

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****SPECIAL CIVIL APPLICATION NO. 1195 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE A.J. SHASTRI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

HINDUSTHAN M-I SWACO LTD.,....Petitioner(s)

Versus

PR COMMISSIONER OF INCOME TAX, VADODARA - 3....Respondent(s)

Appearance:

MR TUSHAR P HEMANI, ADVOCATE for the Petitioner(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Petitioner(s) No. 1

MR KM PARIKH, ADVOCATE for the Respondent(s) No. 1

**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**

**and**

**HONOURABLE MR.JUSTICE A.J. SHASTRI**

**Date : 28/06/2016**

**ORAL JUDGMENT**  
**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The petitioner has challenged an order dated 09.12.2015 passed by the respondent-Principal Commissioner of Income-tax, transferring the assessment cases of the petitioner in exercise of powers under section 172(2) of the Income Tax Act, 1961 ('the Act' for short).

2. Brief facts are as under.

3. Petitioner is a company registered under the Companies Act and is engaged in the activity of manufacturing chemicals. The petitioner has two manufacturing units in Gujarat. A search and seizure operation was carried out by the investigation wing of the Income-tax department at Kolkata on 23.12.2014 in case of one Hindusthan Engineering & Industries Ltd. group (hereinafter to be referred to as the 'searched person'). Later, the petitioner was subjected to survey operations by the Income-tax authorities. According to the petitioner, during the survey operations, though discrepancies in valuation of

inventory was noticed, no incriminating materials were found indicating any transaction between the petitioner company and the searched person.

4. On 10.08.2015, the respondent issued a notice to the petitioner proposing to transfer the petitioner's case records to Kolkata. The petitioner was called upon to state whether it has any objection to transfer the case to Kolkata. In such notice, it was conveyed that the transfer of the case was for centralization of the assessment under the charge of the Principal Commissioner of Income-tax, Kolkata. In response to such notice, petitioner made a detailed representation dated 26.08.2015, raising six specific points why the petitioner's assessment should not be transferred to Kolkata. The respondent issued yet another notice dated 15.09.2015, conveying that the reasons put-forth by the petitioner for non centralization of the case to Kolkata were not found tenable since search under section 132 of the Act was carried out in case of the searched person and also in case of the petitioner. For effective and coordinate investigation and assessment, the case of the petitioner needed to be centralized from Bharuch to Kolkata. The petitioner

was therefore conveyed as under:

*"3. I am further directed to request you to please attend this office on 22/09/2015 at 11.30 a.m. in this matter. If you fail to attend the dated and time fixed. It will be presumed that you have no objection to centralize your case to Kolkata and the necessary action will be taken accordingly."*

5. In response to such further communication of the respondent, the petitioner under a letter dated 22.09.2015 raised detailed objections to transfer the cases relying upon and referring to several decisions of different High Courts.

6. The respondent was however unmoved. By impugned order dated 09.12.2015, he ordered transfer of the assessment cases of the petitioner from Bharuch to Central Circle, Kolkata to facilitate effective and coordinate investigation of the cases of Hindusthan Engineering & Industries Ltd. group i.e. searched person. It is this order that the petitioner has challenged in this petition.

7. Taking us through the materials on record, learned counsel for the petitioner submitted that;

I. No search action had been taken against the petitioner contrary to what has been recorded by

the respondent in the impugned order. Entire order is thus based on factually incorrect premise.

II. The CBDT's circular referred to in the impugned order is for consolidation of search cases and the reliance on such instructions by the respondent authority in the present case is wholly unjustified.

III. Mere declaration that for effective and coordinate investigation it is necessary to consolidate cases is not sufficient for transfer of assessment proceedings without there being any material on record justifying the transfer.

IV. No incriminating material was found from the premises of the petitioner during the survey operations and therefore also, transfer of the assessment was not permissible.

V. The petitioner is a professionally managed company and has no connection with the searched person except for the two directors of both the companies being common.

VI. The petitioner had no transactions with the searched person and in any case merely because there were some transactions in course of business relation would not *per-se* justify transfer of the assessment of the petitioner.

