

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION NO. 4755 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 ?	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

LALABHAI KAMABHAI BHARWAD....Petitioner(s)

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX-3 & 1....Respondent(s)

Appearance:

UMAIDSINGH BHATI, ADVOCATE for the Petitioner

MR.VARUN K.PATEL, ADVOCATE for the Respondent No. 1

MR SUDHIR M MEHTA, ADVOCATE for the Respondent No. 2

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)

Present petition is directed against the impugned order dated 27.10.2015 passed by the Principal Commissioner of Income Tax-3 in exercise of power under section 127(2) of Income Tax Act, 1961 ("the Act" for short) whereby the case of the petitioner is transferred from IT ward 3(3)(3), Ahmedabad to DCIT,Central Circle-3, Surat. The petitioner is an individual being regularly assessed with ITO, Ward 3(3)(3), Ahmedabad, was issued a notice on 14.10.2015 by respondent no.1 informing that a search proceeding which was carried out on 9.10.2014 with respect to HVK International Group, Surat, it was proposed to transfer the petitioner's case from Ahmedabad to Surat. This exercise of power under section 127(2) of the Act to be exercised for the purpose of effective and coordinated investigation and assessment. In respect of this, an opportunity of hearing was provided in terms of section 127(2) of the Act which hearing was fixed on 26.10.2015 at 11.00 a.m. It is the case of the petitioner that this notice of informing the petitioner itself came to be despatched through speed post which was received by the petitioner on 27.10.2015. Upon receipt of the notice, petitioner immediately contacted his counsel to prepare an appropriate reply with a view to make a representation. Said reply dated 29.10.2015 was filed before respondent no.1 on 30.10.2015. Attention of the respondent no.1 was specifically drawn to the fact that

the notice dated 14.10.2015 came to be received after the date of hearing fixed by the authority. In reply, the petitioner has objected to the proposal of centralisation and transfer of the petitioner's case from Ahmedabad to Surat. It was pointed out by the petitioner that petitioner's business activities are confined only to Ahmedabad and he has studied upto 3rd standard only. It was specifically averred in the reply that there is no connection directly or indirectly with M/s. HVK International Group, Surat and despite this fact having been brought to the notice of the respondent by submitting reply, to the surprise of the petitioner, he was informed that the order of transfer of the petitioner's case from Ahmedabad to Surat has already been passed on 27.10.2015. It is in this background the petitioner had further raised serious objection vide letter dated 21.12.2015 objecting to the said transfer of the case from Ahmedabad to Surat without affording an opportunity of personal hearing. It was conveyed that it is the requirement of statute that before transferring the case, an opportunity of hearing is required to be afforded. It was further submitted that the order cannot be said to be justified on the basis of coordinated investigation and assessment as the petitioner had no direct or indirect connection with the said firm named M/s. HVK International Group, Surat. On the contrary, the petitioner heard the name of the company for the first time and there is not a single financial or accounting transaction with the said group. It was also brought to the notice of the authority that searches were carried out at the premises of the petitioner under mistaken identity

of Sanjay Dhanak, a builder because the petitioner had purchased Sanjay Dhanak's flat situated at A/301, Shyam Residency, Science City Road, Ahmedabad. The petitioner has even submitted a letter from the said M/s. HVK International Group, Surat dated 3.12.2015. Even an affidavit is also sworn by said Sanjay Dhanak dated 7.12.2015 which was attached to the said letter of the petitioner. But then nothing has been heard from respondent no.1 which has constrained the petitioner to place one another letter dated 25.1.2016 but of no avail and therefore, in the background of these circumstances, the petitioner has to approach this Court by way of the present petition.

2. Learned advocate Mr. Umedsinh Champavat appearing for the petitioner has submitted that the impugned order challenged in the petition is passed without affording any opportunity to the petitioner and therefore, the same is required to be quashed on that ground alone. It was also submitted by the learned counsel for the petitioner that notice dated 14.10.2015 issued by respondent no.1 came to be despatched through speed post which was received by the petitioner only on 27.10.2015 i.e. a day after the hearing which was fixed on 26.10.2015 and and therefore, in true sense, the petitioner was not afforded an opportunity of hearing. Immediately thereafter, a reply came to be submitted on 30.10.2015 but during that process, the petitioner was informed that the order is already passed and therefore, counsel for the petitioner submitted that the respondent authority has not afforded a reasonable opportunity of

