(2005) 04 AHC CK 0205

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1120 of 2004

Bansal Sharevests Services Limited, Shri Sonu Agarwal, (adult) and Pradeep Kumar Bansal — APPELLANT

Vs

Commissioner of Income Tax-II and The Additional Commissioner of Income Tax Range-IV — RESPONDENT

Date of Decision : 07-04-2005

Acts Referred:
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 127, 127(2)

Citation : (2006) 283 ITR 332

Hon'ble Judges : Rajes Kumar, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : Sant Saran Upadhyay and Sadhna Upadhyay, for the Appellant; A.N. Mahajan, S.C. and Shambhu Chopra and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.K. Agrawal and Rajes Kumar, JJ.—By means of the present writ petition filed under Article 226 Constitution of India, the petitioners seeks the following relief:

(a) issue, a writ order or certiorari, calling for the relevant of the direction in the nature of records, to quash the impugned order No. 17/2004-05 dated 18-06-2004 passed by the respondents No. u/s 127(2) of the Income Tax Act,

(b) issue, a writ or direction in the nature of mandamus commanding the respondent not to give effect to the impugned order dated 18-6-2004 (Annexure-1) and in pursuance thereto no record of the Company be transferred from Kanpur to Mumbai.

(C) issue, a writ order or direction in the nature of ad-interim mandamus staying the operation and effect of the impugned order dated 18-6-2004 (Annexure-1) during the pendency of the present Writ Petition before this Hon''ble Court, and further direct the respondents not to transfer the. records of the petitioner

Company from Kanpur to Mumbai or else great hardship and inconvenience shall be caused to the petitioner who shall suffer irreparable loss and injury.

(d) Any such order or farther orders be passed in favour of the Petitioners as this Hon''ble court deems fit and proper in the present facts and circumstances of the case, so as to secure the ends of justice.

(e) Costs of the proceedings be kindly awarded in favour of the petitioner."

2. The petitioner No. 1 is public limited company of which petitioner No. 2 and 3 are Directors. They are being assessed to income tax at Kanpur by the Additional Commissioner of Income tax Range - IV, Kannpur, A notice u/s 127(2)(a) of the Income Tax Act, 1961, (hereinafter referred to as "the Act) was issued by Commissioner of Income Tax-I, Kanpur proposing to transfer the cases from the Additional Commissioner of Income Tax, Range-IV, Kanpur to the Deputy Commissioner of Income Tax, Central Circle-VIII, Mumbai. The petitioner submitted their objection reply on 18.12.2003 objecting to the proposed transfer The Commissioner of Income - tax-II, Kanpur vide order dated 18.06.2004 had transferred the assessment cases of the petitioners from Additional Income Tax, range-4, Kanpur to the Deputy Commissioner Income-tax Central Circle-VIII, Mumbai a copy of which has been annexed as annexure No. 1 to the present writ petition. The order dated 18.06.2004 is under challenge in the present writ petition on the. ground that the Commissioner of Income Tax while transferring the cases land not given any reasons nor has dealt with the various objections raised by the petitioner.

3. We have heard Sri Sant Sharan Upadhyaya, learned counsel, for the petitioner and Sri Shambhu Chopra, learned Standing Counsel appearing for the respondents.

4. Learned counsel for the petitioners submitted that under Sub-section (2) of Section 127 of the Act, the Director General or Chief Commissioner or Commissioner have been empowered to transfer any case from one or more assessing officers to any other assessing officer where they are not subordinate to the same Director General or Chief Commissioner or Commissioner etc. after recording reasons and giving reasonable opportunity of being heard. According to the learned counsel in the present case, even though opportunity of hearing was given but no reasons have been recorded for transferring the cases. He submitted that the order dated 18.06.2004 is in violation and contravention of the provision of Sub-section (2) of Section 127 of the Act and therefore, the said order is liable to be set aside. Sri Shambu Chopra, learned Standing Counsel submitted that as in the present case there has been a search and seizure in the business premises of the petitioners, in view of the guidelines framed by the Central Board of Direct Taxes to the effect that in search cases all the cases should be centralised at one place cases have been transferred from Kanpur to Mumbai. He further submitted that in the show cause notice reasons for proposed transfer cases which is a valid reason.

5. Having heard the learned counsel for the Clause (2) of Section 127 of the Act where assessing officers assessees officers from whom the case is to the transferred and the assessing officer or assessing officers to whom the cases is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner a reasonable opportunity of hearing in the matter is required; to-be given to the assessee and reasons have also to be recorded before passing the order. In the present case we find that the assessing authority of the present petitioners are situated at Kanpur. whereas the assessment cases have been transferred to the assessing officer situated at Mumbai. Thus they are not subordinate to the same Commissioner of Chief Commissioner of the Director General and therefore, not only opportunity of hearing was required to be given but also reasons ought to have been recorded before transferring the cases Even though opportunity of hearing had been given to the petitioners but we find that in the order no reasons have been recorded. The order dated 18.06.2004 is reproduced below:

GOVERNMENT OF INDIA OFFICE OF THE COMMISSIONER OF INCOME TAX-II 15/295-A, VAIBHAV BUILDING, CIVIL LINES, KANPUR-208001.

