(2012) 10 CHH CK 0005

In the Chhattisgarh High Court

Case No : Writ Petition No. 41 of 2012

Ram Gopal Agrawal APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 09-10-2012

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227
Income Tax Act, 1961 — Section 127, 127(1), 127(2), 132, 132(9A)

Citation : (2013) 258 CTR 320

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : B.P. Sharma, M.L. Sakat and Kshitij Sharma, for the Appellant; Anand Dadariya, for the Respondent No. 2, for the Respondent

Final Decision : Allowed

Judgement

Prashant Kumar Mishra, J.—In these petitions under Art. 226/227 of the Constitution of India, the respective petitioners have sought quashment of the order dt. 2nd April, 2012 (Annex. P-1) passed by respondent No. 2 in exercise of powers under s. 127(2) of the IT Act 1961 (henceforth "the Act") transferring the cases of 5 assessees namely, (1) M/s. Maa Mahamaya Industries Ltd.; (2) M/s. G.V.A. (P) Ltd.; (3) M/s. Shri Maa Mahamaya Power Ltd.; (4) M/s. V.S.G. Power & Ispat (P) Ltd. and Shri Ashok Kumar Agrawal, the respective petitioners of Writ Petn. (T) Nos. 30, 31, 32, 33 and 34 of 2012 from the AO at Raipur i.e., Asstt. CIT-2(1), Raipur-2 to the AO, VSP i.e. Asstt. CIT-CC-I, Visakhapatnam. Similar order with respect to 9 other group companies have been passed on 31st May, 2012, for the assessees namely (1) Smt. Anita Agrawal; (2) Shri Anunal Agrawal; (3) Shri Ram Charan Agrawal; (4) Shri Ram Gopal Agrawal; (5) Shri Omprakash Agrawal; (6) Shri Vidya Sagar Agrawal; (7) Smt. Santosh Agrawal; (8) Smt. Sharda Devi Agrawal; (9) Smt. Pinki Agrawal transferring the cases from AO, Dhamtari i.e., ITO, Dhamtari to the AO at Visakhapatnam i.e., Asstt. CIT, (CC)-I, Visakhapatnam, which are under challenge in Writ Petn. (T) Nos. 35, 36, 37, 38, 39, 40, 41, 42 and 43 of 2012. The order in all the cases though passed on two different dates, however, there being commonality in facts and law, they are disposed of by this common order.

2. Brief facts of the case, necessary for disposal of the present batch of petitions, are that on 19th Aug., 2011, a search and seizure operation was conducted on the premises of M/s. Maa Mahamaya Industries Ltd. and the director''s office as well as the other companies belonging to the group at Dhamtari, Raipur and Visakhapatnam. After completion of search and seizure, the respective petitioner was issued show-cause notice on 18th Jan., 2012 inviting objection from the assessees against the proposed transfer of Jurisdiction of its case from AO i.e., ITO, Dhamtari/Raipur to Asstt. CIT, Central Circle-I, Visakhapatnam for a "co-ordinated investigation".

3. The respective assessees objected to the transfer inter alia stating that the companies are registered with the Registrar of the Companies, Gwalior (ROC, MP and Chhattisgarh) having its registered office at Dhamtari/Raipur within the jurisdiction of ITO, Dhamtari/Asstt. CIT Circle-2(1), Raipur; the Board meeting also takes place at its registered office, all the companies belong to one family and some companies are headed by aged persons and women; some companies have not yet started any business; Maa Mahamaya Industries Ltd. is executing a contract at Bhilai Steel Plant, Bhilai, jointly with Vidya Sagar & Sons and the said company is participating in different tenders in Chhattisgarh, therefore, merely because search and seizure was carried on under s. 132 of the Act, the cases should not be transferred to Visakhapatnam.

4. Assailing the legality and validity of the order, learned counsel for the petitioner would argue that the impugned order is ex facie illegal and arbitrary in as much as a transfer cannot be made for "co-ordinated investigation" as was mentioned in the show-cause notice. He would argue that no public interest as such is involved in transferring the cases and the order of transfer does not satisfy the requirement of s. 127(2) of the Act.

5. Per contra, learned counsel for the respondents would submit that the order having been passed after hearing the petitioner, it does not warrant interference under Art. 226 of the Constitution of India.

6. The search and seizure operations under s. 132 of the Act in the group companies were conducted on 19th Aug., 2011 and the said operation was carried on by the authorized officer i.e., Director of Investigation, Hyderabad. Under the provisions of s. 132(9A) of the Act, it is provided that where the authorized officer has no jurisdiction over the person referred to in cl. (a) or cl. (b) or cl. (c) of sub-s. (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in ss. 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorized officer to the AO having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed and thereupon the powers

exercisable by the authorized officer under sub-s. (8) or sub-s. (9) shall be exercisable by such AO.

