(2016) 05 BOM CK 0076

In the Bombay High Court

Case No : Writ Petition No. 2423 of 2003

Ramswaroop APPELLANT

Vs

The Commissioner of Income Tax-II RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Income Tax Act, 1961 — Section 127

Citation : (2016) 290 CurTR 520 : (2016) 388 ITR 208

Hon'ble Judges : B.P. Dharmadhikari and P.N. Deshmukh, JJ.

Bench : Division Bench

Advocate : Shri M.G. Bhangde, Senior Advocate, for the Petitioner; Shri A. Parchure and Shri B. Mohta, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

P.N. Deshmukh, J.—Both these petitions having similar facts can be disposed of by this common judgment.

2. In Writ Petition No. 2423/2003, challenge is to order dated 10/4/2003 passed by respondent whereby petitioners'' cases under the Income Tax Act, 1961 (hereinafter referred to as "the Act") are transferred from Wardha (Maharashtra) to Jodhpur (Rajasthan) while in Writ Petition No. 1455/2004 challenge is to similar orders passed on 15/12/2003 and 28/1/2004 by respondent whereby income tax cases of petitioners therein are transferred from Nagpur (Maharashtra) to Jodhpur (Rajasthan).

In Writ Petition No. 2423/2003 by interim order dated 24/6/2003 and in Writ Petition No. 1455/2004 by interim order dated 26/3/2004, the parties were directed to maintain status quo.

3. Following facts would be necessary to reveal the controversy involved in the petitions :

Facts in Writ Petition No. 2423/2003 are that petitioner no.1 is the Managing

Partner of the firm M/s. Jagdishprasad Ramswaroop (petitioner no.2). The petitioner no.1 controls overall financial and other affairs of the firm as well as of the Mundra family and all the connected family business concerns. The place of residence of petitioner no.1 as well as the place of business of petitioner nos.1 and 2 is at Sindi (Railway), Tahsil Seloo, District Wardha (Maharashtra). The petitioner no.2 firm consists of 3 partners, namely, petitioner no.1 Mr. Ramswaroop Mundra, Smt. Vidya w/o Nandkishore Mundra and Smt. Asha w/o Sudhir Mundra and is engaged in the business of cotton ginning. The factory of this firm is situated at village Sindi (Railway), Tahsil Seloo, District Wardha. This is the main and oldest business of the Mundra family, which is being carried on since 1947. For all these years, the petitioner nos.1 and 2 are being assessed to Income Tax at Wardha only. No part of activity of the said business is carried on from any place other than Wardha/Sindi (Railway). The petitioner nos.1 and 2 are assessed under the Act by the Income Tax Officer, AWard, Wardha and their assessments are finalised upto 31.3.2002. The return of Income Tax was due to be filed in the month of October 2003.

4. The petitioner no.3 is the elder son of the petitioner no.1. The petitioner no.3 resides at Sindi (Railway) and also at Jodhpur for the purpose of business. The petitioner no.4 is a Hindu Undivided Family of which petitioner no.3 is the Karta. The petitioner no.4 is running its business, namely, manufacture of hydrated lime in the name and style of M/s. Shivam Chemicals at Pipar City. The petitioner no.3 derives income by way of interest from M/s. Shivam Chemicals. The petitioner nos. 3 and 4 are being assessed under the Act since beginning by the Income Tax Officer, A-Ward, Wardha. Their assessments are finalised upto 31.3.2002 and the return of income for the year 2002-03 was due to be filed in the month of October 2003.

5. The Income Tax Department carried out search and seizure operation under Section 132 of the Act at the business/residential premises of the petitioners/ Mundra family, of which the petitioner no.1 is the Head at Jodhpur and Sindi (Railway), on 20/21.12.2002.