hearing rather the petitioner is deprived of making an effective representation. Learned counsel further submitted that the impugned order as stated above is suffering from serious procedural lapse based on procedural irregularity and while passing the impugned order, a lame reason is assigned that the case is transferred for the purpose of effective and coordinated investigation and assessment but in reality this reason is not backed by cogent material. It was also contended by the learned counsel that search which was carried out at the petitioner's premises was under mistaken identity. It was only on account of fact that flat no.A/301, Shyam Residence, Science city road, Ahmedabad came to be purchased by the petitioner from Sanjay Dhanak. It is only on account that circumstance, an inference is drawn by the authority to link the petitioner to the firm named HVK International Group, Surat. It was also contended by the counsel for the petitioner that while passing the order impugned in the petition, no reasons are assigned. It reflects non-application of mind and therefore, such a non-speaking order may not be allowed to stand in the eye of law. While passing such order, the authority has defeated the very purpose and object of affording an opportunity to the person concerned as contemplated under section 127 of the Act. He therefore, contended that the order is required to be quashed and set aside. It was further contended by the learned counsel for the petitioner that in absence of any cogent material linking or connecting the petitioner that M/s. HVK International group, Surat, no such subjective satisfaction can be arrived at on the issue of effective and coordinated

investigation and assessment. It was pointed out that on the basis of such vague reason not supported by any cogent material, since the order is passed, the same is required to be quashed in the interest of justice. It was also contended that even during the process of search, a statement was recorded in which also no tangible material of any nature is found which would even remotely connect the petitioner to the said firm namely M/s HVK International Group, Surat. There is no positive statement of any nature connecting the petitioner to the said firm and therefore, the impugned exercise is based upon mere surmises and conjectures and therefore, since the order is based upon such action of weak circumstances, the same may not be allowed to operate. Therefore, requested the Court to set aside the impugned order. While substantiating the contention, learned counsel for the petitioner contended that since nothing incriminating is found, the petitioner cannot be linked with such a firm to which he has no association of any nature at all. In the case of **Anand Kumar Arya and anr. vs. Commissioner of Income Tax reported in (2009) 314 ITR 324**, dealing with the issue of transfer of case, Calcutta High Court discarded the plea of centralisation and having found no merit, the order of transfer came to be set aside. This was a case in which no opportunity of hearing was granted before transferring the case from Calcutta to Mumbai. In another decision in the case of **Shikshana Prasarak Mandali vs. Commissioner of Income Tax reported in (2013) 352 ITR 53**, while dealing with the power of transfer of case, concept of opportunity of hearing was

examined by the Court and it was held that the same having not been given, the order of transfer came to be quashed. It is in the background of these facts that the learned counsel for the petitioner requested the Court to grant relief by setting aside the order dated 14.10.2015 impugned in the petition.

3. As against this, learned counsel Mr. Varun K Patel, appearing on behalf of the respondent authority has opposed the petition mainly contending that since there was a search carried out in which a link of the petitioner came to be found with M/s HVK International group, Surat and therefore, in the interest of effective and coordinated investigation and assessment, the authority found it justified to pass an order. It was also pointed out that the respondent no.1 has exercised jurisdiction in due discharge of his duties and in the interest of revenue. Ultimately, with an aim to sub-serve the object of investigation and assessment and to see that effective investigation and assessment can take place, coordination was found to be justified and therefore, the order came to be passed. It was also contended by the counsel that the reason was very much assigned while passing the impugned order which is reflected in the order itself that for the purpose of effective and coordinated investigation and assessment, section 127 of the Act came to be resorted to and therefore, since the order is supported by reason, the same may not be allowed to be assailed by the petitioner. It was also brought to the notice from the affidavit-in-reply more particularly para-6 that there is material found from the

petitioner which necessitated the respondent authority to exercise powers under section 127 of the Act having found by the authority that house which came to be purchased by the petitioner is from Sanjay Dhanak who is having close nexus in business with the said firm namely HVK International group, Surat. The stand of the authority was that Sanjay Dhanak was dealing with real estate ventures of the director of HVK International group and the survey which was carried out in which it was found that flat came to be purchased by the petitioner about 4 to 5 months back. On the basis of such kind of stand having been taken, it was averred in the reply that said premises in question was running as a business premises of M/s. Brillare Reality Private Ltd. in which directors/share holders of HVK International group are also directors and one of the directors is named as Sanjay Dhanak. Therefore, having found that there is a possibility of live link of the petitioner with the said firm HVK International group, the authority has rightly exercised jurisdiction in the interest of effective investigation and assessment. It was also contended by Mr. Patel from the affidavit-in-reply that from the disclosure during search proceedings, it would establish prima facie that there is a possibility of having transaction through M/s. Brillare Reality Pvt.Ltd. to HVK International group by the petitioner and his family members of such possibility cannot be ruled out. By pointing out that learned counsel for the revenue submitted not to disturb the order passed by the respondent authority in due discharge of his duty. While submitting this, learned counsel further pointed out that

