
(2010) 11 AHC CK 0048

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No's. 876 and 877 of 2010

Sanjay Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-11-2010

Acts Referred:

Income Tax Act, 1961 — Section 127, 127(1), 132, 153C

Citation : (2011) 1 ADJ 756

Hon'ble Judges : F.I. Rebello, C.J.;Vineet Saran, J

Bench : Division Bench

Final Decision : Allowed

Judgement

F.I. Rebello, C.J.—In both these petitions, common questions of law are involved, therefore, they have been heard together and are being disposed of by this common judgment.

2. The Petitioner in Writ Petition No. 877 of 2010 is an individual and is carrying on business at Kanpur and he is also resident of Kanpur. It is case of the Petitioner that he is being assessed to income tax and sales tax at Kanpur and has no business connection with anybody at Allahabad. The Petitioner's case is that he has also no relatives dwelling at Allahabad.

The Petitioner in Writ Petition No. 876 of 2010 is the wife of the Petitioner in Writ Petition No. 877 of 2010. According to this Petitioner, she is a house wife and derives income only from the rent and share and does not carry on any business. She is assessed at Kanpur and has no business connection with anybody at Allahabad and nor any relatives dwell at Allahabad.

3. Respondent No. 2 issued separate notices to the Petitioners on 21.1.2010 requiring them to file objections, if any, against the transfer of assessment from Kanpur to Allahabad in pursuance of a search and seizure operation conducted by the Income Tax Department u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") on 27.8.2009 at the business premises of M/s. Bhola

Food Product Pvt. Ltd., belonging to Kesarwani Group. According to the Petitioners, the said notices did not contain any reason or any material on the basis of which such notices have been issued in order to enable them to file objections.

The notice dated 21.1.2010 issued to the Petitioner in Writ Petition No. 877 of 2010 reads as under:

GOVERNMENT OF INDIA

OFFICE OF THE COMMISSIONER OF INCOME TAX-1

Aayakar Bhawan, 16/69 Civil Lines, Kanpur - 208 001

Telephone: 2304066, 2304495, Fax: 2306979

F. No. CIT-1/KNF/12-02/Centralisation/2009-10 Dated: 21.1.2010

To,

Shri Sanjay Gupta, (PAN: AEHPG 0965 R)

S/o Late Daulat Ram Gupta,

16/16, Gokul Apartment, Flat No. 404,

Civil Lines, Kanpur.

Sub: Transfer of cases u/s 127 of I.T. Act, 1961 from ITO-1 (4), Kanpur to ACIT, Central Circle, Allahabad)

(Date of Search 27.8.2009) - - - Reg-

Please refer to the above.

A search and seizure operation u/s 132 of I.T. Act, 1961 was carried on Kesarwani Group of cases, Allahabad on 27.8.2009.

For the purpose of coordinated post search investigation and meaningful assessment, it is proposed to centralize your case with ACIT, Central Circle, Allahabad.

In case you have any objection to the proposed transfer, you may furnish the reasons for the same either in person or through your authorized representative on 28.1.2010 at 11:30 A.M. in case you do not attend, it will be presumed that you have no objection to the proposed transfer of case u/s 127 of I.T. Act, 1961.

Sd/ (Anand Deep) Commissioner of Income Tax-1 Kanpur

Similar notice was also issued to the Petitioner in Writ Petition No. 876 of 2010.

In pursuance of the aforesaid notices, both the Petitioners filed objections on 28.1.2010 stating that they have no business activity or place of residence at Allahabad and they were regularly assessed by the Income Tax Department at

Kanpur. They have further pointed out that they have no family relations or business relations with Kesarwani Group and, therefore, requested that the cases pertaining to their assessment be not transferred from Kanpur to Allahabad. We may reproduce the reply filed by the Petitioner in Writ Petition No. 877 of 2010, which reads as under:

To

Hon"ble Commissioner of Income Tax-1,

Kanpur.

Ref: Sanjay Kumar Gupta, PAN AI-HPG0965 R

Sub: Transfer of Case u/s 127 of I.T. Act 1961 from HO-1 (4), Kanpur to ACIT Central Circle, Allahabad - Objection - reg.

Sir,

With respect to your letter F. No. CTI-1/KNP/12-02 (Centralisation 2009-10/3058.I beg to submit that Assessee is residinsg in Kanpur since so many years and is a regular Assessee of Income Tax at Kanpur. Assessee has no any either business activities or place of residence at Allahabad. I have no family relation or relation with Kesarvani Group mentioned by yourself.

It would be against the natural justice if my cases are being transferred to Allahabad.

Similar reply was also filed by the Petitioner in Writ Petition No. 876 of 2010.

