

(2011) 08 MAD CK 0378

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 8062 of 2011 and M.P. (MD) No. 1 of 2011

Karandhai Tami Sangam 1922

APPELLANT

Vs

The Commissioner of Income
Tax-II, No. 44, Williams Road,
Cantonment, Tiruchirappalli-620
001, The Joint Commissioner of
Income Tax, Thanjavur Range,
Thanjavur and The Income Tax
Officer, Ward 1(1), Thanjavur

RESPONDENT

Date of Decision: Aug. 24, 2011

Acts Referred:

- Income Tax Act, 1961 - Section 120(4), 127, 127(1), 127(2), 127(3)

Hon'ble Judges: R. Sudhakar, J

Bench: Single Bench

Advocate: T. Balachandar for S. Sridhar, for the Appellant; R. Sathyamoorthy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

The Honourable Mr. Justice R. Sudhakar

1. This writ petition has been filed by the Petitioner praying to issue a Writ of Certiorari and Mandamus, to call for the records of the Petitioner Society/Trust on the file of the first Respondent, to quash the impugned order dated 11.08.2010 served to the Petitioner on 07.07.2011 issued in Notification No. 4/2010-11 read with C. No. 7089/CIT/II/TRY/2010-11 in transferring the assessment jurisdiction from Deputy Commissioner of Income Tax, Circle I, Thanjavur to the Joint Commissioner of Income Tax, Thanjavur Range, Thanjavur for framing assessments for the Assessment Years 2004-05 to 2009-10 by the second Respondent and consequently

direct the first Respondent to maintain the jurisdiction with the third Respondent.

2. Heard Mr. T. Balachandar, Learned Counsel representing Mr. S. Sridhar, Learned Counsel appearing for the Petitioner and Mr. R. Sathiyamoorthy, Learned Counsel appearing for the Respondents.

3. By consent, the writ petition itself is taken up for final disposal.

4. The writ petition has been filed challenging the notification No. 4/2010 -11, dated 11.08.2010, whereby the Commissioner of Income Tax-II in exercise of his powers conferred u/s 127 of the Income Tax Act, 1961, transferred the case of the Assessee from one Assessing Officer to another Assessing Officer as per the Schedule to the said notification and the same is as follows:

Schedule:

Sl.No	GIR NO./ P.A.N.	Name and address of the assessee	A.Y	From	To
(1)	(2)	(3)	(4)	(5)	(6)
		Karanthai	2004-05	DCIT,	JCIT,
		Tamil	2005-06	Circle-I,	Thanjavur
		Sangam, karanthai	2006-07 2007-08 2008-09 2009-10	Thanjavur	Range, Thanjavur

5. The main grievances of the Petitioner challenging the Notification are as follows:

(i) In terms of Section 127 of the Income Tax Act, no show cause notice has been issued to the Petitioner while passing the order of transfer from one Assessing Officer to another. No reason has been recorded in the order of transfer. Therefore, there is a statutory violation and therefore, the notification has to be set aside.

(ii) The authority is not of the same cadre(i.e.) to say, the Deputy Commissioner of Income Tax Circle, Thanjavur from whose table, the assessment file is transferred to the Joint Commissioner of Thanjavur range. Therefore, unless specific order is passed empowering the transferee Officer, the Joint Commissioner of Income Tax to deal with the case on transfer, the transfer of file is bad in law.

In support of these contentions, the Learned Counsel for the Petitioner relied upon various decisions of this Court including the decisions of the Honourable Supreme Court, which shall be dealt with later on.

6. Though several contentions were raised by the Learned Counsel for the Petitioner on the issue of transfer of the file from one Assessing Officer to another, the Learned Counsel for the Petitioner pointed out the ground Nos. (xi) and (xii) and contended that even in a case of transfer invoking Sub-section (3) of Section 127 of the Income Tax Act, 1961, the requirement of following the principles of natural justice is a must and an opportunity of hearing should be given and for the purpose of transfer, reasons should be stated. He relied upon various decisions referred to in ground Nos. (xi) and (xii). The two grounds on which emphasis was made are as follows:

(xi) The 1st Respondent failed to appreciate that even though Sub-section (3) to Section 127 of the Act dispenses with the opportunity of hearing in so far as transfers within the same place/area, the requirement of the principles of Natural Justice warrants definitely an opportunity of hearing with a view to challenge "unnecessary transfers". It is submitted that there were no reasons shown for the transfer of jurisdiction on the facts of the case and hence the opportunity of hearing assumed significance and important to protect the interest of the Petitioner society/Trust. Hence the order of the 1st Respondent dated 11.8.2010 is wrong, incorrect, unjustified, erroneous and not sustainable both on facts and in law.

