinafter referred to as "the Act"), was conducted in the premises of M/s. Bibi General Hospital and Cancer Centre, Malakpet, Hyderabad.. A sum of Rs. 85,00,000 was seized in 12 envelopes. A statement of Sri Syed Iqbad Mehdi was recorded and he admitted the cash being handed over by Sri Naseer Aziz A.N., who is the managing director of the assessee. Sri Naseer Aziz also admitted his visit to the hospital on February 7, 2009. Survey under section 133A of the Act was conducted in the case of the assessee. The residential premises of Sri Syed Mohd. Mehdi was also subjected to search and incriminating documents were found and seized. Post-search investigation statements were recorded from Sri Naseer Aziz and the seized materials were confronted to him. According to the Revenue from the entire investigation, it was found that Sri Naseer Aziz through the assessee was having various transactions through Sri Syed M. Mehdi. For co-ordinated

investigation, the assessee was proposed to be centralised at Hyderabad along with 8 other assessees. The individual assessment of Sri Nazeer Aziz and his wife were also centralised at Hyderabad.

2. A show-cause notice was issued under section 127 of the Act to the respondent. The assessee through his managing director, Sri Nazeer Aziz, objected for transfer of assessment from Bengaluru to Hyderabad. After considering the objections raised, an order came to be passed transferring the assessment from Bengaluru to Hyderabad for co-ordinated investigation. Thereafter, notices were issued under section 153C of the Act. The assessee filed its return after issue of notice under sections 143(2) and 143(1) of the Act. The Assessing Officer concluded the assessment for the assessment years 2007-08, 2008-09 and 2009-10 by assessing the income at Rs. 14,04,112, Rs. 46,39,425 and Rs. 13,91,857, respectively. The assessee challenged the said order of transferring his file from Bengaluru to Hyderabad for centralised assessment before the learned single judge of this court.

3. The learned single judge of this court, who heard the matter, was of the view that the notice under section 127 of the Act issued to the assessee should have been enclosed with all the relevant material particulars and copies of the documents relating to search and seizure alleged to have been carried out at Hyderabad on February 7, 2009. In the absence of such relevant particular, the assessee was handicapped to submit explanation and objections to the transfer of his case from Bengaluru to Hyderabad. The notice bereft of material particular. Therefore, it does not satisfy the requirements of the principles of natural justice. Therefore, the order of transfer passed in pursuance of the said notice was quashed. Aggrieved by the said order, the present appeal is preferred.

4. The learned counsel for the Revenue assailing the impugned order contends that when the notice was issued under section 127 of the Act to the assessee, it did not plead that they want particulars of search and seizure but in contrary it entered appearance through its managing director and filed a detailed statement of objections opposing the transfer. It is only after considering the said objection, the impugned order has been passed and, therefore, the impugned order passed by the learned single judge on the ground that the principles of natural justice has been violated and there is no obligation on the part of the Revenue to furnish all the particulars and, hence, contended that it requires to be set aside.

5. Per contra, learned counsel for the assessee submitted that in the notice issued, there is no whisper about how the search and seizure were conducted at Hyderabad which is in no way connected with the assessee. Even in the impugned order passed, no such connection is found to have been existing and unless the nexus is made out, the question of transferring the file of the assessee from one jurisdiction to another jurisdiction would not arise and, therefore, on this ground, the impugned order is sustainable for the reasons given by the learned single judge.

6. The material on record discloses that the managing director of the assessee has given his statement against the transfer of his file from Bengaluru to Hyderabad and he has not challenged the same. On the contrary, he has participated in the assessment proceedings and the assessment order has been framed. In so far as communication conducting search and seizure at Hyderabad in so far as the assessee is concerned, it could be clearly gathered from the answers given by the managing director in his statements which are recorded on February 7, 2009, in the form of question and answers as follows:

"9. Question : Please mention when you entered in to the above-mentioned real estate deal with Mr. Syed M. Mehdi and also give full details.

Answer: I entered into agreement with Sri Syed M. Medhi for purchasing 10 plots for rupees 1.50 crores. A part of which I have already paid APP. 1.40 crores and the balance Rs. 10 lakhs is yet to be paid. The registration for these 10 plots is over the documents are at Hyderabad with Shri Syed M. Mehdi. He shall give above documents once I paid the entire amount.

10. Question: Please explain the forms for the abovementioned payments made by you to Shri Syed M. Mehdi.

Answer: The abovementioned plot registered in my name and in my wife. Out of the 10 plots mentioned above roughly 2 are registered in my name and roughly 8 plots registered in my wife''s name. '' The source 6f payments made to Shri Syed M. Mehdi are the drawing made by me from the company Span Design and Development Pvt. Ltd. and the partnership firm Span Centre where me and my wife are partner, the entire payment has been made by way of cheque. These cheques given to Mr. Mehdi on various dates and the cheques were drawn from the bank account of our company Span Design and Development Pvt. Ltd. and partnership firm Span Centre and me and my wife personal accounts at Kotak Mahendra Bank, ITPL Branch, White Field, Bangalore."

7. The above answers clearly disclose that the managing director of the assessee has paid money for purchase of 10 plots out of which two are registered in his name and eight are registered in his wife''s name and the seller--Sri Syed M. Mehdi was paid the money by cheques from the account of the assessee and the partnership firm where he and his wife are partners. It is asserted that the cheques given to Sri Mehdi on various dates and the cheques were drawn from the bank account of the assessee and the partnership firm and also of his and his wife''s personal account at Kotak Mahendra Bank, ITPL Branch, Whitefield, Bangalore. From this answers, it is clear that the 10 plots were purchased in Hyderabad, two in the name of the managing director and 8 in the name of his wife. The consideration for these 10 plots was paid to the purchaser from the account of the assessee and from the account of the partnership firm and the individual account of the managing director and his wife. That is why it is necessary to centralise all the returns in order to find out the true nature of the transaction--from which account, how much amount is paid? and how the

documents came to be registered in the name of husband and his wife? The managing director is fully acquainted with all these facts. It is he, who has given all these information and he has no difficulty in going to Hyderabad for being present during the assessment proceedings of his, individual account and his wife''s account. We do not see what difficulty he would have, if the assessee''s account, of which he is the managing director, is also processed at the same time where his individual and his wife is processed. In that view of the matter, the order passed by the authorities transferring the file of the assessee to the Hyderabad is just and proper and without any justification the learned single judge has interfered with the well considered order passed. Therefore, the impugned order cannot be sustained. Hence, we pass the following:

Order

(i) The appeal is allowed.

(ii) The impugned order passed by the learned single judge is hereby set aside and the order of transfer is restored; and

(iii) Parties to bear their own cost.