4. According to the Petitioners, the Respondent No. 2 vide order dated 30th March, 2010 transferred the cases u/s 127 of the Act citing "administrative convenience and coordinated investigation" as the reasons for transfer. Respondent No. 2 relied upon the comment given by CIT (Central), Kanpur, which reads as under:

Action under Section. 153C of the I.T. Act, 1961 have been proposed in the case of Shri Sanjay Gupta, Kanpur. Shri Sanjay Gupta and Sri Naveen Kesarwani, M.D. of M/s. Bhola Food Products Private Limited have close business connection as well as family connection. Since Smt. Kiran Gupta is the wife of Shri Sanjay Gupta so centralization of case of Smt. Kiran Gupta is also required because without the centralization of the case of Smt. Kiran Gupta proper investigation as well as assessment of Shri Sanjay Gupta cannot be made and Smt. Kiran Gupta will accommodate the concealed income of Shri Sanjay Gupta which will jeopardize the interest of revenue. Therefore, for co-ordinated investigation and consistency in assessments of search and seizure cases of the Kesarwani Group, it is paramount to centralize the cases of Shri Sanjay Gupta and Smt. Kiran Gupta with DCIT (Central Circle), Allahabad alongwith case of Kesarwani Zarda Bhandar Group, Sahsoon, Allahabad.

Subsequent to that, Respondent No. 3 issued notices to the Petitioners dated

16.4.2010 u/s 153C of the Act, requiring the Petitioners to file return of income at Allahabad for the consequential assessment proceedings to be undertaken at Allahabad. The orders dated 20.3.2010 and 16.4.2010 have been challenged in these writ petitions.

5. Though the petitions were filed on 9th June 2010, they were adjourned on several occasions, and have been taken up today.

6. The relevant provision for transfer the cases is Section 127(1) of the Act, which reads as under:

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.

7. On behalf of the Petitioners, it is submitted that to attract the provisions of Section 127 of the Act, there must be material and valid reasons based on which the Respondent No. 2 could have transferred the assessment proceedings from Kanpur to Allahabad. The requirement of giving reasons is to ensure that the reasons given are germane to the object, namely, the transfer of assessment proceedings. In the instant case, no material has been disclosed as to why the transfer of assessment proceedings is required and why the assessment cannot not be investigated, verified or completed without transferring the cases to Allahabad. Merely because the Petitioner in Writ Petition No. 877 of 2010 was the supplier of M/s. Bhola Food Products Pvt. Ltd. and/or he knew Shri Naveen Kesarwani, M.D. of M/s. Bhola Food Products Pvt. Ltd. by itself can be no ground for transfer in the absence of any material found in the course of search and seizure operations or otherwise. It is, therefore, submitted that, in these circumstances, the impugned orders of transfer are liable to be set aside. In addition, it is further submitted that merely stating that transfer was effected for "administrative convenience and coordinated investigation of assessment" is not sufficient, as the Petitioners ought to have been intimated about the reasons in a comprehensive manner in order to enable them to make effective representation. It is further submitted that the objections furnished by the Assessee, Petitioners herein, were not dealt with and the orders of transfer have been passed in mechanical manner. It is, therefore, submitted that, for the aforesaid reasons also, the orders transferring the proceedings be quashed and set aside.

8. On the other hand, on behalf of the revenue, the following submissions have been made. The Petitioners were given opportunity of showing cause against the transfer of assessment proceedings and they filed their representations/objections and it is only after that, that action was taken to transfer the assessment proceedings from Kanpur to Allahabad. The search and seizure

operations were carried out at the premises of M/s Bhola Food Products Pvt. Ltd. There were various suppliers, who had supplied materials to M/s. Bhola Food Products Pvt. Ltd., but most of them have been discharged and proceedings for transfer of assessment have been taken against a few suppliers, like the Petitioners, for proper assessment, not only of the income of Kesarwani Group but also of both the Petitioners herein.

9. The power to transfer is located in Section 127 of the Act. The power, however, can be exercised by the authority only after the Assessee is given a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording reasons for doing so, cases can be transferred. In the instant case, the Respondents had given opportunity to the Petitioners herein to file their reply though not an oral hearing. As regards the expression "reasonable opportunity of being heard", in view of Section 127(1) of the Act, it is not necessary that in all cases opportunity of hearing is required to be given, as the said Section itself contemplates that transfer may be effected after giving the Assessee a reasonable opportunity wherever it is possible to do so and after recording reasons for such transfer. No explanation has been given why the hearing was not given.

10. Section 127 of the Act contemplates a reasonable opportunity being given to the Assessee. One of the aspects of giving "reasonable opportunity" would be that while issuing a show cause notice to an Assessee as to why the assessment proceedings ought not to be transferred, it is incumbent on the revenue to disclose the material, as in the absence of disclosing any material, the Assessee would not be in a position to show cause. In the instant case, we have already reproduced the show cause notice issued to the Petitioners. The show cause notice does not disclose any material based on which transfer of assessment proceedings is sought to be effected except using the expression "for the purpose of coordinated post search investigation and meaningful assessment." This is related to a -search and seizure operation carried on the Kesarwani Group at Allahabad. To our mind, this show cause notice does not, in any way, disclose any reason as to how the Assessee, present Petitioners, are involved with the Kesarwani Group, or what material was available to link the Petitioners with the Kesarwani Group in the matter of undisclosed income or evasion of income. Therefore, in our opinion, due to non-disclosure of the material in the show cause notice, the Petitioners did not have the opportunity to meet the case of the revenue. The show cause notice is not an empty formality, as the transfer proceedings have the effect on an Assessee, as their proceedings are to be transferred from one assessment place to another. In our opinion, on this count alone, the impugned orders of transfer are liable to be set aside.

