(2014) 04 MP CK 0053

In the Madhya Pradesh High Court

Case No : Writ Petn. No. 5867 of 2009

Gudstar Builders (P) Ltd. APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-04-2014

Acts Referred:
Income Tax Act, 1961 — Section 127, 127(1), 127(3)

Citation : (2014) 270 CTR 324

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : K.N. Gupta and Anil Sharma, Advocate for the Appellant; Saurabh Jain, Advocate for the Respondent

Judgement

1. Heard. The petitioner has filed this petition against the order dt. 15th Sept., 2009 (Annex. P/2), by which the case of the petitioner of assessment has been transferred from Asstt. CIT, Circle-3, Gwalior to ITO, Shivpuri. The petitioner also challenged the order dt. 26th Nov., 2009 (Annex. P/1), by which the representation of the petitioner against the order dt. 15th Sept., 2009 has been rejected.

2. The main ground for challenge of the order in the petition is that the order was passed against the statutory provision of s. 127(1) and (2) of the IT Act, 1961 (hereinafter referred to as the Act).

3. It is an admitted fact as admitted by the respondents in the return that before passing the order of transfer no opportunity of hearing was afforded to the petitioner.

4. The respondents pleaded in the reply that in accordance with s. 127(3) of the Act as amended there was no necessity to provide opportunity of hearing to the petitioner before passing the order.

5. The question for consideration before the Court is that whether affording an opportunity of hearing was necessary to the petitioner before passing the order

dt. 15th Sept., 2009 (Annex. P/2).

6. To answer the aforesaid question, it is necessary to consider the provisions of s. 127 of the Act. The provisions of s. 127(1),(2) and (3) of the Act are necessary. The aforesaid provisions are as under:

"127. (1) The Director General or Chief CIT or CIT 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 AOs subordinate to him (whether with or without concurrent jurisdiction) to any other AO or AOs (whether with or without concurrent jurisdiction) also subordinate to him.

(2) Where the AO or AOs from whom the case is to be transferred and the AO or AOs to whom the case is to be transferred are not subordinate to the same Director General or Chief CIT or CIT,--

(a) Where the Directors General or Chief CITs or CITs to whom such AOs are subordinate are in agreement, then the Director General or Chief CIT or CIT 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 Director General or Chief CITs or CITs aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief CIT or CIT as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-s. (1) or sub-s. (2) shall be deemed to require any such opportunity to be given where the transfer is from any AO or AO (whether with or without concurrent jurisdiction) to any other AO or AOs (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place."

7. From the aforesaid provision, it is clear that while passing the order under s. 127(1) and (2) of the Act, it is necessary to provide a reasonable opportunity of being heard to the assessee, wherever it is possible to do so and after recording his reasons for doing so, the order of transfer could be passed.

8. In the present case, no opportunity of hearing was afforded to the petitioner neither any reasons have been recorded in the order that why the case was transferred. The respondents had taken a plea that it is mentioned in the order of transfer that concerned AO. Shivpuri shall attend the office of Gwalior to dispose of the scrutiny of assessment in the case, hence, the transfer was within the city. In such circumstances, it is not necessary to accord opportunity of hearing in view of s. 127(3) of the Act. But s. 127(3) of the Act prescribes that the opportunity of hearing as mentioned under sub-s. (1) and (2) of s. 127 of the Act should not be required where the transfer is from any AO to any other AO if the offices of all such officers are situated in the same city, locality or place. In the

present case, the officer of ITO is at Shivpuri and Asstt. CIT is at Gwalior. These are two different cities. In such situation, the provisions of s. 127(3) of the Act would not be applicable. Hence, in our opinion the order passed by the authority is contrary to the provisions of s. 127(1) and (2) of the Act. Consequently, the petition is disposed of with the following directions:

(i) Impugned orders dt. 26th Nov., 2009 (Annex. P/1) and dt. 15th Sept., 2009 (Annex. P/2) are hereby quashed. The matter is remanded back to the competent authority to pass order in accordance with s. 127 of the Act or the ITO, Gwalior can proceed with the assessment proceedings.

(ii) It is hereby clarified that this Court has not opined about the merits of the case. No order as to costs.

No order as to costs.