simply because an opportunity of hearing is not possible to be given on account of late communication, the said fact ipso facto may not be utilised to nullify the action of the respondent authority as there seems to be no prejudice to the petitioner and therefore, in absence of any prejudice, counsel for the respondent authority submitted not to set aside the impugned order only on the ground that an opportunity of hearing is not afforded. He also submitted that it is of no consequence in the background of aforesaid facts and therefore, he requested not to disturb the order impugned in the petition. He also relied on the decision of the Supreme Court in the case of 2015(8) SCC 519 in which it was held that simply because opportunity of hearing is not afforded, in absence of any prejudice, ultimate action may not be nullified as concept of hearing is not to complete an empty formality and therefore, since there is no serious prejudice to the petitioner and even after granting hearing to the petitioner, ultimate outcome is not possible to be altered. This empty formality of granting an opportunity, in view of this judgment may not be given such importance in the present case.

4. Mr. Sudhir Mehta, learned advocate appearing on behalf of respondent no.2 has strenuously contended and submitted that exercise of power is just and proper and ultimately it is for the aim of achieving effective and coordinate investigation and assessment and therefore, purpose of making such assessment in effective manner may not be allowed to be disturbed.

5. Having heard learned counsel for the respective parties and having gone through the material on record and giving our anxious consideration to the impugned order passed by respondent no.1, it appears that the order passed by the respondent authority is not germane in law. We may refer to statutory provisions in which mandate of affording an opportunity is stipulated and for that purpose, section 127 of the Act need to be reproduced hereinbelow:

“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.

(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,—

(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;

(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.]”

6. Before dealing with the contentions, this statutory provisions is required to be analysed in which ultimately it is found that the concept of affording an opportunity of hearing is very much effectively envisaged and said provision gives mandate to the authority to afford an opportunity cannot be given a go-bye in a lighter way. It is a well settled position of law that statutory provisions must be given full effect and to see that the same may be scrupulously observed by the authority. We may recall that while dealing with such issue of section 127 of the Act, Division Bench of this Court in a case reported in the case of **Shree Ram, Vessel Scrap (P) Ltd. vs. Commissioner of Income-tax-VI reported in (2013) 32 Taxmann.com.120** has

analysed the provisions and considered the issue which is time and again posed by the authorities of centralisation of cases for effective and coordinated investigation and assessment. In the said case, the Court has considered the wordings contained in the provision based upon which the authorities are exercising powers namely “for effective and coordinated investigation”.

7. From the wordings of statutory provisions contained in section 127 of the Act referred to above, in unequivocal terms, it is spelt out that reasonable opportunity be given to a person before passing an order. Time and again this Court as well as Supreme Court has propounded that if a bare reading of the provision gives a very clear and unequivocal meaning, the same is to be given an effect to. The obligation cast under the provision has to be discharged scrupulously and having not been done here in the present case, it appears that the order in question is passed quite in conflict with the statutory provisions. The aforesaid proposition is recently pronounced by the Supreme Court in the case of Narayan vs. Babasaheb & others reported in 2016 AIAR (Civil) 506. In para-30 thereof, the Apex Court has propounded as under:

“ 30. The High Court as well as the Trial Court erred in applying Article 109 of the Act, where Article 109 of othe Act clearly speaks about alienation made by the father governed by Mitakshara law and further Courts below proceeded in discussing about the long rope given under Article 109 of the Act and comparatively lesser time specified under Article 60 of the Act. It is well settled

principle of interpretation that inconvenience and hardship to a person will not be the decisive factors while interpreting the provision. When bare reading of the provision makes it very clear and unequivocally gives a meaning it was to be interpreted in the same sense as the Latin maxim says “dulo lex sed lex”, which means the law is hard but it is law and there cannot be any departure from the words of the law.”