6. Thereafter the Deputy Commissioner of Income Tax-II (Hq.) for the respondent sent identical letters dated 11.3.2003 to each of the petitioners proposing to transfer the cases of petitioners from the jurisdiction of the Income Tax Officer, Wardha to the Assistant Commissioner of Income Tax, Central Circle-II, Jodhpur under the provisions of Section 127 of the Act. It was stated in that letter that the cases of Mundra group are to be centralised for the purpose of coordinated investigations and assessments in Jodhpur and objections, if any, were invited from the petitioners. The petitioners vide separate, but identical replies submitted in the office of the respondent on 19.3.2003, objected to transfer of their cases from Wardha (Maharashtra) to Jodhpur (Rajasthan). In short, the petitioners contended that they were being regularly assessed to Income Tax since beginning at Wardha, the petitioner no.1 controls the overall financial and other affairs of the family and resides at Sindi (Railway), it would be

highly inconvenient and difficult to attend assessment proceedings at Jodhpur, which is at a distance of 1100 kms. from Wardha and transfer of cases to Jodhpur was not necessary for the alleged coordinated investigation.

7. On 28/5/2003 a copy of the order dated 10.4.2003 passed by the respondent is served upon the petitioners. By that order passed under Section 127 of the Act, the respondent has ordered transfer of Income Tax cases of the petitioners from Wardha to Jodhpur. According to respondent, transfer of these cases from Wardha to Jodhpur is necessitated to centralise all the cases of Mundra group for facilitating coordinated, systematic and centralised investigation/enquiry. The petitioners are aggrieved by this order and seek to challenge the same by the instant petition.

8. Insofar as Writ Petition No. 1455/2004 is concerned, facts are that petitioner no. 1 is the Karta of petitioner no. 2 Hindu Undivided Family and the Managing Partner of the firm (petitioner no. 3), which is registered with the Registrar of Firms, Nagpur vide Registration No. NGP-516/1989-90. The place of residence of petitioner no. 1 is at Nagpur as well as at Pipar City, District Jodhpur. Since beginning, the petitioners are being assessed under the Act at Wardha and since the year 1996 at Nagpur. The assessment of the petitioners is finalised upto 31.3.2002. The father of the petitioner no.1 resides and carries on business at Sindi (Railway), District Wardha. The father of petitioner no.1 controls overall financial and other affairs of Mundra family and all the connected family business concerns. He also attends the Income Tax cases of the petitioners and other family members and family business concerns.

9. The petitioner no.1 derives income by way of interest and his share of profit in the partnership firm, namely, petitioner no.3 M/s. Aditya Chemicals. This firm carries on the business of manufacture of Hydrated Lime and Quick Lime. Raw material that is required for this factory is Lime Stone, which is available at 5 places only in the entire country. These places are Gotan (Rajasthan), which is 40 kms. from the factory, (ii) Dehradun, (iii) Katni, (iv) Veraval and (v) Dronachalam. The quality of lime available at Gotan is very good among the aforesaid five places and, therefore, factory run by the firm M/s. Aditya Chemicals is situated at Pipar City, which is at a distance of 40 kms. from Gotan. Although manufacturing activity is done at Pipar city, sales of the products of M/s. Aditya Chemicals are entirely effected to various Industries in Maharashtra, Andhra Pradesh, Karnataka, Tamil Nadu, Gujarat, etc. No part of the product of M/s. Aditya Chemicals is sold anywhere in the State of Rajasthan. The principal place of business of this firm is located at Nagpur in Maharashtra. The firm is registered with the Registrar of Firms, Nagpur vide Registration No. NGP-516/1989-90. Income from this business arises only upon sale of the product, namely, Hydrated Lime, which is effected in Maharashtra, Andhra Pradesh, Tamil Nadu, Karnataka and Gujarat. The source of income is sale of the product and not the manufacture of the product. Entire income arises in Maharashtra, Andhra Pradesh, Tamil Nadu, Karnataka and Gujarat according to

