**(2013) 04 KAR CK 0076**

**In the Karnataka High Court**

**Case No :** Writ Petition No. 6452 of 2010 (T-IT)

Span Design and Development (P.) Ltd. APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

**Date of Decision :** 17-04-2013

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

**Citation :** (2013) 215 TAXMAN 559

**Hon'ble Judges :** Ram Mohan Reddy, J

**Bench :** Single Bench

**Advocate :** S. Parthasarathi, Malhara Rao and Vijayakumar Punna, for the Appellant; K.V. Aravind, for the Respondent

## Judgement

Ram Mohan Reddy, J.—Having heard the learned counsel for the parties and examined the notice dated 19.06.2009 Annexure ''G'' and the order dated 07.07.2009 Annexure ''H'' impugned in this petition, suffice it to state that the notice Annexure ''G'' is in violation of the principles of natural justice. In these petitions, Rule was issued on 01.07.2010 and the interim order on 29.11.2010, which reads thus:

Any order to be passed by the Assessing Authority shall be subject to the outcome of the writ petition.

Petitioner-assessee was issued with notice dated 19.06.2009 Annexure ''G'' by the income tax Officer (Tech.) proposing to transfer the case from ITO Ward 12[2], Bangalore, to Dy. CIT, Central Circle-3, Hyderabad and reads thus:

A search and seizure operations u/s. 132 of the income tax Act, 1961 was carried in the case of Sri Syed M. Mehdi and others, Hyderabad on 07-02-2009. Your name appear in the above mentioned group of cases. You are being assessed with the ITO Ward 12[2] Bangalore. It is accordingly proposed to transfer the case from ITO Ward 12[2], Bangalore to Dy. CIT, Central Circle-3, Hyderabad.

If you have any objection to the proposed transfer, you may file your objection, if any so as to reach this office on or before 29th June 2009. You are also given an opportunity of personal hearing before the Commissioner of income tax, Bangalore-III, Bangalore at his office at 1st Floor, C R Building, Queens'' Road, Bangalore-560001 at 11 A.M. on 29-06-2009.

2. The proposed transfer according to the learned counsel for the respondent-Revenue is in exercise of jurisdiction under clause (a) of sub-section (2) of section 127 of the income tax Act, 1961, which reads thus:

127. Power to transfer cases.

(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.

(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;

3. The notice Annexure ''G'' is not appended with all relevant material particulars and copies of documents relating to search and seizure, alleged to have been carried out at Hyderabad on 07.02.2009 in the case of Sri Syed Mehdi and others. There can be no dispute that the rule of audi alteram partem or principles of natural justice requires the authority to make available all and every relevant material, as also particulars, while calling upon the assessee to submit explanation/objection for transfer of his returns for assessment in another State. The petitioner assessee, in the absence of relevant material particulars obviously is handicapped to submit explanation/objection to the transfer of its case to Hyderabad. Annexure ''G'' bereft of material particulars does not subscribe to the requirement of principles of natural justice.

4. It is elsewhere said that if there is a power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is a NULLITY. Natural justice is another name for commonsense justice. Rules of natural justice are not codified cannons. But they

are principles ingrained into the conscience of man.

5. Respondent, without furnishing relevant material along with the notice Annexure ''G'', which might throw light upon the matter in question, sought to obtain objection from the petitioner assessee in the absence of material and information, which a properly informed decision requires, in short, passed the order Annexure ''G'' transferring the case of the petitioner for assessment to the State of Andhra Pradesh at Hyderabad by furnishing to the petitioner imperfect knowledge. The extreme impropriety of such a course could not be made too plain. On this ground alone, this petition deserves to be allowed and is accordingly allowed. The order dated 19.06.2009 Annexure ''G'' transferring the case of the petitioner to the Deputy Commissioner of income tax. Central Circle-3, Hyderabad, is quashed and the proceeding remitted for consideration afresh after furnishing all relevant material particulars, including copies of search and seizure mahazars and other such relevant material to the petitioner and thereafter, to pass an order strictly in accordance with law. Sequentially, the assessment order passed by the authority at Hyderabad, on transfer, of the petitioner''s return is declared a nullity.