(1998) 11 PAT CK 0037

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 11413 of 1997

Steel Engineering and Processing Works APPELLANT

Vs

Union of India(UOI) and Others RESPONDENT

Date of Decision : 17-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 127

Citation : (2000) 162 CTR 19 : (2000) 243 ITR 721

Hon'ble Judges : B.M. Lal, C.J;S.K. Singh, J

Bench : Division Bench

Advocate : L.K. Bajla, for the Appellant; L.N. Rastogi, for the Respondent

Judgement

1. By this writ petition, the petitioner, Steel Engineering and Processing Works, a partnership firm having its office at Haziganj, P. S. Chowk, Patna City, District--Patna, through Shri R. K. Bhartiya, seeks a writ in the nature of certiorari for quashing Notification No. CIT/OSD/JUR-127/Vol. III of 1996-97, dated December 6, 1996, issued by the Commissioner of Income Tax, Patna, Revenue Building, Gardiner Road, Patna, u/s 127 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), transferring the file of the petitioner from the jurisdiction of the Assistant Commissioner of Income Tax, Investigation Circle 1(2), Patna, to the Deputy Commissioner of Income Tax, Special Range, Ranchi.

2. It is contended that right from its inception, the petitioner is carrying'' on its entire business of the firm at Patna only. In Ranchi there was a stockyard of the firm but that was only for the purpose of storage and delivery of goods, sales, etc., were effected at Patna and for the buyers of Ranchi area deliveries were made from Ranchi stockyard of the firm.

3. On December 4, 1996, the petitioner received a notice from the Income Tax Officer, according to which, in the interest of the Revenue, the case of the firm was to be transferred from the jurisdiction of the Assistant Commissioner of Income Tax, Investigation Circle 1(2), Patna, to the jurisdiction of the Deputy

Commissioner, Special Range, Ranchi, and if the petitioner had any objection to the proposed transfer, the petitioner should appear before respondent No. 2 on December 16, 1996 or may submit a written reply on that date. To this show-cause notice, Shri Ram Swaroop Bhartia objected to the proposed transfer before respondent No. 2, on December 16, 1996, at Patna stating that the entire business of the firm was being carried on at Patna and all its books of account, etc., were at Patna with the partners of the firm residing at Patna and hence it will not be in the interest of the petitioner as also in the interest of the Revenue to transfer the file to Ranchi inasmuch as in the absence of books of account it will not be possible for him to co-operate in the assessment of the firm''s income/ loss at Ranchi. It is also submitted that on May 5, 1997, while the representative of Shri Ram Swaroop Bhartia was in the office of the Deputy Commissioner, Ranchi, in connection with the assessment of other concerns, a notice dated January 2, 1997, was served, according to which, the case was transferred from Patna to Ranchi by order dated December 6/12, 1996.

4. In the above background it is contended that no proper opportunity of being heard was afforded to the petitioner and thus the impugned transfer of the case is contrary to the provisions of Section 127 of the Act.

5. Denying the averments made by the petitioner, the Revenue has filed its counter affidavit and it is contended that the petition as framed and filed suffers from laches. Besides this, on the basis of misrepresentation and suppression of fact, the writ petition is filed. It is contended that on December 6, 1996, the transfer order is made and after a lapse of more than a year the petitioner has filed the writ petition, a copy of which was served on the respondent on December 9, 1997. It is thus contended that after a lapse of about one year, the petitioner, exercising his right under writ jurisdiction, challenged the order of transfer and, therefore, the petition suffers from laches. It is also contended that the transfer of the case is made at the instance of the petitioner''s request. On November 5, 1996, the petitioner, in the course of search u/s 132 of the Act at Ranchi, had made a statement on oath and thereby requested that the files of his group should be centralised at Ranchi. Therefore, it was at his request that the Commissioner of Income Tax, Ranchi, requested vide his letter dated November 26, 1996, to the Commissioner of Income Tax, Patna, to transfer the file of Ram Swaroop Bhartiya group to Ranchi.

6. Therefore, it is contended that the conduct of the petitioner is not appreciable, rather, on the other hand, it is dubious so much so that on the one hand he is requesting the authority to transfer the file and, on the other hand, he is filing the writ petition challenging the order of transfer of his case to Ranchi whereas considering his request the file has been transferred to Ranchi. It is stated that the petitioner has not approached this court with clean hands.

7. It is also submitted that the petitioner has suppressed certain material facts in as much as he is working partner of the firm Steel Engineering and Processing Works, Patna City, and was drawing monthly salary of Rs. 1,500 (rupees one

thousand and five hundred) as is clear from the partnership deed which is annexed to the writ petition. Paragraphs 11 and 12 of the recitals in the partnership deed show that the petitioner and his son were partners of the first and the fourth parts as working partners drawing salary of Rs. 1,500 (Rupees one thousand and five hundred) each for looking after the business of the firm. Therefore, it is submitted that even if, according to the petitioner, the business of the firm is closed in 1995 (as per reference at page 6, para. 16, of the writ petition), the petitioner being" the managing working partner is under legal obligation to comply with the notice of the Department and the liability to pay tax is joint and several of all the partners including the petitioner. It is also contended that the petitioner has all along been not co-operating in pursuance of the notice served upon him on flimsy grounds.

8. It is also contended that after the transfer of the case, the Deputy Commissioner, Ranchi, passed the assessment order u/s 158BC creating a demand of Rs. 24,59,256 (Rupees twenty four lakhs fifty nine thousand two hundred and fifty six) on December 24, 1997, as the petitioner and all other partners at Patna and Ranchi have not complied with the last notice served on them fixing the date of hearing on December 2, 1997. As a matter of fact, the petitioner refused to accept the last notice of hearing dated December 2, 1997.