11. The next question before us is whether the reasons which have been annexed as Annexures-1 to the orders of transfer dated 30.3.2010 can be said to be germane or sufficient for the purposes of exercising the power u/s 127(1) of the Act? The only reason given on behalf of the Respondents for exercising the

powers is that a search and seizure operation was carried out in the premises of M/s. Bhola Food Products Pvt. Ltd. There is nothing on record to show that, from the search and seizure operations at the premises of M/s. Bhola Food Products Pvt. Ltd., which belongs to the Kesarwani Group, any material was seized, which would have any relations with the Petitioners herein. Merely assuming that the Petitioners in Writ Petition No. 877 of 2010 knew Shri Naveen Kesarwani and/or they had business connections and family connections, by itself cannot be a ground for such transfer. No material has been shown as to what are the family connections. In fact, the Petitioners have specifically set out that they have no family/business relations with Kesarwani Group. On the contrary, according to the Petitioner in Writ Petition No. 877 of 2010 all that he was doing was that he was supplying the materials to M/s. Bhola Food Products Pvt. Ltd., which is a Company belonging to Kesarwani Group like many other suppliers. That by itself, in our opinion, without anything more, cannot be a ground for transferring the assessment proceedings from Kanpur to Allahabad. It is enjoined on the Respondents in such cases to have disclosed the germane reasons. The only reason given is that such transfer is required for administrative convenience and coordinated investigation. In our opinion, merely reciting the said expression is of no consequence. A similar issue came up for consideration before the Calcutta High Court in the case of Naresh Kumar Agarwal Vs. Union of India (UOI) and Others, wherein the Calcutta High Court has held that merely stating that the transfer of case for coordinated investigation and assessment, without specific reasons, is not sufficient as the Assessee should be intimated about the reasons in a comprehensive manner in order to enable him to make effective representation. We are in agreement with the view taken by the Calcutta High Court in the said case. In the instant case, there is nothing on record to show the reasons as to why the assessment proceedings have been transferred from Kanpur to Allahabad. The transfer order has been passed in a mechanical manner and for that reason alone the impugned orders are liable to be set aside.

12. We may also note that there is nothing on record to show that in the search and seizure operations, anything was found to indicate the connection of the Petitioners herein with the Kesarwani Group. No such reasons have been cited in the orders whereby the assessment proceedings have been transferred from Kanpur to Allahabad. In our opinion, on this count also the impugned orders of transfer are liable to be set aside.

13. For the aforesaid reasons, these petitions deserve to be allowed and are, accordingly, allowed. In the light of that, rule made absolute in terms of prayer Clauses 1, 2 and 3 in Writ Petition No. 877 of 2010, which read as under:

(i) to issue a writ, order or direction in the nature of certiorari, quashing the notice dated 16.4.2010 issued u/s 153C of the Income Tax Act by Respondent No. 3 and consequential assessment proceedings thereof (Annexure-7 to the writ petition).

(ii) to issue a writ, order or direction, in the nature of certiorari, quashing the

order dated 30.3.2010 passed u/s 127 of the Act by Respondent No. 2 (Annexure-6 to the writ petition).

(iii) to issue a writ, order or direction in the nature of mandamus, commanding the Respondent not to proceed in pursuance of the impugned notice dated 16.4.2010 and impugned order dated 30.3.2010 and not to compel the Petitioner to conduct the assessment proceeding at Allahabad.

Rule made absolute in terms of prayer Clauses 1, 2 and 3 in Writ Petition No. 876 of 2010, which read as under:

(i) to issue a writ, order or direction in the nature of certiorari, quashing the notice dated 16.4.2010 issued u/s 153C of the Income Tax Act by Respondent No. 3 and consequential assessment proceedings thereof (Annexure-5 to the writ petition).

(ii) to issue a writ, order or direction, in the nature of certiorari, quashing the order dated 30.3.2010 passed u/s 127 of the Act by Respondent No. 2 (Annexure-4 to the writ petition).

(iii) to issue a writ, order or direction in the nature of mandamus, commanding the Respondent not to proceed in pursuance of the impugned notice dated 16.4.2010 and impugned order dated 30.3.2010 and not to compel the Petitioner to conduct the assessment proceeding at Allahabad.

14. In the circumstances of the case, there shall be no order as to costs.