(2009) 12 MP CK 0034

In the Madhya Pradesh High Court

Dr. Ashok APPELLANT

Vs

Commissioner of Income Tax-I RESPONDENT

Date of Decision : 21-12-2009

Acts Referred:
Income Tax Act, 1961 — Section 127(1)

Citation : (2010) 190 TAXMAN 19

Hon'ble Judges : Viney Mittal, J;Prakash Shrivastava, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Viney Mittal, J.—This order shall dispose of two writ petitions being W.P. No. 9294/2009 and W.P. No. 9295/2009 as the controversy in both these case is identical. For the sake of convenience the main order is being passed in W.P. No. 9294/2009.

2. An order dated 3-4-2009 passed by the Commissioner of income tax-1, Indore u/s 127(1) of the Income Tax Act, 1961 (''the Act'') is subject matter of challenge by the petitioner before this Court, whereby the assessment proceedings pertaining to Dr. Ashok Sharma and his wife Aparna Sharma (writ petitioners in two petitions) have been ordered to be transferred to the assessing authority at Bhopal. The aforesaid order has been appended as Annexure P-I with the petition.

3. Although many facts have been pleaded in the petitions, to challenge the aforesaid order, Annexure P-I, but primarily a grievance has been made that although in pursuance to the show-cause notice received by the assessee, a detailed objection (Annexure P-13, dated 8-4-2009) had been filed by the assessee, but while passing the impugned order, Annexure P-I, the aforesaid Authority has not assigned any reasons for the said transfer. Thus, the petitioners maintain that the aforesaid transfer orders are totally contrary to the mandatory provisions of Section 127(1) of the Act.

4. Shri P.M. Choudhary, learned Counsel for the petitioner has reiterated the pleas raised by the petitioner in the pleadings during the course of arguments as well.

5. On the other hand, Shri R.L. Jain, learned senior counsel for the respondents has supported the transfer order, Annexure P-1 by maintaining that Annexure P-1 does mentions the reasons on account of which the assessment proceedings of the present assessees have been transferred. According to Shri Jain it has been indicated in the impugned order that the transfer of proceeding had been done to facilitate and coordinate investigation and assessment.

6. We have duly considered the rival contentions of the learned Counsel for the parties.

7. At the outset, it would be relevant to point out that the only reason given by the Commissioner of income tax-1, Indore while passing the impugned transfer order is "in order to facilitate and to coordinate investigation and assessments".

8. At this stage, it would be relevant to extract the relevant portion of Section 127(1) of the Act:

Power to transfer cases,

Section 127(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him. (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

9. It is apparent from the perusal of the aforesaid provisions that the order of the transfer can be passed by the Competent Authority, after giving assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording the reasons for doing so. Thus, it is apparent that the reasons which are required to be given by the Transferring Authority on the objections raised by the assessee against the proposal of transfer should have a nexus to the proposal of transfer. The aforesaid reasons should be self explanatory.

10. However, in the present case, we find that the impugned order, Annexure P-l, ordering the transfer of assessment proceedings of the present petitioners is totally cryptic and non-speaking order and does not contain any reasons to come to the aforesaid conclusion.

11. Keeping in view the aforesaid facts and circumstances of the case, but without commenting on the merits of the controversy, we deem it appropriate to allow the present petition and quash the order Annexure P-1, passed by the Commissioner of income tax-1, Indore. The Commissioner of income tax-1, Indore, however, would be at liberty to pass a fresh order u/s 127(1) of the Act, if so desired, in accordance with law.

12. Disposed of accordingly.