9. It is further contended that the impugned notification dated December 6. 1996, u/s 127 of the Act recording the reasons for transfer was duly sent as per memo dated December 12, 1996, to the assessee as usual.

10. A rejoinder affidavit has also been filed on behalf of the petitioner denying the counter affidavit. It is admitted that the statement of R.S. Bhartia was recorded by the respondent-Department on September 10, 1996. About the guilt of laches and misrepresentation and suppression of facts nothing has been stated in the rejoinder affidavit.

11. A reply to the rejoinder has also been filed wherein it is reiterated that para. 2 of the rejoinder is totally incorrect and it is again reiterated that the petitioner is guilt of misrepresentation and suppression of facts. It is also submitted in reply to the rejoinder that the books of account for the period financial years 1985-86 to 1994-95 were seized from the premises of the petitioner and his father at Ranchi and in this regard the statement of the petitioner is palpably false.

12. It is also contended that the transfer of case from Patna to Ranchi was known to the petitioner on May 5, 1997, whereas he has filed the writ petition in December. 1997. It is further submitted that the assessment of the firm has already been completed on March 24, 1997. It is also stated that it is not that the Department has not served the notice in time but it was the petitioner who refused to accept the notice on January 13, 1997. Therefore, it was returned back and so the presumption in law about valid service of notice is in favour of the Department.

13. Learned counsel, Shri Bajla, appearing for the petitioner, submitted that since the provisions of Section 127 of the Act has not been complied with in letter and spirit, therefore, the impugned order deserves to be quashed. In support of his contention, learned counsel has relied upon a decision in the case of Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and Others, and in the case of Shantilal Hiralal and Co. and others Vs. K.S. Ramamurti, First Income Tax Officer, C-V Ward and others, . He also relied upon a decision in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, .

14. Laying stress on the decision in the case of Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, , learned counsel for the petitioner has contended that the requirement of recording" reasons u/s 127(1) of the Income Tax Act, 1961, for the transfer of a case from one Income Tax Officer to another is a mandatory direction under the law and non-communication thereof to the assessee is not saved by showing that the reasons exist in the file although not communicated to the assessee. Recording of reasons and disclosure thereof are not a mere idle formality. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reason is not expiated. Hence, it is submitted that the order impugned be quashed.

15. Learned counsel for the Revenue, repudiating the submission of Shri Bajla, learned counsel for the petitioner, has submitted that the petition deserved to be dismissed outright as it has been filed at a belated stage and by suppressing material facts as also on the ground of misrepresentation of facts. It is also argued that it is the petitioner who suggested for the transfer of his case to Ranchi.

16. On hearing learned counsel for the parties and on perusing'' the records and considering'' the legal aspect of Section 127 of the Act, no doubt this provision is to be adhered to in letter and spirit and all procedural opportunities envisaged under this provision are to be afforded to the assessee. Therefore, the submission made by Shri Bajla and the authority cited by him have no two opinion. But, in the facts and circumstances of the instant case, where the assessee-petitioner himself comes forward and states that his account books, etc., are at Ranchi and suggests for transfer and thereby proceeding is initiated u/s 127 of the Act, still the requirement of Section 127 of the Act, is to be complied with and failing which the proceedings u/s 127 of the Act is to be vitiated.

17. Law in this regard is well settled. If the assessee-petitioner does not raise any objection to his case or cases being'' transferred and, on the other hand, by lapse of time he submits to the jurisdiction of the transferee court and when after transfer of the case, assessment, etc., was also made and thereafter the assessee-petitioner wakes up and asserts the right u/s 127 of the Act--how far

will it be justified ?

18. Thus, there is no doubt that law is well settled that in respect of the transfer of Income Tax cases from one Income Tax Officer to another Income Tax Officer, the procedure as laid down under the provisions of Section 127 of the Act is to be followed and opportunities as contemplated thereunder must be afforded to the assessee, failing which, the order of transfer is rendered a nullity.

19. But this is not all, The facts as are emerging'' from the records of this case cannot be lost sight of, which have been elaborately pleaded and described by the respondent-Revenue in its counter affidavit and also in the reply affidavit to the rejoinder affidavit stating that the proceeding for transfer of the case from Patna to Ranchi was initiated at the instance of the petitioner-assessee himself and it was he who suggested that the entire records and books of account are at Ranchi and so it will be convenient for him to co-operate with the assessment at Ranchi. Besides laches in approaching the writ court, the assessee-petitioner also submitted to the jurisdiction of the transferee authority at Ranchi.

20. This being so, the party having once acquiesced in the jurisdiction of the transferee court, all statutory rights which the assessee gets by virtue of Section 127 of the Act vanish and, therefore, the assessee cannot assert that without affording opportunity as required u/s 127 of the Act, the case has been transferred. In this regard see Halsbury''s Laws of England, volume II, third edition, page 140, pr. 265, and also the case reported in O.A.O.K. Latchmanan Chettiar Vs. The Commissioner, Corporation of Madras and Another, , which are referred to in the decision in the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., .

21. In the case of PANNALAL BINJRAJ AND ANOTHER Vs. THE UNION OF INDIA AND OTHERS. (AND OTHER CASES)., , which is a Constitution Bench decision, the Supreme Court lays down the law to the effect that (head-note), "If an assessee has acquiesced in the jurisdiction of the Income Tax Officer to whom a case has been transferred, he cannot subsequently object to the jurisdiction of the officer and seek to get the order of transfer quashed by invoking the jurisdiction of the court under Article 226 of the Constitution."

22. This being the law in respect of cases where the assessee has acquiesced in the jurisdiction of the transferee court, the submissions made by Shri Bajla have no application in this case. The writ petition is, therefore, dismissed.

