

(2006) 11 P&H CK 0137

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Charan Pal Singh

APPELLANT

Vs

Commissioner of Income Tax
and Another

RESPONDENT

Date of Decision: Nov. 30, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 127

Citation: (2008) 307 ITR 132

Hon'ble Judges: Rajesh Bindal, J; Adarsh Kumar Goel, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. This petition seeks quashing of the order dated June 8, 2006, annexure P-13, passed by the Commissioner of Income Tax, Bathinda, transferring the file of the petitioner-assessee from the file of the Assessing Authority, Ferozepur, to the file of Assessing Authority, Baroda u/s 127 of the Income Tax Act, 1961 (for short, "the Act").

2. The case of the petitioner is that he is the resident of Ferozepur and is living at Chandigarh. He is a director of M/s. Jay Bee Distributors (P.) Limited QBDPL) and is also a partner in M/s. Shubh Distributors, who are both engaged in the distribution of medicines. JBDPL is a C & F agent of M/s. Corned Chemicals Limited, Baroda (for short, "the Baroda company") and is looking after distribution of medicines in Punjab, Haryana, Himachal Pradesh and Chandigarh but there is no intermingling or interlacing of funds between the two companies.

3. On September 9, 2004, the business premises of the Baroda company was searched. The business premises of M/s. JBDPL and residence of the petitioner were surveyed from where nothing incriminating was found. The petitioner received a show-cause notice dated May 31, 2006, as to why his case be not tagged with the

Baroda company to which the petitioner replied that he being merely a director of a company which was distributor of the Baroda company, there was no ground for transfer of his file to Baroda which is 1000 kms. away from his normal place of residence and when the petitioner had no business concern at Baroda. In spite of this, order of transfer has been passed relying on the Board's Instruction No. 5/2001, dated September 20, 2001, without a speaking order and in a mechanical manner.

4. In the reply filed, the stand taken is that the company of which the petitioner was a director, was an agent of the Baroda company, one of the directors of the Baroda company was also a director of the company of which the petitioner is a director. There was a nexus between the Baroda company and the company of which the petitioner was a director. Certain documents were impounded for investigation during survey and it was on account of centralization of cases for co-ordinated investigation, the case of the petitioner was transferred u/s 127 of the Act.

5. Order of transfer is extracted below:

In exercise of the powers conferred by Sub-section (2)(a) of Section 127 of the Income Tax Act, 1961 (43 of 1961) and all other powers enabling me in this behalf, I, the Commissioner of Income Tax, Bathinda, hereby transfer with effect from June 8, 2006, the cases particulars of which are mentioned in column 2 and column 3 of the Schedule below from the assessing authority mentioned in column 4 to the Assessing Officer mentioned in column 5 of the said Schedule. The cases are transferred in view of the Board's Instruction No. 5/2001 issued under No. 225/95/2001-ITA-II, dated September 20, 2001, after providing opportunity to the concerned assessee and considering their replies.

6. Vide our order dated September 22, 2006, we gave liberty to the respondents to pass a supplementary order giving further reasons if necessary, without prejudice to rights and contentions of the parties. The supplementary reasons given are as under:

Search and seizure action u/s 132 were conducted on the business premises of M/s. Corned Chemicals Limited, Baroda and residential premises of the directors of this group. The company and the directors falling under the jurisdiction of this charge have substantial interest in the Baroda group company, having one common director. Further, M/s. Jay Bee Distributors (P.) Limited, Ferozepur Cantt, having business premises at Chandigarh was also covered by conducting a survey u/s 133A of the Income Tax Act, 1961, along with the search conducted in the Corned group of cases. Certain documents/CDs were impounded during the course of survey. As such M/s. Jay Bee Distributors (P.) Limited, Ferozepur Cantt., has substantial business interest with the Corned group of cases, Baroda along with its director. Therefore, centralization of these cases is vital from the view point of co-ordinated investigation in the group to protect the interests of the Revenue. In pursuant to any

evidence found in search and seizure/survey operations in the aforesaid group, this requires investigation at one centralised office.

7. Learned Counsel for the petitioner submitted that the impugned order was void as no reasons were given and the view-point of the petitioner was not considered. The impugned order did not show application of mind to the objection of the petitioner and the petitioner in his individual capacity had no concern with the Baroda company so as to justify transfer of his assessment file. Reliance has been placed on the judgments of the hon"ble Supreme Court in [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#), , [Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others](#), and the judgment of this court in [Rajesh Mahajan and Others Vs. Commissioner of Income Tax](#), .

8. Learned Counsel for the Revenue opposed the submissions made and submitted that the impugned order itself carried the reasons, namely, for co-ordinated investigation in the group of cases having inter-connection to protect the interests of the Revenue. Circular of the Board requiring centralization of cases having inter-connection was referred to and relied upon. It was also recorded therein that the assessee had been provided opportunity and reply filed by the assessee has been considered. The judgments relied upon were, thus, distinguishable.

9. It was submitted that the reason was not irrelevant as the petitioner was a director of JBDPL of which one of the directors was also a director of M/s. Corned Chemicals Limited and, thus, there was a nexus between the two assessees. Reliance was also placed on the judgments in [Shri Rishikul Vidyapeeth and Shri Rishikul Brahmacharya Ashram Vs. Union of India \(UOI\) and Others](#), , [General Exporters Vs. Commissioner of Income Tax](#), , [One-up Shares and Stock Brokers Pvt. Ltd. Vs. R.R. Singh, Commissioner of Income Tax and Others](#), and [Rathi and Co. and Ramesh and Co. Vs. Union of India \(UOI\) and Others](#), .

10. We have considered the rival submissions and perused the decisions relied upon by learned Counsel for the parties.

11. Undoubtedly, the order of transfer of assessment file of an assessee to a far off place puts the assessee in a great inconvenience and ought not to be ordered unless necessary in public interest to safeguard revenue by centralisation of cases for co-ordinated investigation. Such an order cannot be passed arbitrarily and can be justified only if there are valid reasons. The principles of natural justice as well as the statutory provision require that the reasons must be recorded in writing in the order itself and disclosed to the assessee to enable the assessee to take its remedies against such an order. At the same time, the power conferred for transfer cannot be interfered with having regard to the object for which such power is conferred. The impugned order records the reason, that is need for centralization for effective and co-ordinated investigation. The nexus between the petitioner and the Baroda

company cannot be held to be non-existent. The decisions relied upon by learned Counsel for the Revenue support the submission that if it was necessary for co-ordinated and effective investigation, transfer u/s 127 of the Act could be justified. In the present case, there is nothing to show that there was any extraneous consideration or that reasons given were non-existent or irrelevant.

12. We, therefore, do not find any ground to interfere in exercise of the writ jurisdiction.

13. The writ petition is dismissed.