well accepted principle of law of Income Tax, which says that income accrues and arises on sale only. The audit of the accounts of this firm is conducted at Nagpur and the Auditors are stationed at Nagpur. The books of accounts of this firm are maintained at Pipar City because manufacturing activity is carried on at Pipar City. The petitioner no.2 is doing the business of ''Petro Coke'', which is manufactured by ''Reliance Industries, Gujarat'' in the name and style of M/s. Sumedha Enterprises''. The petitioner no.2 gets his commission from manufacturer in respect of sales effected by him to various purchasers. Entire transactions are done on telephone. The income from these transactions accrues in the States of Rajasthan, Gujarat, Uttar Pradesh and Haryana. The petitioner no.2 is also doing business of mining of lime stone under name and style of Uttam Chuna Patthar Udyog at Gotan. The lime stone obtained after mining is supplied to M/s. Aditya Chemicals mainly. This business is on the verge of closure due to exhaustion of the mines.

10. The Income Tax Department carried out search and seizure operation under Section 132 of the Act at the business as well as the residential premises of the petitioners/Mundra family at Jodhpur and Sindi (Railway) on 20/21.12.2002.

11. Thereafter, the Income Tax Department served communications dated 9/4/2003 on the petitioners proposing to transfer the cases of the petitioners from the file of A.C.I.T. Circle-I, Nagpur to A.C.I.T. (Central)-II, Jodhpur under the provisions of Section 127 of the Act. The petitioners by their letters dated 16/4/2003 requested the Department to inform the reasons for proposed transfer of their cases. The Department vide communication dated 16/4/2003 informed the petitioners that their cases are connected with the Mundra Group of Jodhpur and, therefore, for co-ordinated investigation, the cases of petitioners are required to be transferred to Jodhpur. The petitioners then filed their objections to the proposed transfer vide replies dated 22/4/2003. The respondent then by order dated 25/4/2003 ordered transfer of the Income Tax cases of the petitioners from Nagpur to Jodhpur.

12. It is also the case of the petitioners that order dated 25/4/2003 was challenged in Writ Petition No. 2359/2003 wherein this Court directed parties to maintain status quo and thereafter on hearing both sides, admitted the petition and continued the interim order. During pendency of the said petition, respondent by his order dated 15/12/2003 withdrew the impugned order dated 25/4/2003, which was assailed in Writ Petition No. 2359/2003, upon which petitioners filed their objections on 26/12/2003 contending that the order as such was impermissible on the grounds as enumerated in para 7 (i to iii) in the petition. However, the objections came to be rejected and fresh notices dated 18/12/2003 came to be issued by respondent to petitioners transferring their income tax cases from Nagpur to Jodhpur.

13. Shri Bhangde, learned Senior Counsel for the petitioners, has referred to the provisions of Section 127(1) and (2) of the Act and contended that order under Section 127(1) of the Act being quasi judicial in nature is required to be issued

by the Authority exercising power under this Section by passing speaking order regarding reasons for transfer on dealing with objections made by the assessee to the proposed transfer and that power under the said provisions does not empower respondent to withdraw the order passed by him also, more particularly in view of order of status quo passed by this Court in Writ Petition No. 2359/2003 as in that writ petition, respondent was required to maintain status quo.

14. In the light of facts involved in the present petitions, provisions of Section 127(1) and (2) of the Act are reproduced hereunder :

"Section 127(1) ? The Director General or 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.

Section 127(2) ? Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner -

(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred 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, pass the order; (b) where the Directors General or Chief Commissioner or Commissioners aforesaid are not in agreement, the order transferring the case may similarly be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette authorise in this behalf."

15. From the aforesaid provisions, it is clear that power to transfer cases from jurisdiction of one Assessing Officer to other vests in the Commissioner of Income Tax. The said provisions require an opportunity of hearing to be given to the assessee. It is also necessary that the show cause notice should contain reasons why transfer of cases is required to be made by the competent Authority and there is no provision for delegation of power by the Commissioner of Income Tax to issue such transfer order to any other Officer as such. It was absolutely necessary as requirement of law that the show cause notices issued to the petitioners had to be under the signature of Commissioner of Income Tax. However, show cause notices involved in the petitions are issued by and under the signature of Deputy Commissioner of Income Tax-II (Headquarters) and not under the signature of Commissioner of Income Tax. We thus find that initiation

of proceedings under Section 127 of the Act in the instant cases was not by the Authority competent to do so.

