(1981) 08 RAJ CK 0018

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1245 and 1246 of 1981

Shri Rishikul Vidyapeeth and Shri Rishikul Brahmacharya Ashram — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 18-08-1981

Acts Referred:
Income Tax Act, 1961 — Section 127

Citation : (1981) 25 CTR 182 : (1982) 136 ITR 139

Hon'ble Judges : S.C. Agrawal, J;M.L. Shrimal, J

Bench : Division Bench

Advocate : G.S. Singhvi, for the Appellant;

Judgement

Agrawal, J.—Both these writ petitions are directed against the order, dated March 4, 1981, passed by the Central Board of Direct Taxes (hereinafter referred to as "the Board") in exercise of the powers conferred by Sub-section (1) of Section 127 of the I.T. Act, 1961 (hereinafter referred to as "the Act"), whereby the cases of the petitioners were transferred from the ITO, Trust Circle, Jaipur, to the ITO, X Ward, Bombay.

2. Shri Rishikul Vidyapeeth, Laxmangarh, the petitioner in Writ Petition No. 1245/81, is an educational institution registered under the Rajasthan Societies Registration Act, 1959. Shri Rishikul Brahmadharya Ashram, Laxmangarh, the petitioner in Writ Petition No. 1246/81, is said to be a part and parcel of Shri Rishikul Vidyapeeth. Both the petitioners aforesaid were earlier being assessed for the purpose of Income Tax by the ITO, Sikar. Subsequently, in the year 1979, the Commissioner of Income Tax, Jaipur, transferred the cases of the petitioners from the ITO, Sikar, to the ITO, Trust Circle, Jaipur. By notice, dated July 17, 1980, sent by the Board, the petitioners were informed that the Board proposed to transfer their cases from the ITO, Trust Circle, Jaipur, to ITO, X Ward, Bombay, u/s 127 of the Act in order to facilitate detailed and co-ordinated investigation at Bombay in the light of certain financial transactions conducted there and because

connected cases were being assessed by the 5th ITO, X-Ward, Bombay. By the notice aforesaid the petitioners were informed that if they had any objection to the aforesaid proposal they may appear before Shri Avtar Singh, Member (Income Tax), of the Board, on August 25, 1980, and that in case they did not wish to appear personally they may state their objections in writing so as to reach the Board by August 25, 1980. In response to the said notice the petitioners submitted their objections dated August 16, 1980. Thereafter, the impugned order, dated March 4, 1981, was passed by the Board whereby the cases of the petitioners were transferred from the ITO, Trust Circle, Jaipur, to the ITO, X-Ward, Bombay. In the said order it is stated that the transfer is effected to facilitate the co-ordinated investigation along with other connected cases.

3. Being aggrieved by the aforesaid order of transfer, the petitioners have filed these writ petitions wherein they have prayed that an appropriate writ, order or direction be issued to quash the notice, dated July 17, 1980, and the order dated March 4, 1981, and to restrain respondent No. 3, namely, the ITO, X-Ward, Bombay, from proceeding with the cases of the petitioners in pursuance of the order of transfer, dated March 4, 1981.

4. We have heard Shri G.S. Singhvi, the learned counsel for the petitioners in both the writ petitions.

5. Before dealing with the contentions urged by Shri Singhvi, it would be convenient to set out the provisions contained in Section 127(1) of the Act which reads as under :

127. (1) The 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 of the following officers subordinate to him, namely :--

(a) any Income Tax Officer or Income Tax Officers ;

(b) any Income Tax Officer or Income Tax Officers having concurrent jurisdiction with the Inspecting Assistant Commissioner,

to any other Income Tax Officer or Income Tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner) also subordinate to him and the Board may similarly transfer any case from-

(i) any Income Tax Officer or Income Tax Officers, or

(ii) any Income Tax Officer or Income Tax Officers having concurrent jurisdiction with the Inspecting Assistant Commissioner,

to any other Income Tax Officer or Inc6me-tax Officers (whether with or without concurrent jurisdiction with the Inspecting Assistant Commissioner)....."

6. The first contention urged by Shri Singhvi was that the petitioners were not afforded a reasonable opportunity of being heard before the impugned order of

transfer was passed by the Board. We are unable to accept the said contention of Shri Singhvi. It is not disputed that prior to the passing of the impugned order the petitioners had been served with the notice, dated July 17, 1980, whereby the petitioners were informed about the proposal for a transfer of their cases from the ITO, Trust Circle, Jaipur, to ITO, X Ward, Bombay, u/s 127 of the Act as well as the reason for the proposed transfer and the petitioners were further informed that if they had any objection to the said proposal they could personally appear before Shri Avtar Singh, Member (Income Tax) of the Board, on August 25, 1980, or if they, did not wish to appear personally, they might send their objections in writing so as to reach the Board by August 25, 1980. In response to the said notice the petitioners had submitted their objections in writing dated August 16, 1980. It is thus clear that the petitioners were afforded an opportunity of making their submissions against the proposal for a transfer of their cases and they did make their submission against the aforesaid proposal. The submission of Shri Singhvi was that no opportunity of personal hearing was given to the petitioners, even though a request to that effect was made in the objections, dated August 16, 1980, submitted by them. We, however, find that in the notice dated July 17,1980, the petitioners were informed that they could appear personally before Shri Avtar Singh, Member (Income Tax) of the Board on August 25, 1980. There is nothing on the record to show why the petitioners could not appear before Shri Avtar Singh, Member (Income Tax) of the Board, on August 25, 1980, and whether they had asked for any other date for appearing before the Member (Income Tax) of the Board and their request was refused by the member (Income Tax) of the Board. In the circumstances, the Contention of Shri Singhvi that the petitioners were not afforded a reasonable opportunity of being heard before the passing of the impugned order of transfer, cannot be accepted.