(xii) The 1st Respondent failed to appreciate that the decisions of the Apex Court reported in Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others, and the decisions of the High Courts reported in General Exporters Vs. Commissioner of Income Tax and another, G. Mohandas and Another Vs. Commissioner of Income Tax and Others, Chaitanya Vs. Commissioner of Income Tax and Others, and Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income Tax and Others, were not taken into consideration and non consideration of the judicial precedents would vitiate the impugned order. Hence, the order of the 1st Respondent dated 11.8.2010 is wrong, incorrect, unjustified, erroneous and not sustainable both on facts and in law.

7. Per contra, the Department filed counter-affidavit stating that the order under challenge is passed in terms of Section 127 of the Income Tax Act, 1961 and it is a transfer of the assessment file from one assessing officer whether with or without concurrent jurisdiction, to another assessing officer situated within the city, locality or place. Therefore, there is no requirement of hearing the Assessee or passing any reasoned order as Section 127(3) which deals with such a situation does not require issuance of notice nor does it require a order with reasons.

8. According to the Learned Counsel for the Respondents, there is a distinction between orders passed under Sections 127(1), 127(2) and 127(3) of the Act. The Assessee is confusing the issue of transfer of case u/s 127(3) of the Act as against the transfer of case u/s 127(1) and (2) of the Act. Though the provision of law is not specifically mentioned the correct provision in respect of this case will be Section 127(3) only as it is a transfer falling within the same city, locality or place. It is also

stated that the transfer of case file is not made to the officer concerned in terms of Section 120(4)(b) of the Act and the averments to that effect is totally misconceived. Paragraph 3 of the counter affidavit is as follows:

3. I respectfully submit that Sub-section (3) of Section 127 of the Income Tax Act, 1961 deals with transfer of a case made from one officer to another in the same city, locality or place, it merely means that such an order is purely an administrative order, passed for considerations of convenience of the Department, and no possible prejudice can be involved in such a transfer. The reasons for transferring the case need not be recorded, nor is there any requirement that the reasons be given to the Assessee as held by the Honourable Kerala High Court in the case of T.S. Sujatha v. Union of India reported in (1999) 151 CTR 29.

9. Section 127(1), (2) and (3) of the Act, which are relevant to the present case, read as follows:

Section 127. (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 the 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 the 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.

10. The Petitioner's counsel does not dispute that the case falls u/s 127(3) as the file is transferred to the Assessing Officer of same city, locality or place. The controversy raised by the Petitioner in the present case revolves on interpretation of Section 127(3) of the Act. He pleads that since the authority is different, the provision of Section 127(1) has to be complied.

11. Section 127(3) was considered by a Bench of Five Judges of the Honourable Supreme Court in Kashiram Agarwala Vs. Union of India (UOI) and Others, in a case of transfer of proceedings from Income Tax Officers "D" Ward District IV(I) and "F" Ward District IV(2), Calcutta to the Income Tax Officer "E" Ward Companies District III, Calcutta. The challenge was made to these orders on the ground that the Board had failed to comply with a mandatory requirement as prescribed u/s 127(1) of the Act. The Honourable Supreme Court, considering the amendment made to Section 127(1) of the Act and consequent to the decision of the Honourable Supreme Court in Pannalar Binjraj v. Union of India reported in 1957 SC 397, clearly held that in a case which falls under proviso to Section 127(1) of the then Act, which deals with transfer from one Assessing Officer to another Assessing Officer of the same city, locality or place, no opportunity need to be given to the Assessee and consequently there is no need to record reasons for transfer. Paragraph 9 of the above cited decision is relevant to the present case and it reads as follows:

9. It is in the light of these considerations that we have to construe the proviso to Section 127(1). As we have already indicated, the construction for which Mr. Jain contends is a reasonably possible construction. In fact, if the words used in the proviso are literally read, Mr. Jain would be justified in contending that the requirement that reasons must be recorded applies even to cases falling under it. On the other hand, if the obvious object of the proviso is taken into account and the relevant previous background is borne in mind, it would also seem reasonable to hold that in regard to cases falling under the proviso, an opportunity need not be given to the Assessee, and the consequential need to record reasons for the transfer is also unnecessary, and this view is plainly consistent with the scheme of the provision and the true intent of its requirements. We would accordingly hold that the impugned orders cannot be challenged on the ground that the Board has not recorded reasons in directing the transfer of the cases pending against the Assessee from one income tax Officer to another in the same locality.

(Emphasis supplied)

Therefore, the case of the Petitioner that the opportunity should be given and a reasoned order should be passed has no legal basis. In this case, the transfer would fall within the meaning of transfer within the same city, locality or place and therefore, the requirement of opportunity or recording of reasons do not arise.