16. With reference to Writ Petition No. 1455/2004, Shri Bhangde, learned Senior Counsel for the petitioners, has submitted that it is stated in the impugned order that the seized documents are in the custody of A.C.I.T. (Central)-II, Jodhpur and it would be convenient that search related assessments are completed by the said Officer as he will also need to cross-examine the assessees on the basis of seized material. It is further contended that search was also conducted at Sindi (Railway) and documents were seized. These documents are in the custody of the Income Tax Authorities at Nagpur. Hence, custody of part of the documents with A.C.I.T. (Central) II, Jodhpur cannot be the reason for transfer of cases inasmuch as there are equal number of documents in custody of Income Tax Authorities at Nagpur. Secondly, the custody of documents cannot be a consideration for deciding whether a case should be transferred or not.

17. With reference to Writ Petition No. 2423/2003, main contention of learned Senior Counsel Shri Bhangde is that petitioners having been regularly assessed to income tax since beginning at Wardha and petitioner no.1 having overall control on financial and other affairs of the family having their residence at Sindi (Railway) in Wardha District, it would be highly inconvenient and difficult to attend assessment proceedings at Jodhpur, which is more than 1000 kms. away from Wardha. It is thus the case of petitioners that there is absolutely no necessity for transfer of cases for the alleged coordinated investigation, which aspect has not been considered before passing the impugned orders. In support of his submissions, learned Senior Counsel Shri Bhangde has placed reliance on the judgments in Vijayasanthi Investments (P) Ltd. v. Chief Commissioner of Income Tax and others (1991) 187 ITR 405(AP), Saptagiri Enterprises v. Commissioner of Income Tax and others (1991) 189 ITR 705 (AP), Melco India (P) Ltd. and others v. Commissioner of Income Tax and others (2003) 260 ITR 450 (Delhi), Global Energy (P) Ltd. v. Commissioner of Income Tax, (2013) 31 taxmann.com 183 (Bombay), Sunisha Impex Pvt. Ltd. v. Commissioner of Income Tax-7, Mumbai and others (2014) 363 ITR 220 (Bombay), Shyam & Company v. Commissioner of Income Tax and another (1991) 192 ITR 387 (Allahabad) and Benz Corporation v. Income Tax Officer and others (1998) 232 ITR 807 (Kerala).

18. Shri Parchure, learned Counsel for the respondents, has resisted the petitions contending that petitioner no.1 has residence at Sindi (Railway), but he is also residing at Pipar city along with his sons. Although he is one of the partners in petitioner no.2 firm, other two partners of the petitioner no.2 firm are his daughters-in-law Smt. Vidya Nand Kishore Mundra and Smt. Asha Sudhir Mundra, both of whom reside at Jodhpur along with their husbands. The petitioner no.1 keeps his main assets like jewellery, etc. at Jodhpur in the residence of his son Shri Nand Kishore Mundra. It is contended that petitioner no.1 does not control all businesses and overall financial and other affairs of the

family from Sindi (Railway). On the other hand, it has been found that even the affairs of the petitioner no.1 are controlled and carried out from Jodhpur. It is further submitted that payment to the Public Provident Fund Scheme from the account of petitioner no.1 had been made at Jodhpur and self assessment challans of petitioner no.1 are made from time to time at Jodhpur.

19. The learned Counsel for the respondents has also submitted that during the search and seizure action at the residence of Shri Ramswaroop Mundra, Shri Nand Kishore Mundra and Shri Sudhir Mundra, certain loose papers were found, which indicated that there was an agreement of partition between Shri Ramswaroop Mundra and his sons Shri Nand Kishore Mundra and Shri Sudhir Mundra. The terms of this agreement show that Shri Sudhir Mundra was to pay Rs. 20 lakhs each to Shri Ramswaroop Mundra and Shri Nand Kishore Mundra. In return, these persons were to resign from the partnership firm M/s. Aditya Chemicals. The business of M/s. Aditya Chemicals is situated only at Pipar city/ Jodhpur. This also shows that the income of Shri Ramswaroop Mundra was from sources situated at Pipar city/Jodhpur. It is also submitted that in the course of the search and seizure operation, account books pertaining to M/s. R.S. Mundra (H.U.F.) were found at Jodhpur. This also indicates that the businesses of Shri R.S. Mundra were controlled from Jodhpur.

