
(2014) 10 MAD CK 0204

In the Madras High Court

Case No : Writ Petition No. 1576 of 2014

D.V. Mercy

APPELLANT

Vs

The Income Tax Officer

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 120, 124, 127, 127(1), 131

Citation : (2014) 368 ITR 616

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner initially filed this Writ Petition for issuance of a Writ of Mandamus, directing the second respondent to transfer the Income Tax files relating to Late Mr. Y. Victor, the husband of the first petitioner and father of the second petitioner from the file of the Income Tax Officer, Ward I (2) Tanjore to the file of the respondents 3 and 4.

2. During the pendency of the Writ Petition, this Court passed an interim order on 03.02.2014, directing the respondents to report the decision of the second respondent on the request made by the petitioner for transferring the Income Tax files to the respondents 3 and 4. The second respondent passed an order dated 18.02.2014, rejecting the petitioner's request. Therefore, the petitioner filed M.P. No. 1 of 2014, to amend the prayer in the writ petition for issuance of a Writ of Certiorarified Mandamus to quash the order dated 18.02.2014, and for a consequential direction to the second respondent to transfer the Income Tax files of Late Mr. Y. Victor from the jurisdiction of the first respondent to the respondents 3 and 4.

3. Mrs. Chitra Sampath, learned Senior counsel appearing for the petitioners submitted that the first petitioner was residing with her husband at Tanjore till 2008, after which they moved to Chennai. That the petitioner's husband as well as the petitioner are the income tax assesseees and the petitioner's husband died

on 29.03.2013, leaving behind the petitioners herein and another son and daughter as his legal heirs. The first petitioner would state that she is now staying with her elder son at Chennai. It is further submitted that the first respondent issued notices to the first petitioner and her two sons under Section 148 of the Income Tax Act on 29.07.2013, calling upon them to produce the accounts and documents pertaining to the estate of Late Mr. Y. Victor from the assessment years 2009-10 till 2012 and a notice under Section 142(1) of the Income Tax Act for the assessment year 2012-13. Further, the learned counsel would state that the first petitioner was not aware of the dealings and transactions done by her husband nor she was aware of the non-filing of the returns of her husband from the assessment year 2009 onwards. Pursuant to the notice, the first petitioner appeared through her Auditor before the first respondent and requested that all future notices may be sent to her Chennai address. The petitioner paid a sum of Rs. 50,00,000/- as advance tax to the account of Late Mr. Y. Victor. It is further submitted that the petitioner sought for transfer of the files from Tanjore to Chennai, since it would be convenient for the first petitioner and her son, the second petitioner, who are at Chennai and they have already filed returns at Chennai and after the files were transferred from Tanjore to Chennai, the assessment would be completed.

4. The learned counsel further submitted that the impugned order passed by the second respondent suffers from errors apparent on the face of the record and there is no justification for retaining the files at Tanjore and without considering the fact that no prejudice would be caused to the department, if the files are transferred to Chennai. Further, it is submitted that merely because notices were issued at Tanjore and statement of the petitioner's son was recorded at Tanjore, it cannot be a ground to compel the petitioners, who are permanently residing at Chennai to travel from Chennai to Tanjore on each occasion for participating in the assessment proceedings. Further, it is submitted that existence of properties of Tanjore alone cannot be a ground for retaining the files at Tanjore, since the petitioners/assesseees have shifted the permanent place of residence to Chennai as early as 2008. Further, it is submitted that except issuing notice under the provisions of the Act, the first respondent has not heard the petitioners on the returns filed and therefore, it is incorrect to state that the proceedings have progressed and therefore, the ground on which, the request made by the petitioner was rejected, is not sustainable in law. Further, it is stated that Late Mr. Y. Victor had not filed returns for the assessment year 2007-08 and no notice was received by the petitioners for the assessment year 2007-08 or for the assessment year 2008-09 and therefore, the conclusion of the second respondent is totally baseless and the rejection of the request is solely on the ground that the petitioner had approached this Court for necessary relief. In support of the above contentions, reliance was placed on the decision of the Hon'ble Division Bench of High Court of Bombay in the case of Devidas Vs. Union of India and another, and the decision of the High Court of Kerala in the case of Benz Corporation Vs. Income Tax Officer and Others, .

