

(2009) 05 DEL CK 0123

In the Delhi High Court

Case No : Writ Petition (C) No. 9028 of 2009 and C.M. No. 6542 of 2009

ATS Infrastructure Ltd.

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 27-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Gift Tax Act, 1958 — Section 7
Income Tax Act, 1922 — Section 5
Income Tax Act, 1961 — Section 124, 127, 127(2), 64(1), 64(2)
Wealth Tax Act, 1957 — Section 11

Citation : (2009) 226 CTR 457 : (2009) 318 ITR 299 : (2009) 183 TAXMAN 486

Hon'ble Judges : Vikramajit Sen, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : C.S. Aggarwal Anil Kher, Prakash Kumar Kapil Kher and S.S. Pandit, for the Appellant; P.L. Bansal, Anshul Sharma and Sanjeev Rajpal, for the Respondent

Judgement

Vikramajit Sen, J.—This is the second salvo of the Petitioners seeking to invoke extraordinary of this Court under Article 226 of the Constitution of India. The Petitioners challenge the transfer of their cases from Delhi to Meerut in terms of the impugned Order dated 1.4.2009 passed by the Commissioner of Income Tax, Delhi-I, New Delhi u/s 127(2) of the Income Tax Act, 1961 (Act for short), Section 11 of the Wealth Tax Act, 1957 and Section 7 of the Gift Tax Act, 1958. The relevant details stand clarified in the Table below:

Sl. Name of the assessee From To No. _____
_____ (1) (2) (3) (4) 1 M/s Alstonia Township
(P) ITO Ward ACIT, Central Ltd. 1(3), New Circle, Meerut PAN AAECA4455A
Delhi _____
_____ 2 Shri Ashwani Talwar DCIT, Circle ACIT, Central PAN AAAPT0920E 2(1),
New Circle, Meerut Delhi _____
_____ 3 Shri Anil Kumar Saha DCIT, Circle ACIT, Central

PAN AMYPS1829D 2(1), New Circle, Meerut Delhi _____
 _____ 4 Shri Geetambar Anand
 DCIT, Circle ACIT, Central PAN ACHPA0868K 2(1), New Circle, Meerut Delhi _____
 _____ 5
 M/s ATS Infrastructure DCIT, Circle ACIT, Central Ltd. 2(1), New Circle, Meerut
 PAN AADCA0809D Delhi _____
 _____ 6 M/s ATS Promoters & ITO Ward ACIT, Central
 Builders (P) Ltd. 2(2), New Circle, Meerut PAN AABCA4298C Delhi _____
 _____ 7 M/s ATS
 Construction & ITO Ward ACIT, Central Maintenance (P) Ltd. 2(2), New Circle,
 Meerut PAN AACCS0562Q Delhi _____

2. Earlier, seven Writ Petitions had been filed on 5.12.2008 challenging the impugned letter dated 7.10.2008 which had earlier transferred the subject cases in the same manner as has been done in the impugned decision dated 1.4.2009. The springboard for this action was the notice issued by the Commissioner of Income Tax, Delhi-I, New Delhi by Communication dated 30.9.2008 which reads thus:

OFFICE OF THE COMMISSIONER OF INCOME TAX

DELHI-I, NEW DELHI

F.No. CIT-I/ITO Hq-I/Centralisation/08-09/972 Dtd: 30.9.08

The Principal Officer

M/s. ATS Infrastructure Ltd.

K-19, Sec.-18

Noida

Sir,

Sub: Proposal to transfer jurisdiction over your case with ACIT, Central Circle, Meerut ? Show cause notice u/s 127 of I.T. Act, 1961

A search action was conducted in cases of M/s ATS group of cases on 15.02.2008 which included your case as well.

2. Considering the intimate connection that you enjoy with the above group of cases it is necessary that your case is centralized with the Assessing Officer handling other cases of the group. Therefore, to ensure proper investigation in the search assessments of the aforesaid Group, I propose to pass an order transferring jurisdiction over your case from DCIT, Cir.-2(1), New Delhi to ACIT, Central Circle, Meerut.

3. If you have any objection to the said proposal, please furnish the same to this office at the above given address within 6th October, 2008 from the receipt of

this letter either personally or through an authorized representative.

