HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 17992/2022

Murliwala Agrotech Pvt. Ltd., Through Its Director Rakesh Gupta, G-240-245, Riico Industrial Area, Gudi, Udaipur 313 001, Rajasthan.

----Petitioner

Versus

1. Union Of India, Through The Secretary To The Government Of India, Ministry Of Finance, Department Of Revenue, New Delhi.
2. Principal Commissioner Of Income Tax, 3Rd Floor, Aayakar Bhawan, Subcity Centre, Udaipur.
3. The Assistant Commissioner Of Income Tax, Circle 2, Income Tax Department, Udaipur.
4. Deputy Commissioner Of Income Tax, Central Circle 14, New Delhi, 354, 3Rd Floor, Income Tax Building, E-2, Ara Centre, Jhandewalan Extension, New Delhi.

----Respondents

For Petitioner(s)	:	Mr. Anjay Kothari Mr. Amit Sharma
For Respondent(s)	:	Mr. K. K. Bissa Mr. G. S. Chouhan

HON'BLE THE CHIEF JUSTICE MR. K.R. SHRIRAM
HON'BLE MR. JUSTICE RAVI CHIRANIA

Order

REPORTABLE

17/09/2025

PER, HON’BLE MR. RAVI CHIRANIA, J.

1. The present petition is the second round of litigation. In the earlier round, petitioner approached this Court with the similar grievance challenging the notice issued under Section 127 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act of 1961’ for short). The co-ordinate Bench of this Court, in the previous round of litigation of the petitioner, passed a reasoned order dated 20.07.2022. The relevant paragraphs of the order dated 20.07.2022 passed in **D.B. Civil Petition No.6847/2021** titled as ‘***Murliwala Agrotech Pvt. Ltd. Vs. Union of India & Ors.***’ are as under:

"We have given our thoughtful consideration to the submission advanced at bar and have gone through the impugned order, the statutory provision and the judgments cited at bar.

At the outset, we may state here that Section 127(1) of the Income Tax Act, which deals with powers of the competent authority to transfer the assessment proceedings, is framed with the salutary objective of adherence to the principle of natural justice, which is fundamental to any proceeding of adversarial nature. It cannot be denied that the assessment/ reassessment proceedings under the Income Tax Act, would be adversarial to the assessee and hence, adherence to the principles of natural justice, is sine qua non.

Whenever it is proposed to transfer the case of assessee from one assessing authority to another, providing opportunity of hearing to the assessee is essential and can be circumvented only if the competent authority feels, for reasons to be recorded in writing, that it is not possible to do so. In the present case, the respondents have neither setup any such case that it was not possible to provide opportunity of hearing to the assessee, nor any reasons to do so were recorded before taking the decision to transfer the case from Circle Udaipur to Circle New Delhi.

Notwithstanding the fact that the assessment proceedings under the Income Tax Act, have now become faceless, it cannot be denied that the assessee would be entitled to engage Counsel/ Advisors of his choice to defend himself even in the faceless proceedings and thus, the requirement of following the principles of natural justice cannot be evaded in a casual manner.

In the case of ***Advantage Strategic Consulting (P) Ltd. (supra)****, relied upon by counsel Shri Bissa, the factual situation was totally different because transfer had been made from one Circle to another in the same city. Furthermore, during pendency of the proceedings, the assessment order had been passed. In that situation, Hon'ble Division Bench went on to hold that proceedings before the High court, had become infructuous.*

In the present case, the transfer order and the notices issued in furtherance thereof, have been stayed by this Court and as such, the facts of the case at hand are totally distinguishable.

A Division Bench of this Court in the case of ***Smt. Jeewan Kumari (supra)****, has held that as per Section 127(1) of the Income Tax Act, it was incumbent for the Board to have provided opportunity of hearing to the assessee before ordering transfer of her case. Similar view was taken by Hon'ble the Supreme Court in the case of* ***Noorul Islam Educational Trust (supra)****.*

Consequently, we are of the opinion that the impugned transfer order dated 21.11.2019 (Annexure-7) and the notices (Annexure-2, Annexure-6 and Annexure-12), as a consequence thereof, do not stand to scrutiny and hence, the same are declared invalid and set aside.

The respondents are permitted to resume the proceedings from the stage former to the transfer order (Annexure-7) dated 21.11.2019, was passed. If it is still proposed to transfer the case of the petitioner, opportunity of hearing shall be provided to it and thereafter, proceedings shall be continued and concluded as per law within a period of three months from today.

The writ petition is allowed in these terms."