20. The learned Counsel for the respondents has further contended that petitioner no.3 is son of petitioner no.1 and on the own showing of the petitioners, petitioner no.3 resides at Jodhpur. On information received from the Deputy Director of Income Tax, Jodhpur, it is found that children of petitioner no.3 are studying at Jodhpur. The petitioner no.3 in his capacity as Karta of petitioner no.4 carried out business in the name of M/s. Shivam Chemicals. M/s. Shivam Chemicals is a manufacturer of Hydrated Lime and its factory is situated at Pipar city. All the marketing operations are carried out from this factorycum-office premises. All books of accounts relating to M/s. Shivam Chemicals were found either at the factory or at the residence of the petitioner no.3 at 37-A, Ajit Colony, Jodhpur. M/s. Shivam Chemicals also pays its central sales tax at Jodhpur. The petitioner no.3 also pays his Public Provident Fund contribution at Jodhpur and also submits his self-assessment challans from time to time at Jodhpur. The petitioner no.3 is also the Chairman of a Company Shri Chakra Housing Finance Pvt. Ltd., Jodhpur whose registered and corporate Office is shown as 37-A, Ajit Colony, Jodhpur. All the activities of this Company, which are related to real estate, are carried out at Jodhpur only. Hence, the Authority at Jodhpur only has jurisdiction in respect of petitioner nos.3 and 4.

21. So far as Writ Petition No. 1455/2004 is concerned, it is contended by learned Counsel for respondents that a search and seizure operation was carried out in the cases of M/s. Mundra group of Pipar city/Jodhpur on 20/12/2002. The Mundra group consists of Shri Ramswaroop Mundra and his sons Shri Nand Kishore Mundra and Shri Sudhir Mundra along with their family members. During the course of the search and seizure action under Section 132 of the Act, it was

found that most of the members of the Mundra group and their family members are having a permanent residence at Pipar city/Jodhpur. It was also found that books of accounts of all the assessees were at Pipar city/Jodhpur. It was also found that the sources of income in respect of the individual assessees mostly fall within the jurisdiction of the Commissioner of Income Tax, Jaipur. The respondent has received information in respect of the petitioners'' activities at Pipar city/Jodhpur from the Deputy Director of Income Tax, Jodhpur.

22. It is also contended by learned Counsel for the respondents that petitioner no.1 is a partner in the firm Aditya Chemicals, which is situated in Pipar city. The petitioner no.1 and his wife have 50% share in this firm. This concern has two units that manufacture hydrated lime from limestone. Both these manufacturing units and the office are situated at Pipar city/Jodhpur. The residence of petitioner no.1 is also located at the same place. All the books of accounts were also found at this place during the search and seizure operation. The petitioner no.1 along with his family is residing at Pipar city and children of petitioner no.1 are residing at Jodhpur. The petitioner no.1 has recently constructed another house at Jodhpur. It is not correct to say that income of the firm accrues and arises in Maharashtra, Tamil Nadu, Andhra Pradesh, Karnataka and Gujarat. The assessee is dealing in purchase and sale of hydrated lime and quick lime. The business of manufacture of this product is carried out at Pipar city in Rajasthan.

23. The learned Counsel for respondents has further submitted that the petitioner no.2, which is a Hindu Undivided Family through its Karta (petitioner no.1) is doing business of supply of petro coke under the name of M/s. Sumedha Enterprises. The office of M/s. Sumedha Enterprises is also located at the residence of petitioner no.1 in Pipar city. The petitioner no.1 in his individual capacity is also doing business of mining of limestone under the name of Uttam Chunna Pathar Udyog of Borunda in Rajasthan. The petitioner no.3 also has its entire work at Pipar city/Jodhpur.

