(2013) 10 BOM CK 0253

In the Bombay High Court

Case No : Writ Petition No. 1433 of 2013

Aamby Valley Ltd. APPELLANT

Vs

Commissioner of Income Tax - 8 RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2014) 270 CTR 57 : (2014) 221 TAXMAN 458

Hon'ble Judges : Mohit S. Shah, C.J;M.S. Sanklecha, J

Bench : Division Bench

Judgement

1. The challenge under Article 226 of the Constitution of India is to the order dated 7 March 2013 (Exhibit-H) passed by the Commissioner of income tax-8, Mumbai. By the impugned order the petitioners (Petitioner No. 1''s) case is transferred from Deputy Commissioner of income tax, Mumbai-8 to Deputy Commissioner of income tax, Central Circle (6), New Delhi for the purpose of co-ordinated investigation and assessment of the petitioner. By an order dated 5 January 2012 the Commissioner of income tax-8, Mumbai had transferred the petitioners'' case from Deputy Commissioner of income tax-8(1), Mumbai to Deputy Commissioner of income tax, Delhi (Central-6), New Delhi in exercise of the powers u/s 127(2) of the income tax Act, 1961 ("the Act"). The above order was passed on the ground that the case belonging to the Sahara Group are centralized with DCIT (Central-6), New Delhi and also the fact that the assessee had large scale financial trans action/substantial loans with Sahara Group entities.

2. The petitioner challenged the above order dated 5 January 2012 by filing a Writ Petition No. 2854 of 2012 in this Court. By order dated 24 January 2013 this Court held that in view of the law laid down by this Court in Sahara Hospitality Limited being Writ Petition No. 596 of 2012, granting of personal hearing was necessary before passing an order u/s 127(2) of the Act.

3. However, the Court by the above order dated 24 January 2013 did not quash and set aside the transfer order dated 5 January 2012 in its entirety as it did not interfere with the transfer of assessment proceedings for A.Y. 2010-11 to Delhi

as the assessment were becoming time barred by 31 March 2013. However, excluding A.Y. 2010-11 the transfer by order dated 5 January 2012 was held to be bad and set aside. The revenue was directed to furnish an opportunity of being heard to the assessee and for that purpose treat the impugned order dated 5 January 2012 as a notice calling upon the assessee to show cause why the case should not be transferred u/s 127 of the Act from Mumbai to Delhi.

4. Pursuant to the above directions, the Commissioner of income tax-8, Mumbai granted the petitioner a personal hearing with regard to the proposed transfer. At the hearing, the petitioner filed additional reply dated 28 February 2013 raising various objections to the proposed transfer. However, by the impugned order dated 7 March 2013, Commissioner of income tax-8, Mumbai did not accept the petitioners'' objections and has transferred the petitioners case from Deputy Commissioner of income tax-8(1), Mumbai to Deputy Commissioner of income tax, Central Circle-6, New Delhi. The impugned order transfers the case of the petitioners as above for the purpose of co-ordinated investigation and assessment after giving the following findings:--

I find that the assessee has not refuted the fact that it is an entity of the Sahara Group and that it has substantial financial transaction with the various group entitles.

5. Mr. J.D. Mistry, learned Senior Counsel for the petitioners has urged the following contentions challenging the impugned order.

(a) The impugned order has been passed on the basis that petitioners belong to the Sahara Group and has substantial transactions with various other group entities in the group. Show cause notice i.e. order dated 5 January 2012 (was to be treated as show cause notice by the order dated 24 January 2013) proposed to transfer the case to Deputy Commissioner of the income tax (Central-6), Delhi in view of its large scale inter group transactions and investments made in M/s. Sahara Adventure Sports Ltd. Thus, the impugned order is beyond the Show Cause Notice and in breach of natural Justice;

(b) The impugned order is an order bereft of reasons inasmuch as it does not deal with the various objections raised by the petitioner to the proposed transfer. These objections of the petitioner was put on record by letters dated 23 March 2011 and 28 February 2013. Therefore, the impugned order is in breach of natural justice as being an order without reasons;

(c) The impugned order transferring the case from Mumbai to Delhi has merely stated that the case is transferred for the purposes of co-ordinated investigation and assessment. However, this was without giving any reason as to why co-oriented investigation and assessment is necessary in the present facts. Such a transfer of case is in defiance of the decision of this Court in M/s. Global Energy Pvt. Ltd. Vs. Commissioner of Income Tax, .

(d) The impugned order dated 5 January 2012 which is to be treated as a Show

Cause Notice relies upon a letter dated 30 August 2011 received from Commissioner of income tax, New Delhi which in turn makes reference to a communication dated 26 August 2011 received from the Chief Commissioner of income tax approving centralization of the petitioners'' case. The aforesaid correspondence not having been furnished to the petitioners makes the impugned order bad in law as being in breach of natural justice; and

(e) The impugned order dated 7 March 2013 is unsustainable in law as there is no evidence on record to show that the transfer of the petitioner''s case from Mumbai to Delhi was consequent to an agreement between the Commissioner of income tax Mumbai and Commissioner of income tax (Central-6), New Delhi.

6. On the other hand Mr. Pinto learned Counsel for the revenue has supported the impugned order.

7. We have considered the submissions. The power to transfer cases u/s 127 of the Act is to be undoubtedly exercised after following the principles of natural justice. However, the discretion of the authority to transfer a case has to be examined on the touchstone of the same not being arbitrary and/or perverse and/ or mala fide. If there are reasons in the impugned order which indicates due application of mind to reach a view to transfer a case from one jurisdiction to another, then this Court will not interfere with the discretion of the administrative authority who transfers the case. This discretion is vested by the Act in high ranking officer viz. Commissioner of income tax and the necessity to transfer a case from the jurisdiction of one Officer to another Officer for better administration of the Act could be diverse and impossible to enumerate. It is for the above reason that Section 127 of the Act has not limited the exercise of jurisdiction by specifying any circumstances before the authority can exercise his powers to transfer the case. One more fact which cannot be lost sight of is that an assessee cannot choose his Assessing Officer and, therefore, if the transfer order does indicate some valid reasons to justify the transfer and such reasons are neither perverse or arbitrary or mala fide this Court would not interfere with the reasonable exercise of his discretion.