8. In view of the aforesaid statutory provisions, even Bombay High Court in a decision in the case of **Shikshana Prasaraka Mandali (supra)** has in no uncertain terms propounded that opportunity of personal hearing is very much required and in that case, the Court has gone to the extent that even if the assessee has not specifically asked for a personal hearing, the authority would not absolve itself from granting such opportunity. It was also decided that such notice must reflect the reasons for the proposed action and ultimately held that effective and adequate opportunity is required to be given to the assessee. Para-11 of the said decision makes it clear that revenue would not be absolved from its obligation to discharge such function contemplated under the provisions of the Act. Para-11 reads as under:

“11. We do not find substance in the submission of the respondent-Revenue that there is no requirement to offer a personal hearing as the same was not asked for by the petitioner. This court in the matter of Sahara Hospitality (supra) has held that it is mandatory wherever it is possible to do so on the part of the Revenue to grant a personal hearing before passing an order under Section 127(2) of the Act. Thus merely because the petitioner had not specifically

asked for a personal hearing it will not absolve the revenue of its obligation to ordinarily grant such a hearing. Similarly, the participation, if any, by the petitioner before the Officer at Mumbai was without prejudice to its challenge to his jurisdiction, as the same was pending in this court to the knowledge of the Respondent-Revenue. In these circumstances, the revenue will not be absolved of its obligation of giving a personal hearing to the petitioner before passing an order under Section 127(2) of the said Act.”

9. It was also suggested in the said judgement that the authority concerned was under an obligation to consider all these and thereafter has to reach to a finding one way or the other and therefore, failure on the part of the authority to observe Audi Alteram Partem Rule would vitiate very exercise of powers. Para-15 postulates such proposition as held by the Bombay High Court.

10. In another decision in the case of **Anand Kumar Aryua and another vs. Commissioner of Income Tax, reported in (2009) 314 ITR 324**, relied upon by the learned counsel for the petitioner, while dealing with the very provision, the Calcutta High Court has also held that non-compliance of mandatory provision of affording reasonable opportunity would vitiate the very exercise of power and by holding that order of transfer passed under section 127 of the Act came to be quashed. Relevant para-6 of the said judgment is reproduced hereinbelow:

“ I find that the order of transfer of the files of the petitioners was passed for "administrative convenience". Admittedly prior to the order of

transfer no notice to show cause was issued. No opportunity of hearing was granted. [Section 127\(1\)](#) of the Act postulates that a "reasonable opportunity" of hearing is to be granted to the assessee "wherever it is possible to do so" and reasons for such transfer should be recorded. Significantly, there is no such requirement in [section 127\(3\)](#) in case of intra city transfer. In the instant case, since no opportunity of hearing was granted to the petitioners, order of transfer transferring the files from Kolkata to Mumbai, an inter-city transfer, does not satisfy the parameters under the said Section. The facts in the instant case are similar to the facts in Kumar Kumar & Brothers (supra) wherein prior to transfer of the case from Kolkata to Mumbai no hearing was granted. Moreover, there is nothing on record to show why there was denial of such opportunity. So far as recording of reason is concerned, I find the order of transfer has been passed for "administrative convenience". In my view, merely stating that transfer is for "administrative convenience" does not fulfil the criteria of recording of reason. Since law and not a notification should prevail, submission of the respondents that the transfer was in accordance with the Notification dated 14th August, 2002 issued by 6 the CBDT cannot be supported as transfer has to be on the basis of [Section 127](#). Further, the argument of the respondents that the transfers were for "effective and coordinated investigation", evident from the letter dated 7th April, 2006 issued by the Deputy Director of Income Tax (Inv.) Unit-VII (2), Mumbai, (pages 26 - 28 of the affidavit-in-opposition), has been set at naught by the order dated 13th March, 2008 issued by the Chairman, Income Tax Settlement Commission (page 20 of the application being GA No.507 of 2009) directing transfer of the files of the petitioners from Additional Bench Mumbai to Additional Bench Kolkata. Besides, since it is evident from pages 14, 15

and 16 of the said application, ETO, of which the petitioners are the partners, is still assessed at Kolkata, the argument that transfer is for centralisation is without merit.”

11. Reverting back to the case on hand, it emerges from the record that the notice of hearing dated 14.10.2015 fixing the date of hearing on 26.10.2015 came to be received by the petitioner on 27.10.2015 i.e. after the actual date of hearing. It also emerges from the record that within a very short period, reply came to be prepared on 29.10.2015 and submitted before the authority on 30.10.2015. But by that time, it was informed that order has already been passed and therefore, it clearly establishes from the record that no opportunity in actual terms is afforded to the petitioner. It is also required to be noticed that immediately upon noticing effect of order having been passed, repeatedly a request was made in protest of the same, but having been not paid any heed, the petitioner was constrained to approach this Court by way of the present petition. From the chronology of the events, it clearly reflects from the record that the impugned order dated 14.10.2015 is passed in defiance of principles of natural justice and therefore, in true sense, compliance of section 127 of the Act is not made by the respondent no.1 and therefore, this being the position on record, on this ground alone, the order impugned deserves to be quashed.

