(2014) 03 AHC CK 0217

In the Allahabad High Court

Case No : Writ Tax No. 754 of 2007

Preeti Elhence APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:
Income Tax Act, 1961 — Section 127, 127(1), 127(2), 132(1), 132(4A)

Citation : (2014) 365 ITR 268 : (2014) 226 TAXMAN 244

Hon'ble Judges : Mahesh Chandra Tripathi, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : Shubham Agrawal and B.P. Verma, Advocate for the Appellant; A.N. Mahajan, Standing Counsel, Ashok Kumar, B. Agrawal, D. Awasthi, G. Krishna, R.K. Upadhyaya and S. Chopra, Advocate for the Respondent

Judgement

1. Heard Shri Shubham Agrawal learned counsel for the petitioner, and Shri R.K. Upadhyaya, learned counsel appearing for the respondent. By this petition, the petitioner has prayed for quashing the order dated April 27, 2007, annexure 6 to the writ petition, by which the Commissioner of income tax exercising the power u/s 127 of the income tax Act, 1961 (hereinafter called "the Act, 1961") transferred the case of the petitioner from Additional CIT, Range-2, Kanpur, to ACIT Central Circle, Meerut.

2. Brief facts necessary to be noted for deciding the writ petition are: A search and seizure operation took place u/s 132(1) of the Act on October 27, 2005, against Dr. G.P. Elhence, Smt. Radhey Elhence and Dr. Anil Elhence. The petitioner, being daughter in law of Dr. G.P. Elhence, Smt. Radhey Elhence at the relevant time was residing at the premises A-130 Shastri Nagar, Meerut, and an amount of Rs. 45,000 was found from the room of the petitioner out of which Rs. 40,500 was seized. A notice u/s 127(2) of the Act dated October 13, 2006, was issued to the petitioner giving her an opportunity of hearing in respect of the proposed transfer from Additional CIT Range-2 Kanpur to ACIT Central Circle Meerut. Following was the reason given in the notice dated October 13, 2006.

"A search and seizure operation u/s 132(1) of the income tax Act was carried out in the case of Dr. Anil Elhence, Dr. G.P. Elhence and Smt. Radhey Elhence at the residential premises No. A-130, Shastri Nagar, Meerut by the Investigation Unit, Meerut, on October 27, 2005. Your case is connected with the case of Dr. Anil Elhence, Dr. G.P. Elhence and Smt. Radhey Elhence residing at the premises No. A-130, Shastri Nagar, Kanpur. It is, therefore, proposed to transfer your case from Range-2, Kanpur to the ACIT, Central Circle, Meerut, in the charge of the Commissioner of income tax (Central), Kanpur, for the purpose of co-ordinated post-search investigation and meaningful assessments."

3. The petitioner submitted her reply to the said notice. In the reply it was stated that there was no search warrant issued in the name of the petitioner, hence, the search and seizure operations cannot be made the basis for transfer of the case. By another notice dated March 13, 2007, the date was fixed for hearing before the Commissioner of income tax was March 28, 2007. The petitioner submitted her reply to the subsequent notice also. The Commissioner of income tax passed the order dated April 27, 2007, transferring the case of the petitioner from Additional CIT, Range-2, Kanpur, to the ACIT, Central Circle, Meerut. The Commissioner of income tax in his order dated April 27, 2007, has referred to the reply submitted by the petitioner and after noticing the contention of the petitioner passed an order for transfer of the said case which is under challenge in the present writ petition.

4. Learned counsel for the petitioner challenging the order impugned contended that the order does not contain any valid and germane reason in exercising the power u/s 127(2) of the Act. He submits that recording of reason and reasons being relevant and germane are condition precedent in exercising the power u/s 127(2) of the Act. He has placed reliance on a Division Bench judgment of this court in Sahara Airlines Ltd. and Others Vs. Director General of Income Tax (Investigation) and Others, as well as another Division Bench judgment of this court in Vijay Kumar Gauri Shankar and Others Vs. Commissioner of Income Tax and Another, He has also referred to section 132(4A) and section 153C of the Act in respect of his submission.

5. Section 127(1) of the Act provides as follows:

"127. (1) The Director General or the 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."

6. In the present case, two notices were issued to the petitioner and she was also given the opportunity of being heard and thereafter for reasons as mentioned in the order impugned, the transfer of the petitioner''s case has been

made.

