(2013) 11 KAR CK 0161

In the Karnataka High Court

Case No : Writ Petition No. 83055 of 2013 (I-IT) and W.P. No''s. 83056, 83057, 83058, 83059, 83060 of 2013 (T-IT)

M/s. Madeeha Enterprises APPELLANT

Vs

Income Tax Officer, Ward-2 and Others RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:
Income Tax Act, 1961 — Section 127, 153

Citation : (2013) 11 KAR CK 0161

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : M.V. Seshachala, for the Appellant; Y.V. Raviraj, for the Respondent

Final Decision : Disposed Off

Judgement

L. Narayana Swamy, J.—Petitioner is challenging the transfer of the petitioner''s file from respondent No. 2-Deputy Commissioner of Income Tax, Bellary to respondent No. 5-Deputy Commissioner of Income Tax, Belgaum u/s 127 of the Income Tax Act. He has challenged the transfer order on the ground that the transfer was made in contravention of Section 127 of the Act. Secondly, before passing such order of transfer, principles of natural justice has not been followed and the petitioner has not been heard in this matter. The transfer causes hardship to the petitioner since he has to take all the volumes of files to the Belgaum, which is far away from the place where he resides. Under these circumstances, the learned counsel submitted to set aside the transfer order. Lastly, he submitted that the said order has not been communicated. Under these circumstances, the action on the part of the respondents transferring the file of the petitioner to the office of the Deputy Commissioner, Income Tax, Belgaum is contrary to law and principles of natural justice and violation of Section 127 of the Income Tax Act. The petitioner is a partnership firm registered under the provisions of the Indian Partnership Act. It has got its registered office at Hospet, Bellary District. He is the income tax assessee filing income tax returns each year with the jurisdictional Income Tax Officer, Ward No. 2, Bellary i.e., respondent No. 1. As things thus stood, a show-cause notice dated 05.07.011 was issued as per Annexure-E directing the petitioner to file objection to the proposed transfer by filing objections to that effect and he was further directed to file statement on or before 10.07.2011. The petitioner rightly has filed his objections and stated to the respondents that transferring the file of the petitioner to Belgaum office causes hardship and he has to shift volumes of files and he has to take witnesses on all the occasions. Thereafter, learned counsel submitted that he is not aware as to what is the outcome. He came to know about the transfer order only when the letter was addressed to him by the office of the Income Tax at Belgaum and non-compliance of Section 153 of the Income Tax Act.

2. The learned counsel submits that Section 127 of the Act requires a reasonable opportunity to the party to make his objections. The reasonable opportunity has been examined and dealt with by the Hon''ble Supreme Court in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, ; and another judgment of this Court in W.P. No. 33035/2011 and connected matter dated 20.07.2012 in the case of M.B. Mallikarjuna Vs. The Commissioner of Income Tax, Davanagere; and W.P. No. 6452/2010 dated 17.04.2013 and submitted that the reasonable opportunity u/s 127(2) of the Act has been interpreted by this Court and held that the affected party to be heard before passing the order. Secondly, the impugned order is to be communicated to provide an opportunity to challenge before appropriate Court. Non-communication is a violation of Section 127(2) of the Act and the authority has to assign reasons for rejecting the claim of the petitioner against the transfer order and also should assign the reasons for transfer. In the instant case, the transfer order itself is not communicated and after issuing the transfer order from the statement of objections filed by the respondents, it is seen that respondents have not assigned any reason. Hence, the impugned action is contrary to the judgment of the Supreme Court and also this Hon''ble Court. He also relied on the judgment of this Court in the case of Y. Moideen Kunhi and Co. and others Vs. Income Tax Officer and others, , wherein the similar grounds has been quashed by this Court.

