

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18886 of 2023

With

R/SPECIAL CIVIL APPLICATION NO. 18912 of 2023

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CHARTERED CAPITAL AND INVESTMENT LIMITED

Versus

PRINCIPLE COMMISSIONER OF INCOME TAX - 1, AHMEDABAD

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Appearance:

MR SN SOPARKAR, LD.SENIOR COUNSEL WITH MR B S
SOPARKAR(6851) for the Petitioner(s) No. 1
for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 06/11/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. Draft amendment is allowed. To be carried out forthwith.
2. Heard learned Senior Counsel Mr.S.N.Soparkar for the petitioner.
3. Learned Senior Counsel Mr.S.N.Soparkar would assail the order dated 29.09.2023 on the ground that the only ground on which transfer of assessment is sought to be made in case of the petitioners is for the purposes of co-ordinating the

investigation. He would submit that recording the reasons would indicate that merely because the search operation under section 132 of the Income Tax Act was conducted in the case of **M/s.Ravindu Motors Private Limited** wherein the petitioners had acted in their professional capacity and rendered advice, transfer of assessment is sought to be done. Reliance is placed on several decisions, which are as under:

- (i) Kamal Varandmal Galani Vs. Principal Commissioner of Income-Tax reported in **[2023]152 taxmann.com 340 (Bombay)**
- (ii) Farooq Ali Khan Vs. Principal Commissioner of Income-Tax, Bengaluru reported in **[2015]59 taxmann.com 74 (Karnataka)**

4. Karnataka High Court in the case of **Farooq Ali Khan (supra)** has considered the decision of Hon'ble Supreme Court in Para-11 and 12, which read as under:

“11. Hon'ble Apex Court in the case of Ajantha Industries v CBDT [1976] 102 ITR 281 has held that while making an order of transfer under Section 127 of the Act requirements of recording reasons is mandatory and non communication of same to the assessee would not save such order by showing that reasons existed in file although not communicated to assessee. It has been held by the Hon'ble Apex Court in the said judgment to the following effect:

"The reasons for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under article 226 of the Constitution or even this court under article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground or special leave mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

We are clearly of opinion that the requirement of recording reasons under section 127(1) is a mandatory direction under the law and non communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee."

"When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

12. Now turning my attention back to the facts on hand when impugned order is perused it would indicate that there are no reasons forthcoming from the impugned order as to why the assessment proceedings of the petitioner pending before the jurisdictional Assessing Officer at Bengaluru is being transferred to Assessing Officer at Mumbai, except indicating that "transfer is being effected to facilitate effective and coordinate the investigations in the connected case of petitioner", in which search and seizure operations under Section 132 of the Act was conducted on 24.02.2014 by the Director of Investigations, Mumbai. This would not satisfy the criteria of reasons as indicated under Section 127 of the Act or the dicta laid down by this Court as well as by the Hon'ble Apex Court in the cases referred to hereinabove. In that view of the matter, I am of the considered view that it would suffice and meet the ends of justice if the impugned order is set aside and matter is remitted back to the Principal Commissioner of Income Tax, Bengaluru-560 006 to redo the matter after affording opportunity to petitioner. If further objections, if any, is filed to proposed transfer same shall also be considered. It is also made clear that no fresh notice for personal hearing shall be issued to petitioner by first respondent and petitioner shall appear before the Principal Commissioner of Income Tax, Bengaluru - 560 006 (first respondent herein) on 11.05.2015 at 11.00 a.m. and after hearing petitioner or his authorized representative first respondent shall proceed to pass orders on merits and in accordance with law. No opinion is expressed with regard to merits of the case.”

5. Issue **Notice** to the respondents, returnable on 28.11.2023. Assessment shall continue, however, no final assessment order shall be passed without the permission of the court. Direct service is permitted.

(BIREN VAISHNAV, J)

(MAUNA M. BHATT, J)

DIPTI PATEL