IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 4473 of 2016
TO
SPECIAL CIVIL APPLICATION NO. 4475 of 2016

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and
HONOURABLE MR.JUSTICE A.J. SHASTRI

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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ANUBEN LALABHAI BHARWAD....Petitioner(s)
Versus
PRINCIPAL COMMISSIONER OF INCOME TAX-3, & 1....Respondent(s)

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Appearance:
UMAIDSINGH BHATI, ADVOCATE for the Petitioner(s) No. 1
MR SUDHIR M MEHTA, ADVOCATE for the Respondent(s) No. 2
MR.VARUN K.PATEL, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 29 /07/2016

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE A.J. SHASTRI)

1. These petitions are having identical set of circumstance as well as challenge contain therein is also almost similar, the petitions are being dealt with by this common judgment and order by treating SCA No.4473 of 2016 as a lead matter.

2. The petition being SCA No.4473 of 2016 is filed for the purpose of challenging legality and validity of an order dated 6.1.2016 passed in exercise of powers under Section 127(2) of the Income-Tax Act,1961 as also notices dated 26.2.2016 and 4.3.2016 whereby, the case of the petitioner is transferred by the respondent authority from Ahmedabad to Surat and the object shown therein while passing the order is for the purpose of coordinated investigation and assessment. The case has been ordered to be transferred from Ward No.3(3)(9), Ahmedabad to DCIT, Central Circle-3, Surat.

2.1 So far as SCA No.4474 of 2016 is concerned, therein also challenge is made by the petitioner to an order dated 6.1.2016 and consequential notice dated 4.3.2016 in which also the case of the petitioner is transferred from Ward No.3(2)(2), Ahmedabad to DCIT, Central Circle-3, Surat.

2.2 Similarly, in SCA No.4475 of 2016 is concerned, here also the legality, validity and propriety of an order dated 6.1.2016 as also notice dated 4.3.2016 came to be challenged whereby, the case of the petitioner came to be transferred from Ward No.3(3)(4), Ahmedabad to DCIT, Central Circle-3, Surat.

3. The case of the petitioner in almost all the three matters is similar and since SCA No.4473 of 2016 is treated as a lead matter, facts of the said case are taken into consideration while passing this common judgment and order.

4. It is the case of the petitioner that she is an individual having been regularly assessed with I.T.O., Ward-3(3)(9), Ahmedabad, was issued with a notice on 1.12.2015 by respondent No.1 authority informing that pursuant to search proceeding carried out on 9.10.2014 in the case of one M/s.HVK International Group of Surat, it was proposed to transfer her case from Ahmedabad to Surat in exercise of powers under Section 127(2) of the Income-Tax Act in the interest of effective and coordinated investigation and assessment. For the purpose of said inclined transfer, an opportunity of being heard was provided to the petitioner in terms of Section127(2)(a) of the Income-Tax Act by keeping the date of hearing on 22.12.2015 at 11.00 a.m. It is the case of the petitioner that upon receipt of the notice, the petitioner contacted her counsel in order to prepare an appropriate reply and proper representation before respondent No.1 and for that purpose, a short adjournment of a day was sought from the authority as there was a pre-fixed professional commitment out of Ahmedabad. However, with a view to assess and in compliance with the notice, a detail reply was submitted by the petitioner in the office of respondent No.1 on 21.12.2015 itself. As the request for adjournment was made, the authority, namely, respondent No.1 has placed the matter for personal hearing on 23.12.2015 at 3.00 p.m. It was

contended in the written submissions dated 21.12.2015, inter-alia, that the transfer of her case from Ahmedabad to Surat is not justified as there is no justifiable reasons for such proposed transfer. It was also submitted that even on the basis of coordinated investigation and assessment, the object of making such centralized investigation may not be achieved as the cases of one group are scattered at a different place before different assessing officer. While making such request, the petitioner has submitted that she has no connection of whatsoever nature or in any way related to said group, namely, M/s.HVK International Group, Surat rather she heard the name of this group for the first time. It was also asserted by her in the reply that there is not a single transaction either financial or accounting with the aforesaid group nor the petitioner had any transaction either in the diamond, jewelery or even immovable property with the said M/s.HVK International Group, Surat. It was brought to the notice about the letter dated 3.12.2015 which was enclosed in case of husband of the petitioner and submitted that even in the search process, no material is gathered which would permit the authority to link the petitioner with M/s.HVK International Group, Surat. It was submitted that the search which was carried out was under mistaken identity of Shri Sanjay Dhanak, a builder who constructed Shyam Residency in Science City Road, Ahmedabad and the petitioner's husband happened to be the purchaser of this flat, so much so that even said Mr.Dhanak has sworn an affidavit on 7.12.2015 which was also enclosed and then, submitted that the petitioner, who is an uneducated house wife, has no transaction of any nature with any person based in Surat. This reply was very much available on record of respondent No.1.