8. In support of his contention, the counsel placed reliance on the judgment of Division Bench of this Court in case of ***Shree Ram Vessel Scrap P. Ltd. v. Commissioner of Income-Tax***, reported in ***355 ITR 255***, in which, referring to large number of judgments from different Courts in context of the powers of the income tax authorities to transfer assessment cases under section 127 of the Act, this Court had made certain observations. Counsel submitted that the said judgment was rendered in background of a group of connected assesses being subjected to search operation which is not the case in the present petition.

9. On the other hand, learned counsel Shri Parikh for the department opposed the petition contending that the principal Commissioner after giving sufficient opportunity of being heard to the petitioner, has passed the impugned order, which

suffers from no illegality. Cogent reasons have been recorded for transferring the assessment proceedings. Whether the petitioner was subjected to search or not is not important at this stage. It was found that the petitioner had transactions with the searched persons. To avoid conflict of opinions and for coordinated and centralized investigation therefore, the petitioner's cases were also transferred which causes no prejudice.

10. Having heard learned counsel for the parties, we may notice that the respondent authority had referred to following objections raised by the petitioner to transfer of the case as under:

*"(i) The board of the company comprises the following persons:*

<i>Mr.Rajendra Prasad Mody</i>	<i>148, Judges Court Road, Kolkata 700027, West Bengal</i>
<i>Mr.Sachita Mody</i>	<i>Mody House, 148, Judges Court Road, Kolkata 700027, West Bengal</i>
<i>Mr.John Joseph Maccallum</i>	<i>2Thorn Avenue Thornlon Hall G74 Sal, Glasgow, 11432, United Kingdom</i>
<i>Mr.Gary Michael Cole</i>	<i>Apt., 1906, Al Mass Tower, Emaor 6, Dubai, Marina 799999, United Arab Emirates</i>
<i>Mr.Nikunj Arvindbhai Mehta</i>	<i>Spectra C-405/406, CASA Bella Goid, Kalyan Shil Road, Palav City, Dombivali, Mumbai, 421 203.</i>

The directors other than Mr. Nikunj Mehta are the nominees of the Investor Groups. The day to day operations of the Company are managed by Shri Nikunj Mehta (who is based at Bharuch and Mumbai) with the assistance of the other staff based at Bharuch.

The Company is thus professionally managed and operates independently under the supervision of the Board.

(ii) In the course of survey at the company's premises, no incriminating material or document was found except for certain discrepancies in the valuation of inventory amounting to Rs.50,48,489/-. There was no record or material to indicate any transaction with the group concerns or the persons of the group which can be said to be incriminating so as to require centralization of the assessee's case at Kolkata and therefore it is not understood as to how the centralization of company's case to Kolkata is going to help in co-ordinated investigation.

Thus, the company requests your kindness to provide the material/documents available with the Department to justify the centralization as the provisions contained in section 127(2) mandate the recording of reasons for transfer of case.

It is reiterated and for the purpose of record, it is submitted that the company has no transaction with any of the group concerns or persons where search is conducted, except for the transaction of investment and loan which is accounted in the regular books of accounts and that in absence of any particulars furnished to indicate or disprove the submission of the assessee the proposed transfer of case for so called coordinated investigation is unjustified and that for assessing the income based on recorded transactions there is no necessity of

*transferring the case to Kolkata as proposed.*

*(iii) It is on record that company's registered office is situated at Bharuch as mentioned above and all the books of accounts, statutory records are maintained there. The company is regularly filing its return of income in the Income tax office at Bharuch and is assessed there. The company's accounts, finance and taxation matters are attended by the Finance Officer based at Bharuch. The shifting of the assessment jurisdiction to Kolkata as proposed would cause undue hardship and difficulty to the company in terms of compliance with the regular requirements of the Income tax Office at Kolkata.*

*(iv) As already stated, the various affairs of finance, accounts and taxation are attended by the same Finance Officer and his absence from the office at Bharuch for attending tax matters at Kolkata would affect the day to day functioning of the company. The company operates with a very lean staff and his absence from the station would adversely affect the functioning. Moreover, the travel to Kolkata for attending the tax matters is not only cumbersome but also very expensive. Considering the size of the company, the expenses would be very high and is avoidable."*

11. The Principal Commissioner repelled these objections in following manner:

*"8.1 From the submissions, with regard to the point No.(i) above, it is learnt that two directors of the assessee company are*

permanently based at Kolkata and therefore contrary to assessee's contention, there is no undue hardship and difficulty to the company in terms of compliance with the regular requirements of the Income tax Office at Kolkata. Moreover, the assessee has not denied the fact that it had transaction with Hindusthan Engineering & Industries Ltd. The reasons put forth for requesting not to centralize are observed to be general in nature and do not carry any forceful acceptable legal arguments.