7. Sec. 127 of the Act confers power on the IT authorities to transfer the cases from one AO to any other AO, who are subordinate to another officer. Where the AO or AOs from whom the case is to be transferred and the AO or AOs to whom the case is to be transferred are not subordinate to the same Director General or Chief CIT or CIT, the power of transfer has been conferred on the CIT from whose jurisdiction, the case is to be transferred, if both the respective CITs are in agreement and such power of transfer is exercisable after giving the assessee a reasonable opportunity of being heard in the matter and after recording reasons for doing so.

8. On a plain reading of the provisions contained in s. 127, two aspects are necessarily to be complied with namely : a reasonable opportunity of being heard in the matter wherever it is possible to do so; and secondly the recording of reasons for transferring a case. In absence of these two requirements being fulfilled, the order may not withstand the judicial scrutiny when its legality is penetrated.

9. In the present case, the assessee was served with a notice proposing to transfer the cases for "co-ordinated investigation". However, when the objections were submitted, the CIT, Raipur, mentioned in the impugned order that in any case, the proposed centralization is only for limited purpose of passing such assessment orders; thereafter, the companies can seek decentralization of cases back at Dhamtari/Raipur as per CBDT Guidelines. In the show-cause notice, the transfer was proposed for "coordinated investigation" and the order of transfer uses similar phraseology. However, the said phraseology has not been dealt with in the impugned order by assigning specific reasons as to what are the basic reasons for transfer or the reasons as to why "co-ordinated investigation" is not possible at Raipur.

10. In the matter of SAGARMAL SPINNING AND WEAVING MILLS LTD. Vs. CENTRAL BOARD OF DIRECT TAXES AND OTHERS., , a Division Bench of Madhya Pradesh High Court held that when the show-cause notice stated the reason for proposed transfer for "facility of investigation", it does not connote anything and the assessee was denied to give a proper reply against the proposed transfer.

11. In the matter of V.K. Steel Industries Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and Others, a Division Bench of Andhra Pradesh High Court has held that the ground for transfer, stated in the order, is "to facilitate detailed and co-ordinated investigation". The order preceded by a show-cause notice which too proposed the transfer with a view to "facilitate detailed and co-ordinated investigation" without assigning other (special) reasons either in the show-cause notice or in the order communicated to the petitioner is not valid ground for transfer and the reasons shown to the Court for transferring the cases having not been stated in the show-cause notice so as to enable the person concerned to

make an effective representation, the order of transfer is liable to be quashed.

12. Similarly, in Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and Others, , a Division Bench of the Andhra Pradesh High Court after referring to the Division Bench decisions of the Madhya Pradesh High Court in Sagarmal Spinning & Weaving Mills Ltd. (supra) and Shivajirao Angre Vs. Commissioner of Income Tax, and the judgment of V.K. Steel Industries (P) Ltd. (supra) held thus:

From the aforesaid decisions, it is clear that, in the matter of the transfer of a case under s. 127 of the Act, it is necessary that the authority which proposes to transfer the case must, wherever it is possible to do so, give the assessee a reasonable opportunity of being heard with a view to enable him to effectively show cause against the proposed transfer. The notice must also propose to give a personal hearing. It is also necessary to mention in the notice the reasons for the proposed transfer so that the assessee could make an effective representation with reference to the reasons set out. It is not sufficient merely to say in the notice that the transfer is proposed ''to facilitate detailed and co-ordinated investigation''. The reasons cannot be vague and too general in nature but must be specific and based on material facts. It is again not merely sufficient to record the reasons in the file but it is also necessary to communicate the same to the affected party.

(Emphasis, italicized in print, supplied)

13. In Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, Hon''ble the Supreme Court held thus in paras 9, 10 and 11:

9. This judgment was rendered by this Court on 21st Dec., 1956, and we find that in the 1961 Act, s. 127 replaced s. 5(7A), 889 where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of s. 127(1). We are unable to accept this submission.

10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach

the High Court under its writ jurisdiction under Art. 226 of the Constitution or even this Court under Art. 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that 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.

11. We are clearly of opinion that the requirement of recording reasons under s. 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

14. Yet again, the Division Bench of Andhra Pradesh High Court in Saptagiri Enterprises Vs. Commissioner of Income Tax and Others, after relying on the said decision of Hon''ble the Supreme Court in Ajantha Industries (supra) and its earlier judgment in Vijayasanthi Investments (P) Ltd. (supra) observed thus:

The order of transfer of an assessee''s case from one place to another under s. 127 of the IT Act, 1961, entails a certain amount of prejudice to the assessee. Therefore, the legislature has advisedly made a provision for giving the assessee a reasonable opportunity of being heard in the matter. It is also enjoined that the reasons for the transfer shall be recorded by the concerned authority.

