(2017) 04 AHC CK 0048

In the Allahabad High Court

Case No : Civil Misc. Writ Tax Petition No. 51 of 2017

Y.K. Gupta APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 03-04-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 127, Section 132, Section 2(a)

Citation : (2017) 5 ADJ 233

Hon'ble Judges : Pankaj Mithal and Vinod Kumar Misra, JJ.

Bench : Division Bench

Advocate : Nikhil Agrawal, Advocate, for the Petitioner; C.S.C. and Manu Ghildyal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Nikhil Agrawal, learned counsel for the petitioner and Sri Manu Ghildyal, learned counsel for all the respondents.

2. The pleadings exchanged between the parties have also been perused.

3. The petitioner is aggrieved by order dated 20th October, 2016 passed by the Principal Commissioner of Income Tax, New Delhi under Section 127 of the Income Tax, 1961 (hereinafter referred to as ''the Act'') whereby out of a group of cases of Sun-world Group of Companies, the case of the petitioner has been transferred from ITO, New Delhi to the Deputy Commissioner/Assistant Commissioner, Income Tax, Central Circle, NOIDA for the purpose of assessment.

4. The submission of Sri Agrawal, learned counsel for the petitioner is that before passing the impugned order of transfer, no personal hearing was given to the petitioner despite specific demand in this regard; the objections of the petitioner in response to the notice were not at all considered by the Principal Commissioner; and the report which forms basis of the order was not supplied to him.

5. Shri Ghildyal, defends the order by alleging that the objections of the petitioners were not found satisfactory and relying upon the report in this regard the case of the petitioner was transferred. The petitioner has participated in the assessment proceedings whereupon assessment order has also been passed. Therefore, the challenge to the transfer order in such a situation is meaningless.

6. It appears from the record that a search and seizure operations under Section 132 of the Act were carried out on 11th November, 2014 in the various premises of Sun-world Group of Companies including that of the petitioner, who happens to be one of the directors of the companies.

7. A show cause notice dated 2nd May, 2016 was issued to the petitioner as to why the case of the petitioner may not be transferred from New Delhi to NOIDA before Deputy/Assistant C.I.T., Central Circle, Noida.

8. In response to the said notice, the petitioner furnished his reply on 16th May, 2016 inter-alia contending that as most of the companies of the aforesaid group of companies are filing returns in Delhi, therefore it will be difficult to pursue cases in U. P., more particularly, when most of the companies are located out side U.P., except one. The petitioner be afforded personal hearing in the matter before any order is passed to transfer his case.

9. It may be pertinent to mention here that in all 48 companies of the group were involved, all of whom have their head offices in Delhi and out of which, 40 companies were filing returns in Delhi.

10. It appears from the record that the Principal Commissioner of Income Tax, New Delhi invited comments on the above objections from the Deputy Director of Income Tax, NOIDA through Principal Commissioner of Tax (Central Kanpur) whereupon it was reported that the objections are not found to be satisfactory, the petitioner is one of the Directors of the aforesaid group of companies and that certain incriminating documents were found during search so the case of the petitioner cannot be separated from others.

11. The Principal Commissioner of Income Tax Delhi, relying upon the aforesaid report, by the impugned order directed for the transfer of the case of the petitioner to the A.C.I.T./D.C.I.T., Central NOIDA but without giving personal hearing to him.

12. Section 127(1) and (2) of the Act, for the sake of convenience are quoted below:

"Power to transfer cases

127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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 on 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 Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-

(a) where the Principal Directors General or Directors General or Principal Chief Commissioner or Chief Commissioners or Principal Commissioners or Commissioner to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal 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;

(b) where the Principal Directors General or Directors General or Principal Chief Commissioner or Chief Commissioners or Principal Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorised in this behalf."

13. Section 127 of the Act lays down the power of the Authority concerned in transferring the cases from one Assessing Officer to another. It contemplates two situations:

(i) where the transfer is from one Assessing Officer to another Assessing Officer subordinate to the Authority competent to transfer; and

(ii) where the transfer is from one Assessing Officer to another Assessing Officer but not subordinate to the same Transferring Authority.

