(2009) 03 CAL CK 0020

In the Calcutta High Court

Case No : Writ Petition No. 4979 (W) of 2009

Naresh Kumar Agarwal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 18-03-2009

Acts Referred:
Income Tax Act, 1961 — Section 127, 132(1)

Citation : (2010) 320 ITR 361

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : J.P. Khaitan and Nilay Sengupta, for the Appellant; R.N. Mitra and Anwara Qurashi, for the Respondent

Judgement

Soumitra Pal, J.—Let affidavit of service filed in the court today be kept with the records.

2. In this writ petition, the petitioner has challenged the notice dated July 21, 2008, issued by the Income Tax Officer/Technical/Asansol, respondent No. 3 proposing transfer of the Income Tax file of the petitioner from Income Tax Officer, Ward-3(1) Asansol to the Assistant Commissioner of Income Tax, Central Circle, Ranchi and the order dated January 28, 2009 passed by the Commissioner of Income Tax, Asansol, respondent No. 2, transferring the file of the petitioner from the Income Tax Officer, Ward-I, Purulia to the Assistant Commissioner of Income Tax, Central Circle-I, Ranchi.

3. Mr. J.P. Khaitan, learned senior advocate, appearing on behalf of the petitioner submits that the notice proposing transfer must mention the reasons to enable the assessee to make an effective representation with reference to the same. However, the notice dated July 21, 2008, proposing transfer is bad as it does not mention the reasons. With regard to the impugned order dated January 28, 2009, it has been submitted that though Section 127 of the Income Tax Act, 1961 (in short "the Act") postulates that a personal hearing is to be granted, no such hearing was given. Moreover, the order does not deal with the written

objection dated July 23, 2008 filed by the petitioner.

4. Mr. Mitra, learned senior advocate, appearing on behalf of the respondents submits that the entire action of the respondent is just and proper.

5. In order to decide the issue it is necessary to set out the relevant portion of the notice dated July 21, 2008 proposing transfer of the file of the petitioner from Asansol to Ranchi which is as under:

In consequence of search and seizure operation conducted u/s 132(1) of the Income Tax Act 1961 in the business as well as residential premises of Sri Ram group of cases, wherein your case was also covered. It is proposed to centralise the entire group of cases with Assistant Commissioner of Income Tax, Central Circle-1, Ranchi under the charge of Commissioner of Income Tax (Central), Patna for co-ordinated investigation and assessment. Accordingly, your case needs transfer to new earmarked jurisdiction.

In this connection I am directed to request you to let this know by July 28, 2008, whether you have any objection to the proposed transfer. In the case of non-compliance on your part in respect of this matter, order u/s 127 will be passed construing that you have, no objection in the proposed transfer.

(Here printed in italics)

This may kindly be treated as most urgent.

6. Pursuant to the notice the petitioner filed a reply, the relevant portion of which is extracted hereunder:

Ref.: Your letter No. 1174/CIT/AS/T-19/ Cent/2008-09 dated July 21, 2008.

Sub.: Proposal for transfer of jurisdiction of Naresh Agarwal from Income Tax Officer, Ward-I Purulia to Assistant Commissioner of Income Tax, Central Circle, Ranchi under the charge of Commissioner of Income Tax (Central), Patna.

In response to your letter dated July 21, 2008, we are submitting following objections regarding transfer of jurisdiction from Purulia to Ranchi.

1. I was earlier residing in Jhalda. In or about 2007, I shifted to Kolkata mainly on security and health ground. I was once kidnapped in 2003 and henceforth has been provided with armed bodyguards by West Bengal Government.

2. I am presently a permanent resident of Kolkata at 37A, Gorcha Road, Kolkata-700 019 and my family are all residing in Kolkata.

3. I have applied for transfer of jurisdiction for transfer of my assessment records from Purulia to Kolkata.

4. All the companies inter alia controlled by me is having its registered office in West Bengal only. The board meeting/AGM of the companies are held at Kolkata only and other than the factory employees (who are stationed at Jhalda) all the

employees of the company are also stationed in Kolkata only.

5. In my case no search was conducted at Ranchi. In fact I do not have any family or business connection in Ranchi.

6. It is practically impossible for me to comply with any notice of Income Tax Department at Ranchi. Even my health and security shall be at stake.

7. Thus I would request you not to transfer the Income Tax file from Purulia to Ranchi.

Thanking you,

Yours faithfully,

(Sd.)....

Naresh Kumar Agarwal.

7. Thereafter, the order impugned was passed which is as under:

In exercising powers conferred upon me by Section 127 of the Income Tax Act, 1961, and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, Asansol, do hereby transfer/centralise the following cases from Assessing Officer mentioned at column No. 5 to Assessing Officer mentioned in column No. 7 for coordinated investigation and meaningful assessment.

-- Name of Present Present New Sl. the Status PAN jurisdiction CIT juris- New CIT Remarks No. assessee charge diction charge -- (1) (2) (3) (4) (5) (6) (7) (8) (9) -- 1. Naresh Indv. ACN ITO, CIT, ACIT, CIT Kumar PA Wd. 1 Asansol Central (Central) Agar- 9268 Purulia Cir-1, Patna walla M Ranchi --

8. So far as the notice is concerned though it has been mentioned that the proposed transfer is for "co-ordinated investigation and assessment", it does not mention any specific reason for transfer. Merely stating that transfer is for "co-ordinated investigation and assessment" is not at all sufficient as the assessee should be intimated about the reasons in a comprehensive manner in order to enable him to make effective representation.

9. With regard to the impugned order dated January 28, 2009 passed by respondent No. 2 is concerned, though Section 127 of the said Act postulates that the assessee should be given reasonable opportunity of being heard, the same was not granted. No cause has been shown for denial of such opportunity. Moreover, the written objection dated July 23, 2008 furnished by the petitioner has not been dealt with at all. The impugned order is not even cryptic. Rather it has been passed in a mechanical manner. Therefore, for the reasons as

discussed, the notice dated July 21, 2008 issued by respondent No. 3 and the order dated January 28, 2009 passed by respondent No. 2 cannot be sustained and are, thus, set aside and quashed.

10. The writ petition is allowed. However, this order shall not prevent the respondents from taking steps afresh in accordance with law.

11. Since the writ petition is disposed of at the stage of admission without calling for affidavits, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

12. There will be no order as to costs.

13. Let urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.