24. Thus, it is the case of respondent Department that petitioners are members of the same family having involved in common business to a large extent, of which most of the business is situated in Pipar city in Jodhpur District and as such, proposal of Authorities of Income Tax to have centralised investigation into the cases of petitioners and also for action under Section 158BC for block assessment and action under Section 158BD in case undisclosed income of other person is found cannot be effected unless all the cases of family members of the petitioners are examined and investigated together.

25. With reference to show cause notice involved, it is the case of respondent Department that the show cause notice is issued on behalf of Commissioner of Income Tax and is signed by the Deputy Commissioner of Income Tax-II (Headquarters) on behalf of the Commissioner of Income Tax. The show cause notice itself states that the signature by the said Officer is for and on behalf of the Commissioner of Income Tax. There is no requirement under law that the show cause notice must be signed by the Commissioner of Income Tax himself. It

is the established procedure in the office of respondent that all such notices are signed on behalf of the respondent by a senior Officer deputed in this regard.

26. It is thus submitted that there are no defects in the impugned orders issued under Section 127 of the Act as same are speaking orders with reasons for transfer of cases to Jodhpur, which also establish necessity of centralizing all cases of petitioners for facilitating coordinated and systematic investigation. In support of his contentions, learned Counsel for respondents has relied upon judgments in Jharkhand Mukti Morcha v. Commissioner of Income Tax (1997) 95 Taxman 132 (Patna) and Aamby Valley Ltd. v. Commissioner of Income Tax-8 (2014) 41 taxmann.com 15 (Bombay).

27. Having considered the provisions of Section 127(1) of the Act and submissions as aforesaid, we find that it was absolutely necessary as requirement of law that the show cause notices impugned in the present petitions should have been under the signature of Commissioner of Income Tax as under the provisions of Section 127 of the Act, there is no provision of delegation of power by the Commissioner of Income Tax to any other Officer. As already stated above, the impugned show cause notices are issued by and under the signature of Deputy Commissioner of Income Tax-II (Headquarters) and not under the signature of Commissioner of Income Tax. On considering the show cause notices together with the impugned orders as also reply submitted by the petitioners as a whole, we find that the reason put forth by the respondents in their communication dated 11/3/2003 is that cases of petitioners'' family have to be centralised for the purpose of coordinated investigation and assessment in Jodhpur. Except for this, we do not find any sufficient reason put forth by respondents for transferring cases of petitioners from Wardha and Nagpur (Maharashtra) to Jodhpur (Rajasthan) and as such, the impugned orders are not in compliance with provisions of law as there are no specific reasons mentioned in the impugned orders for effecting transfer of cases nor there appears to be any material fact mentioned even in show cause notices requiring transfer, which otherwise could have given an opportunity to petitioners/assesses to put forth the grounds, if any, in a meaningful manner. In the absence of any such reasons in the show cause notices, the petitioners appear to be deprived of their right to have hearing. According to relevant requirement of law, the show cause notices must reveal why coordinated investigation and assessment cannot be carried out either at Nagpur or Wardha, more particularly when petitioners since beginning are being assessed at these places. It is further noted that petitioners in Writ Petition No. 2423/2003 are residents of Sindi (Railway), District Wardha. Their place of business is at the same place and books of accounts of petitioner nos.1 and 2 were found at Sindi (Railway). Source of income of petitioner no.1 is within the jurisdiction of Commissioner of Income Tax, Nagpur while petitioner no.2 is a resident of Sindi (Railway) as well as of Jodhpur and has source of income from petitioner no. 4. Moreover, in the impugned order dated 10/4/2003 transferring petitioners'' cases from ITO, Ward Wardha to ACIT, Central Circle-2, Jodhpur apart from expressing necessity to centralize all the cases of petitioners for

facilitating coordinated, systematic and centralised investigation, the only reason put forth is that the Commissioner of Income Tax, Central, Jaipur has "no objection" to transfer of cases to Jodhpur. In that view of the matter, it is noted that there is lack of "agreement between two competent Authorities" as required under the statutory provisions.