12. Apart from this non-compliance of principles of natural justice, even on merits also, the petitioner has specifically pointed out that he has even no remote connection with said M/s. HVK International Group, Surat. In the detailed reply submitted before the authority, it was brought to the notice that the petitioner

is not at all directly or indirectly connected nor having any financial transactions with the said group. It was also specifically asserted that search operation was under mistaken belief. From the record of the case, even a certificate is issued by the said M/s. HVK International Group dated 3.12.2015 in which it was specifically submitted that there is no business or financial transaction or any connection with the present petition. Relevant para-2 of the said certificate dated 3.12.2015 is reproduced hereinbelow:

“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 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 Sanjay Vrajlal Dhanak who is dealing with real estate business in Ahmedabad from whom the petitioner purchased a flat in Shyam Residence on Science City Road has also sworn an affidavit on 9.12.2015 in which he has also specifically declared that there is no remote connection either with the petitioner or with his family members. The said affidavit dated 7.12.2015 sworn on 9.12.2015 requires to be taken note of. Relevant paragraphs 4 and 5 of the said affidavit read as under:

“4. That I came to know Shri Lalabhai Kamabhai Bharwad and his family members vis. Smt. Anuben Lalabhai Bharwad, Shri Ashok Lalabhai Bharwad and Shri Pintoo Lalabhai Bharwad because of the above deal only.

5. That I do not have any financial or other business transaction with Shri Lalabhai Kamabhai Bharwad, Smt. Anuben L. Bharwad, Shri Ashok Lalbhai Bharwad and Shri Pintoo Lalbhai 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 Residence, Science City Road, Ahmedabad.”

14. Even from the objections filed by the petitioner alongwith some statements have been brought to the notice which was recorded on 9.12.2014 which is reflected on para-30 of the compilation. In the said statement also, there is no positive material found on of any nature or information revealed which would link the petitioner with said M/s. HVK International group, Surat. On the contrary, it appears that no such question is posed to connect which would make it clear that there appears to be no link with the petitioner with the said M/s. HVK International Group, Surat from the reading of the said statement recorded of the petitioner during search operation. On the contrary, in question nos. 10 and 11, the petitioner has explained about disclosure which has been alleged. From the said material also, prima facie it is revealed that there must be no live link of the petitioner with M/s. HVK International Group, Surat. However, since the authority has not given an opportunity to the petitioner, these materials which are part of the present petition appear to have not been possible to be examined. Had an opportunity been given, the petitioner would have been able to establish that the petitioner has nothing to do with the said M/s. HVK International Group, Surat. Be that as it may. Since the

impugned order suffers from the vice of non-compliance of principles of natural justice, the same is required to be quashed.

At this juncture, we may refer to the decision in the case of **Shree Ram Veessel Scrap (P) Ltd.** cited by the learned counsel for the respondent no.1. But on examination of facts of that case, the ratio laid down appears to be in the context of background of a particular case. In the said case, the Court was dealing with the circumstances wherein show cause notice was issued by the Commissioner calling upon to explain why cases should not be centralised at Ahmedabad for effective and coordinated investigation and assessment. The Commissioner passed an order after considering their objections and while passing the order, even Commissioner has permitted oral submissions made by the authorised representative and in the said case, an alternative place was also suggested and therefore, in that background that order of transfer came to be passed. In the said case, though the Court has dealt with section 127 of the Act, the facts and background of case altogether were different wherein opportunity was very much afforded. Whereas, in the present case, as stated above, exercise of power is undertaken in complete disregard of principles of natural justice. In the present case, we are constrained to hold that there is a serious procedural irregularity, material in nature in exercising powers under section 127 of the Act to the detriment and prejudice of the petitioner and therefore, the authority referred to above is of no avail to the respondent. It is

settled position of law that while applying principles of precedent, if the facts are different, it would make a world of difference in applying principle and therefore, keeping that proposition in mind, we are of the opinion that in the present case, the authority has not passed the impugned order in right spirit in which the same ought to have been passed. It appears that the exercise of power is based upon mere conjectures and surmises and under the garb of centralised and effective coordinated investigation and assessment, the respondent no.1 has passed an order which is not supported by subjective satisfaction nor reflects any application of mind. Hence, the impugned order dated 14.10.2015 requires to be quashed and set aside.

15. For the reasons recorded above, this petition is allowed. The impugned order dated 14.10.2015 passed by respondent no.1 authority is hereby quashed and set aside. The case of the petitioner is ordered to be transferred back from the office of DCIT, Central Circle-3, Surat to the office of ITO Ward 3(3)(3), Ahmedabad and he is directed to proceed with the same from the stage from where it may have presently reached. Rule made absolute accordingly.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

VC DARJI