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

+ W.P.(C) 9713/2019 & C.M.No.40084/2019

LOUIS DREYFUS COMPANY ASIA PTE. LTD. Petitioner

Through: Mr.Aditya Vohra, Advocate.

versus

COMMISSIONER OF INCOME TAX (INTERNATIONAL
TAXATION) - 2 & ORS. Respondents

Through: Mr.Sanjay Kumar, senior standing
counsel for the Revenue.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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13.05.2022

Present writ petition has been filed challenging the notice dated 30th March, 2019 issued by respondent no.3 – Deputy Commissioner of Income Tax, Circle 3(1)(2) (International Taxation), Mumbai under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) for the Assessment Year 2012-13 and the proceedings initiated pursuant thereto.

Learned counsel for the petitioner submits that since the impugned notice has been issued under Section 148 of the Act by respondent no.3 based in Mumbai, who is a non-jurisdictional Assessing Officer, he is not entitled to exercise power over the petitioner.

On 06th September, 2019, the learned predecessor Division Bench had directed the respondent no.3 to decide the issue of jurisdiction raised by the petitioner. However, today Mr.Sanjay Kumar, learned senior standing

counsel for the respondents/Revenue states that no decision on the issue of jurisdiction has been taken by the respondent no.3 till date. He points out that on 09th May, 2022, the respondent no.3 had sent an email to DCIT(IT)-2(2)(1), New Delhi, requesting him to provide a copy of the order under Section 127 of the Act. The email dated 09th May, 2022 is reproduced hereinbelow:-

“This office vide letter dated 14.06.2019, 26.07.2019 has asked from DCIT(IT)-2(2)(1), New Delhi for the order u/s 127 of the Act (letter attached) consequent to which the PAN was transferred in this charge. However no reply has been received till date. Further, the PAN was transferred back on 23.09.2019 after receiving the NOC dated 16.09.2019 from DCIT(HQ)(IT)-2, New Delhi.

Further, it has to be noted that the PAN jurisdiction is being determined by the office of the transferrer i.e. DCIT(IT)-2(2)(1), New Delhi and As the office of the undersigned had never been asked for NOC and never received order u/s 127 of the Income Tax Act, it is not possible to reply to the directions issued by Hon’ble Delhi High Court to the respondent no.3 to decide the issue of jurisdiction raised by the petitioner. Kindly provide a copy of order u/s 127 of the Act which was asked before also, so that the appropriate reply can be prepared.

*Kshitij
DCIT(IT)-3(1)(2)
Mumbai”*

Mr.Sanjay Kumar, learned counsel further states that the DCIT(IT)-2(2)(1), New Delhi, had replied to the said email on 11th May, 2022 stating therein that no order under Section 127 of the Act is available. The said email is reproduced hereinbelow:-

*“Sir,
Kindly refer to the trailing mail.
In this regard, it is intimated that all efforts have been made to trace the order passed u/s 127 of the Act in the case of Louis Dryfus Company Asia Pvt. Ltd (PAN AABCL7593H). However, the same couldn't be traced. Further, from the record, it is found that PAN of the assessee was transferred on 14.11.2018 to Mumbai Circle 3(1)(2).*

*Regards
DCIT(IT), Circle 2(2)(1), New Delhi.”*

Mr.Sanjay Kumar, on instructions, reiterates that no order under Section 127 of the Act has been passed. He also states that PAN of the petitioner/assessee was transferred to Mumbai on 14th November, 2018 and it was transferred back to Delhi on 23rd September, 2019.

Keeping in view the fact that no transfer order has been passed under Section 127 of the Act, the impugned notice dated 30th March, 2019 issued by respondent no.3 is without jurisdiction. Consequently, the notice dated 30th March, 2019 is quashed and the present writ petition along with pending application stands disposed of. If the law permits the respondents/Revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioner has a grievance, it shall be at liberty to take the remedies in accordance with law.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 13, 2022/KA