Similarly, before passing impugned order dated 28/1/2004 challenged in Writ Petition No. 1455/2004 transferring petitioners'' cases from ACIT Circle-I, Nagpur to ACIT, Central-II, Jodhpur, it is noted that same came to be passed even without issuing show cause notices to petitioner nos.2 and 3 therein.

28. On considering facts involved in these petitions together with provisions of Section 127(1) and (2) of the Act, it is noted that as per these provisions, transfer of case can be effected only if the Commissioner of Income Tax, Jaipur requests for transfer. However, in these petitions, no such request appears to have been made by the said Authority of Jaipur, but the request is made by Deputy Director of Income Tax/Additional Director of Income Tax. According to learned Senior Counsel for the petitioners, function of said Authority is in respect of search and seizure operations and to collect material and relevant facts for assessment of undisclosed income. The Deputy Director of Income Tax and Additional Director of Income Tax are Authorities subordinate to Commissioner of Income Tax. In that view of the matter, we thus find that request made by Deputy Director of Income Tax/Additional Director of Income Tax cannot be equated with that of request of Commissioner of Income Tax for transfer of cases as contemplated in Section 127(2) of the Act. The impugned orders dated 15/12/2003 and 28/1/2004 in Writ Petition No. 1455/2004 thus do not stand for any reason. Even on considering show cause notices, which came to be issued to petitioners before the impugned orders of transfer of cases came to be passed, the said show cause notices appear to be vague as there are no specific reasons mentioned therein, which are found to be considered by the Authorities before effecting transfer of cases for coordinated investigation. Thus, as already stated above, the show cause notices, in fact, should have contained specific reasons based on material facts, which should be clear so that petitioners in that case could exercise their right to have hearing on substantial questions in a meaningful manner. The show cause notices having been vague do not convey for what reason cases came to be transferred nor there is any reason as to why assessment cannot be done at Wardha where petitioners are being assessed since beginning, moreover, when all the income tax cases of the petitioners are being assessed at Nagpur and none of their cases is dealt with at Jodhpur.

29. In para 12 of the judgment in the case of Jharkhand Mukti Morcha (supra) relied by respondents, it is observed that for transfer of cases from jurisdiction of one Commissioner to other, the requirement is that there should be agreement between two Commissioners. Similarly, in the case of Aamby Valley Ltd. (supra), objection was raised that there was no evidence of any agreement between Commissioner of Income Tax, New Delhi and Commissioner of Income Tax,

Mumbai that petitioners'' cases should be transferred from Mumbai to New Delhi and on considering facts involved in that case, it was noted that since there was an agreement between Commissioners of Income Tax, New Delhi and Mumbai as required in terms of Section 127(2)(a) of the Act, the objection does not sustain.

30. As such, we find that for the purpose of effecting transfer of cases from jurisdiction of one Commissioner to other, requirement is agreement between two Commissioners for effecting transfer of cases, which aspect is lacking in the impugned orders.

31. In all the cases as referred in para (17) relied on by learned Senior Counsel for the petitioners, it is clear that in the matter of transfer of a case under Section 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 coordinated 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.

32. Having considered the facts involved in the petitions and law as aforesaid, the impugned order dated 10/4/2003 in Writ Petition No. 2423/2003 and impugned orders dated 15/12/2003 and 28/1/2004 in Writ Petition No. 1455/2004 passed by the respondents transferring cases of petitioners from Wardha (Maharashtra) to Jodhpur (Rajasthan) and from Nagpur (Maharashtra) to Jodhpur (Rajasthan) being arbitrary and illegal are not sustainable and are thus quashed and set aside.

33. The rule is made absolute in the above terms.

34. However, in the facts and circumstances, there shall be no order as to costs.