5. Mr. T. Pramod Kumar Chopda, learned Standing counsel appearing of the respondents sought to sustain the impugned proceedings by contending that Late Mr. Y. Victor sold the immovable property at Tanjore for a total consideration of Rs. 5,11,20,000/- on 07.04.2011, but no return of income was filed by Late Mr. Y. Victor for capital gains arising out of the transfer of property assets. Further, it is submitted that during the course of enquiry done with the brother of the second petitioner, it came to the notice of the department that Late Mr. Y. Victor and the first petitioner sold the numerous plots over the years and have not filed the returns of income from the assessment year 2007-08 onwards. Further, it is submitted that Late Mr. Y. Victor has not made any investment in his name by using the sale proceeds for claiming exemption under Section 54F of the Income Tax Act relating to the assessment year 2012-13. Therefore, it is submitted that since the income assessed to tax has escaped from assessment both in the case of Late Mr. Y. Victor as well as the first petitioner, notice was issued under Section 148 of the Income Tax Act for the assessment years 2009-10 to 2011-12 and subsequently notices were issued for the assessment year 2007-08 and 2008-2009 after obtaining prior approval from the Joint Commissioner and Income Tax, Tanjore. Further notice was issued under Section 142(1) of the Income Tax Act in the case of Late Mr. Y. Victor for the assessment year 2012-13. It is submitted that after receipt of the notices, the petitioners instead of filing the return of income before the first respondent, who had issued notice under Section 148 of the Income Tax Act, they have manually filed the return for the assessment years 2009-10 and 2010-11 on 26.11.2013, before the Deputy Commissioner of Income Tax, Business Circle III, Chennai, admitting a total income of Rs. 13,88,500/- and Rs. 18,93,310/- respectively. It is further submitted that though in the said two returns, the petitioners have quantified the self assessment tax for the said assessment years, the same was paid only on 31.01.2014, in response to the letter of the Assessing Officer, dated 16.01.2014.

Further, it is submitted that the fact that the petitioners have filed their returns at Chennai, came to the knowledge of the first respondent only pursuant to the letter dated 16.12.2013, from the Deputy Commissioner of Income Tax Business Circle-III, Chennai, wherein clarification was sought for pertaining to the details of the pending proceedings and on the question of jurisdiction. Further, it is submitted that the first respondent issued summons under Section 131 of the Income Tax Act, calling upon the petitioners to appear on 27.11.2013. However, the petitioners failed to respond by the said summons.

6. Further, the learned counsel submitted that all the properties of the petitioner's husband as well as the petitioner are situated at Tanjore District and the petitioner's husband's residence is about 500 meters away from the Income Tax office, Tanjore and the properties sold are at Tanjore and the second son of the first petitioner is also residing at Tanjore and all the details could be collected from the office of the Sub-Registrar and Banks at Tanjore. Further, it is stated that there are other properties which are unsold, which are also situated in Tanjore. In the light of the above facts, it is submitted that the order passed by

the second respondent rejecting the petitioner's request for transfer of the Income Tax files, is perfectly justified and the power under Section 127 of the Income Tax Act to transfer cases vest the Director General or Chief Commissioner or Commissioner after giving the assessee a reasonable opportunity of hearing in the matter, wherever it is possible to do so and after recording reasons for doing so the transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or Assessing Officers also subordinate to him. Therefore, it is submitted that the petitioner cannot compel the department to transfer the files from Tanjore to Chennai merely on the ground that it is convenient to the first petitioner to attend the assessment proceedings at Chennai. It is further submitted that since all the properties and transactions were within the jurisdiction of the first respondent, the second respondent rightly rejected the request for transfer.

7. Heard the learned counsel appearing on either side and perused the materials placed on record.

8. Section 127 of the Income Tax Act deals with power of transfer of cases and the said provision reads as follows:-

127. Power of transfer cases:- (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;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or

Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.-In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

9. On a reading of the above provision, it is seen that the object for which such provision was enacted is for the purpose of administrative convenience. The said provision does not empower the Assessing Officer to transfer a case from his jurisdiction to that of nature and even when the Director General or the Chief Commissioner or the Commissioner exercising such power, can transfer any case after recording his reasons for doing so. For the purpose of recording reasons, it is obvious that the Commissioner has to consider the circumstances involved in each case. Undoubtedly, the first respondent has initiated proceedings, since the returns were to be filed before the first respondent, since Late Mr. Y. Victor as well as first petitioner were residing in Tanjore and the transaction from 2007 onwards were done at Tanjore. Admittedly, the Commissioner did not exercise jurisdiction under Section 127 of the Act, but it is the request made by the first petitioner on the ground that it would be convenient for her to partake in the assessment proceedings, as she has shifted her permanent residence to Chennai. The reason stated for issuing notice under Section 148 of the Income Tax Act for reopening is on the ground that no returns were filed by the first petitioner's husband from 2007 onwards. Admittedly, the petitioner's husband passed away in 2013. When the transactions have taken place within the jurisdiction of the first respondent and the transaction pertained to the immovable property, the petitioners cannot insist that the files should be transferred from Tanjore to Chennai solely on the ground that it would be convenient for the first petitioner to partake in the assessment proceedings.