4. Please note that if nothing is heard from you, the matter will be decided on merits.

Yours faithfully,

(Vijay Sharma)

Commissioner of Income Tax,

Delhi-I, New Delhi.

3. The Order that had been previously passed thereon, dated 7.10.2008, did not contain any reasons on which the decision to transfer the cases was founded and, therefore, it was set aside by Order of this Court. However, the CIT, Delhi-I, New Delhi was permitted to pass order u/s 127(2) after granting a further opportunity of hearing to the Petitioners, making it clear that the Objections that may be raised by the Petitioners must be decided by a speaking order.

4. By letter dated 25.3.2009 the Income Tax Officer (Hqrs.I), New Delhi informed the Chartered Accountants of the Petitioners that these cases had been fixed for hearing on 30.3.2009 in the Chambers of the CIT, Delhi-I, New Delhi. The Chartered Accountants, in their letter dated 30.3.2009, raised several Objections which included, inter alia, the points(a) that the proposed action created inconvenience as well as additional administrative costs to the entire ATS Group. This was predicated on the decision in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ; (b) the Head Office and Registered Office of the Company is in Delhi and the entire Group is being assessed in Delhi since its inception; (c) the Respondent's Directors reside either in Delhi or Noida only. No establishment/operations of the Group of whatsoever nature exist in Meerut and (d) that the higher Departmental Authorities are located in Ghaziabad, Kanpur and Lucknow, apart from Delhi.

5. We have already reproduced the copy of the Show Cause Notice dated 30.9.2008, stating the reasons for the proposed transfer of cases to Meerut, which referred to the intimate connection between the Group necessitating that the cases be centralized with the Assessing Officer handling other cases of the Group. Mr. C.S. Aggarwal, learned Senior Counsel for the Petitioner, has vehemently argued that since the ATS Group has no establishments and operations in Meerut and more specifically that no Assessing Officer at Meerut was handling any other cases of the Group, the entire action was liable to be struck down. It seems to us that this argument could have been taken in the writ petitions previously filed on behalf of the Group. Avowedly, no fresh notice has been issued and the Respondents have relied on this very Notice. The previous Order was quashed only for the reason that it did not articulate the reasons which had weighed in the mind of the CIT in deciding to transfer the subject cases from New Delhi to Meerut. Principles of Order II of the Code of Civil Procedure, 1908 will come into play so as to preclude the consideration of the

present challenge to the Notice dated 30.9.2008. Furthermore, Objections had been filed on behalf of the Petitioners prior to the filing of the earlier writ petitions, and detailed Objections have once again been filed on 30.3.2009. It is manifestly clear that the Petitioners were fully aware of several factors other than what had been spelled out in the said Notice which were present in the mind of the CIT, Delhi-I, New Delhi. If this were not so, we may have been left with no option but to rule in favour of the Petitioners because of the observations made by their Lordships in Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . Their Lordships had stated that ""public orders" publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older". We see no reasons not to extrapolate these observations even to the contents of a show cause notice. The Supreme Court has held in Commissioner of Customs, Mumbai Vs. Toyo Engineering India Limited, that the Department cannot travel beyond the contents of its show cause notice, which ratio was applied in CIT v. Contimeters Electricals (P) Ltd. [2009] 178 Tax 22 (Del). Generally speaking, if an order is passed on issues and grounds not spelt out in the show cause notice, that, in itself, may be sufficient justification for striking down the order. The reason is firmly entrenched on the principles of natural justice and on the audi alteram partem rule in particular [see M/s J.T. (India) Exports and another Vs. Union of India and another,] was a member. It is not possible for a party to respond or clarify issues which have not been articulated, and which remain only in the mind of the decision making Authority. However, there are exceptions to this dogma of natural justice which is in effect but an obverse facet thereof. The exception is that if it is palpably clear that points which had not been initially penned down in the Notice were subsequently conveyed by the concerned authority, who was given adequate opportunity and facility to respond thereto, the dictates of natural justice would have been adequately complied with. This is what we find has happened in the case in hand, as is evident from the gamut of Objections taken by the Chartered Accountants of the Petitioners in their letter dated 30.3.2009. The impugned Order, which is in great detail, is not predicated on any points which are foreign to the said response dated 30.3.2009 of the Chartered Accountants of the Petitioners. Stated differently, no prejudice, whatsoever, has been caused to the Petitioners for the failure to spell out in the said Show Cause Notice all the considerations for ordering the transfer of the cases. Since a hearing on the entire spectrum of the points touching upon the reasons for the consolidation and transfer of the cases has been given, it will lead to prolixity to consider, beyond making mention of the decisions in Melco India (P.) Ltd. and Others Vs. Commissioner of Income Tax, ; Nitin Developers And Const Vs. Commissioner of Income Tax, ; Saptagiri Enterprises Vs. Commissioner of