However, the hearing which was scheduled on 23.12.2015 was again adjourned to 5.1.2016 and on 5.1.2.2016, in a brief hearing in the office of respondent No.1, it was mentioned that DGIT (Inv.) had already approved the centralization of all search cases and as such, respondent No.1 is bound to pass an order under Section 127(2) of the Income-Tax Act. This was informed during the course of brief hearing which took place on 5.1.2016. But, thereafter since nothing was heard from respondent No.1, another combined letter dated 25.1.2016 was filed in the office of respondent No.1 with a request to recall the order of transfer made in case of Shri Lalabhai K. Bharwad and simultaneously, sought the copies of approval of DGIT (Inv.) and the order sheet. This copy of approval as well as order sheet has not been provided nor in view of such situation, any opportunity of hearing was given and since no development thereafter took place, the petitioner initiated an inquiry in the month of March,2016 with the Income-Tax office and then, it was revealed that order under Section 127(2) of the Income-Tax Act has already been passed on 6.1.2016. Resultantly, the petitioner has obtained the copy of the said order on 10.3.2016. By that time, to the surprise of the petitioner, respondent No.2 has issued the impugned notice on 26.2.2016 under Section 142(1) r/w Section 129 of the Income-Tax Act assuming the jurisdiction to the pending assessment proceedings of the petitioner for the assessment year 2013-14 and consequently, on 4.3.2016, the notices came to be issued under Section 153(2) of the Income-Tax Act calling upon the petitioner to furnish returns of income for the assessment year 2009-2010 to 2014-15. In view of this development took place abruptly, the petitioner finding it not proper that her case be transferred from Ahmedabad to Surat on the premise on which it is transferred, left with any other alternative the petitioner has filed the present petition challenging the legality and validity of the judgment and order dated 6.1.2016.

5. Mr.Umaidsingh Bhati, learned counsel appearing on behalf of petitioner has contended that transferring the case of the petitioner is patently illegal and contrary to the provisions, more particularly in view of the fact that there is no cogent material which would remotely link the petitioner with M/s.HVK International Group, Surat. It was brought to the notice of the Court that even after extensive search at the premises of the husband of the petitioner on 9.10.2014 as well as on the next day i.e. on 10.10.2014, no material is found which would link the petitioner with M/s.HVK International Group, Surat. Even the husband had also no linkage in any manner with M/s.HVK International Group, Surat. It was also contended that during the search proceedings, statement of the husband was also recorded and has also recorded at a later point of time on 2.2.2015. However, no material found of any nature either in relation to any transaction, financial or business with M/s.HVK International Group, Surat and based upon that, it has been contended by learned counsel that before exercising power under Section 127 of the Act, subjective satisfaction of the transferring authority is a bare minimum requirement before passing an order. There is no material of any nature which would warrant the authority to transfer the case of the petitioner from Ahmedabad to Surat. It was also contended by learned counsel for the petitioner that even the petitioner has not been afforded any reasonable opportunity of hearing in the sense in which it has to been afforded and therefore, the order passed by the authority is

grossly in violation of principles of natural justice. Even considering the reasons which are assigned in the order dated 6.1.2016 which is under challenge, there is no cogent explanation or the reason which would justify the transfer. A bare sentence of coordinated investigation and assessment would not sufficient enough to exercise jurisdiction to transfer the case from Ahmedabad to Surat. It was brought to the notice of the authority that under the mistaken identify of Shri Sanjay Dhanak, a builder from whom the husband of the petitioner has purchased a flat situated at Science City Road on 22.10.2013 and except this, none of the family members of the petitioner including the husband had any transaction either with said Shri Sanjay Dhanak or M/s.HVK International Group, Surat. It was specifically mentioned in the letter dated 21.12.2015 that the petitioner has no connection whatsoever nor has even purchased at any point of time any Diamond, Gem, Jewelery or any immovable property from the said group, namely, M/s.HVK International Group, Surat. There is no iota of evidence which would connect or create a linkage of the petitioner with M/s.HVK International Group, Surat and therefore, in absence of such material, it is not open for the respondent authority to just pass a casual order for the sake of passing under the garb of coordinated investigation for the sake of their own administrative convenience.