14. Sub-section (1) of the Section 127 of the Act contemplates a situation where the transfer of the case is from one Assessing Officer(s) to one or more Assessing Officer(s) subordinate to the same Transferring Authority, namely, the Principal Commissioner. It provides that the Principal Commissioner would give reasonable opportunity of being heard to the Assessee wherever it is possible to do so and may transfer the case after recording reasons for doing so.

15. Sub-section (2) of Section 127 of the Act contemplates the transfer of case from one Assessing Officer(s) to one or more Assessing Officer(s) but not subordinate to the same Authority competent to transfer. It provides that where the two superior authorities, to whom, the Assessing Officers are subordinate,

are in agreement, then the competent authority from whose jurisdiction the case is to be transferred, may give the Assessee a reasonable opportunity of being heard in the matter wherever possible and order the transfer of the case after recording reasons for doing so.

16. Sub-section (2) of Section 127 of the Act contemplates another situation as contained in Clause (b) of it where two superior Authorities, to whom, the Assessing Officers are subordinate, are not in agreement for transfer of the cases, the order of the transfer may be passed by the Board or any such specified Officer as the Board made by notification in the Gazette authorize in that behalf.

17. The very language of Section 127(1) and 2(a) of the Act demonstrates that in the matter of transfer of cases from one Assessing Officer to another, the Principal Commissioner is supposed to follow the principles of natural justice. He has to give reasonable opportunity of hearing to the Assessee if it is so possible and has to record reasons for transfer of case(s).

18. In the case at hand, we are only concerned with the situation as contemplated Section 127(2)(a) of the Act i.e. transfer of case from one Assessing Officer(s) to another Assessing Officer(s) but not subordinate to the same Authority with the agreement between the two competent authorities and as such, the competent authority from whose jurisdiction, the case is to be transferred is required to give reasonable opportunity of hearing to the Assessee, if it is possible to do so and has to record reasons for transferring the case before passing any order of transfer.

19. In other words to put it simply, the Principal Commissioner of New Delhi, from whose jurisdiction, the case was proposed to be transferred could not have ordered the transfer of the case without giving reasonable opportunity of hearing to the Assessee, if it was so possible and without recording reasons for such transfer. Therefore, until and unless, the above two conditions, which are part and parcel of the principles of natural justice, were fulfilled, the order of transfer would not be legally sustainable.

20. A perusal of the impugned order demonstrates that the Principal Commissioner has nowhere stated that it was not possible to accord opportunity of hearing to the petitioner or that objections raised by him by means of reply dated 16th May, 2016 are not tenable and stands rejected except for saying that as per the report received from the office of the Deputy Director of Income Tax (Investigation) NOIDA through Principal Commissioner Income Tax, Kanpur, the objections of the petitioner are not found to be satisfactory.

21. The Principal Commissioner of Income Tax, New Delhi, in passing the impugned order without giving opportunity of hearing to the petitioner, only states that considering the reasons given by the Office of the Deputy Director of Income Tax (Investigation), Unit-1, NOIDA and Office of the Principal Commissioner, C.I.T. (Central), Kanpur, the case of the petitioner is transferred to

A.C.I.T./B.C.I.T.-C.C., NOIDA.

22. The reasons given by the aforesaid two authorities are the following two only.

(1) petitioner is one of the directors and has admitted undisclosed income of Rs.3.39 crore during the course of search;

(2) certain increment documents relating to the case during the search were found and as such the case of the petitioner cannot be separated from others.

23. The aforesaid reasons are only to the effect that the case of the petitioner cannot be separated from the other cases of the aforesaid group of companies and that the petitioner is one of the directors, who had admitted undisclosed income. The holding of the office of a director by the petitioner and his admission to the undisclosed income, if any, is not at all relevant for transfer of the case. The petitioner had not demanded separation of his case from other cases rather wanted all of them to be proceeded in Delhi, but no reason was assigned for shifting it from Delhi to Noida. The reply of the petitioner was not dealt with either by the two authorities in their report, which forms the basis for transfer of the case or by the Principal Commissioner in passing the impugned order. Moreover, there is no categorical consent or agreement of the Principal Commissioner, C.I.T. (Central), Kanpur, for the transfer of the case.