8.2 With respect to point no.(ii) of the contention, it is to state that the statement that during the course of survey at the company's premises, no discriminating material or document was found except for certain discrepancies in the valuation of inventory and there was no record or material to indicate any transaction with the group concerns or the persons of the group which can be said to be incriminating so as to require centralization of the assessee's case at Kolkata, cannot be considered as it is not mandatory or a pre-condition that there has to be seizures of valuable or incriminating documents etc. for every action to follow actions u/s. 153A / 153C for the purpose of consideration of cases u/s. 127 of the I.T.Act.

8.3 Moreover, at this stage, for the purpose of actions u/s. 127(2) of the I.T.Act, it is too premature to arrive at any conclusive finding, for such a conclusion cannot be logically drawn at this moment & stage, and it is neither the requirement nor the precondition, while considering the proposal u/s. 127 of the I.T. Act as this supposedly be the outcome of investigation in a coordinated manner and not doing that itself will defeat the very purpose of the actions and investigations.

8.4 In respect of the contentions of the

assessee as mentioned above at (iii) & (iv) the same has already been discussed in para-8.1 and hence no further comments are required at this stage. However, it is pertinent to mention here that there is no compulsion of personal attendance of the directors at any stage. The assessee can authorize any person as per law to attend the case on behalf of the assessee with the help of the directors who have already establishment at Kolkata."

He further observed as under:

"9. Further, for making any comment on any issue one need to have the process i.e. "coordinated investigation" and that can only happen while proceedings of assessment u/s.153A / 153C of the I.T.Act as the case may be and for that, the investigations & assessments of entities requires to be made centrally by one Officer i.e. DCIT, CC-1(4), Kolkata.

10. Nonetheless, it is a fact that the actions u/s. 132 / 133A of the I.T.Act has been carried out in the M/s. Hindusthan Engineering & Industries Ltd. group which requires coordinated investigation and assessments. There is nothing on merit which the assessee could contest on the issues of transfer, and hence it has taken various irrelevant pleas that have no nexus with reference to section 127 for the purpose of transfer of the case.

...

13. The kind of web which has been woven by the tax payers and the discrepancies in valuation of inventory that will require detailed and coordinated investigation to be conducted centrally with the group cases and therefore, it will be contrary to the existing instruction and law on the subject, if the cases are allowed to remain with the

*regular Assessing Officer.*

...

*16. Where the proposed transfer is as a result of follow up of procedure as laid down in instructions where search cases or search related cases where action u/s. 153A / 153C are to be assessed centrally by one Officer in Central Circle for effective and coordinated investigation and assessment by designated Officer for the specific purpose such as DCIT, CC-1(4), Kolkata, there can hardly be any merit in the case of the assessee on given facts and circumstances."*

12. From the perusal of the above quoted portion of the impugned order, it can be seen that the Principal Commissioner has proceeded on the footing that like the searched person, the petitioner is also subjected to search operations. In the preamble portion of the impugned order also after referring to the search operations in case of Hindusthan Engineering & Industries Ltd. group i.e. searched person, he has mentioned that in this context, the search operations were carried out at the premises of the petitioner also. This admittedly is incorrect. The department now agrees that the petitioner was never subjected to search. The observations and conclusions of the Principal Commissioner therefore, would have to be viewed in the background of this discrepancy. His

reference to the CBDT circular would also have to be seen from this angle. In such circular it is provided *inter alia*;

"Instances have come to notice of the Board that Search cases are not being centralized promptly, thereby causing delay in initiation of the search assessment proceedings, deferment of payment of taxes and finally resulting in completion of search assessments at the fag end of the limitation period.