5.1 Learned counsel for the petitioner has submitted that several decisions have been pointed out in the said representation dated 21.12.2015 and it is brought to the notice that simply because for the sake of administrative convenience in the absence of any material of any nature, to create a linkage, the authority cannot transfer the case of the petitioner under the guise of effective and coordinated investigation and assessment. Learned counsel has also submitted that this is nothing but a gross misuse of the powers at the behest of authority and requested the Court not to allow such irregular exercise of power to operate. It was also contended that even the order impugned in the petition dated 6.1.2016 reflects no reasons which would justify even an application of mind before passing the order by the authority. It was submitted that the reasons are part and parcel of principles of natural justice and therefore, since the order in question is not supported by any cogent reasons, same being treated as violative of principles of natural justice. On the basis of such submissions, learned counsel for the petitioner has submitted that not to allow such impugned order to operate and the petitioner may not be put to unnecessary harassment or coercive process of assessment and therefore, requested the Court to set aside the impugned orders.

6. As against this, Mr.Varun K. Patel, learned counsel appearing on behalf of transferring authority has submitted that a detailed search was carried out at the premises and on the basis of material available, the authority has prima facie established the linkage of the petitioner with M/s.HVK International Group, Surat and resultantly, requested that the transfer has been made solely with an idea to execute effective and coordinated investigation and assessment and therefore, the authority is justified in passing the order which is impugned in the petition. Learned counsel further submitted that the aim of transferring the investigation is to undertake a fair investigation and assessment and therefore,

such object may not be allowed to be frustrated at the instance of the petitioner. Learned counsel further submitted that the condition to effect the transfer as contemplated under Section 127 of the Act has been considered by the authority and keeping in view the sole object underlying the statutory provision, the order came to be passed. By filing affidavit-in-reply, learned counsel has submitted that sufficient opportunity was given to the petitioner to represent the case and it has been submitted that only after considering the material produced and available on record and after considering the representation of the petitioner, the authority has exercised the power under Section 127 of the Act and therefore, learned counsel submitted that not to entertain the petitions, more particularly since it is brought under extraordinary jurisdiction of this Court.

6.1 Learned counsel for the respondent No.1 authority submitted that the husband of the petitioner has purchased the flat from one Shri Sanjay Dhanak, who is having a close nexus in the business of the said firm, namely, M/s.HVK International Group, Surat and therefore, it has been contended that since said Shri Sanjay Dhanak had a business dealing in the real estate ventures with M/s.HVK International Group, Surat, there is a reasonable belief on the part of respondent authority that petitioner has close nexus with the said group and as such, the authority has justifiably passed an order keeping in view the object of Section 127 of the Act.

6.2 Learned counsel for the respondent No.1 authority has further submitted that the premises in question was utilized as a business premises of M/s.Brillare Realty Pvt. Ltd. in which the directors/shareholders of M/s.HVK International Group, Surat are also connected directors and one of the directors is Shri Sanjay Dhanak and therefore, having found that there is some possibility of live linkage of the petitioner with M/s.HVK International Group, Surat, the authority has rightly exercised the jurisdiction of transferring the case. Learned counsel also contended that adequate opportunity of hearing has been afforded to justify that exercise of power and therefore, same is not vitiated and ultimately, requested the Court not to interfere with the said order which is passed in exercise of statutory power.

7. Mr.Sudhir Mehta, learned counsel appearing on behalf of respondent No.2 authority has submitted that exercise of power is just and proper and ultimately if the said exercise is undertaken keeping in view the object of achieving effective and coordinated investigation and assessment and therefore, for the purpose of making such effective assessment, power under Section 127 of the Act is exercised and therefore, requested the Court not to interfere with the said exercise. Substantially the same stand is taken as that of the transferring authority.