3. The learned counsel for the respondents submitted to dismiss these petitions on the following grounds, namely, on principle of estoppel. By virtue of the speaking order dated 28.07.2011 passed by respondent No. 3, the petitioner appeared before the Income Tax authority at Belgaum and submitted his returns and participated in the proceedings. Having accepted the transfer order and participated in the proceedings, it amounts to waiving the rights from appearing and it attracts principles of estoppel. Secondly, the transfer order passed on 28.07.2011 and the said order has been challenged in the year 2013. This long delay has not been explained and on this ground alone these petitions have to be dismissed on the ground of laches. With regard to the principles of natural justice, the learned counsel submits that before issuance of transfer order, a

show-cause notice was issued on 05.07.2011 and the petitioner has submitted his objections and objections have been considered in detail. Hence, there is no violation of principles of natural justice. Section 127 of the Act is silent about communicating the order. Hence, there is no violation in non-communicating the impugned order. Hence, he submitted to dismiss these petitions.

4. I have gone through the provisions of Section 127 of the Income Tax Act The power is available to the authority to transfer the files of the assessee from one office to another office. It is an administrative convenience. However, if it affects and causes hardship to the party concerned, it needs to give an opportunity to the party. Rightly in this case, a show-cause notice was issued and the petitioner was provided an opportunity to make objections and after considering the objections, this impugned order of transfer was made. The question is as to whether the transfer order has been communicated and whether it is required to be communicated. Though Section 127(2) of the Act does not speak about the communication of the order, but any order affects the party is to be communicated. An affected party should know what is the order, which causes hardship to him. Non-communication is a good ground to interfere on the ground of administrative lapses. This Court in the case of Y. Moideen Kunhi and Co. and others Vs. Income Tax Officer and others, held as under:

Whenever a group of files are transferred from the jurisdictional Assessing Officers at the place where the assessees are carrying on business or reside to a place outside the city, locality or place, the assessees will invariably be put to undue hardship and inconvenience. Therefore, there must be justifiable and valid reasons for such transfer. Whenever several files pending with various assessing authorities are transferred to a single authority, it is necessarily to facilitate co-ordinated investigation. Hence, that cannot be the reason for the transfer. To say that the transfer of several files is being done to facilitate proper coordinated investigation, does not amount to giving the reason for transfer, but stating the result sought to be achieved by the transfer. Take the example of a group of assessees each of whom is maintaining true and correct accounts, but assessed with different assessing authorities. It will certainly be convenient and time saving to transfer all the files to a single officer, even though there is no tax evasion. But on that ground can the files be transferred to afar away place? The answer will be ''No''. The section itself makes a distinction between a transfer to another authority in the same city/locality and a transfer to an authority outside the city/locality. Sub-s (2) of s. 127 provides that if the transfer is to another assessing authority in the same city or locality, no opportunity to show-cause need be given. That is because there is no stigma attached to such a transfer as the transfer is deemed to be merely a matter of convenience. But if the transfer is outside the city, the transfer ceases to be one of convenience but becomes one with the purpose of countering evasion of tax or a similar reason which is sought to be prevented by the transfer. In such cases, merely stating that the transfer is to facilitate co-ordinated investigation will not be a sufficient reason for the transfer.

5. In respect of non-communicating and non-assigning the reasons in passing the order, the Hon''ble Supreme Court in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, held as follows:

When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.

In the light of the provisions discussed above, I find there is a force in the submission made by the learned counsel for the petitioner and the case of the petitioner in challenging the transfer order is required to be reconsidered by the competent authority. The impugned order is to be communicated and it should be a reasoned order and it should assign reasons as to why the case of the petitioner is not considered. The submission of the respondents that approaching this Court is being examined. From the date of order, namely 28.07.2011, he has responded to the notice issued by the office at Belgaum and in compliance of the said notice he has appeared and furnished all the volumes of files and particulars. The said appearance is in compliance of Section 153 of the Income Tax Act. Lapses if any would have attracted penal action. That cannot be considered as an estoppel since he has accepted the notice. Under these circumstances, I pass the following:

ORDER

i) The impugned transfer order is hereby quashed.

ii) The Commissioner Income Tax at Gulburga is directed to pass fresh order and the order should be a reasoned order and the reasons to be assigned as to the rejection of the objections.

iii) Consequently, the assessment order issued by the office at Belgaum is quashed.

iv) Liberty is reserved to the respondents-authorities to issue fresh notice.

v) Time limit to complete the fresh assessments to be done by the respondents is two years.

Accordingly, all the petitions stand disposed of.