Income Tax and Others, , General Exporters Vs. Commissioner of Income Tax and another, and V.K. Steel Industries Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and Others, . Seen in all its hues, therefore, the challenge to the Notice is ill-founded and devoid of merit.

6. On a reading of the Objections, as well as keeping in perspective the arguments addressed before us by Mr. C.S. Aggarwal, the Petitioners have, in principle, no objection to the consolidation of the cases or to their subsequent and consequent transfer. We, therefore, need not deal with the numerous judgments cited at the Bar by Ms. P.L. Bansal, learned Counsel for the Revenue, setting down the parameters within which the decision to consolidate and/or transfer the cases can legitimately be taken.

7. As has already been noted above, the challenge of the Petitioners is to the transfer of cases to Meerut in particular. It is contended by Mr. C.S. Aggarwal that business operations of the ATS Group span the States of Uttar Pradesh, Punjab, Uttaranchal and Goa and obviously the convenient place for completing the assessment would be New Delhi where several Revenue Officers competent to carry out the task are presently and always posted.

8. It is the case of the Revenue that when a Search was conducted at the Registered Office of the ATS Group, it was found that insignificant activity was conducted at the Registered Office of the Group at Nehru Place, New Delhi. On the contrary, the business activities of the ATS group were being carried on predominantly in and around the environs of Noida, where some of the Directors even resided. This was pointed out to elucidate that in actual effect no real inconvenience would be caused to the Petitioners by the transfer of the cases out of Delhi. Mr. Aggarwal, however, submits that the Group has several offices spread across the country and it is necessary for it to maintain camp offices close to wherever any of their activities are on going. The fact remains that the ATS Group also has offices in Uttar Pradesh ? Noida; one of its sister companies, Prateek Resorts and Builders Pvt. Ltd., has its principal office in Dehradun, Uttaranchal. It is not disputed that the ATS Group has no office or operations in Meerut. Mr. Aggarwal has also contended that if the assessments are to be transferred out of New Delhi the Petitioners would have no objection if the said cases of the Group are transferred to Ghaziabad since that would cause least insignificant inconvenience to them. The point which has become central, therefore, is whether the Petitioners' convenience is a preeminent consideration or whether the Revenue is free, without any restraints, on the choice of where the transfer of cases after consolidation proceedings is to be directed.

9. In PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., the Constitution Bench had repulsed a siege laid to the vires of Section 5 of the Indian Income Tax Act, 1922. The Assessee had one of its branches in Calcutta where the Karta of the HUF resided and carried on business. The HUF, however, was being assessed at Patna but the cases were transferred to Calcutta and subsequently to Circle-VI, New Delhi. Their Lordships

observed thus:

Prima facie it would appear that an assessee is entitled under those provisions to be assessed by the Income Tax Officer of the particular area where he resides or carries on business. Even where a question arises as to the place of assessment such question is u/s 64(3) to be determined by the Commissioner or the Commissioners concerned if the question is between places in more States than one or by the Central Board of Revenue if the latter are not in agreement and the assessee is given an opportunity of representing his views before any such question is determined. This provision also goes to show that the convenience of the assessee is the main consideration in determining the place of assessment. Even so the exigencies of tax collection have got to be considered and the primary object of the Act, viz., the assessment of Income Tax, has got to be achieved. The hierarchy of Income Tax authorities which is setup under Chapter II of the Act has been so set up with a view to assess the proper Income Tax payable by the assessee and whether the one or the other of the authorities will proceed to assess a particular assessee has got to be determined not only having regard to the convenience of the assessee but also the exigencies of tax collection. In order to assess the tax payable by an assessee more conveniently and efficiently it may be necessary to have him assessed by an Income Tax Officer of an area other than the one in which he resides or carries on business. It may be that the nature and volume of his business operations are such as require investigation into his affairs in a place other than the one where he resides or carries on business or that he is so connected with various other individuals or organisations in the way of his earning his income as to render such extra territorial investigation necessary before he may be properly assessed?.

