

Radico Khaitan Ltd. Vs The Commissioner of Income Tax, The Deputy Commissioner of Income Tax and The Assistant Commissioner of Income Tax Range-I

Court: Allahabad High Court

Date of Decision: July 10, 2006

Acts Referred: Constitution of India, 1950 " Article 226
Income Tax Act, 1961 " Section 120, 127, 127(1), 127(2)

Citation: (2007) 208 CTR 406 : (2007) 292 ITR 507

Hon'ble Judges: Vikram Nath, J; Sushil Harkauli, J

Bench: Division Bench

Advocate: Ravi Kant and Vishal Agrawal, for the Appellant; A.N. Mahajan and Govind Krishna and S.C., for the Respondent

Final Decision: Dismissed

Judgement

1. We have heard Sri Ravi Kant, Senior Advocate assisted by Sri Vishal Agarwal, advocate, learned Counsel for the petitioner and Sri Govind

Krishna, advocate, for the respondent Income Tax Department.

2. The petitioner is challenging the order dated 20.6.2006 passed by the Commissioner of Income Tax, Moradabad u/s 127(2)(a) of the Income

Tax Act, 1961 (in short referred to as the Act). A copy of the same is enclosed as Annexure 7 to this writ petition. By the impugned order, a case

of the petitioner pending before the ACIT, Range-I, Moradabad, has been transferred to the DCIT, central Circle-4, New Delhi.

3. For ready reference, the contents of Section 127 of the Act, are reproduced below:

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 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;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may,

similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner, as the Board may, by notification in

Official Gazette, authorise in this behalf.

(3) Nothing in Sub-section (1) or Sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any

Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers

(whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under Sub-section (1) or Sub-section (2) may be made at any stage of the proceedings and shall not render necessary

the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation. - In Section 120 and this section, the word "case" in relation to any person whose name is specified in any order or direction issued

thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may

have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such

order or direction in respect of any year.

4. Apparently, before the transfer of the case, notice dated 3-5-2006 (Annexure 1) was given by the CIT Moradabad to the petitioner, which

mentioned the reason "centralisation of cases of the petitioner". Upon receipt of the notice the petitioner made a request vide letter dated

10.5.2006 seeking a month's time to submit reply to the show cause notice. Thereafter, the petitioner submitted a reply dated 24-5-2006

(Annexure 3) in which the petitioner merely resisted transfer of the petitioner's cases to a common station (Delhi) and did not suggest any

alternative location (more convenient to the petitioner) for consolidation of all these cases before the one single authority. It would be worth

mentioning that from the letter head of the petitioner company (Annexure 2), it is clear that their head office is at Delhi and the address mentioned is

Plot No. J-1, Block B-1, Mohan Coop. Industrial Area, Mathura Road, New Delhi-110044.

5. By the same reply dated 24-5-2006, the petitioner asked for the reasons for the proposed transfer. By the letter dated 29.5.2006 (Annexure

4), the A.C.I.T. (H.Q.), Moradabad, informed the petitioner that the petitioner should contact the C.C.I.T. (Central), New Delhi, for the reasons

for the proposed centralization of cases. The petitioner approached the C.C.I.T. (Central), New Delhi, and from the Office of C.C.I.T. (Central),

New Delhi, a letter dated 14.6.2006 (Annexure 6) was sent to the petitioner informing the petitioner that the transfer of the 23 cases, consequent

to the search and seizure operation conducted on the petitioner's group of companies, was proposed for the purpose of coordinated enquiries and

meaningful investigations.

6. It does not appear that the petitioner thereafter made any further representation or reply or objection in the light of the reasons so disclosed. It

also does not appear that the petitioner sought any better particulars of the reasons. Indeed no grievance has been raised in this writ petition that

the better particulars could not be sought or further reply could not be submitted due to shortage of time between receipt of the letter dated 14-6-

2006 and passing of the impugned Order dated 20-06-2006.

7. Thereafter, the impugned order was passed on 20-06-2006. It says that the transfer is being done for the coordinated investigation and

administrative convenience.

8. The first objection of the petitioner is that the impugned order does not contain reasons recording of which is mandatory u/s 127 of the Act. In

substance the argument means that the reason mentioned in the impugned order and referred above is not sufficient or sufficiently detailed.

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 can not be any rigid and/or absolute inflexible rule with regard to this.

10. The petitioner in the present case cannot claim any vested right in Investigation or adjudication by a particular forum at a particular station. At

best, the petitioner could possibly have some claim to have the petitioner's convenience also considered for the purpose of fixing a location where

all the cases could be consolidated. Cases of similar nature are almost always bunched together or consolidated for the convenience of

adjudication and investigation.

11. However we find from the solitary reply given by the petitioner in the present case, that the petitioner was only resisting consolidation of all its

cases under one single authority. The petitioner did not raise any objection with regard to the fixing of the location. In fact, petitioner could not have

any objection for Delhi as a location as it had its head office situate at Delhi, as already observed in this order. Thus, we find that petitioner had

only been raising hypertechnical objections in order to delay and frustrate the consolidation of cases.

12. In the circumstances, in our opinion no further or more detailed reasons other than what have been given were called for in the impugned

order.

13. Learned Counsel for the petitioner has taken a second objection about the notice not been more detailed or more precise. In support of the

proposition, he relies upon a decision of the Supreme Court in the case of, Canara Bank and Others Vs. Shri Debasis Das and Others, .

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. The third objection of the learned Counsel for the petitioner is that this

order has been passed not on the independent discretion of the CIT, Moradabad, but I: on the dictate of the CCIT (Central), New Delhi.

16. 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.

17. 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,

Sneh 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. The writ petition is, therefore, dismissed.