10. In the case of Autofin Ltd. Vs. Commissioner of Income Tax and Another, , a Writ Petition was filed before the Andhra Pradesh High Court to quash an order passed by the Commissioner of Income Tax, Hyderabad, dated 20.10.1972. The said order was passed on an application made by the petitioner seeking for transfer of the file from a particular Income Tax Officer to some other Officer on the ground that the said Officer was teasing and harassing the second petitioner

as well as the company and therefore, the petitioners" apprehended that they would be denied jurisdiction in the hands of the said Income Tax Officer. The Commissioner of Income Tax called for a report from the Inspecting Assistant Commissioner of Income Tax and passed an order stating that the transfer could not be effected at that stage, as arrears assessment are pending, which have to be completed expeditiously and the petitioner was requested to co-operate with the Income Tax Officer in the expeditious completion of assessment and in case of any difficulty, he could contact the Inspecting Assistant Commissioner Range-IV, Hyderabad. Challenging the said order, the petitioners filed the Writ Petition before the Andhra Pradesh High Court contending that the Commissioner did not deal with the petitioner's application for transfer and it is the Income Tax Officer that communicated the order and the power under Section 127 of the Income Tax Act was not exercised. However, this was found to be a wrong submission, since the files disclosed by the Commissioner exercised power under Section 127 of the Income Tax Act. It was next contended that the petitioners were not given an opportunity to make their representation before the impugned order was passed. The Court after taking note of Section 127 of the Income Tax Act as amended in 1967 pointed out that sub-section (1) of Section 127 provides for giving the assessee has a reasonable opportunity of being heard in the matter, wherever, it is possible to do so, and reasons should be recorded for transfer of the case from any Income Tax Officer to any other Income Tax Officer and similar power could be exercised by the Board; but the proviso to sub-section (1) of Section 127 of the Income Tax Act states that such an opportunity need not be given where the transfer is from any Income Tax Officer to any other Income Tax Officer and the Officers of all such Income Tax Officers are situated in the same city, locality or place. It was further pointed out that the Commissioner in the said case, did not transfer the case and therefore, the question of giving an opportunity of being heard or giving the reasons in the matter as required by Section 127(1) of the Income Tax Act, does not arise.

11. It is further pointed out that the assessee also could move either the Commissioner or the Board for transfer of his case and there is no reason as to why the power should be exercised only suo-moto and not on the application of the assessee. It was further held that the Commissioner was bound to exercise the power of transfer in accordance with Section 127 of the Income Tax Act, if proper grounds are made out. After holding that the assessee can also seek for invoking the power under Section 127 of the Income Tax Act, it was held that it is for the Commissioner or the Board to consider and decide whether the case is a fit one for exercising jurisdiction conferred by Section 127 of the Income Tax Act. On the question as to whether such an order could be interfered under Article 226 of the Constitution, it was pointed out that the question whether the circumstances warrant transfer or not is a matter for consideration and decision by the Commissioner and the Commissioner on consideration of the representation of the petitioners and the report was satisfied that it is not a fit case for transfer and such circumstances, the Court will be reluctant to interfere

under Article 226 of the Constitution with the discretion exercised by the Commissioner unless there is a patent error of law or error apparent on the face of the record. Therefore, the Writ Petition came to be dismissed by holding that under Article 226 of the Constitution, the Writ Court would not normally interfere with the discretion exercised by the Commissioner under Section 127 of the Income Tax Act, unless the order is ex facie perverse or vitiated by any patent error. I am in respectful agreement with a view taken by the Hon'ble Division Bench of the High Court of Andhra Pradesh in the aforesaid decision.

