(1987) 04 DEL CK 0025

In the Delhi High Court

Case No : Civil Writ No. 2156 of 1986

Manoj Didwania APPELLANT

Vs

Union of India and others RESPONDENT

Date of Decision : 10-04-1987

Acts Referred:

Citation : (1987) 63 CTR 207 : (1987) 167 ITR 177 : (1987) 34 TAXMAN 204

Hon'ble Judges : R.N. Aggarwal, J;Jagdish Chandra, J

Bench : Division Bench

Judgement

Jagdish Chandra, J.—This is a civil writ brought by the petitioner, Manoj Didwania, under articles 226 and 227 of the Constitution of India praying for a writ of certiorari or any other writ, order or direction for quashing or setting aside the Notification F. No. 185/26/84-IT(A) dated 15/21-11-84 passed by respondent No. 2, Central Board of Direct Taxes (in short "the Board") as also for quashing and setting the ex parte assessment order dated March 20, 1986, passed by respondent No. 4, Shri K. Sundaresan, Income Tax Officer, Central Circle-III, Madras.

2. The aforesaid impugned notification transfers the cases of the petitioner from the Income Tax Officer (INV), Special Circle-I, New Delhi, and the Income Tax Officer, Central Circle XXIX, Bombay, to the Income Tax Officer, Central III, Madras. It is alleged that neither this notification nor the reasons in support of the transfer orders was served upon the petitioner as a result of which the principles of natural justice have been violated and the said transfer orders contained in the said notification were invalid.

3. The petitioner has also assailed the validity of the aforesaid ex parte assessment order dated March 20, 1986, passed by the Income Tax Officer, Madras, after the transfer of his aforesaid cases, on the same ground of the transfer order and the reasons thereof not having been communicated to him.

4. During the course of arguments, Mr. D. Y. Chandrachud, learned counsel for

the petitioner, pressed his prayer only in respect of the transfer of the petitioner''s case from Bombay to Madras, and did not press his prayers in respect of the second case which had been transferred from Delhi to Madras nor in respect of the ex parte assessment order dated March 20, 1986, passed by the Income Tax Officer, Madras, against him.

5. Section 127 of the Income Tax Act, 1961, as amended by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975, confers on the Board power to transfer cases and the relevant portion thereof is reproduced below :

"127. (1) The Commissioner may, after giving the assessed 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 of the following officers subordinate to him, namely :-

(a) any Income Tax Officer or Income Tax Officers;

(b) any Income Tax Officer or Income Tax Officers having concurrent jurisdiction with the Inspecting Assistant Commissioner,

to any other Income Tax Officer or Income Tax Officers or (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) also subordinate to him and the Board may similarly transfer any case from -

(i) any Income Tax Officer or Income Tax Officers, or

(ii) any Income Tax Officer having concurrent jurisdiction with the Inspecting Assistant Commissioner,

to any other Income Tax Officer or Income Tax Officers or (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income Tax Officer or Income Tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) to any other Income Tax Officer or Income Tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) and the offices of all such officers are situated in the same city, locality or place :......

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

6. It was conceded on behalf of the petitioner that show-cause notice in regard to the proposed transfer of cases, had been received by the petitioner from the Board and the petitioner had even preferred objections against the same. The only contention now raised is that as the Board was under an obligation u/s 127 to record reasons in justification of the order of transfer of a case, the order

along with those reasons should have been communicated to the petitioner and omission in that regard violates the principles of natural justice and the order of transfer is, Therefore, rendered invalid. The petitioner has placed specifically and his counsel has asserted vociferously during the course of arguments that no such order nor the reasons justifying the same had been communicated to the petitioner.

7. On the other hand, the counter-affidavit filed by respondents Nos. 1 and 2 asserts that a copy of the transfer order contained in the impugned notification was forwarded to the Commissioner of Income Tax, Bombay Central-III, Bombay, with instruction that a copy of the order may be supplied to the assessed as well as to the Commissioner of Income Tax Beyond this, the counter-affidavit does not say anything whether the Commissioner of Income Tax, Bombay Central-III, Bombay, had complied with those instruction or not in the matter of supplying a copy of the transfer order to the assessed. Learned counsel for the respondents also relied upon this very assertion in the counter-affidavit and further submitted that efforts had been made to find out whether the Commissioner of Income Tax, Bombay Central-III, Bombay, had supplied or not a copy of the transfer order to the petitioner but the relevant record there was not traceable. It was also pointed out by learned counsel for the respondents that the petitioner had written a letter dated November 28, 1985, to the Finance Minister, Government of India, New Delhi, for the retransfer of all his cases out of Madras and ad contended that from this it could be at once inferred that he was aware of the transfer of his cases to Madras and it could further be inferred that he must have been communicated the transfer order as also the reasons for the same. He has also relied upon a similar letter dated February 3, 1986, written by another member of the Didwania group, viz., Dindayal Didwania, for retransfer of his cases out of Madras. A perusal of the letter dated November 28, 1985, written by the petitioner shows that he had expressed his apprehension that after raids had been conducted at their various places of business at Madras, Calcutta, Bombay and Delhi by two officers, namely, Mr. G. Anantaraman, DDI, and Mr. K. Sunderesan, ADI, these two officers got themselves appointed as regular Inspecting Assistant Commissioner and Income Tax Officer, Central Circle, Madras, and these two officers got the cases of all the family members of the Didwania group centralised at Madras from the Board and accordingly all the case files were transferred to them. From this letter or from the other letter written by Dindayal Didwania to the Finance Minister, it cannot be said to be established that the transfer order and its justification reasons had been communicated to the petitioner and the aforesaid knowledge of the petitioner regarding the centralization of all their cases at Madras by an order of the Board could ne the result of some information received from some other source from which he may not be aware of the reasons of the transfer order in question. Thus, it cannot be said that the petitioner was communicated the transfer order and the reasons thereof given by the Board.

8. The result of such an omission has been discussed in Ajantha Industries and

Others Vs. Central Board of Direct Taxes, New Delhi and Others, , wherein it was held as follows (headnote) :

"Non-communication of the reasons in the order passed u/s 127(1) was a serious infirmity and the order was invalid." It was further observed by the Supreme Court in this authority as follows (p. 285) :

The reason for recording of reasons in the order and making these reasons known to the assessed is to enable an opportunity to the assessed to approach the High Court under its writ jurisdiction under article 226 of the Constitution or even this court article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground hat it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

We are clearly of opinion that the requirement of recording reasons u/s 127(1) is a mandatory direction under the law and no communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessed."

9. No other authority of the Supreme Court to the contrary was cited by learned counsel for the respondents and the aforesaid authority clinches the matter in favor of the petitioner.

10. In view of the above discussion, the impugned notification transferring the case of the petitioner from Bombay to Madras is held invalid and, consequently, the sane is quashed to that extent.