(1997) 08 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2316 of 1996 (Also SB Civil Writ Petns. No''s. 2327, 2167, 2166, 3009, 5972 and 2939 of 1996)

RAJASTHAN MINING and ENGINEERING (P) LTD. and Others — APPELLANT

Vs

COMMISSIONER OF INCOME TAX and Others — RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:
Income Tax Act, 1961 — Section 127

Citation : (1997) 142 CTR 329

Hon'ble Judges : J. C. Verma, J

Bench : Division Bench

Judgement

J. C. VERMA, J. :

All the abovementioned seven writ petitions are being decided together for the reason that a common question of law is involved. The facts are being taken from Civil Writ Petition No. 2316 of 1996, M/s Rajasthan Mining and Engineering (P) Ltd. vs. CIT, and others.

2. Sec. 127 of the IT Act (hereinafter referred to as the Act) authorises the Director General or Chief CIT or CIT, after giving the assessee a reasonable opportunity of being heard and after recording the reasons for doing so, to transfer any case from one or more AOs subordinate to him to any other AO or subordinate.

3. In the present case the petitioner-company is regularly being assessed by IT Department at Jaipur, even since their incorporation from 1979, but the CIT, IT Department, Jaipur, exercising powers under s. 127 of the Act, has vide order dt. 29th March, 1996/ 3rd of April, 1996, transferred the case of the petitioner to the jurisdiction of the Dy. CIT, Special Range, Cuttack, Orissa, without giving any reasons and without any authority or jurisdiction. The petitioner submits that the transfer order made under s. 127 is per se, arbitrary, illogical, whimsical and contrary to the well-established principles of natural justice. Rather it is

submitted that the CIT had transferred many other cases as well to Cuttack and many of them have filed the writ petition and, therefore, prayer has been made to quash the impugned order Annexure 4 attached with the writ petition.

4. It seems that IT authorities had carried out some search in regard to the firm M/s Ores India, Barbil and in the search so conducted, it was found that there were certain directors of M/s Ores India who are relatives of the partners of the present firm. It is stated that without any notice and reasons the cases of the petitioner have been transferred to Cuttack in Orissa. A reply has been filed to the Writ Petition. It is stated that the petitioner consists of a very large family and has got various connections and relations with M/s Ores India Ltd. and, therefore, during the raid conducted at Ores India, it was found that the petitioner is so connected with the partners of M/s Ores India and CIT was competent to transfer the cases of the petitioner to Cuttack. The impugned Annexure 4 only states that in exercise of the powers conferred by sub-s. (1) of s. 127 of the Act, the CIT, Jaipur, hereby transfers the cases, particulars of which are mentioned in column 2 of the schedule made thereunder. As many as 12 cases have been transferred. No reason has been given for such transfer. On 1st March, 1996, vide annexure 3, the ITO had written a letter to the Asstt. CIT, Jaipur, to the effect that there is no need to transfer the cases to Cuttack. It was further pointed out by the ITO that if the IT authorities at Cuttack feel that some of the files are essentially required being connected with such proceedings, then list of such files may be sent for transfer from Jaipur charge.

5. The contention of the petitioner is that the CIT, Jaipur, has no powers whatsoever to transfer any other cases to Cuttack for the reason that he could have only transferred the cases, if permissible under law, to any ITO subordinate to him in his area. Admittedly, the ITO, Cuttack is not subordinate to the CIT of Jaipur. If at all the cases could be transferred, they could have been transferred by the Director General who is incharge of all the IT Departments in the Country. So the CIT could only transfer the cases after recording the reasons from one AO to another AO subordinate to him, as per the provisions of s. 127(1), which are reproduced as under :

"(1) The Director General or Chief CIT or CIT 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 AOs subordinate to him (whether with or without concurrent jurisdiction) to any other AO or AOs (whether with or without concurrent jurisdiction) also subordinate to him".

6. Counsel for the petitioner also relies on Y. Moideen Kunhi and Co. and others Vs. Income Tax Officer and others, and Anil Mittal and Others Vs. Chief Commissioner of Income Tax, wherein order of the transfer was set aside on the ground that no reasons had been stated by IT authorities and it was held that recording of the reasons in the order of transfer under s. 127 of the Act is the mandatory requirement.

7. In Anil Mittals case (supra) it was observed as under :

"Where, after giving an opportunity to the appellants for a proposed transfer of their cases for facility of investigation from the ITO at Nellore to an ITO at Hyderabad, the Central Board passed an order under s. 127(1) of the IT Act, 1961, transferring the cases but in the order served on the appellants no reasons were recorded or communicated :

Held accordingly, that non-communication of the reasons in the order passed under s. 127(1) was a serious infirmity and the order was invalid".

"On a perusal of the order, annexure-P19 we find that no reasons whatsoever have been recorded in the order by the respondent while passing order under s. 127 of the Act transferring the case of the assessee from Gurdaspur to New Delhi. The order, annexure P-19, is against the provisions of s. 127 of the Act and the law laid down by their Lordships of the Supreme Court in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, and the same being bad in law cannot be sustained".

8. In Y. Moideen Kunhis case (supra) the Karnataka High Court observed as under :

"Sec. 127 of the IT Act, 1961, 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. In such cases, merely stating that the transfer is to facilitate co-ordinated investigation will not be a sufficient reason for the transfer. Whenever CIT orders transfer of the files of a group from one city to another, tax evasion or misdemeanour by all or several of the parties constituting the group is assumed. Before such a stigma is cast, it is necessary that the affected parties should be notified of the reasons for the proposed transfer in the show-cause notice, so that they can effectively explain why such a course is not necessary. Similarly, it is also necessary that the order communicated should contain the reasons for making the order of transfer. Thus, where the transfer is to another city, the mere mention of stock phrases like "to facilitate co-ordinated investigation" or variations thereof will not be in compliance with the mandatory requirement of s. 127".

9. In the above said cases the impugned orders of transfer are quashed on the ground that neither the impugned orders contains any reasons nor the CIT was authorised to transfer the cases outside his jurisdiction, as the Cuttack AO was not his subordinate. Even otherwise because of the reason that on account of some raid made on the firm Ores India Ltd. the assessee is at Jaipur who is being assessed at Jaipur, for the last so many years, cannot be asked to present

themselves before Cuttack for the purposes of assessment relating to their firms at Jaipur. The impugned orders of transfer of the cases of the petitioners to Cuttack cannot be sustained in the law and are therefore, quashed with costs of Rs. 1,000 per case.