Furnishing of specific and intelligible reasons for the transfer of a case is only a concomitant of the concept of reasonable opportunity enshrined in s. 127(1) and (2). Unless the assessee knows the precise reasons for the transfer, he would be handicapped in putting forth his objections effectively. If a vogue and omnibus ground, such as for detailed and coordinated investigation'' is mentioned in the show-cause notice and repeated in the final order given, the assessee cannot be reasonably expected to project his viewpoint. The requirement of a reasonable opportunity will then be reduced to an idle formality. It is, therefore, incumbent upon the authorities to spell out the basic reason for the transfer, at least briefly and broadly, so that the assessee may have the opportunity of making an effective representation and an opportunity to question the final order in the writ proceedings or otherwise. The phraseology co-ordinated investigation'', without anything more, does not convey any intelligible reason from the assessee''s point of view.

It is not possible to predicate that, in each and every case where the transfer is contemplated, the recording of reasons will thwart or defeat the purpose of transfer. There may be certain exceptional cases where affording reasonable opportunity to the assessee including the disclosure of specific reasons might come in the way of effective exercise of the statutory functions by the concerned IT authorities. The likely damage that may be caused to the interests of the Revenue might be irretrievable. In order to provide for such a contingency, an exception is carved out by using the words ''wherever it is possible to do so''. If it is not possible to afford a reasonable opportunity to the assessee having regard to relevant factors bearing a nexus with the object sought to be achieved, the recording of reasons or for that matter the requirement of hearing can be dispensed with. The expression ''wherever it is possible to do so'' need not be confined to cases of physical impossibility of contacting the assessee. That should be an exception but not a rule and it should not be resorted to in each and every case in a mechanical manner.

Where the case of the assessee was transferred by the CIT from place C to place M to facilitate detailed and co-ordinated investigation but no specific reasons were mentioned in the show-cause notice issued by the CIT or in the final order passed by him except using the stock phraseology which was bald and vague in its tenor, namely ''detailed and co-ordinated investigation''.

Held, that in the absence of communication to the assessee of the special reasons for the transfer of the case, the order of transfer was liable to be quashed. Farther, a perusal of the file of the CIT did not indicate that the non-communication of the specific reasons to the assessee was by reason of any satisfaction having been reached by the CIT that it was not possible to communicate the specific reasons or in case such reasons were disclosed, there was every possibility of interfering with the enquiry that had to be taken up after the transfer of the case."

(Emphasis, italicized in print, supplied)

15. In the case in hand also the reason for proposed transfer was stated to be for "co-ordinated investigation". The assessee(s) was expected to object to this stock phraseology "co-ordinated investigation" which was bald and vague in its tenor. However, in the opinion of this Court, if the basic reasons and foundations which have compelled or have put the AO to such inconvenience where "co-ordinated investigation" is not possible at Raipur are not known to the assessee and against this, the assessee could not have made any possible objection, the reason for proposed transfer is not only vague but by mentioning such reason proper opportunity is also not afforded to the assessee for raising his objection in the matter.

16. There is yet another reason as to why the pre-requirement of s. 127 as to the furnishing of reason in the transfer order is not complied with because while replying to para 8.10 of the writ petition, the respondents in para 7 of the return had stated that the order of transfer has been passed after providing reasonable opportunity to the petitioner(s) and that "the other detailed reasons" for transferring the case from ITO, Dhamtari and Asstt. CIT-2(1), Raipur to Asstt. CIT, Visakhapatnam have been recorded in the file and in the order which have been communicated to the petitioner. If there are additional reasons other than the one mentioned in the show-cause notice or in the impugned order, but which have not been disclosed to the petitioner, he cannot be expected to submit his objection on those grounds which are not communicated to him and not disclosed in the Impugned order. As held by the Supreme Court in Mohinder

Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the present case, there are other reasons available in the file but not disclosed in the impugned order. The matter becomes more serious because even in the return, additional reasons have not been disclosed nor the concerned file has been placed for perusal before this Court. Therefore, even this Court is not aware of the other reasons which compelled the authority to pass the impugned transfer order. For the foregoing reasons, the impugned transfer orders being not in conformity with the provisions of s. 127 of the Act are hereby quashed. Accordingly, the writ petitions are allowed. No order as to costs.

