**(2009) 01 CAL CK 0044**

**In the Calcutta High Court**

**Case No :** Writ Petition No. 1761 of 2008

Singhal Enterprises P. Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 06-01-2009

**Acts Referred:**
Income Tax Act, 1961 — Section 127, 127(1), 127(2), 132

**Citation :** (2010) 229 CTR 442 : (2009) 315 ITR 246

**Hon'ble Judges :** Soumitra Pal, J

**Bench :** Single Bench

**Advocate :** R.N. Dutta, for the Appellant; L.K. Chatterjee, for the Respondent

**Final Decision :** Allowed

## Judgement

Soumitra Pal, J.—In the writ petition, the petitioner has challenged the order u/s 127 of the Income Tax Act, 1961, dated October 21, 2008, passed by the Commissioner of Income Tax, Kolkata-I, respondent No. 1, transferring the file from Kolkata to Ranchi, on the ground that neither the petitioner was given an opportunity of hearing to present his case nor the order reveals how the written objections dated June 11, 2008, and September 8, 2008, were considered.

2. It has been submitted that in the order impugned the name of the petitioner M/s. Singhal Enterprises (P.) Ltd., appears against serial No. 1 in the schedule of cases transferred. The said order was also challenged by Simple Viniyog Private Limited, whose name appears against serial No. 2, by filing a writ petition being W.P. No. 1712 of 2008, Simple Viniyog P. Ltd. Vs. Commissioner of Income Tax, . The writ petitioner being W. P. No. 1712 of 2008 was heard and by judgment and order dated November 20, 2008, the order of transfer was quashed. Submission has been made that as the facts are similar and the case of the petitioner is covered by the said judgment and order dated Corrected in terms of corrigendum issued by the Calcutta High Court dated 4-2-2009 November 20, 2008, an appropriate order may be passed cancelling the order dated October 21, 2008. Reliance has also been placed on the judgment passed in Rajesh Mahajan and

Others Vs. Commissioner of Income Tax, wherein it has been held that non-consideration of the written objections is violative of the legislative mandate of Section 127 of the Act.

3. Learned advocate for the Revenue has submitted that though no mention has been made in the order whether the petitioner had appeared pursuant to the notice of hearing, the petitioner was given an opportunity to appear as is evident from the second paragraph of the order under challenge. Submission has been made that the two written objections proceeded mainly on the basis of personal inconvenience of the petitioner in attending the proceedings and the contentions have been dealt with in paragraph 5 of the impugned order. Relying on the judgment of the apex court in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , it has been submitted that it has to be seen whether the reasons in arriving at a conclusion is cogent and as personal inconvenience is the primary grievance of the petitioner, the order impugned is just and proper.

4. In order to appreciate the issue, it is necessary to refer to the relevant portion of the order impugned, which is extracted hereinbelow:

Consequent to search and seizure operations u/s 132 of the Income Tax Act, 1961, in the ''B.S. Agarwal'' group of cases, it had been requested by the Commissioner of Income Tax (Central), Ranchi, that the cases named in column (2) of the schedule below be centralized for the purpose of co-ordinated investigation with the Assessing Officer mentioned in column 6 of the schedule below.

2. In the interest of natural justice and in pursuance of requirements of Clause (a) of Sub-section (2) of Section 127, the assessees were provided an opportunity to be heard in the matter of the proposed transfer, by issue of notice dated May 26, 2008.

3. Each of the assessees raised objections against the transfer, on the grounds that neither the directors nor accountants or auditors had any business connection or infrastructure at Ranchi to attend to proceedings of block assessment at offices of the Asst. Commissioner of Income Tax, Central Circles at Ranchi.

4. The said objection was communicated to the Commissioner of Income Tax (Central), Patna, for comments and providing material to indicate the nexus between/amongst the assessees named in the schedule and the other assessee of the group. The Commissioner of Income Tax (Central), vide his letter dated August 26, 2008, communicated the information and grounds on which centralization was being sought. The said information was communicated to the assessee, vide further show-cause notices, each dated September 2, 2008, relevant copy of which is being made part hereof and annexed to the present order as annexure A. In response, the assessees named at serial Nos. 1 and 2 of the schedule below filed further rejoinders, all on September 9, 2008. In the said rejoinders, the said assessees reiterated the ground of their practical

 

inconvenience in attending to proceedings at Ranchi, and requested for centralization of the other cases at Kolkata. The copy of the relevant rejoinder to each assessee is enclosed as annexure B. The assessees at serial Nos. 3 and 4 of the schedule below have not filed any rejoinder till date.

5. The contents of the assessees'' rejoinders along with enclosures thereto have been perused and considered. However, I do not find substantive merit in the same. Personal inconvenience in attending proceedings cannot override the interest of co-ordinated investigation and it cannot be the prerogative of an assessee to choose the office or officer with whom their case should be centralized. Since the assessees at Serial Nos. 3 and 4 have not filed any reply, it is presumed that they "have no justification to support their objections to the proposed transfer of their cases.

