

(2007) 02 AHC CK 0115

Allahabad High Court

Case No: None

Unnao Distilleries and Braveries
Limited

APPELLANT

Vs

Commissioner of Income Tax-II,
Deputy Commissioner of Income
Tax and Commissioner of
Income Tax

RESPONDENT

Date of Decision: Feb. 21, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Income Tax Act, 1961 - Section 120, 124, 127, 132, 5

Citation: (2007) 213 CTR 68

Hon'ble Judges: Vikram Nath, J; R.K. Agrawal, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

R.K. Agrawal, J.

By means of the present petition filed under Article 226 of the Constitution of India the petitioner, M/s Unnao Distilleries & Braveries Ltd., Kanpur seeks the following reliefs:

(a) issue a writ order or direction in the nature of certiorari quashing the impugned order dated 18.1.2007 (Annexure 4 to the writ petition) passed u/s 127(2) of the Act by the Commissioner of Income Tax-II, Kanpur (respondent No. 1);

(b) issue a writ order or direction in the nature of prohibition restraining respondent No. 3 from taking any further action in pursuance of the impugned order dated 18.1.2007 (Annexure 4 to the writ petition), else the petitioner will suffer grave and irreparable loss;

(iii) issue any other suitable writ, order or direction in the nature of writ as this Hon"ble Court may deem fit and proper in the circumstances of the case; and

(iv) award costs of this petition to the petitioner.

2. Briefly stated the facts giving rise to the present writ petition are as follows:

The petitioner is a Public Limited Company duly incorporated under the Companies Act, 1956. It has its registered office at 424, Fourth Floor City Centre, the Mall, Kanpur and factory at Shekhpur, Unnao. The entire business operation takes place from Kanpur. It is being assessed under the Income Tax Act, 1961 (hereinafter referred to as the Act) at Kanpur. It is engaged in the business of manufacture and sale of country liquor and sprit. The Assessing Officer has passed the assessment order for the Assessment Years 2001-02 to 2004-05. A notice dated 10th November, 2006 was served upon the petitioner u/s 127(2)(a) of the Act by the Commissioner of Income Tax-II, Kanpur- respondent No. 1 making reference to a search and seizure operation u/s 132 of the Act conducted in the premises of M/s Radico Khaitan Ltd. on 14th February, 2006 calling upon the petitioner to show cause as to why the case be not transferred to the Deputy Commissioner of Income Tax, Central Circle-19, New Delhi for the purpose of coordinated investigation and meaningful assessment. On receipt of the aforesaid notice the petitioner submitted its reply on 2nd January, 2007. The respondent No. 1 vide order dated 18th January, 2007 had transferred the cases of the petitioner from the Deputy Commissioner of Income Tax VI, Kanpur to the Deputy Commissioner of Income Tax, Central Circle-19, New Delhi.

3. The order dated 18th January, 2007 is under challenge in the present writ petition on the ground that the notice dated 10th November, 2006 issued by the respondent No. 1 was absolutely bald and did not state the ground of reasons necessitating such transfer of cases and the petitioner was groping in darkness about the reasons warranting transfer of cases. The entire business activities of the petitioner as well as its Head Officer is at Kanpur and that the notice appears to have been issued under some misapprehension of the facts as it has no connection with other firms and no search and seizure have taken place against the petitioner company. The authorities are acting with predetermination and the impugned order is totally a non-speaking order. Thus, the entire proceedings including the transfer of cases culminated in the impugned order are null and void.

4. We have heard Sri Ravi Kant, learned Senior counsel, assisted by Sri Shakeel Ahmad, learned Counsel appearing for the petitioner and Sri A.N. Mahajan, learned standing counsel appearing for the respondents.

5. Sri Ravi Kant, learned senior counsel submitted that the notice dated 10th November, 2006 issued by the respondent No. 1 proposing to transfer the cases of the petitioner from Kanpur to New Delhi did not mention the grounds on which the proposed transfer was to be made, in the absence of which the petitioner was not aware about the grounds of transfer and it was only groping in the dark, therefore,

it could not meet the grounds of transfer. He further submitted that the respondent No. 1 had acted mechanically and had not exercised his independent mind which he ought to have done while passing the order dated 18th January, 2007. Thus, the order dated 18th January, 2007 is wholly illegal and is liable to be set aside. He further submitted that transferring the cases of the petitioner for the purpose of assessment from Kanpur to New Delhi would not only involve voluminous documents, books of accounts and heavy expenses but would also cause great inconvenience. In support of various pleas raised herein, he has relied upon the following decisions:

1. [Pannalal Binjraj Vs. Union of India \(UOI\),](#)
2. [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others,](#)
3. P.K. Pehuja v. Central Board of Direct Taxes, New Delhi and Anr. 1978 UPTC 384;
4. [Vinay Kumar Jaiswal and Others, Ganga Dharam Kanta and Another, Sneha Jaiswal and Others and Jaiswal Steel Processing Pvt. Ltd. and Others Vs. Commissioner of Income Tax and Others,](#)
5. [Canara Bank and Others Vs. Shri Debasis Das and Others,](#)
6. [Bansal Sharevests Services Limited, Shri Sonu Agarwal, \(adult\) and Pradeep Kumar Bansal Vs. Commissioner of Income Tax-II and The Additional Commissioner of Income Tax Range-IV,](#)
7. [R.K. Agarwal and Others Vs. Commissioner of Income Tax and Others,](#)

6. Sri A.N. Mahajan, learned standing counsel, on the other hand, submitted that the petitioner cannot insist upon the assessment being made at a particular place by a particular officer. If in order to check large scale evasion of tax, investigations and investments the authorities have come to the conclusion that the cases of a particular group of companies or a particular assessee is to be centralized at Delhi the petitioner cannot have any objection to it. In the present case the petitioner has been given reasonable opportunity of being heard and the respondent No. 1 had recorded reasons for the transfer, which cannot be said to be illegal. He further submitted that respondent No. 1 had applied his own independent mind. He further submitted that the order does not suffer from any illegality. In support of his various pleas raised herein, he has relied upon the following decisions:

1. Bansal Sharevest Services Ltd. and Ors. v. Commissioner of Income Tax, Kanpur 2006 UPTC 992 2nd case
2. Radico Khaitan Ltd., Rampur v. Commissioner of Income Tax, Moradabad and Ors. 2006 UPTC 1202;

3. [Virendra Kumar Jain and Vijay Kumar Pradeep Kumar Vs. Commissioner of Income Tax and Others,](#)

4. [Trimurti Fragrances P. Ltd. Vs. Commissioner of Income Tax and Another,](#)

7. Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties we find that u/s 120 read with Sub-section (1) of Section 124 of the Act the Assessing Officer has been vested with jurisdiction over any area, where any person carrying on the business or profession is situate or resides. However, u/s 127 of the Act power to transfer cases have been given to various authorities. Under Sub-section (2) of Section 127 of the Act in case where the Assessing Officer from whom the case is to be transferred and the Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner in that event with the concurrence of the respective Director General or Chief Commissioner or Commissioner to whom the Assessing Officers are subordinate the case can be transferred. The only requirement is that assessee has to be afforded reasonable opportunity of being heard where it is possible to do so, and reasons have to be recorded before passing such an order. In case the Directors General or Chief Commissioners or Commissioners are not in agreement for transferring the case in that event the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the official Gazette authorize in this behalf, can pass an order of transfer. In the present case, the two Commissioners are different. However, they are in agreement for transferring the case of the petitioner from Kanpur to New Delhi. The Commissioner of Income Tax, Kanpur had issued a show cause notice calling upon the petitioner to give reply which the petitioner had submitted. The reply submitted by the petitioner has been considered by the Commissioner of Income Tax, Kanpur and he had passed the order transferring the cases of the petitioner from Kanpur to New Delhi. Thus the requirement of Sub-clause (a) of Sub-section (2) of Section 127 of the Act has been complied with in the present case.

8. In the case of Messrs. Pannalal Binraj (Supra) the Apex Court has held that the determination of the question whether a particular Income Tax Officer should assess the case of the assessee depends on (1) the convenience of the assessee as posited in sub-sections 64(1) and (2) of the Act and (2) the exigencies of tax collection and it would be open to the Commissioner of Income Tax and the Central Board of Revenue who are highest amongst the Income Tax Authorities under the Act to transfer the case of a particular assessee from the Income Tax Officer of the area within which he resides or carries on business to any other Income Tax officer if the exigencies of tax collection warrant the same. It has further held that the infringement of such a right by the order of transfer u/s 5(7-A) of the Act is not a material infringement. It is only a deviation of a minor character from the general standard and does not necessarily involve a denial of equal rights for the simple

reason that even after such transfer the case is dealt with under the normal procedure which is prescribed in the Act. The production and investigation of the books of account, the enquiries to be made by the Income Tax Officer and the whole of the procedure as to assessment including the further appeals after the assessment is made by the Income Tax Officer are the same in a transferred case as in others which remain with the Income Tax Officer of the area in which the other assessee reside or carry on business. There is thus no differential treatment and no scope for the argument that the particular assessee is discriminated against the reference to other similarly situated.

