

(2014) 02 DEL CK 0021

In the Delhi High Court

Case No : Writ Petition (C) 1147 of 2014, C.M. Application 2393 of 2014 and 2394 of 2014

Vishal Kumar

APPELLANT

Vs

Commissioner of Income Tax and Another

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Income Tax Act, 1961 — Section 127 127(1) 127(2) 132

Citation : (2014) 225 TAXMAN 203

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Ajay Vohra, Ms. Kavita Jha and Sh Vaibhav Kulkarni, for the Appellant; Suruchii Aggarwal, Senior Standing Counsel, for the Respondent

Judgement

S. Ravindra Bhat, J.—This writ petition impugns an order u/s 127 of the Income Tax Act, 1961 ("the Act") passed by the CIT (XVI), New Delhi, as a result of which jurisdiction over the writ petitioner (i.e. the assessee) has been transferred from the DCIT, Circle 48(1), New Delhi to the ACIT, Central Circle, Noida. On 9.10.2013, the CIT, New Delhi issued a show-cause notice to the petitioner u/s 127 of the Act proposing the transfer, in the following terms:

It is proposed to transfer your case from Delhi to Faridabad. Therefore, before transferring your case u/s. 127(2) of the IT Act, 1961 an opportunity of being heard in person or through your authorized representative or a written reply, is being given to you before CIT, Delhi-XVI, New Delhi.

If you have any objection for the proposed transfer you are requested to bring all evidences before CIT, Delhi-XVI, New Delhi, in support of your claim on 18th Oct. 2013 at 12.30 P.M. in Room No. 313 D-Block, Pratyakshkar Bhawan, Dr. S.P. Mukherjee Civic Centre, Minto Road, New Delhi.

In case your reply/submission is not received in this office by 17-10-2013, it will be presumed that you have no objection if your case is centralized with the

Commissioner of Income tax (Central Circle), Faridabad.

2. At this stage, it is important to note the background in which this show-cause notice was issued. The show cause notice pertains to the centralization of the petitioner's case with the CIT, Faridabad, along with the group of cases concerning the Eldeco Group of Companies. The petitioner is the Managing Director of Xander Advisors Pvt. Ltd. ("XAPL"), a company incorporated in India, with its registered offices in Delhi. XAPL are engaged as advisors by Xander Investment Management, Mauritius, which in turn renders advisory services to Xander Investment Holding Limited III ("XIH III") and Xander Investment Holding Limited IV ("XIH IV"), both incorporated in Mauritius. XIH III and XIH IV are foreign shareholders of Indian incorporated companies belonging to the Eldeco Group, including importantly Eldeco Jalandhar Properties Private Limited and Eldeco City Private Limited, which carry-out construction activities in Punjab and Lucknow respectively. The petitioner states categorically that these two companies "are ... special purpose vehicle companies promoted by Eldeco group." It is in this context of the inquiry into the income of the Eldeco Group of Companies, and the search and seizure operations conducted u/s 132 of the Act at the premises of Xanders Advisors and Xander Finance Private Limited, that the show-cause notice were issued.

3. Pursuant to the show-cause notice, while the petitioner did not make any oral representation on the assigned date, written objections were furnished raising the following grounds:

The assessee is the Managing Director of Xander Advisors India Pvt. Ltd., which has its Registered as well as Corporate office in Delhi. Xander Group has invested in the projects of Eldeco Group and formed SPVs for the purpose. The assessee acts only in the capacity of the nominee Director, of the Xander Group and draws no remuneration from Eldeco Group of Companies. Other than this, the assessee has no business relationship with Eldeco Group. We are enclosing the copies of the income tax returns along with the acknowledgment of the assessee for the past 5 years from where it may be verified that he is in receipt of salary from Xander Advisory India Private Limited and has been regularly paying his taxes and filing the returns of income accordingly. In view of the above, we request that the centralization of the assessee's case with Eldeco group, is neither justified nor will it serve any useful purpose and he be continued to be assessed by the existing A.O.

4. These objections were disposed off by the impugned order of the CIT dated 31.10.2013, passed u/s 127(2) of the Act, whereby the transfer was effected. The order states as follows:

A proposal for centralization of search cases of M/s. Eldeco Group with DCIT/ ACIT Central Circle Noida (D.O.S. 28/03/2012) was received vide letter no. 1870 dated 4/9/2013 from the office of Commissioner of Income Tax (Central) Kanpur. The letter also intimated that in continuation to earlier proposal for centralization

of Eldeco Group of Cases issued vide letter no. 1101 dated 27/06/2013, wherein five cases from the CIT XVI Charge were proposed to be centralized, it was found that some more cases of the family members of the Directors or their HUFs should also be centralized as they lead to some relevant information of the assessment in the main entity.