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There is no fundamental right in an assessee to be assessed in a particular area or locality. Even considered in the context of Section 64(1) and (2) of the Act this right which is conferred upon the assessee to be assessed in a particular area or locality is not an absolute right but a subject to the exigencies of tax collection.

10. The Division Bench of this Court in Sameer Leasing Co. Ltd. Sing Co. Ltd. Vs. Chairman, Central Board of Direct Taxes and others, gave its imprimatur to assessment previously being carried out at Delhi, being transferred to Meerut, keeping in view the fact that the business activities of the assessee were located in Muzaffarnagar and also keeping in perspective the fact that other cases of assessee pertaining to the same group were also transferred to Meerut. Another Division Bench of this Court in K.K. Loomba and Mrs. Uma Loomba Vs. Commissioner of Income Tax and Others, applied Bidi Supply Co. Vs. The Union of India (UOI) and Others, and Pannalal Binjraj to reject the challenge to the transfer of cases from Amritsar to Delhi. In K.P. Mohammed Salim Vs. Commissioner of Income Tax, Cochin, their Lordships have clarified that the ? power of transfer in effect provides for a machinery provision. It must be given

full effect. It must be construed in any manner so as to make it workable. Even Section 127 of the Act is the machinery provision. It should be construed to effectuate a charging section so as to allow the authorities concerned to do so in a manner where for the statute was enacted?.

11. In this conspectus and analysis of the law it will be relevant to note that ? firstly there is no fundamental right of an Assessee to be assessed at a particular place. u/s 124 the assessment must be carried out at the principal place of business but when powers u/s 127 are invoked, territorial nexus becomes irrelevant. Secondly, the determination of the venue of the assessment would be governed by the greatest effectivity for collection of taxes. Thirdly, the decision to transfer cases cannot be capricious or malafide. If the venue is changed from year to year, or periodically for no apparent reason, it would not manifest an instance of exercise of power which is not available, but an example of an abuse of power in the manner in which it is exercised. Fourthly, whilst the convenience of the assessee should be kept in mind, it would always be subservient to the interests of adjudication and collection of taxes.

12. When these tests are applied to the case in hand the decision to transfer the cases out of Delhi would become unassailable keeping in view the outcome of the Searches made in Delhi and in several other parts of Uttar Pradesh under the Commissioner, Kanpur. There is no material before us to come to the conclusion that the decision to transfer the cases out of Delhi is malafide. In fact, Mr. C.S. Aggarwal has rightly conceded that no challenge can be laid to the decision to consolidate cases and/or even transfer them to Ghaziabad. We cannot accept his argument that the powers to transfer are restricted, so far as venue is concerned, to the choice between one of the several places where the cases are pending. No such principle is extractable from any of the precedents cited before us; it does not follow from a reading of the provisions of Section 127 of the Act. Therefore, even if the notice in question erroneously mentions the pendency of a case in Meerut, since the decision to transfer it there is in large measure influenced by the convenience of the Petitioners, it becomes impervious to challenge. Ms. Bansal states that while there may be senior officers available at Ghaziabad, the officer concerned is posted at Meerut and not at Ghaziabad. A perusal of the decisions itself make it abundantly clear that several cities to which the cases could be considered in Uttar Pradesh, such as Agra, Lucknow, Kanpur etc. were considered, Meerut is undoubtedly of closest proximity both to Delhi as well as to the Noida and hence the impugned decision is neither malafide nor arbitrary.

13. Given all the venues available with the Respondents, Meerut is the most convenient for the Petitioners. In the light of these facts, we are unable to be persuaded that the decision to transfer the cases to Meerut suffers from capriciousness, arbitrariness or malafides.

14. The Petitions lack merit and are dismissed. Pending applications also stand dismissed. There shall be no order as to costs.