**(2007) 01 CAL CK 0015**

**In the Calcutta High Court**

**Case No :** Writ Petition No. 1657 of 2006

Kumar Kumar and Brothers and Another — APPELLANT

Vs

Union of India (UOI) — RESPONDENT

**Date of Decision :** 22-01-2007

**Acts Referred:**
Income Tax Act, 1961 — Section 127, 127(1), 153C

**Citation :** (2007) 212 CTR 213 : (2007) 290 ITR 310

**Hon'ble Judges :** Soumitra Pal, J

**Bench :** Single Bench

**Advocate :** Tanushree Ghosh, for the Appellant; D.K. Shome and Md. Nizamuddin, for the Respondent

**Final Decision :** Allowed

## Judgement

Soumitra Pal, J.—In the writ petition the petitioners have challenged the action of the Revenue in transferring the file from Kolkata to Mumbai which they learnt from the order dated October 11, 2006, passed by the Deputy Commissioner of Income Tax, Central Circle-22, Mumbai, calling for filing of return u/s 153C of the Income Tax Act, 1961 (for short, "the Act"), for the assessment years 1999-2000 to 2004-05. The grounds of challenge are that such transfer was carried out without inviting objection and without giving them an opportunity of hearing. The learned advocate appearing on behalf of the petitioners has relied on the judgment in Nitin Developers And Const Vs. Commissioner of Income Tax, in support of his submissions.

2. The matter was moved on November 27, 2006, when directions for affidavits were issued. The matter came up on January 15, 2007. Thereafter, it appeared on January 17, 2007. Since no affidavit was filed, the Revenue was directed to produce records. However, in spite of directions records have not been produced. Therefore, in my view, in the absence of affidavit and records, assertions made by the petitioners are deemed to be correct.

3. In order to delve into the issue it is necessary to refer to the relevant portion of Section 127 of the Act which is as under:

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....

(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.

(emphasis supplied)

4. A reading of Sub-section (1) of Section 127 shows that in the case of transfer of a case from one city to the other-that is inter-city transfer- principles of natural justice have to be complied with by giving the assessee an opportunity of hearing. Further, reasons for such transfer must be recorded. However, Sub-section (3) postulates in the case of intra-city transfer no such requirement regarding grant of opportunity is necessary. In the instant case, prior to the transfer of the case from Kolkata to Mumbai, which is an inter-city transfer, no opportunity of hearing was given to the petitioners which is in contravention of Sub-section (1) of Section 127 of the Act. Thus, the principles of law laid down in Nitin Developers And Const Vs. Commissioner of Income Tax, are applicable to the facts of the case. Therefore, the order of transfer of the case of the petitioner from Kolkata to Mumbai cannot be sustained and is, thus, set aside and quashed. Hence, the writ petition is allowed.

5. The Revenue is at liberty to take action in accordance with law after issuing notice and after giving an opportunity of hearing to the petitioners.

6 There will be no order as to costs.

7 All parties are to act on a xerox signed copy of this order on the usual undertaking.

 