(1990) 02 DEL CK 0002

In the Delhi High Court

Case No : Civil Writ Petition No. 518 of 1990

Sameer Leasing Co. Ltd. Sing Co. Ltd. APPELLANT

Vs

Chairman, Central Board of Direct Taxes and others RESPONDENT

Date of Decision : 13-02-1990

Acts Referred:

Citation : (1990) 84 CTR 7 : (1990) 185 ITR 129 : (1990) 53 TAXMAN 265

Hon'ble Judges : C.L. Choudhary, J;B.N. Kirpal, J

Bench : Division Bench

Advocate : B. Dutta, for the Appellant;

Judgement

Kirpal, J.—The challenge in this writ petition is to the order passed u/s 127(2)(a) of the Income Tax Act, 1961, transferring the Income Tax proceedings of the petitioner which were pending before the Assistant Commissioner, Company Circle 3(1), New Delhi, to the Assistant Commissioner, Special Circle, Meerut. This order was passed by the Commissioner of Income Tax, Delhi III, with the concurrence of the Commissioner of Income Tax, Meerut.

2. From the record before us, it appears that on December 27, 1989, an order was passed where by the cases of 15 assessed were transferred by the Commissioner of Income Tax, Meerut, from the Assistant Commissioner of Income Tax, Special Circle-1, Muzaffarnagar, to the Assistant Commissioner of Income Tax, Special Circle, Meerut. This order was passed u/s 127 of the Income Tax Act as well as under the relevant provisions of the Wealth-tax Act and the Gift-tax Act. It is mentioned in this order that an authorisation u/s 132 had been issued for search and seizure of the premises, both business and residential, of the assessed mentioned therein, and the officers, who were required to search the premises were prevented from performing their duties and subjected to humiliation and severe physical injuries. It is also mentioned that the Income Tax Officers and the staff at Muzaffarnagar were under constant threat and pressure of the assessed mentioned therein and were under a fear that they would not be able to discharge their duties. In view of this, the order was passed in public

interest transferring the cases from Muzaffarnagar to Meerut.

3. The cases which were transferred by the aforesaid order dated December 27, 1989, pertained to the family and business concerns of Mr. Harish Chhabra, who is the chairman and managing director of the petitioner before us. On December 1, 1989, a notice u/s 127(2) of the Income Tax Act was issued to the petitioner by the Commissioner of Income Tax, Delhi III, giving the petitioner an opportunity to show cause as to why the petitioner''s case should not be transferred to the Special Circle, Meerut, for proper investigation. Reply to the show-cause notice was filed in which it was alleged that the officers at Meerut were inimical and hostile to the petitioner and there was no reason as to why the transfer should be made.

4. By the impugned order dated December 21, 1989, it was stated by the Commissioner of Income Tax, Delhi III, that the petitioner has its registered office at Delhi, but the business activities of the assessed-company are entirely located at Muzaffarnagar. It was, Therefore, concluded that for a proper investigation, it was necessary to transfer the cases to Meerut. It was also noticed that objection to the transfer had been raised on the ground that the Income Tax Officers at Meerut were prejudiced and biased. The Commissioner observed that no evidence had been produced in support of this objection.

5. It is contended by learned counsel for the petitioner that no reasons had been given for the transfer of the case, and furthermore, the reason given is not sustainable in law. We are unable to agree with this contention. Admittedly, a show-cause notice was issued proposing to transfer the case and the reason for transfer was for proper investigation. The reply to the same was filed. The impugned order read as a whole clearly shows the reason for transferring the case. The petitioner''s business activities are located at Muzaffarnagar and for a proper investigation, the case had been transferred to Meerut. This order should be seen in conjunction with the order dated December 27, 1989, whereby the case is of the other concerns in which the chairman of the petitioner is interested have an bloc been transferred from Muzaffarnagar to Meerut. In our opinion, it is the duty of the Income Tax Officer to make a full investigation of the case of an assessed and to properly adjudicate the amount of Income Tax which may be due and payable. In order to facilitate proper investigation, transfer of a case can be made from one Income Tax Officer to another. It is not unknown that transactions take place which are inter-related and interconnected between different assessed belonging to the same group, and for a proper investigation, it is always desirable and necessary that the assessments should, as far as possible, be made by the same assessing authority. In the present case, fifteen cases relating to the petitioner and his family concerns appear to have transferred from Muzaffarnagar to Meerut by an order dated December 27, 1989, and by the impugned order, one case has been transferred from Delhi to Meerut. We find no infirmity in the impugned order transferring the case.

6. It was contended that in the case of Shivajirao Angre Vs. Commissioner of

Income Tax, , it has been observed that transferring a case for "detailed and co-ordinated investigation" was very vague and did not constitute a valid reason. We are unable to hold that a properly co-ordinated investigation cannot be a ground for the Income Tax authorities to direct that all the case belonging to a group should be decided by a single assessing authority. In the present case, as it appears from the impugned order, the business activities of the petitioner are located at Muzaffarnagar and, Therefore, though the petitioner was assessed previously at Delhi, it was considered necessary to transfer the case to Meerut where the other case of the assessed belonging to the same group were also being transferred by another order dated December 27, 1989.

7. It was also contended that the provisions of section 127(2) of the Income Tax Act were ultra virus as it contained no guidelines on the basis of which the transfer could be effected. We are unable to agree with this contention. The power u/s 127 of the Act is to be exercised in public interest and in the interest of administration of the Act. In order to safeguard the interest of the assessed, an opportunity of being heard is granted and the section further requires reasons to be stated for transferring a case. The decision to transfer can be taken, in a case like the present, only if there is a concurrence between the two Commissioners of Income Tax who may be concerned with the transfer, when such high functionaries agree to the transfer and a show-cause notice is issued and reasons are contained in the order of transfer and those reasons appear to be germane to the transfer and show that the transfer has been made in the public interest and for a proper adjudication under the Act, we do not see how the impugned provision can be said to be ultra vires.

8. It was lastly contended that the impugned order has been passed for mala fide reasons and the exercise of the same shows an abuse of power. We are unable to agree with this contention. In fact, the order of transfer dated December 27, 1989, issued by the Commissioner of Income Tax, Meerut, shows that it is the Income Tax Officers who are afraid of Shri Harish Chhabra and his family and it is for this reason that these cases have been transferred from Muzaffarnagar to Meerut. Merely because the case of the petitioner has been transferred from Delhi to Meerut cannot show that the Commissioner of Income Tax Delhi III, has acted for mala fide reasons, specially in view of the fact that the business activities of the petitioner are being carried on at Muzaffarnagar, where, apparently the other business activities of the 15 assessed mentioned in the order dated December 27, 1989, are also being carried on which itself shows that it was in the public interest that all the assessments of the various assessed in the group should be conducted by the same assessing authority.

9. We find no infirmity in the impugned order.

10. Dismissed.