8. So far as first ground as urged by Mr. Mistry that the impugned order goes much beyond the Show Cause Notice is concerned, we find that in the show cause notice (order dated 5 January 2012) it is mentioned as under:--

It is seen that all the cases belonging to the Sahara Group are centralized with DCIT Central Circle-6, New Delhi. It is also a fact that the assessee has substantial loan/financial transactions with the other group entities. Further the assessee is learnt to have stakes in IPL Cricket Team (Pune Warriors) owned by the group company M/s. Sahara Adventure Sports P. Ltd., which also has been centralized with DCIT, Central Circle-6, New Delhi.

while the impugned order transfers it on the following grounds:--

I find that the assessee has not refuted the fact that it is an entity of the Sahara

Group and that it has substantial financial transactions with the various group entities.

We specifically asked Mr. Mistry whether the petitioners are a part of the Sahara Group of Companies and he stated that it is so. However, he further stated that the petitioners are not a subsidiary or holding company of any other company belonging to the Sahara Group of Companies. Moreover, there is substantial financial transaction with various group entities. Moreover, in the reply dated 28 February 2013 the petitioners have stated in Paragraph 19(1) thereof "the assessee submits that there are many Sahara group companies which are not assessed to DCIT, Central Circle 6, New Delhi and hence the same cannot be considered as valid lawful reason to exercise powers u/s 127(2) to transfer the case of the assessee to DCIT, Central Circle 6, New Delhi. This also supports the inference that the petitioner is a part of a Sahara Group of Companies. Thus, we find no merit the first objection.

9. As regards the second contention of Mr. Mistry that the Commissioner of income tax in the impugned order has not dealt with all the submissions made by the petitioners in its reply dated 28 February 2013 does not appear to be correct. It is necessary to note that in Para 2 of the impugned order the Commissioner has in fact referred to all the major objections raised by the petitioners. In fact, the petitioners themselves have stated in their replies that it has substantial financial transactions with various group entities of the Sahara Group. In fact the petitioner had in its replies not refuted the fact that it has substantial financial transactions with various entities in the Sahara Group of Companies. Thus, when there is no objection to the ground for proposed transfer, no occasion to deal with the same can arise. Moreover, as pointed out above, the order of transfer u/ s 127 of the Act has to indicate that there is due application of mind and the transfer is not mala fide and/or the impugned order is not perverse.

10. As regards the third contention of Mr. Mistry, that the petitioners is regularly assessed to tax in Mumbai. The impugned order gives no reasons as to how the transfer of the petitioners'' case from Mumbai to Delhi was necessitated for co-ordinated investigation and assessment. The recording of reasons for co-ordinated investigation is necessary in view of the discussion of this Court in Global Energy (P.) Ltd. (supra). We find that the above decision will have no application to the present facts. This is so, as the impugned order does give reasons for co-ordinated investigation i.e. the petitioners are a part of the Sahara Group of the Companies and the petitioners had substantial transactions and investments in other entities of the Sahara Group particularly-Sahara Adventures Sports (Pvt.) Ltd. which is assessed in Delhi with DCIT, Central Circle-6 to whom the petitioners case is transferred.

11. As regards the fourth contention of Mr. Mistry i.e. failure on the part of the revenue to supply letter dated 26 August 2011 to CIT(Central-6) Delhi who has approved centralization of the petitioner''s case. This was a letter referred to in the communication dated 30 August 2011 referred to in the Show cause Notice

i.e. order dated 5 January 2012. The aforesaid letter is not the basis of seeking a transfer. It is an communication which is internal between the offices and not furnishing of the same causes no prejudice to the petitioner. The impugned order places no reliance upon it. Letters merely initiating process were not required to be given to the petitioners. The petitioners were given the show cause notice and also personal hearing by the Commissioner of income tax, Mumbai. In the circumstances, it cannot be said that there was violation of principle of natural justice. The petitioner was given an opportunity of hearing whereat objections were raised and considered before passing the impugned order.

12. We may also refer to recent judgment of this Court dated 26 September 2013 in Writ Petition No. 408 of 2013 dismissing the writ petition challenging the similar transfer order u/s 127(2) of the income tax Act, 1961 in the case of Sahara Hospitality Ltd. Vs. Commissioner of Income Tax-8, which is also a part of the Sahara Group.

13. The last objection raised by Mr. Mistry is that there is no evidence of any agreement between Commissioner of income tax (Central 6), New Delhi, and Commissioner of income tax, Mumbai that the petitioners case should be transferred from Mumbai to New Delhi. These proceedings for transfer of the petitioners case was initiated on report instituted by communication dated 30 August 2011 from the Commissioner of income tax (Central 6), New Delhi seeking to centralization of the petitioners'' case at Delhi. Thereafter by the impugned order dated 7 March 2013, the Commissioner of income tax-8, Mumbai has transferred the petitioner''s case from Mumbai to New Delhi. Thus, there is an agreement between the Commissioners of income tax, New Delhi and Mumbai as required in terms of section 127(2)(a) of the Act was available. Therefore, this objection is not sustainable.

In view of all the above reasons, we do not find any reason to entertain this petition.

Accordingly, petition is dismissed with no order as to costs.