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2. As per the requirements of section 127 of the Income Tax Act, 1961, an opportunity of being heard was provided to Sh. Rohan Sikri and Sh. Vishal Kumar to file their reply if they had any objection to the proposed transfer. No reply was received from Sh. Rohan Sikri. In the absence of any reply from Sh. Rohan Sikri, it is construed that he has no objection to his case getting centralized with DCIT/ACIT Central Circle Noida.

Sh. Vishal Kumar filed a reply dated 17/10/2013. The main contentions made by Vishal Kumar against the proposed transfer were that he was MD in M/s. Xander Advisors India Pvt. Ltd. which had registered office in Delhi; he drew no salary from Eldeco Group of Companies; and he was a regular assessee paying his taxes in time.

Reply of Sh. Vishal Kumar has been considered and is found to have no force in light of the reasons for which proposal for centralization of the cases is sought by the CIT (Central) Kanpur. Assessee has himself stated in his reply that M/s. Xander Group has invested in the projects of Eldeco Group and formed SPVs for the purpose. There is sufficient reason to transfer the case to DCIT/ACIT Central Circle Noida for effecting meaningful investigation in a coordinated manner with one officer.

3. In exercise of powers conferred by sub-section (2) of section 127 of the I.T. Act, 1961 and all powers enabling me in this behalf, I, the Commissioner of Income Tax Delhi XVI New Delhi hereby transfer the cases, particulars of which are mentioned in Column No. 2 of the Schedule hereunder, from the Assessing Officer mentioned in Column No. 4 to the Assessing Officer mentioned in Column No. 5 below, after receiving the concurrence from the Commissioner of Income Tax (Central) Kanpur vide letter no. 1870 dated 4/9/2013. This order is being passed for conducting coordinated investigation:

5. Impugning this order, the petitioner argues that it does not carry any cogent reasons for transfer, as required by Section 127. It is argued that there was no warrant to transfer the cases, as no material was presented on the basis of which the transfer could be made. Rather, such a transfer-it is argued-was made on a mere suspicion, especially since no raid was conducted at the petitioner's residence. Further, learned counsel argues no justifiable and cogent reasons have been brought on record; consequently the Court should use its powers under Article 226. The petitioner in his response to the show-cause notice, specifically stated that he has no business or financial connection with the Eldeco group, apart from holding one position as a nominee Director. It is argued that despite

this categorical assertion, which was not displaced by the Revenue, no reasons have been provided except for a vague reference to the need for "conducting a coordinated investigation". In the absence of any incriminating material suggesting any possible undisclosed income in the hands of the petitioner, and the absence of any link between the Eldeco Group of Companies and the petitioner, it is argued that the rationale of "coordinated investigation" cannot sustain the order of transfer u/s 127. Furthermore, it is argued that since the proceedings have not only been transferred from one Assessing Officer to another, but also from one State to another, the considerations must be stricter in judging whether the powers u/s 127 have been properly utilized.

6. Learned counsel urges that a mechanical order has been passed in this case, which betrays a non-application of mind. Reliance has been placed on various decisions, including R.K. Agarwal and Others Vs. Commissioner of Income Tax and Others, P.S. Housing Finance P. Ltd. and Others Vs. Union of India (UOI) and Others, Rajesh Mahajan and Others Vs. Commissioner of Income Tax, Saptagiri Enterprises Vs. Commissioner of Income Tax and Others, and M/s. Global Energy Pvt. Ltd. Vs. Commissioner of Income Tax, for the proposition that merely mentioning that the transfer is required for the purpose of co-ordinated investigation or administrative convenience is insufficient to justify an order u/s 127. Furthermore, learned counsel argues that the impugned order is totally silent on the nature of the proposed investigation sought to be conducted, since the petitioner is only a salaried employee, who does not have any links with the Eldeco Group. Furthermore, learned counsel argues that the impugned order proceeds on a factually incorrect premise that some of the "family members of the Director or their HUFs" remain to be centralized, which includes the case of the petitioner. This-it is argued-is factually incorrect as the petitioner is not the family member of any of the Directors of any Eldeco Group, nor is the petitioner a member of any of the HUF's related to the Eldeco Group. Finally, learned counsel argued that a reasonable opportunity of being heard is mandatory u/s 127. It is argued that in this case no specific reasons for the proposed transfer were recorded, nor was any material or information communicated to the petitioner, such that an effective representation could be made. Finally, it is argued that the impugned order is contrary to the show-cause notice. While the latter purported to transfer the case to the CIT (Central Circle), Faridabad, the case was ultimately centralized in Noida.