8. Having heard the learned counsel appearing for the respective parties and having gone through the material on record and giving our anxious consideration with the material on record as compared to the orders which are impugned to the petitions, prima facie it appears to this Court that the authority has not acted in a just and proper manner. Before adverting to the contentions raised by learned counsel for the

respondents representing the authorities, we may refer to the statutory provisions in which the authority is entrusted with the power. Relevant Section 127 of the Act as such reproduced hereunder:

> "**Section 127.** (1) The **[***Principal Director General or***]** Director General or **[***Principal Chief Commissioner or***]** Chief Commissioner or **[***Principal Commissioner or***]** Commissioner may, 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.
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> (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or 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,—
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> (*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 Chief Commissioner or***]** Chief Commissioner 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 possible to do so, and after recording his reasons for doing so, pass the order;
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> (*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 in respect of any year.]"

9. On plain reading of the aforesaid provision of law, it is emerging that while exercising the jurisdiction under the said statutory provision, a reasonable and effective opportunity is required to be given to a person concerned. This reasonable opportunity would mean that an effective opportunity must be given coupled with an appropriate application of mind and after arriving at a subjective satisfaction on the issue, an appropriate order is required to be passed. Law requires that

every administrative order must be in consonance with well recognized principles of natural justice and the natural justice compliance demands not only mere granting of reasonable opportunity but also to assign cogent reasons and assigning of reasons is nothing but a part and parcel of compliance of principles of natural justice and therefore, the authority under a legal obligation to exercise the power in a manner in which the statute demands and here, from the material on record and the contentions raised by the respective counsel, it appears that the provision of Section 127 of the Act has not been complied with in true letter and spirit. A bare reading of the order dated 6.1.2016 reflects only one reason which is reflected in Para.1. From the reading of an order, it appears that none of the contentions which have been reflected in the written representation have been considered. Not only that even the authorities which have been cited specifically have also not been dealt with and in addition thereto, most material aspect which was expected to be considered s that the petitioner has specifically contended that there is no life linkage at all with the said group, namely, M/s.HVK International Group, Surat and there is no iota of evidence which would connect even remotely to the said group. Now, when this specific case has been put-forth, it was expected on the part of respondent authority to examine the said issue. Having not done so, the very exercise of jurisdiction is vitiated, suffers from the vice of non-application of mind and since the reasons are not reflected at all, this Court is of the opinion that the order cannot be said to be in consonance with the compliance of principles of natural justice and therefore, deserves to be struck down on this ground alone.

10. Apart from the consideration of a reasonable opportunity concept, even the material on record is also not sufficient enough to link the petitioner even remotely with the said group, namely, M/s.HVK International Group, Surat. Even if we recall in a cognate petition being SCA No.4755 of 2016 in case of Lalabhai Kamabhai Bharwad arising out of the very same search operation, a detailed questionnaire was put by the authority in which also nothing incriminating found of any nature which would even prima facie establish the linkage of the petitioner with M/s.HVK International Group, Surat. On the contrary, only one thing has emerged from the material on record that except the purchase of flat by the husband of the petitioner from said Shri Sanjay Dhanak, who happens to be a builder and constructed the scheme, there is no connection of whatsoever nature either financially or any transaction even commercially and therefore, in the absence of such material, no such order of transfer can be passed which would put the petitioner to the detriment and jeopardy.

11. Even from the material on record, it is emerging that the authority has no specific material on record or any independent material to link thep petitioner in any manner with M/s.HVK International Group, Surat. The authority appears to have drawn inferences and simply because Shri Sanjay Dhanak had some linkage with M/s.HVK International Group, Surat, the authority presumed that petitioner also must have remove connections and thereby, in casual exercise of power, the provision of Section 127 of the Act is resorted to and transferred the case from Ahmedabad to Surat. Even to examine whether any linkage remotely is found of the petitioner with said M/s.HVK International Group, Surat, this

Court has gone through the statements recorded during the course of search which are attached to the memo of petition from Page-49 onwards and from those questions – answers also which are part of the record, it would emerge that by any stretch of imagination, it can be said that the petitioner has any linkage with said M/s.HVK International Group, Surat. This Court found from the statements, material on record as well as from the affidavits filed in a cognate petitions that no connection is emerging except a bare transaction of purchase of flat at Science City Road, Ahmedabad by the husband of the petitioner. Except that solitary circumstance which is not sufficient enough to establish linkage, there is no other cogent material to arrive at a conclusion that even for coordinated investigation and assessment, the case deserves to be transferred from Ahmedabad to Surat. In the absence of any material and in the absence of any circumstance, it is not open for the authority to exercise such statutory power in a routine or casual manner, without application of mind and therefore, even on merits also, the power under Section 127 of the Act is not possible to be resorted to by the authority as found from the material on record.