9. In the case of Ajantha Industries (supra) the Apex Court has held that the requirement of recording reasons u/s 127(1) is a mandatory direction under the law and non communication thereof is not saved by showing that the reason exist in the file although not communicated to the assessee. It has further held that when the 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 reasons is not expiated.

10. In the case of P.K. Pehuja(supra) this Court has followed the decision of the Apex Court in case of Ajantha Industries (supra).

11. In the case of Vinay Kumar Jaiswal (supra) this Court has held that a notice has to be given u/s 127 whenever it is proposed to transfer the case from one officer to another and this notice must briefly indicate the reasons why it is proposed to transfer the case, since otherwise the assessee would not know on what basis the case is proposed to be transferred and would not be able to meet the said notice.

12. In the case of Canara Bank (supra) the Apex Court has held that adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse natural justice. It is after all an approved rule of fair play.

13. In the case of Bansal Sharevests Services Ltd. (1st case)(supra) this Court has held that where no reasons have been recorded and there is no other order on record passed by the Commissioner of Income Tax, the said order cannot be sustained and

was therefore, set aside on the ground that the various objections raised by the petitioners have not be dealt with in the transfer order.

14. In the case of R.KAgarwal (supra) this Court has held that no prejudice will be caused to the Department if the precise reason is disclosed to show that the authority did apply his mind to the material on record or information available on the basis of search and seizure operations, giving a link to the fact that the "assessee" has some connection or association and by making a mention of the said fact in the transfer order. This is more so necessary to show that the authority exercising its statutory power of transfer had actually gone through the record and applied its mind before passing the impugned order of transfer and that the power to transfer cases is not exercised mechanically. If the Department remains silent it will frustrate the whole object of the statutory provisions that transfer should be passed mala fide or arbitrarily or on irrelevant/extraneous considerations.

15. In the case of Bansal Sharevest Services Ltd. (2nd case) (supra) this Court after considering various judgments of the Apex Court had laid down the parameters for any interference by the Court by holding that it is possible if the decision is perverse or is such that no reasonable body or person could come to it or it has been influenced by irrelevant or extraneous considerations. The Courts can also examine the mater to find out whether the executive had arrived at a reasonable decision on the material before them in the light of the Wednessburry and CCSU test referred to above and the Courts cannot substitute its view as to what is reasonable. The order can also be set aside if there is manifest error in the exercise of power or the exercise of power is manifestly arbitrary. The Court after applying the aforesaid principle in paragraph 24 of the report has held as follows:

24. As pointed out above, the Commissioner has examined the objections raised by the assessees. The main objection regarding inconvenience has been considered and reasons have been assigned for rejecting the same. It cannot be said that the reasons pointed out in the impugned order, are wholly irrational to the extent that no person of normal prudence can arrive at the said conclusion or the same are wholly irrelevant and outside the scope of Section 127 of the Act. Shri Pradeep Kumar Bansal, the Director and the key person of the group, has residence cum business premises at Mumbai which facts has not been denied in the petition. In fact, he has business places at many places in the country. It has also been observed by the Commissioner of Income Tax that from the papers seized during the search conducted on 26th July, 2003 it transpires that the assessee had been including in accommodation entries for financing share applications/gifts and the statement of account obtained from the banks at Mumbai during the course of investigation reveals deposits of huge cash in bank account of the various assessees of this group.

16. This Court had come to the conclusion that the order impugned therein is neither arbitrary nor is based on irrelevant or extraneous considerations nor there is

any manifest error apparent on the face of record and declined to interfere under Article 226 of the Constitution of India.

17. In the case of Radico Khaitan Ltd. (supra) this Court after considering decisions of this Court in the case of Vinay Kumar Jaiswal (supra) and of the Apex Court in the cases of Pannalal Binjraj (supra), Ajantha Industries (supra) and Canara Bank (supra) has held as follows:

9. The extent of reasons which should find place in an order, in which reasons are required to be recorded, depends upon a variety of reasons such as the nature of the order, the extent and nature of the petitioner's rights which are effected thereby, the issues involved or the contentions raised or required to be considered, etc. There cannot be any rigid and/or absolute inflexible rule with regard to this.

14. Again, the extent of details to be mentioned in the show cause notice necessarily depend upon a variety of factors such as the allegations made, the proposed action, etc. As a thumb rule while judging the validity of a show cause notice on this score it has to be seen whether on account of the lack of the detail, the petitioner has been prejudiced due to inability to give proper defence.

15. In our opinion, this simple matter where 23 cases relating to the petitioner's group were proposed to be brought to one place for coordinated investigation did not require any further or better or more detailed reasons.