12. The learned Senior counsel appearing for the petitioners placed reliance on the decision of the Hon'ble High Court of Bombay in the case of *Devidas vs. Union of India*, referred supra, and submitted that the total scheme relating to jurisdiction and transfer under Sections 120, 124 and 127 of the Income Tax Act is a proportionate mix of consideration for convenience of an assessee and interest of the Revenue and it aims at striking a balance between the private and public interest. The question which fell for consideration, in the said case was whether an assessee under the Income Tax Act was entitled to a reasonable opportunity of hearing and a reasoned order when his application calling in question the jurisdiction of an Assessing Officer and for transfer of a case to the other Assessing Officer is rejected. The Revenue in defence of the impugned order stated that a statute can, in appropriate cases, exclude the principle of natural justice; since the assessee has no legal right of being assessed by any particular Assessing Officer; that Section 127 of the Income Tax Act restricts the obligation of hearing and passing a speaking order only when the case is to be transferred suo motu; that Section 127 of the Income Tax Act excludes by necessary implication an opportunity of hearing when there is refusal to transfer; and that in any case, perusal of the contents of an application made by the petitioner and the enquiry report obtained from the Assessing Officer is sufficient compliance with the principles of natural justice. After taking note of the observations made by the Delhi High Court in the case of *Kanjimal and Sons Vs. Commissioner of Income Tax, New Delhi*, , *DEVI DAYAL MARWAH Vs. COMMISSIONER OF Income Tax, ANDHRA PRADESH, AND OTHERS.*, and the decision in the case of *Autofin Ltd., vs. Commissioner of Income Tax*, referred supra, it was held that it is true that Section 127 of the Income Tax Act refers to suo motu jurisdiction, but it is settled law that such jurisdiction can be triggered either by an assessee or the Revenue and the power is conferred to remedy any injustice and it is always open to bring to notice any error, illegality or injustice. On examining the impugned order which was subject matter of the said case, it was held to be vitiated because of absence of hearing and recording of reasons. However, it was held that no hard and fast rule can be laid down about the extent and manner of hearing and reasons to be recorded and all depends upon the facts and circumstances on each case. Therefore, the High Court of Bombay though culled out the legal position and observed that there can be no hard and fast rule and the extent and manner of hearing and reasons depend on the facts and circumstances of each case. On the facts of the said case, the Court was

satisfied that the impugned order therein was vitiated because of absence of hearing and recording of reasons.

13. The High Court of Kerala in the case of Benz Corporation vs. Income Tax Officer, (supra), held that the power of transfer under Section 127(1) of the Income Tax Act is a quasi-judicial one and such power has to be exercised in a fair and reasonable manner and not in an arbitrary or mechanical way and passing a reasoned order is one of the requirements of fairness in action. In the said case, the Department issued notice proposing to transfer the files and called for the objections from the assessee, who filed his objections and without reference to the objections, a notification was issued for transfer. Therefore, the Court interfered with the said order and remanded the matter to the Chief Commissioner to take a decision afresh.

14. In the case on hand, it is the petitioner, who sought for transfer by representation dated 12.02.2014 submitted through the assessee's representative in person on the date of hearing. The second respondent considered the representation, called for a report from the Assessing Officer and the contentions raised by the representative of the assessee was considered and reasoned order has been passed. It is to be noted that as the first petitioner/assessee stating that she has permanently shifted her residence at Chennai, on the sole ground of her convenience, she seeks for transfer of the files. It is to be noted that the assessee in default was not only the first respondent, but also her husband, Late Mr. Y. Victor as well. No returns were filed from the assessment year 2007-08 onwards and during the relevant period, there were several sale transactions in respect of properties situated at Tanjore which would fall within the jurisdiction of the first respondent. It is only after notices were issued under Sections 148, 142(1), of the Income Tax Act, returns were filed at Chennai for the assessment years 2009-10 and 2010-11, but were not filed before the first respondent. The Assessing Officer in his report has specifically stated that the fact that the returns were filed at Chennai came to his knowledge only after a letter was received from the Deputy Commissioner of Income Tax, Business Circle-III, Chennai, dated 16.12.2013 to clarify the details of pendency and jurisdiction for further action. The petitioner did not respond to the summons issued by the first respondent under Section 131 of the Income Tax Act and failed to appear before the Assessing Officer. Therefore, the Assessing Officer opined that the assessee was not co-operating with the department and avoiding further enquiry. That apart, the younger son of the first petitioner was residing permanently at Tanjore, who could very well collect the required particulars from the Banks at Tanjore and Sub-Registrar office Tanjore and other immoveable properties, which were retained by the family were situated in Tanjore District. Further, a statement has also been recorded from the first petitioner's younger son under Section 131 of the Income Tax Act. Therefore, the impugned proceedings cannot be stated to be an order either arbitrary or erroneous, more so, when the second respondent has recorded reasons. Therefore, the decisions relied upon by the learned Senior counsel appearing for the petitioners are

clearly distinguishable on facts and as held by the High Court of Bombay in the case of *Devidas vs. Union of India*, (supra), there cannot be any hard and fast rule in such matters.

15. Thus, the impugned order being a reasoned order and nothing has been placed before this Court to show that the impugned order is either ex facie perverse or vitiated by any patent error and that the power under Section 127 of the Income Tax Act could be exercised in accordance with the said Section, if proper grounds are made out. In the impugned order reasons have been assigned for rejecting the request for transfer, which is based on the records. In such circumstances, this Court is not inclined to interfere with the discretion exercised by the second respondent in refusing to transfer the case from Tanjore to Chennai.

In the result, the Writ Petition fails and it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.