7. The second contention urged by Shri Singhvi was that under Sub-section (1) of Section 127 of the Act it is incumbent upon the authority to give reasons for transfer of the cases- and that in the present case no reason has been given for the transfer of the cases of the petitioners from the ITO, Trust Circle, Jaipur, to the ITO, X Ward, Bombay, According to Shri Singhvi the statement in the impugned order that the transfer is effected to facilitate co-ordinated investigations along with other connected cases, cannot be regarded as a reason within the meaning of Sub-section (1) of Section 127 of the Act. In support of his aforesaid submission Shri Singhvi has placed reliance on the decision of the Supreme Court in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others,

8. In Ajantha Industries v. CBDT, the Supreme Court was dealing with a case where the reasons for a transfer had not been communicated to the assessee and the Supreme Court set aside the order of transfer on the ground that the non-communication of the reasons in the order passed under Sub-section (1) of Section 127 of the Act was a serious infirmity in the order. In the said case, the Supreme Court has observed that the requirement of recording reasons u/s

127(1) of the Act is a mandatory direction under the law and non-communication thereof was not saved by showing that the reasons exist in the file although not communicated to the assessee. In the said case, the Supreme Court has quoted the following observations from its earlier decision in PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., decided with reference to the provisions contained in Section 5(7A) of the Indian I.T. Act, 1922 (p. 589):

"It would be prudent if the principles of natural justice are followed where circumstances permit, before any order of transfer u/s 5(7A) of the Act is made by the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons for the order are reduced, however briefly, to writing."

9. In the present case, we find that in the impugned order, dated March 4, 1981, it has been stated that-the transfer was effected to facilitate co-ordinated investigations along with other connected cases. The aforesaid statement in the impugned order of transfer discloses the reasons for the transfer of the cases of the petitioners. It cannot, therefore, be said that the reasons for transfer have not been recorded in the order of transfer and the decision of, the Supreme Court in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, can have no application to the facts of the present case.

10. Shri Singhvi has further submitted that the Board ought to have given its reasons for rejecting the submissions made by the petitioners in their objections dated August 16, 1980, which was submitted in response to the notice dated July 17, 1980, and that the failure to give any reasons for rejecting the aforesaid submissions renders the order of transfer void. In support of his aforesaid submission Shri Singhvi has placed reliance on the decisions of the Supreme Court in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, North Bihar Agency and Others Vs. State of Bihar and Others, North Bihar Agency and Others Vs. State of Bihar and Others, and The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others,

11. A perusal of the objections dated August 16, 1980, submitted by the petitioners, shows that in the said objections the petitioners have adverted to the fact that the activities of the petitioners are confined to District Sikar, in Rajasthan and that the petitioners have no place of activity at Bombay and that if their cases are transferred the petitioners would suffer great inconvenience and hardship. In the said objections the petitioners have, however, not made any submission in reply to the reason disclosed in the notice dated July 17, 1980, for the proposed transfer of their cases, viz., to facilitate detailed and co-ordinated investigation at Bombay in the light of certain financial transactions conducted there and that the connected cases are assessed by the 5th ITO, X Ward, Bombay. In their objections dated August 16, 1980, the petitioners have, on the other hand, admitted that Shri Rishikul Vidyapeeth collects donations from

businessmen at Bombay. Tims, we find that in the objections that wore filed by the petitioners there was nothing to controvert the reason for transfer which was disclosed in the notice dated July 17, 1980. In passing the impugned order, the Board could, therefore, proceed on the basis that the petitioners had nothing to say against the reason which had been disclosed in the notice dated July 17, 1980. In our opinion the fact that in the impugned order the Board has not given any reasons for rejecting the submissions contained in the objections dated August 16, 1980, filed by the petitioners, is of no consequence inasmuch as the said submissions do not deal with the reason that had been disclosed in the notice dated July 17, 1980, for the proposed transfer. In the matter of transfer of a case u/s 127 of the Act the convenience of the assessce cannot override the need of the revenue for a better investigation of the case. We are, therefore, unable to accept the submission of Shri Singhvi that the impugned order is liable to be. set aside on the ground that it does not show that the objections submitted by the petitioners against the proposed transfer of case were not considered by the Board. The decisions of the Supreme Court in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, which related to the cancellation of a licence of dealership under the U.P, Sugar Dealers'' Licensing Order, 1962, as well as in North Bihar Agency and Others Vs. State of Bihar and Others, which related to the cancellation of a drug licence, have no application to the present case. Similarly, the decision of the Supreme Court in The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, has no application to the present case.

12. No other contention was urged by Shri Singhvi.

13. We, therefore, find no merit in the.se writ petitions and they are, accordingly, dismissed summarily.