7. The impugned order and the preceding show-cause notice in this case arise from previous investigations of the Revenue into the Eldeco Group of Companies. It is not in dispute today that the petitioner holds a crucial position of Managing Director of XAPL, which in turn, provides advisory services-through a chain of companies-to XIH III and IV, which are part of the Eldeco Group of Companies. The petitioner also admits that the entities lying further downstream are Special Purpose Vehicles, which are dependent upon and controlled by the Eldeco Group, and are engaged in construction activities. The officers of XAPL were subject to search and seizure u/s 132 of the Act. The petitioner is also a nominee Director

appointed by the Eldeco group, and thus, represents the interests of the Eldeco group in that capacity, though-if the petitioner's assertions are believed-receives no monetary or financial gain in that capacity. Nonetheless, through these facts, which present themselves from a reading of the show-cause notice, the impugned order and the facts that are admitted between the parties, it is clear that the petitioner is linked, in some business capacity, with the Eldeco Group of Companies. It is not in dispute that the Eldeco Group of Companies are receiving attention from the Revenue. In such case, the assessment of the assets and liability of the Eldeco Group of Companies, and the assessment of those associated with the functioning of the group in Delhi, by the same Assessing Officer becomes important. Indeed, it is not in the Court's domain to second-guess the Revenue's reasoning, or sit in appeal. Rather, the conspectus of facts in this case clearly points towards some nexus between the Eldeco Group and the petitioner, which satisfied the scrutiny of this Court in its limited writ jurisdiction under Article 226.

8. The Court also takes notice of the fact that an "order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest." (see K.P. Mohammed Salim Vs. Commissioner of Income Tax, Cochin, The purpose of a Section 127 transfer is not to subject the petitioner to any tax liability, or even undergo any other obligation (onerous or otherwise), but rather, only to direct that the regular assessment (as is carried out in the usual course of events) will be conducted by an AO other than the jurisdictional AO in order to ensure coordinated investigation. Importantly, in this case, the Revenue does not rely on the mere plea or assertion of coordinated investigation. Rather, the facts, as discussed above, provide a context of the need for such a coordinate investigation, given the various limbs and branches of the entities involved in the Eldeco Group and their varying business connections. Indeed, the very purpose of the Section 127 order in this case is to ensure than an orderly and coordinated investigation takes place while conducting the assessment of the various (and possibly related) entities involved. Indeed, the Supreme Court has also recognized that a Section 127 order does not - by itself -cause any prejudice to the assessee, and given that due deference must be granted to the Revenue in such matters, the limits of review of such orders is narrow. In Kashiram Agarwala Vs. Union of India (UOI) and Others, , the Supreme Court held:

6. But on the other hand, the provision that nothing in sub-section (1) shall be deemed to require any opportunity to be given, is worded in an emphatic form; and that fact has to be borne in mind in considering the effect of the proviso. Besides, it would not be unreasonable to assume that the recording of reasons prescribed by s. 127(1) would be appropriate where a transfer is being made otherwise than in the manner prescribed by the proviso. In such a case, normally, the assessee has to be given a reasonable opportunity to be heard; and the natural corollary of this requirement is that his objections to transfer should be considered and reasons given why the transfer is made despite the

objection of the assessee. In other words, the requirement as to the recording of reasons flow as a natural consequence and corollary of the requirement that a reasonable opportunity should be given to the assessee. If, however, a reasonable opportunity is not given to the assessee on the ground that it is not possible to do so, s. 127(1) requires that the transfer being of a category where a reasonable opportunity should be given to the assessee, the authority should record its reasons for making transfer, even though no opportunity was in fact given to the assessee. If that be the true position, it is not easy to understand why the proviso should be so construed as to require reasons to be given for the transfer, even though no opportunity to the assessee is required to be given. That is one aspect of the matter which has to be borne in mind in determining the true scope and effect of the proviso.

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8. ...This provision clearly indicates that where a transfer is made under the proviso to s. 127 (1) from one income tax Officer to another in the same locality, it merely means that instead of one income tax Officer who is competent to deal with the case, another income tax Officer has been asked to deal with it. Such an order is purely in the nature of an administrative order passed for considerations of convenience of the department and no possible prejudice can be involved in such a transfer. Where, as in the present proceedings, assessment cases pending against the appellant before an officer in one ward are transferred to an officer in another ward in the same place, there is hardly any occasion for mentioning any reasons as such, because such transfer are invariably made on grounds of administrative convenience, and that shows that on principle in such cases neither can the notice be said to be necessary, nor would it be necessary to record any reasons for the transfer...

9. The assessee also has the opportunity to present his case, and be subject to a regular assessment, in front of the AO to whom jurisdiction has been transferred. No prejudice is caused by the mere fact of a Section 127 order, such that detailed reasons and specific grounds are required to be provided, as the petitioner today argues. Equally, the show-cause notice dated 9.10.2013 granted the petitioner in this case an opportunity of being heard. No oral representation was made by the petitioner on that date, nor was any request for another date made to the Commissioner. Written objections, however, were preferred, which were considered and disposed off by the impugned notice in this case. The argument, thus, that no chance to effectively represent the case was provided has no merit. For the above reasons, this writ petition, being meritless, is dismissed along with pending applications.