24. The aforesaid reasons have been recorded by the two authorities by simply stating that the objections/reply of the petitioner are not satisfactory. There is no whisper with regard to contention/objection of the petitioner that all the companies of the group are having Head Office in Delhi and that most of them at least 40, are filing the returns in Delhi. There is no mention of any reason as to why case of the petitioner or any other case of the aforesaid group of companies requires to be transferred outside New Delhi to NOIDA.

25. The aforesaid two reasons are not relevant for the transfer of the petitioner''s case from one Assessing Officer(s) to one or more Assessing Officer(s) either subordinate to the same competent authority or outside his jurisdiction.

26. The Principal Commissioner of Income Tax, Delhi, has not recorded his independent reasoning or finding about the objections raised by the petitioner. He does not even record that he is satisfied with the report as submitted to him and that he agrees with the same.

27. In addition to the above it is also not disputed that the report as relied upon by the petitioner forming the basis of the order was never supplied to the petitioner. The petitioner through his objections have categorically demanded personal hearing in the matter but the same was never refused and was not even given. At the same time, no reason exists for denying the opportunity of hearing to the petitioner or to indicate that it was not possible to give such an opportunity to him.

28. In view of the above, the order of transfer passed on behalf of the Principal

Commissioner of Income Tax, New Delhi is not only without opportunity of hearing to the petitioner but is also without saying that it is not possible to do so and at the same time fails to record specific and material reasons for rejecting the objections and for the necessity of transfer of the petitioner''s case.

29. In fact, it envisages to segregate and transfer the case of the petitioner from other cases of the group, which is contradictory to the intention expressed by the authorities in the report forming the basis of transfer of the case.

30. In view of the aforesaid facts and circumstances, it is exfacie clear that there was not hurdle in giving personal hearing to the petitioner but even then the petitioner was not afforded any opportunity of hearing at any stage except for the show cause notice before passing the impugned order and his reply to the show cause notice was not independently considered by the Principal Commissioner of Income Tax of his own so as to say that it is not found to be satisfactory frustrating the very purpose of the notice itself.

31. Sri Manu Ghildyal submits that the petitioner has participated in the proceedings of assessment before the Deputy Commissioner of Central Circle, NOIDA and that assessment order has already been passed on 31st December, 2016.

32. In order to counter the above submission Sri Agrawal draws our attention to the protest lodged by the petitioner before participating in the proceedings of assessment.

33. The petitioner vide letter dated 26th December, 2016 much before the passing of the assessment order has raised an objection that he is participating in the proceedings under protest only to extend co-operation without prejudice to the fact that the assessing authority to whom the case has been transferred has no jurisdiction in the matter, as the order of transfer is illegal.

34. The aforesaid letter of protest was duly received in the office of the Deputy Commissioner of Central Circle on 26th December, 2016 as per the endorsement of receipt over it. It was also sent to him through speed post and its receipt is not denied.

35. The petitioner has made averments regarding the aforesaid protest in paragraph no. 25 of the writ petition. The said averments have not been controverted in the counter affidavit filed on behalf of the respondent nos. 3, 4 and 5. The said counter affidavit only states that the reply to the said paragraph, if any, may be filed by the office of the Principal Commissioner of Income Tax, New Delhi.

36. The reply of the Principal Commissioner, New Delhi is by way of a short counter affidavit on record and we do not find any averment therein which may contradict or dispute the factum of the protest lodged by the petitioner before the assessing authority.

37. In view of the aforesaid facts and circumstances notwithstanding the fact that an order of assessment order has been passed against the petitioner, as the order of transfer passed by the Principal Commissioner Income Tax New Delhi is illegal for the reasons referred to above earlier, we quash the transfer order dated 20.10.2016 by issuing a writ of certiorari in that regard with liberty to the authority concerned to pass a fresh order in accordance with law, if the law so permits.

38. Since the order of transfer stands quashed, consequently, the assessment order also falls to the ground.

39. The writ petition is, accordingly, allowed with no order as to costs.