ORDER

Dated: 18/6/2OO4

No. 17/2004-05

In exercise of the powers conferred by Sub-section (2) of Section 127 of the Income Tax Act. 1961 and all others powers enabling me in this behalf. I, the Commissioner of Income Tax-II Kanpur hereby transfer the cases. Particulars of which are mentioned in column 1 to 4 of the Schedule appended below for coordinated investigation from Assessing Officer mentioned in column 5 to the Assessing Officer mentioned in column 6 there of:-

M/s Bansal Sharevest Service Ltd. Group of cases SCHEDULE

Sl. No. GIR/Pan Name & Address of the Status Assessing Officer assassee (1) (2) (3) (4) From To (5) (6) Bansal Sharevest Addl.CIT DCIT-CC- 1. AAACB7735B Services Ltd. Co. Range-4 VIII Mumbai. 2. ABTPB8429L Pradeep Kumar Bansal Ind. Add.CIT DCIT-CC- Range-4 VIII Mumbai. 3. Sonu Aggarwal Ind. Addl.CIT DCIT-CC- Range-4 VIII Mumbai This order shall take etlect from 28.6.2004.

Sd-(U.K. SHUKLA) Commissioner of income Tax-II Kanpur. Dated: 8.6.2004.

F.No. 12-02-CIT-II-2004-05/599

Copy forwarded to:

1. The Chief Commissioner of income Tax, Kanpur.

2. The Chief Commissioner of Income Tax, (Central) 1, Mumbai

3. The Commissioner of income Tax (Central)Mumbai.

4. The Director of Income Tax (Inv.)Kanpur/Mumbai.

5. The Commissioner of income Tax (Appeals) I &II Kanpur.

6. The Addl .Commissioner of Income Tax (Certral Range-2) Mumbai.

7. The Addl. Commissioner of Income Tax (Range-4), Mumbai.

8. The Dy. Commissioner of Income Tax, CC-VIII, Mumbai.

9. The ITO (Judl/Tech/SP&R), O/o CIT-I&II, Kanpur.

10. The Record Keeper, O/o the Commissioner of Income Tax-II, Kanpur.

11. The Concerned Assessee.

Sd/- (A.P. AMAR) Dy. Commissioner of Income Tax(HQ/Admn.) For Commissioner of Income Tax-II, Kanpur

JARIKIYA

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Dinank 21.06.04"

6. On perusal of the aforementioned order we find that no reasons whatever has been mentioned in the order transferring the cases This Court in the case of Vinay Kumar Jaiswal and Others, Ganga Dharam Kanta and Another, Sneh Jaiswal and Others and Jaiswal Steel Processing Pvt. Ltd. and Others Vs. Commissioner of Income Tax and Others, while dealing with the matter relating to the transfer of the case u/s 127 of the Act has held as follows:

"It is obvious that when certain factual allegations are made in the objections of the assessee, they have to be dealt with, otherwise the very purpose of hearing would be frustrated. In their objections the petitioners had specifically mentioned that all the concerns of the family barring a few which were recently established are being assessed at Kanpur and they were paying a good amount of tax in Kanpur. They have also mentioned that the accounts of all the concerns of the family are maintained at Kanpur and only manufacturing and trading activities are conducted at Bhilai. Hence it was incumbent upon the Commissioner of Income Tax to deal with the said averments which he has not done in the impugned order and for this reason also the impugned order has been vitiated."

7. Since in the present case no reasons have been recorded and there is no other order on record passed by Commissioner of Income Tax we are of the considered opinion that the said order can not be sustained and is therefore, set aside on the ground that the various objections raised by the petitioners have not been dealt with in the transfer order.

8. It may be mentioned here that the learned Standing Counsel has sought to

justify the transfer of the cases on the basis of the guidelines given in the circular No. 225 dated 20.09.2001 where it has been stated that in search cases all the cases should be centralised. It is well settled that the order has to be judged on the basis of the reasons given therein It can not be supplemented by means of an affidavit. In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , the Apex Court has held that when a statutory functionary makes an order based on certain grounds, its validity must be judged by, the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to court in account of a challenge, get validated by additional grounds later brought out. As in the impugned order, no mention has been made to the circular No. 225 dated 20.09.2001 and the various objections raised by the petitioner had not been dealt with the impugned order can not be sustained on the basis of the said circular also. In view of the foregoing discussions we set aside the order dated 18.06.2004 leaving it open to the Commissioner income tax-II, Kanpur to pass a fresh order in accordance with law.

9. In the result, the writ petition succeed and is allowed.