2. In super-session of existing Boards instruction no.8/2002 dated 14<sup>th</sup> August, 2002 on above subject, I am directed to inform that following procedure for early centralization of search cases should be followed :

(c) In regions where there is no central circle or the group is assessed in more than one CCIT region or involving more than one CIT charges, then the DGIT(Inv.) should identify the CIT charge in which the group searched will be centralized in consultation with the CCIT in whose jurisdiction the main case of the group are assessed to tax within seven days of initiation of search."

Thus, clearly this circular of CBDT relates to the searched cases where number of group assessee's are subjected to search operations and whose assessments are within the jurisdiction of different Assessing Officers.

13. If we therefore, eliminate this angle of the petitioner being subjected to search, a wrong premise

on which the Principal Commissioner proceeded in his impugned order, what is left is that in his opinion "the kind of web which has been woven by the tax payers and the discrepancies in valuation of inventory that will require detailed and coordinated investigation to be conducted centrally with the group cases and therefore, it will be contrary to the existing instruction and law on the subject, if the cases are allowed to remain with the regular Assessing Officer". For several reasons, his observations and conclusions are erroneous. Firstly, after referring to some alleged web woven by the tax payers and the discrepancies in valuation of inventory, he concluded that the group cases will have to be centralized, again referring to the existing instructions. He was thus of the opinion that allowing these cases to proceed before the Assessing Officer would be against such instructions. Firstly, no such instructions have been cited and other than the instructions of the CBDT noted above, which apply to search cases in case of group of the assesses. Secondly, mere declaration of the kind of web woven by the tax payers is too general a statement not

supported by any materials on record and can therefore, not form a basis for transfer of assessment proceedings.

14. In case of **Shree Ram Vessel Scrap P. Ltd.** (supra), the Division Bench of this Court had occasion to consider the powers of the Revenue Authorities to transfer assessment proceedings under section 127 of the Act. In the context of the reason of coordinate and effective investigation, the Court observed as under:

*"18. From the above it can be seen that there is cleavage of opinion between different Courts on the issue. Some of the Courts have taken a view that indication of reason of for effective and coordinated investigation or the like would not be sufficiently clear. If such reasons are indicated in the show cause notice, would not put the assessee to sufficient notice on the grounds on which the competent authority proposed to transfer the cases. Some Courts have held that such reasons for transferring the case would not be sufficient. On the other hand several Courts of the country have taken a view that such reasons are sufficient to permit transfer of cases.*

19. We would therefore, like to express our opinion on the issue.

20. Section 127 of the Act, as already noticed, pertains to power to transfer cases. Sub-section(1) empowers the Director General, Chief Commissioner or the Commissioner after giving the assessee a reasonable opportunity

of being heard wherever it is possible to do so and after recording his reasons, transfer any case from one more or more Assessing Officers subordinate to him to any other Assessing Officer or Assessing Officers also subordinate to him. Like-wise, under sub-section(2) of section 127 after following similar procedural requirements, it is open for the Director General, Chief Commissioner or Commissioner to transfer a case from one Assessing Officer to another who is not subordinate to him in agreement with the authority to whom he may be subordinate. Sub-section(3) of Section 127 provides that nothing contained in sub-section(1) or sub-section(2) shall be deemed to require giving of any such opportunity where the transfer is from any Assessing Officer to another and offices of all such officers are situated in the same city, locality or place. Sub-section(4) of Section 127 provides that 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-issuance of any notice already issued by the Assessing Officer from whom the case is transferred.

21. Exercise of power under sub-section(1) and sub-section(2) of the Act comes with certain procedural requirements namely, of granting a reasonable opportunity of being heard in the matter wherever it is possible to do so, of recording of reasons for passing such order and as provided by the Supreme Court in **Ajanta Industries** (supra) communicating such reasons also to the assessee. Subject to fulfillment of such procedural requirements, the authority under section 127 enjoys considerable discretion while exercising the power contained in sub-section(1) or sub-section(2) thereof. Such discretion of-course has to be exercised for achieving the public purpose and not for any arbitrary or irrelevant consideration. On the other hand, it can also be seen that transfer

