
(2010) 04 GAU CK 0054
In the Gauhati High Court

Anil Kumar Kothari

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 28-04-2010

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Income Tax Act, 1961 — Section 127, 142, 34

Citation : (2010) 232 CTR 104

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Heard Mr. Kanan Kapoor, learned Counsel for the petitioner as well as Mr. U. Bhuyan, learned standing Counsel, IT Department.

2. This writ petition is directed against the order dt. 1st Aug., 2007 (Annex. B) by which the writ petitioner was directed to furnish true and correct return of income regarding asst. yr. 2000-01 in respect of which the petitioner was shown assessable as an assessee. The notice further provides that the return should be furnished in the form as prescribed in Sub-rule (1) of Rule 12 of the IT Rules, 1962 and should be delivered in the office within 15 days after service of the notice. In the last para of the notice, it has been stated as follows:

It is also being intimated to you that vide order Memo No. 18/127/Centralisation/Crr/GHY-II/02-03/1365-69 dt. 24th July, 2007 of the CIT, Guwahati-II, Guwahati jurisdiction over your case has been transferred to this office and therefore, you are requested to direct all your Income Tax related correspondence to this office and from now onwards IT returns are also to be filed in this office only.

3. From the above what is seen is that by an order dt. 24th July, 2007 passed by the CIT, Guwahati-II, Guwahati jurisdiction over the petitioner had been transferred to the office of the Asstt. CIT, Central Circle-5, New [Delhi and accordingly the petitioner was requested to make all the Income Tax related

correspondences to the said office.

4. It is the case of the petitioner that he was never intimated about the order dt. 24th July, 2007 and no reason whatsoever was assigned to him towards transferring the jurisdiction from Guwahati to New Delhi.

5. By Annex. A notice dt. 10th July, 2007 issued u/s 142(1) of the IT Act, 1961, the petitioner was directed to prepare true and correct return of his income in respect of the asst. yr. 2005-06 and to submit the same to the AO who is the Asstt. CIT, Circle-3, Guwahati.

6. Mr. Kapoor, learned Counsel for the petitioner upon a reference to the provision of Section 127(1) of the Act, submits that the impugned order is palpably illegal being violative of the said provision and thus it requires to be interfered with. He has also placed reliance on the decision of the apex Court in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, as well as the decisions in Naresh Kumar Agarwal Vs. Union of India (UOI) and Others, and Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and Others,

7. Referring to the counter affidavit filed by the respondents, Mr. Kapoor, learned Counsel for the petitioner has contended that the order dt. 24th July, 2007 purportedly passed u/s 127 of the IT Act, 1961 does not disclose any reason whatsoever. The reasons for transfer as have been disclosed in the said order dt. 24th July, 2007 is "administrative convenience and co-ordinating and effective investigation". He submits that the reasons shown in the order dt. 24th July, 2007 being vague and indefinite, same cannot be said to be in compliance of the requirements of the reasons to be assigned as per the provisions of Section 127(1) of the Act.

8. Mr. U. Bhuyan, learned standing Counsel, IT Department, on the other hand, supporting the aforesaid order dt. 24th July, 2007, submits that the reasons assigned in the order being sufficient, the Writ Court exercising its power of judicial review under Article 226 of the Constitution of India, will be reluctant to interfere with the same. He submits that if the petitioner is aggrieved by non-furnishing of the notice, it is always open for him to approach the authority for such notice with reasons.

9. I have considered the submissions made by the learned Counsel for the parties as well as the materials on record. In the rejoinder affidavit, the petitioner has submitted that he being a permanent resident of Guwahati and having regard to his background and root in Guwahati, it is unbelievable that the authority was unable to serve notice on him. Further, stand of the petitioner is that since the requirement of assigning reasons as contemplated in Section 127(1) of the Act has also not been complied with, the impugned order is liable to be set aside and quashed.

10. In Ajantha Industries (supra), the apex Court dealing with the requirement of

assigning reasons in the order has made the following observations:

6. ...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 ease 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.

7. We are clearly of opinion that the requirement of recording reasons u/s 127Q 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.

Mr. Sharma drew our attention to a decision of the Delhi High Court in *Sunanda Rani Vs. The Union of India and Others*, where the learned Single Judge has taken a contrary view. For the reasons, which we have given above, we have to hold that the said decision is not correct.