12. The Learned Counsel for the Petitioner relies upon the following decisions to state that opportunity should be given and reasons to be recorded:

(i) [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#), a case which falls u/s 127(1) of the Act and transfer in that case was from ITO, Nellore to ITO, B Ward, Special Circle II, Hyderabad. Therefore, it will not apply to the facts of the present case of transfer in terms of Section 127(3) of the Act.

(ii) General Exporters v. Commissioner of Income Tax and Another decided by the Madras High Court reported in (1998)149 CTR (Mad) 138 is also a case of transfer from Chennai to New Delhi. Therefore Section 127(2) of the Act will be attracted and not Section 127(3) of the Act.

(iii) G. Mohandas and Anr. v. Commissioner of Income Tax and Ors. reported in (2000)163 CTR (Mad) 199 is also the case u/s 127(2) of the Act as the transfer was said to be made from Chennai to Trivandrum.

(iv) Similarly, the decision in [Chaitanya Vs. Commissioner of Income Tax and Others](#), is also a case of transfer from ITO, Wardha to ITO, Nagpur, which will fall u/s 127(1) or (2) of the Act and not under Sub Clause (3) of Section 127.

(v) Madhu Khurana v. Commissioner of Income Tax and Another rendered by the Division Bench of Gujarat High Court reported in (2011) 237 CTR (Guj) 304 is also a case which falls u/s 127(2) of the Act.

(vi) Vijayasanthi Investments (P) Ltd., v. Chief Commissioner of Income Tax and Ors. rendered by the Division Bench of Andhra Pradesh High Court reported in (1991)91 CTR (AP)36 equivalent to (1991)187 ITR 405(AP) is also a case of transfer from Bombay to Visakhapatnam.

13. Therefore, all the decisions cited by the Learned Counsel for the Petitioner will not apply to the facts of the present case as they are distinctly different and the provision of law which has been considered by the Courts in those cases are not relevant to the facts of the present case.

14. In view of the decision of a Five Judges Bench of the Honourable Supreme Court referred to above, the contention of the Petitioner, clearly has no legal basis. It clearly establishes the fact that the writ petition is filed with mala fide intention of protracting the assessment proceedings by indulging in meaningless litigation, knowing fully well that the decision of the Five Judges Bench of the Honourable Apex Court does not support the Petitioner's plea. In fact, the case of [Kashiram Agarwala Vs. Union of India \(UOI\) and Others](#), is referred to in the Honourable Apex Court decision of [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#), relied upon by the Petitioner's counsel. Kashiram Aggarwalla case was held to be inapplicable to the facts of the Ajantha Industries case by the Honourable Supreme Court. The Learned Counsel for Petitioner when asked as to why he is not referring to the decision of the Five Judges Bench reported in [Kashiram Agarwala Vs. Union of India \(UOI\) and Others](#), which is to the point in issue, he pleaded that he does not rely on it. This only shows the deliberate

intention to misinterpret the law for protracting the assessment proceeding under some pretext.

15. One other contention raised by the Learned Counsel for the Petitioner is that the transferring officer is not vested with the power specifically and therefore, the proceedings are bad.

16. This contention appears to be totally misconceived as the definition of the Assessing Officer u/s 2 7(A) includes the Joint Commissioner of Income Tax. Therefore, the said contention is rejected as it is without any legal basis.

17. The Learned Counsel for the Petitioner further pleaded that the Joint Commissioner of Income Tax, Trichy, is holding additional charge of Thanjavur District and is not a Joint Commissioner of Thanjavur regular and, therefore, it cannot be treated as a transfer within the same city.

18. This argument appears to be a fallacy as the transfer of the file is a transfer from one Assessing Office to another Assessing Office of the same city, locality or place. The post is be held by a person who is directed to take charge of the said post. The Petitioner's plea that the in-charge officer has no power, cannot be countenanced as the transfer is not to the individual officer but to the Assessing Office of the particular city, place or locality. Therefore, this contention is also rejected as devoid of merits. No other plea was made or argued.

19. In the result, finding no merits in the plea taken, the Writ Petition is dismissed. Consequently, the connected Miscellaneous Petition is dismissed.

20. Since the entire exercise of filing writ petition is to stall the proceedings of the Department without there being any legal basis that too knowing fully well that the provision of law is clear with regard to transfer in terms of Section 127(3) of the Act, the writ Petitioner deserves to be mulcted with some costs as valuable time of Court is wasted to deal with a case with no legal basis and on untenable plea. The Petitioner has filed this writ petition purely on technicalities to avoid or delay the assessment proceedings. this Court is therefore constrained to impose cost of Rs. 5,000/- (Rupees Five Thousand only) on the Petitioner to be paid to the Legal Services Authority, Madurai Bench of Madras High Court, within fifteen days from the date of receipt of a copy of this order.