7. The submission which has been pressed by the learned counsel for the petitioner is that the reason for transfer has to be germane and relevant to the issues raised. He has referred to paragraph 14 of the judgment in the case of Sahara Airlines Ltd. (supra) which provides as follows (page 42 of 286 ITR):

"The reasons, so recorded, have to be relevant and germane to the issues raised which can be supported by documentary evidence or such evidence, as may be available, but if reasons are absurd or nonexistent mere recording of statement of reasons would not be sufficient to hold the order as valid for the compliance with the requirement of recording reasons. But the sufficiency or adequacy of material for recording such reasons, may not be a factor to raise a plea of quantitative insufficiency of material, so as to make the reasons recorded as arbitrary or bad."

8. In Vijay Kumar Gauri Shanker''s case (supra) the following was laid down in paragraph 12 (page 531 of 283 ITR):

"It is, therefore, imperative upon the concerned authority while exercising power to transfer proceedings which may cause inconvenience and prejudice to the assessee to show conscious application of mind at the appropriate stage by recording reasons in the order itself. The order passed without application of mind cannot be justified by showing circumstances or material from the record to ascertain the same, as it will be in negation of statutory condition to record reasons by the authority itself."

9. There cannot be any dispute to the proposition that the reasons for exercising power u/s 127(1) of the Act has to be relevant and germane. In event, the power u/s 127(1) of the Act is exercised on extraneous reason the order falls outside the purview of section 127(1) of the Act. In paragraph 5 of the order dated April 27, 2007, the following reasons have been given by the Commissioner.

"5. In the letter dated April 20, 2007, the assessee reiterated the submissions as put forth, vide her earlier reply letter dated January 27, 2006, which have been discussed in the paragraph 2 above. The assessee also placed reliance on the judgment of the Hon''ble Supreme Court of India in the case of Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, The submissions put forth by the authorised representative of the assessee in letters dated October 27, 2006, and April 20, 2007, have been carefully considered. The contention of the assessee that there is no connection between her and the persons in whose name search warrant was issued and search and seizure took place, is not acceptable in view of the fact that she is the daughter-in-law of Dr. G.P. Elhence in whose name search warrant was issued. The assessee is living in house No. A-130, Shastri Nagar, Meerut, which was covered under the search and seizure operation. This house property belongs to her father-in-law, Dr. G.P. Elhence. Not only this, during the course of search operation, cash of Rs. 45,000 was found from her room in house No. A-130, Shastri Nagar, Meerut, out of which Rs. 40,500 was seized. This fact was brought to the notice of the assessee, vide letter dated March 13, 2007, reproduced above. In view of these facts, the case of the assessee is clearly connected with the case of Dr. G.P. Elhence, Dr. Anil Elhence and Smt. Radhey Elhence in whose names, warrant was issued and search and seizure operation was conducted. Further, the facts of the case of the assessee are distinguishable from that of the case Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, on which the assessee has placed reliance."

10. The Commissioner noted in the order impugned that the assessee is living in A-130, Shastri Nagar, Meerut, which was covered under the search and seizure operation. The order further states that in the search operation cash of Rs. 45,000 was found from her room out of which Rs. 40,500 was seized. The reasons given in the order impugned cannot be said to be irrelevant or not germane to the issues. Section 127(1) of the Act gives ample power to the Commissioner to transfer a case on a valid and cogent reason.

11. In the present case, the assessee was living in A-130 Shastri Nagar, Meerut, where the search operation took place and where cash of Rs. 45,000 was found from her room out of which Rs. 40,500 was seized.

12. We are satisfied that the reasons recorded by the Commissioner cannot be said to be irrelevant or not germane to the issues. There is no error in the order of the Commissioner in exercising the power by the Commissioner u/s 127(1) of the Act in transferring the case of the petitioner.

13. Now, coming to section 132(4A) of the Act which provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed that search belongs to such person.

14. Section 132(4A) of the Act contains a provision regarding presumption. The said provision may be relevant at the time of final assessment regarding the cash seized in the search but the said provision does not help the petitioner in finding any fault in exercise of power u/s 127(1) of the Act.

15. Lastly, the learned counsel for the petitioner has referred to section 153C of the Act which relates to assessment of income tax of any other person. The said provision is again relevant in the assessment proceedings and does not help the petitioner in finding any fault for exercising the power u/s 127(1) of the Act.

16. In view of the foregoing discussions, we are of the view that there is no error committed by the Commissioner in transferring the case of the petitioner u/s 127(1) of the Act. The writ petition is dismissed.