The appellant drew our attention to a decision of this Court in *Pragdas Umer Vaishua v. Union of India* (1967) 12 MPLJ 868, where Rule 55 of the Mineral Concession Rules, 1960, providing for exercise of revisional power by the Central Government was noticed. It was held that under Rule 55 the Central Government in disposing of the revision application must record its reason and communicate these reasons to the parties affected thereby. It was further held that the reasons could not be gathered from the notings in the files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality.

Mr. Sharma drew our attention to a decision of this Court in *Kashiram Agarwala Vs. Union of India (UOI) and Others*, It is submitted that this Court took the view that orders u/s 127(1) are held in that decision to be "purely administrative in nature" passed for consideration of convenience and no possible prejudice could be involved in the transfer. It was also held therein that under the proviso to Section 127(1) it was not necessary to give the appellant an opportunity to be heard and there was consequently no need to record reasons for the transfer. This decision is not of any assistance to the Revenue in the present case since that was a transfer from the ITO to another ITO in the same city, or, as stated in the judgment itself "in the same locality" and the proviso to Section 127(1), therefore, applied.

When the law requires reasons to be recorded in a particular order affecting prejudicially the interest of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.

8. Mr. Sharma also drew our attention to a decision of this Court in *S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore*, where this Court was dealing with Section 34 of the Act. It is clear that there is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the CIT to accord sanction to proceed u/s 34 must also be communicated to the assessee. The ITO need not communicate to the assessee the reasons which led him to initiate the proceedings u/s 34. The case u/s 34 is clearly distinguishable from that of a transfer order u/s 127(1) of the Act.

When an order u/s 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has no such remedy under the Act to question the order of transfer. Besides, the aggrieved assessee on receipt of the notice u/s 34 may even satisfy the ITO that there were no reasons for reopening the assessment. Such an opportunity is not available to an assessee u/s 127(1) of the Act. The above decision, is therefore, clearly distinguishable.

11. In the case of *Vijayasanthi Investments (supra)*, the Andhra Pradesh High Court has observed thus:

8. From the aforesaid decisions, it is clear that, in the matter of the transfer of a case u/s 127 of the Act, it is necessary that the authority which proposes to transfer the case must, wherever it is possible to do so, give the assessee a reasonable opportunity of being heard with a view to enable him to effectively show cause against the proposed transfer. The notice must also propose to give a personal hearing. It is also necessary to mention in the notice the reasons for the proposed transfer so that the assessee could make an effective representation with reference to the reasons set out. It is not sufficient merely to say in the notice that the transfer is proposed "to facilitate detailed and co-ordinated investigation". The reasons cannot be vague and too general in nature but must be specific and based on material facts. It is again not merely sufficient to record the reasons in the file but it is also necessary to communicate the same to the affected party.

12. In *Naresh Kumar Agarwal (supra)*, the Calcutta High Court also observed thus:

8. So far as the notice is concerned though it has been mentioned that the proposed transfer is for "co-ordinated investigation and assessment", it does not mention any specific reasons for transfer. Merely stating that transfer is for "co-ordinated investigation and assessment" is not at all sufficient as the assessee should be intimated about the reasons in a comprehensive manner in order to enable him to make effective representation.

13. Section 127 mandates that assessee must be given a reasonable opportunity of being heard while exercising the power to transfer cases. Although a rider "wherever it is possible to do so" is also there, it is not the case of the

respondents that it is not possible to do so. Further, the order is to be passed after recording the reasons for doing so. Apart from the fact that the petitioner was not provided with any opportunity of being heard in the matter, the reasons assigned in the order dt. 24th July, 2007 which is "administrative convenience and for co-ordinating effective investigation" also cannot be said to be the reasons as envisaged in Section 127(1) of the Act. It is in this context, Mr. Kapoor, learned Counsel for the petitioner has referred to the aforesaid two decisions rendered by Andhra Pradesh High Court and Calcutta High Court. In both the decisions, the High Courts have emphasised on the need to assign detailed reasons while holding that it is not sufficient merely to show in the notice that the transfer is proposed to "facilitate the detailed and co ordinated investigation". In the Andhra Pradesh High Court decision the said quoted portion, was assigned to be the reasons, which did not find favour of the Court.

14. In view of the above, the writ petition succeeds on both counts, i.e. non-issuance of notice to the petitioner and non-furnishing of reasons for transferring the matter from Guwahati to New Delhi. Consequently, the impugned order dt. 1st Aug., 2007 (Annex. B) stands set aside and quashed. The writ petition is allowed, however, without any order as to costs.

15. Setting aside of the impugned order may not preclude the respondents from proceeding with the matter in accordance with law, if so advised.