12. A further fact which has recalled the Court while dealing with the present petition that in case of Lalabhai Kamabhai Bharwad, as stated hereinabove, referring to SCA No.4755 of 2016 (a cognate matter arising out from the same proceeding), even a certificate came to be issued by said M/s.HVK International Group, Surat dated 3.12.2015 wherein, it has been categorically stated that there is no connection of any nature or any financial transaction with the petitioner. Said certificate is very much part of the record of said cognate

petition and to deal with, we may refer the specific stand taken by said M/s.HVK International Group, Surat. Learned counsel appearing for the respective parties have not disputed against relevance of the said certificate. Relevant extract of the said certificate reads, thus;

> "We are hereby declaring that our group or its Directors, or Share Holders or any family members of the same did not have any business or financial transaction or connection with Shri Lalabhai Kamabhai Bharwad or his family members viz. Smt.Anuben Lalabhai Bharwad, Shri Ashok Lalabhai Bharwad and Shri Pintoo Lalabhai Bharwad in past or present."

13. Even a specific letter also in the form of an affidavit filed by Shri Sanjay Dhanak, from whom a flat has been purchased by the husband of the petitioner and said Shri Sanjay Dhanak has filed an affidavit on oath wherein also, he has clarified in no uncertain terms that the petitioner has not business connection nor having any financial or other business transactions with him and therefore, said affidavit is also worth to be taken note of in the present proceedings as the same arising out of very same search proceedings. Relevant extract of the said affidavit dated 7.12.2015 is reproduced hereinunder :

> "4. That, I came to know Shri Lalabhai Kamabhai Bharwad and his family members viz. Smt.Anuben Lalabhai Bharwad, Shri Ashok Lalabhai Bharwad and Shri Pintoo Lalabhai Bharwad because of the above deal only.
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> 5. That, I do not have any financial or other business transaction with Shri Lalabhai Kamabhai Bharwad, Smt.Anuben Lalabhai Bharwad, Shri Ashok Lalabhai Bharwad and Shri Pintoo Lalabhai Bharwad, Ahmedabad

so far except the deal as per Para.3 above besides having received advances from Shri Lalabhai Kamabhai Bharwad against the promise of sale of office premises at 11/12/12A, Shyam Residency, Science City Road, Ahmedabad

The above facts are true and correct as per my knowledge and belief.

Signed and verified on 7th December,2015 at Ahmedabad."

14. From this overall set of circumstance, reverting back to the facts of the present case which are almost similar substantially in nature, we are of the opinion that the power exercised by the authority under Section 127 of the Act is thoroughly uncalled for in the absence of any linkage material of any nature.

15. In view of above facts prevailing on record, it clearly transpires that the authority has not acted in the spirit in which it has to act while dealing with an issue of transfer. By merely reproducing and taking out the words from the statutory provisions, the order cannot be said to be passed upon application of mind and therefore, it appears to the Court that the orders challenged in these petitions deserve to be set aside.

16. For the reasons recorded above, the present petitions are allowed. The orders impugned dated 6.1.2016 are hereby quashed and set aside in each petition. The cases of the petitioner of SCA No.4473 of 2016 is ordered to be transferred back from the office of DCIT,Central Circle-3,

Surat to ITO, Ward No.3(3)(9), Ahmedabad, (ii) the petitioner of SCA No.4474 of 2016 is ordered to be transferred back from the office of DCIT,Central Circle-3, Surat to ITO, Ward No.3(2)(2), Ahmedabad and (iii) petitioner of SCA No.4475 of 2016 is ordered to be transferred back from the office of DCIT,Central Circle-3, Surat to ITO, Ward No.3(3)(4), Ahmedabad and the respondent No.1 authority is directed to proceed with the same from the stage from where it may have presently reached. Rule made absolute in each matter.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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