of a pending case from one Assessing Officer to another outside of a city, locality or place is likely to cause considerable inconvenience to an assessee. Therefore, even though an assessee may not have a vested right to insist that his assessment be completed only at one place or by a particular Assessing Officer, nevertheless, the reasons for transfer must be weighty enough to off-set against such personal inconvenience of an assessee. In exercise of power under section 127 thus we are concerned with larger public interest on one hand and personal inconvenience on the other. However, as long as such powers are exercised bona fide, for public purpose and in the interest of Revenue, the role of the Court to dissect such reasons and to come to a different conclusion would be extremely limited. It is by now well settled that judicial review against the administrative order in exercise of writ jurisdiction, the Court is concerned with the decision making process and not the final decision itself. Unless the reasons which prompted the competent authority to transfer the case can be stated to be wholly irrelevant or arbitrary, the Court would not interfere with such reasons. Of-course an order of such nature can and need to be quashed if it is demonstrated that same is passed either without jurisdiction or is actuated by mala fide either in fact or in law.

...

...

26. We therefore side with the school of thought that the reason for effective and co-ordinate investigation for transfer of assessment cases is neither vague or ground not insufficient. Particularly in the present case when through show cause notice and during hearing of such notices, it was clearly brought to the notice of the assesses the need for transfer of cases, no case for interference is made out. Learned counsel Shri Soparkar submitted that all the

*judgements taking contrary view pertain to cases which are transferred from one place to another where at-least one assessee is being assessed. This to our mind is not the relevant factor. It may be a factual aspect common to all cases. None of the decisions is based on such fact. Neither Section 127 of the Act, nor any of the decision brought to our notice provides that assessment cases can be transferred from one place to another only as long as at-least one of the case of the group is pending at such place. Section 127 of the Act does not recognise or provide any such limitation on exercise of the powers. Discretion is wide and may be required to be exercised in varieties of situations. We neither can, nor propose to foresee all of them."*

15. In the said decision thus, while recognizing wide discretionary powers of the competent Revenue Authorities to transfer assessment cases under section 127 of the Act in public interest, the Court also recognized a degree of prejudice or inconvenience that may be caused to the assessee whose assessment may be lifted from his principal place of business and may be put at the disposal of an assessing authority who may be situated at another place far away from the assessee's place of business. The power of transfer of cases therefore, would have to be exercised in proper cases when sufficient material on record justify such action. This is, however, not to suggest

that transfer of cases for effective investigation and coordination can be resorted to only in cases of assesses who are subjected to search operations. This requirement may arise in other circumstances also. However, the sufficiency of reasons would have to be judged from case to case basis. In the present case, we find no such justification. Entire approach of the Principal Commissioner, was erroneous since he proceeded on an incorrect premise that the petitioner also was subjected to search operation. There being no further reliable material justifying such consolidation of cases, impugned order is set aside.

16. Before closing, we may notice that on 25.01.2016 this Court while issuing notice had issued following interim directions:

*"In the meanwhile, the respondent shall not send the records relating to the petitioner to Kolkata at this stage."*

The Revenue brings to our notice that before this order was passed, under communication dated 17.12.2015, the authority had transferred the case records of the petitioner for the assessment years 2014-15 and 2013-14 to the Deputy Commissioner of

Income-tax, Central Circle 1(4), Kolkata. This communication should have been brought to the notice of the court by the petitioner itself. Had it been so done, surely the court would not have framed its interim directions in the manner noted above. Combined effect of these factors would be that on account of interim directions issued by the Court neither the petitioner's Assessing Officer at Bharuch, nor the assessing authority at Kolkata could proceed further with the assessment of the petitioners' returns for the assessment years 2014-15 and 2013-14. The question of limitation for completion of such assessments therefore, shall have to be seen from this angle. It is therefore, clarified that the effect of the interim order of the High Court and the pendency of the petition would be that from 25.01.2016 till the date when this petition is being disposed of, there was stay against the assessments of the petitioner for the assessment years 2014-15 and 2013-14 proceeding further with all consequential effect on the question of limitation for completion of assessments.

17. With these further directions, the petition is allowed and disposed of.

(AKIL KURESHI, J.)

ANKIT

(A.J. SHASTRI, J.)