6. Consequently, in exercise of the powers conferred upon me by Sub-sections (1) and (2) of Section 127 of the Income Tax Act, 1961, and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, Kolkata-I, Kolkata, do hereby transfer the case named in column (2) of the schedule below, from the jurisdiction of the Assessing Officer named in column (5) to the Assessing Officer named in column (6) of the said schedule.

Schedule of cases transferred

------------------------------------------------------------------------ Sl. Name of the Address PAN From To No. assesses ------------------------------------------------------------------------ (1) (2) (3) (4) (5) (6) ------------------------------------------------------------------------ 1 Singhal 34A, Metcalfe AADCS6988F Deputy CIT Asst. CIT, Enterprises Street, Cir 3, Central Cir. Private Ltd. Kokata-700 013 Kolkata 2, Ranchi ------------------------------------------------------------------------ 2 Simple Viniyog AADCS6697M ITO Private Wd.2(4), Ltd. Kolkata ------------------------------------------------------------------------ 3 B.S. Sponge AACCB0433H ITO Private Ltd. Wd.2(2), Kolkata ------------------------------------------------------------------------ 4 Meritime AABCM8293R Deputy CIT Merchants Cir 2, Private Ltd. Kolkata ------------------------------------------------------------------------ This order will take immediate effect.

(Sd.) Commissioner of Income Tax, Kolkata I, Kolkata.

(Here printed in italics)

5. It appears from paragraph 5 of the order impugned that respondent No. 1 had "considered" the written objection. "Consideration" means taking into account and dealing with the materials on record leading to a decision. In the instant case, the petitioner had filed two representations dated June 11, 2008, and September 8, 2008, objecting to the proposed transfer. However, the order impugned is silent how the replies and enclosures on record were considered.

 

Since the two written objections were filed and as filing of objection is not an empty formality, it was incumbent upon the Commissioner of Income Tax, Kolkata-I, respondent No. 1, to deal with the objections. In paragraph 7 of the judgment in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , relied on by the learned advocate for the respondent, the law laid down is as under (page 1304):

Opportunity to a party interested in the dispute to present his case on questions of law as well as fact, ascertainment of facts from materials before the Tribunal after disclosing the materials to the party against whom it is intended to use them, and adjudication by a reasoned judgment upon a finding of the facts in controversy and application of the law to the facts found, are attributes of even a quasi-judicial determination. It must appear not merely that the authority entrusted with quasi-judicial authority has reached a conclusion on the problem before him : it must appear that he has reached a conclusion which is according to law and just, and for ensuring that end he must record the ultimate mental process leading from the dispute to its solution. Satisfactory decision of a disputed claim may be reached only if it be supported by the most cogent reason that appeal to the authority. Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency.

6. Thereafter, the proposition of law is in arriving at a judgment, facts must be ascertained, law has to be applied and the decision is to be supported by cogent reasons. In the case in hand, the opposite has happened. Though it has been recorded in paragraph 5 of the impugned order that rejoinders along with enclosures were "considered", there is nothing to show that while arriving at the decision there was deliberation on the two written objections dated June 11, 2008, and September 8, 2008. Thus, the decision cannot be said to be on the basis of materials on record. Further, Section 127 of the Act postulates that the assessee should be given a reasonable opportunity of being heard in the matter, wherever it is possible to do so. In the instant case, though it appears from paragraph 2 of the order under challenge that the assessee was given an opportunity of being heard, the order is silent as to whether the assessee, pursuant to the notice of hearing, had appeared. Therefore, in my view, the order is squarely covered by the judgment and order in Simple Viniyog P. Ltd. Vs. Commissioner of Income Tax, passed on November 21, 2008. Moreover, the law laid down in Mahabir Prasad Santosh Kumar Vs. State of Uttar Pradesh and Others, , though relied on by the respondents, supports the case of the petitioner. Since the objections dated June 11, 2008, and September 8, 2008, were not considered the principles of law laid down in Rajesh Mahajan and Others Vs. Commissioner of Income Tax, are also applicable to the facts of the case. Hence, the order impugned passed u/s 127 of the Act by respondent No. 1 cannot be sustained and is, thus, set aside and quashed. The writ petition is allowed. Respondent No. 1 is directed to proceed afresh in accordance with law

 

after giving the petitioner an opportunity of hearing on the basis of materials already on record.

7. Since the respondents were not called upon to file affidavits controverting the allegations made in the writ petition, the allegations are deemed not to have been admitted by them.

8. No order as to costs.

9. All parties concerned are to act on a signed xerox copy of this order on the usual undertakings.

 