17. We are unable to sustain even this argument. The purpose of the transfer is quite obvious and in accordance with the normal procedures of judicial and quasi judicial authorities. In absence of the petitioner's suggestion for a better location more convenient to the petitioner, the CCIT (Central) New Delhi, was perfectly justified in transferring all the cases to one common place i.e. Delhi which is centrally located. Thus this suggestion/proposal of the CCIT, New Delhi, can not be said to be vitiated by any kind of mala fides. Further if such a reasonable suggestion, against which no sustainable objection could be shown to us, has been accepted by the CIT Moradabad, we are unable to hold that the CIT has acted on the "dictate" of the CCIT.

18. For the reasons mentioned above, we do not find it to be a fit case for interference in our discretionary jurisdiction under Article 226 of the Constitution of India, and we are of the opinion that the three other cases i.e., [Pannalal Binjraj Vs. Union of India \(UOI\)](#), [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#), and [Vinay Kumar Jaiswal and Others, Ganga Dharam Kanta and Another, Sneha Jaiswal and Others and Jaiswal Steel Processing Pvt. Ltd. and Others Vs. Commissioner of Income Tax and Others](#), also do not help the case of the petitioner for resisting either the consolidation of the cases at one station or fixation of the central location of Delhi for such consolidation.

18. In the case of Virendra Kumar Jain (supra) this Court has held that the Department cannot be compelled or required at the initial stage to disclose the "material" or information" as it may "embarrass or prejudice" the assessment. The legal position is crystal clear and settled by a catena of the decisions of this Court and the Apex Court on this issue. This Court cannot go into the "sufficiency" of the reasons.

19. In the case of Trimurti Fragrances P. Ltd. (supra) this Court has held as follows:

In the instant case admittedly notice was given. The petitioner had submitted his reply taking the plea of inconvenience in particular and thereafter, the impugned order dated February 22, 2005/annexure 3 to the writ petition has been passed wherein the concerned authority has specifically noted "for co-ordinated investigation". We find nothing wrong with the said order inasmuch as the petitioner had reasonable opportunity to place his case. Moreover, the petitioner has not been able to show any particular prejudice caused by transfer of the case in view of the attending facts and circumstances of the instant matter, wherein assessment is to take place with respect to a group of persons, common family members, business concerns having close interaction, and above all one of them resides at Delhi; one of the directors/partners himself, admits that heavy "cash amount" was recovered from his premises at Delhi belongs to his father at Kanpur and that out of 26 cases of the same group in question, 16 cases were assessed at Delhi.

In the instant case, this Court takes notice of the fact that otherwise also the distance between Kanpur and Delhi can be covered within a few hours and that the persons involved are already having their business transactions and activities between Kanpur and Delhi. The inconvenience projected by the assessee in question cannot be said to be of that magnitude which could prevail over other relevant considerations.

20. From the aforesaid decisions the following position emerges:

The assessee has to be assessed by an officer who has been vested with jurisdiction over an area where the persons carries on a business or profession u/s 124(1) of the Act. The exigencies of the tax collection may require the Income Tax Authorities to transfer the case of a particular assessee from the assessing officer of the area within which he resides or carries on business to another Income Tax officer under Sub-sections (1) and (2) of Section 127 of the Act. The order of transfer is not a material infringement of the assessee's rights. Before transferring the case from one officer to another a notice has to be given to the assessee. The notice should briefly state the reasons why it is proposed to transfer the case. Before ordering transfer reasons have to be recorded and it has to be communicated to the assessee. The officer has to apply his mind to the materials on record or information available while passing an order of transfer.

21. Applying the aforesaid principles to the facts and circumstances of the present case we find that before proposing transfer of the petitioner's cases from Kanpur to Deputy Commissioner of Income Tax, Central Circle -IV, New Delhi, the Commissioner of Income Tax, Kanpur- respondent No. 1 had issued a show cause notice dated 10th November, 2006 giving brief reasons for transfer, namely, the search dated 14th February, 2006 conducted at the premises of M/s Radico Khaitan Ltd. and its group of companies and for centralizing the cases for the purpose of assessment. The petitioner in its reply dated 2nd January, 2007 had given its explanation/objection on the aforesaid two grounds mentioned in the notice which has been dealt with by the Commissioner of Income Tax- respondent No. 1 in the impugned order.

22. Thus, we find that in the present case the principle of natural justice had been complied with. Therefore, we do not find any illegality in the order.

23. In view of the foregoing discussions, we do not find merit in this writ petition, which is hereby dismissed in limine.