2. The co-ordinate Bench in the above order permitted respondent-Revenue, after quashing the earlier impugned transfer order dated 21.11.2019, to transfer the case, if necessary, after providing opportunity of hearing to petitioner. In terms of the earlier order passed by the co-ordinate Bench of this Court, the Revenue by notice bearing No.ITBA/COM/F/17/2022-23/1045189559(1) dated 05.09.2022 provided opportunity of hearing. Petitioner in response to the notice dated 05.09.2022 (Annex.2 of the writ petition) filed its detailed objections (Annex. 5 of the writ petition). The respondent-Principal Commissioner of Income Tax maintaining its earlier stand again passed the impugned order under Section 127 of the Act of 1961 on same grounds without there being much change in circumstances.

3. Being aggrieved by the fresh notice issued under Section 127 after the previous one was declared invalid by the co-ordinate Bench by its order dated 20.07.2022 petitioner has again approached this Court. This Court noted that the co-ordinate Bench considered the objections of respondent-Revenue and thereafter by order dated 20.07.2022 declared the impugned transfer order dated 21.11.2019 as invalid and quashed the order issued under Section 127 of the Act of 1961, however respondent-Revenue, by order impugned dated 19.10.2022, has again ordered for transferring the case.

3.1 Learned counsel for petitioner Mr. Ajay Kothari has relied upon the order passed by the High Court of Bombay authored by one of us (**Hon'ble the Chief Justice**) in the case of '***Rajib Mukhopadhyay vs. Principal Commissioner of Income Tax – 42 and Ors.***' **in Writ Petition (L) No. 12575/2024 decided by order dated 08.05.2024** in which similar controversy, where the PCIT, Mumbai ordered for transferring the case form Mumbai to Delhi, was decided. In the case of '*Rajib Mukhopadhyay'* (supra) the Court relied upon another order passed by Bombay High Court also authored by one of us (**Hon'ble the Chief Justice**) passed in the case of Pegasus Assets Reconstruction Private Ltd. vs. Principal Commissioner of Income Tax.

3.2 On the basis of the reasoned order dated 20.07.2022 passed in the earlier round in '*Murliwala Agrotech'* (supra) and '*Rajib Mukhopadhyay'* (supra), the learned counsel Mr. Ajay Kothari submitted that the impugned transfer order dated 19.10.2022 be declared invalid and quash and set aside. The learned counsel for the Revenue Mr. K.K. Bissa strongly objected and submitted that in the order dated 19.10.2022 the Revenue has considered all objection as raised. He therefore, prayed that the present petition being devoid of merit deserves no interference of this Court.

4. We find that the factual position as it was prior to issuance of earlier transfer order dated 21.11.2019 has not changed, except for few formal approvals of the competent authorities of the Revenue at Delhi which has no material impact on the merits of this case and which would not cement the arguments of the revenue in this second round of litigation for the same controversy.

5. We do not approve the conduct of the Revenue for being rigid and adamant to transfer the case of petitioner from Udaipur to Delhi despite passing of the previous order by the co-ordinate Bench of this Court dated 20.07.2022 which was not challenged further but rather accepted by the Revenue. The Revenue must be more concerned with examining and deciding the issue strictly as per law instead of making the assessee a shuttlecock. When the faceless system has been put in place by the Revenue itself which has provided more transparency in the taxation matters then act of Revenue of transferring the case by impugned order dated 19.10.2022 is neither reasonable nor justifiable but rather arbitrary. The proceedings initiated by respondent against petitioner are pending for more than 6 years because of respondent's unreasonable and unjustified act of ordering transfer the case of the petitioner from Udaipur to Delhi.

6. Moreover, from impugned order dated 19.10.2022 it appears that respondent decided to transfer petitioner's case from Udaipur to Delhi by exercising powers under Section 127(1) of the Act for uniformity in assessment of persons involved following the search that department had taken under Section 132(1) of the Act on 27.11.2017 on the Brindavan group.

Admittedly, as stated in reply, the assessment of Brindavan group got completed sometime in December 2019, therefore, as the assessment itself has been passed in the case of Brindavan group, we see no reason why the petitioner's case should be transferred to Delhi.

7. For the above reason, the present D.B. Civil Writ Petition No.17992/2022 stands allowed and the impugned order dated 19.10.2022 issued under Section 127 of the Act of 1961 is declared invalid and the same is hereby quashed and set aside. Any adverse order passed against the petitioner during the pendency of this petition also stands declared illegal. The respondent shall be free to continue proceedings from the stage as it existed prior to issuance of the transfer orders dated 21.11.2019 and 19.10.2022.

8. At the same time, all rights and contentions of Revenue is kept open including to take steps in accordance with law under the provisions of Section 153C of the Income Tax Act, 1961 or any other applicable provisions. This liberty should not be construed as an approval by us to take such action against petitioner. If such action is taken, petitioner be defended in accordance with law.

Petition disposed.

(RAVI CHIRANIA),J **(K.R. SHRIRAM),CJ**

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