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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 03.10.2023*

+ **W.P.(C) 12914/2023**

KAMLESH KUMAR JHA Petitioner
Through: Ms Aabgina Chishti, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX -15, DELHI

..... Respondent

Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Pratishta
Chaudhary and Mr Aditya Gupta,
Advocates.

+ **W.P.(C) 12917/2023**

SUSHMA JHA Petitioner
Through: Ms Aabgina Chishti, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX -15, DELHI

..... Respondent

Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Pratishta
Chaudhary and Mr Aditya Gupta,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]



RAJIV SHAKDHER, J.: (ORAL)

CM APPL. 50864/2023 in W.P.(C) 12914/2023

CM APPL. 50872/2023 in W.P.(C) 12917/2023

1. Allowed, subject to just exceptions.

W.P.(C) 12914/2023 and CM APPL. 50863/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

W.P.(C) 12917/2023 and CM APPL. 50871/2023 [*Application filed on behalf of the petitioner seeking interim relief*]

2. Issue notice.

3. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondent/revenue, accepts notice.

4. Given the directions we propose to pass, Mr Chawla says that he does not wish to file counter-affidavit(s) in the above-mentioned matters, and will argue the matters based on the record presently available with the court.

4.1 Therefore, with the consent of the learned counsels for the parties, the writ petitions are taken up for hearing and final disposal at this stage itself.

5. These writ petitions seek to challenge two separate orders [in short, “impugned orders”] dated 06.09.2023 passed under Section 127(2) of the Income-tax Act, 1961 [in short, “Act”].

6. Two broad grounds are articulated in the writ petitions in support of the plea that the impugned orders are unsustainable in law:

(i) First, that the impugned orders passed in the matters are non-speaking orders.

(ii) Second, the impugned orders do not bear a Document Identification Number (DIN).

7. It is stated that in the absence of DIN, the document is non est in law.



In support of this plea, the petitioner relies on Circular No. 19/2019 dated 14.08.2019.

8. We may note that, before the issuance of notice, the petitioners were served with a letter dated 22.05.2023. The reason indicated in the letter for transferring the case of the petitioners from DCIT, Circle 43(1) Delhi to DCIT, Central Circle – 4(4), Central Range-4 in the charge of PCIT(C)-2, Mumbai [in short, “DCIT, Mumbai”] was that a search had been conducted under Section 132 of the Act concerning a group going by the name Suumaya. The search was conducted on the Suumaya Group on 05.07.2022 in Mumbai. Previously, a search and seizure operation was conducted on the petitioners on 16.02.2023 under Sections 132 and 133A of the Act.

8.1. Via the aforesaid letter, it was indicated that the transfer of cases concerning the petitioners to DCIT, Mumbai was proposed for administrative convenience and coordinated investigation carried out *qua* Suumaya.

9. In response to the said notice, the petitioners filed their replies dated 22.05.2023, in which, the petitioners cited the following reasons as to why transfer to DCIT, Mumbai was uncalled for:

- (i) First, they were residents of Delhi.
- (ii) Second, they were directors in two companies going by the name KK Software Pvt. Ltd. and MJ Software Solutions Pvt. Ltd. [hereafter, collectively referred to as “companies”]. These companies were located in Delhi. The companies traded in computer software and I.T.-related products including CCTV, televisions, and mobile phones. The companies were also authorized partners/distributors of various products such as anti-virus software like EScan, ESat, Quick heal, Norton, K7, Kasper Sky, Macfee,



Adobe, etcetera.

10. In sum, the petitioner sought to portray that the business activity of the companies was being managed from their registered office located in Delhi, and accordingly, the books of accounts were also located in Delhi. To buttress this submission, the petitioners also averred that their tax consultant and authorised representative was based in Delhi; whose services, perhaps, were required to progress its legal interest.

11. It is not in dispute that the aforementioned response, for whatever it was worth, was filed before the concerned officer i.e., PCIT-15, New Delhi. The concerned officer, while passing the impugned order, has not said a word as to what prevailed with her in directing the transfer of the petitioners' cases to DCIT, Mumbai. This fact is evident upon a bare perusal of the orders. The relevant part of one of the orders is, thus, set forth hereafter:

“ORDER U/S 127(2) OF THE I.T. ACT, 1961

In exercise of powers conferred by sub-section (2) of Section 127 of the Income Tax Act, 1961 (43 of 1961) and all other powers enabling me in this behalf, I, the Principal Commissioner of Income Tax, Delhi-15, New Delhi, hereby transfer the case, the particulars of which are mentioned hereunder in column (2) & (3) from the Assessing Officer mentioned in Column (4) therein, to the Assessing Officer mentioned in Column (5).

| S.No. | Name of the Assessee (Sh./Smt.) | PAN | From | To |
|--------------|--|------------|----------------------------------|---|
| (1) | (2) | (3) | (4) | (5) |
| 1 | Kamlesh Kumar Jha | ADCPJ2479F | DCIT, Circle- 43(1), Delhi | DCIT, Central Circle-4(4), Central Range-4 in the charge of PCIT(C)-2, Mumbai (DLC-CC- 10-81) |

2. This is in concurrence with letters bearing email dated 29.08.2023 received



from Office of the Pr. CIT(Central)-2, Mumbai. The order shall come into force with immediate effect.”

12. As indicated above, the orders do not bear the DIN as well. Although Mr Aseem Chawla did try to persuade us to sustain the impugned orders, having regard to the fact that coordinated investigation was necessary as Suumaya Group was in Mumbai, we are not inclined to accept the plea as the impugned orders do not even advert to the reasons stated in the letter i.e., search on Suumaya group, administrative convenience, and coordinated investigation.

13. As indicated above, there were several reasons given by the petitioners as to why the transfer ought not to take place. The least the PCIT could have done was to discuss, in the briefest of terms, why these reasons did not prevail with her. It cannot be disputed that Section 127(1) required PCIT to set forth reasons in the order. For convenience, the provision is extracted hereafter:

“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.”

[Emphasis supplied by us]

14. Furthermore, the Supreme Court in ***Ajantha Industries v. Central Board of Direct Taxes*** (1976) 102 ITR 281 (SC) held that reasons available on file [in the instant case, the letter dated 22.05.2023] cannot supplement what is not contained in the order. For convenience, the relevant paragraphs of the judgment are extracted hereafter:



“...The question then arises whether the reasons are at all required to be communicated to the assessee. **It is submitted, on behalf of the revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of section 127(1). We are unable to accept this submission.**

The reason 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 that it is 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 noncommunication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

xxx xxx xxx

We are, therefore, clearly of opinion that non-communication of the reasons in the order passed under section 127(1) is a serious infirmity in the order for which the same is invalid.”

[Emphasis is ours]

15. What compounds the injury is that the impugned orders do not bear a DIN, which is a requirement of the CBDT Circular No. 19/2019 dated 14.08.2019. Thus, for the foregoing reasons, we are inclined to set aside the impugned orders.

15.1 It is directed accordingly.

16. The PCIT would be at liberty to take the next steps in the matter, *albeit*, as per law. In case the PCIT decides to recommence the process concerning the transfer of the petitioners’ cases, she would do well to deal with apprehensions expressed in that behalf by the petitioners, as mere incantation of the expression “administrative convenience and coordinated



investigation”, by itself, conveys nothing.

17. The writ petitions are disposed of in the aforesaid terms.

18. Consequently, the pending applications shall also stand closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 3, 2023 / tr