

(2002) 01 CAL CK 0030

Calcutta High Court

Case No: Writ Petition No. 1099 (W) of 2002

Shruti Ltd. and Another

APPELLANT

Vs

Commissioner of Income Tax
and Others

RESPONDENT

Date of Decision: Jan. 30, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 127

Citation: (2002) 175 CTR 626 : (2002) 255 ITR 283

Hon'ble Judges: Amitava Lala, J

Bench: Single Bench

Advocate: Anindya K. Mitra, J.P. Khaitan and S.K. Ash, for the Appellant; Shyamal Kumar Sarkar and Mintu Kumar Goswami, for the Respondent

Judgement

Amitava Lala, J.

Let affidavit-of-service filed in court today be kept with the record.

2. This writ petition relates to an order of transfer of the assessment of the company from Calcutta jurisdiction to Delhi jurisdiction of the concerned Income Tax authority. It appears from the order impugned that the authority on January 1/4, 2002, passed an order of transfer u/s 127 of the Income Tax Act, 1961. In such order the entire reply of the show-cause notice has been quoted and ultimately a conclusion has been drawn in a cryptic manner under paragraphs 3 and 4 of such order impugned. Paragraphs 3 and 4 of such order are quoted as follows :

"3. The assessee asked for adjournment till the second week of January 2002, to furnish reply stating that its senior consultant was out of Kolkata. Since the proposed transfer was linked with completion of time-bound block assessment proceedings, the assessee was informed vide this office of even No. 765, dated December 13, 2001, that it was no longer possible to give such a long adjournment. The assessee was asked to furnish its reply by December 26, 2001, failing which it

was made dear that the issue shall be decided on merits considering its earlier replies. Vide its letter dated December 26, 2001, the assessee has stated its objections. The assessee has denied that basic infrastructure in Delhi was in existence to represent its case before the income tax authorities. In a nutshell, the stand taken in its previous reply dated July 26, 2001, has been reiterated.

4. I have already mentioned in the aforesaid show-cause notice the facts which justify transfer of the assessee's jurisdiction from Kolkata to New Delhi. These facts have not been controverted with any evidence to the contrary. In view of the aforesaid position, order as stated hereunder is passed."

3. It appears from the annexures that firstly, on July 17/18, 2001, the concerned Income Tax Officer on behalf of the Commissioner issued a show-cause notice of transfer in a cryptic manner. However, the same was replied by the petitioners on July 26, 2001, taking the particular point that the alleged reason mentioned in the show-cause notice under reply is too vague and does not enable the assessee to put forth objections effectively. However, a proposed order of transfer was made on November 27, 2001. But surprisingly in the first paragraph of such proposed order of transfer a direction was given for personal appearance of the petitioners or their representatives before the authority to decide further objections, if any, in connection thereto. Paragraph 5 of the proposed order of transfer is quoted hereunder :

"5. In view of the foregoing I am directed to request you to appear before the Commissioner of Income Tax, Kolkata-XX, in his office at 54, Rafi Ahmed Kidwai Road, Kolkata-16, on December 14, 2001 at 10.30 a. m. personally or through an authorised representative to state your further objections to the proposed transfer of Income Tax jurisdiction from the Income Tax Officer, Ward-55 (1), Kolkata, to the Deputy Commissioner of Income Tax, Central Circle-XII, New Delhi, Mayur Bhawan, Connaught Circus, New Delhi-110 001. If you are unable to appear, you may send your reply in writing which should reach his office within the date and time mentioned as aforesaid. In case of non-appearance or non-filing of any reply, it will be assumed that you have no objection to the proposed transfer and order to that effect may be passed by the Commissioner of Income Tax, Kolkata-XX, without making any further correspondence with you in this regard."

4. On December 13, 2001, a notice has been issued by the authority concerned stating that adjournment of hearing till the end of second week of January, 2002, cannot be acceded to since the issue of centralisation in the way of block assessment has been made out within the time bound. However, a direction was given to the petitioners to appear on December 16, 2001, at 11.30 a. m. giving the last opportunity of hearing, failing which the issue shall be decided on merits considering the replies already furnished.

5. On December 26, 2001, a reply was given which was received by the authority concerned. In such reply, a categorical statement has been made by the petitioners to satisfy the test of forum's convenience.
6. On January 1/4, 2002, under the order impugned the authority concerned quoted the entire reply and reiterated the earlier order by saying that the assessee has denied the basic infrastructure in Delhi which was in existence before to represent its case before the Income Tax authorities and in a nutshell the stand taken in its previous reply dated July 26, 2001, has been reiterated. Therefore, the authority thought that there is no justification for giving further hearing and the earlier order was reiterated virtually by confirming the order of transfer.
7. Here the dispute lies.
8. According to Mr. Anindya Mitra, learned senior counsel appearing in support of the petitioners, an opportunity of hearing has to be given in accordance with law and a reasoned order has to be passed by the authority concerned. The reason in passing the order that the earlier reply will suffice the material part, will not serve the purpose of giving opportunity of hearing and for passing a reasoned order.
9. Mr. Mitra, learned senior counsel for the petitioners, has cited several Judgments of the Supreme Court and the High Courts which have been dealt with hereunder. Firstly, he cited in [Ajantha Industries and Others Vs. Central Board of Direct Taxes, New Delhi and Others](#) . A three judge Bench of the Supreme Court held thereunder that non-communication of the reasons in the order passed u/s 127(1) was a serious infirmity and the order is invalid. This has been followed by a subsequent judgment of the Allahabad High Court reported in [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](#) . There it was held that a notice has to be given u/s 127 whenever it is proposed to transfer a case from one officer to another and it must briefly indicate the reasons for the proposed transfer, since otherwise the assessee would not know on what basis it is proposed to be transferred and would not be able to meet the said notice. The mere filing of objections by the assessee did not comply with the requirement of section 127. Therefore, the order u/s 127 is liable to be set aside in such circumstances. The order of transfer has to be vitiated when the Commissioner failed to deal with the assessee's objections. In another judgment reported in [Shyam and Company Vs. Commissioner of Income Tax and Another](#) , a Division Bench of the Allahabad High Court held that an order of transfer of a case without considering the objection of the assessee is not valid and is liable to be quashed.
10. Mr. Shyamal Sarkar, learned counsel appearing on behalf of the respondents, contended before this court that there is no question of violation of the principles of natural justice. The show-cause notice was issued which had been replied. A further show-cause notice was also issued and similar defence was taken. Since the defence

was similar, there was no occasion of dealing with the same particularly when it could be reiterated by passing the similar order. According to him, the earlier order was a preliminary order but the present order is the final order which according to Mr. Mitra, learned senior counsel for the petitioner, is contrary to law. According to him, there is no question of passing a preliminary order and final order of transfer. In any event, in paragraph 3 of the order impugned it was categorically specified that the assessee was asked to furnish its reply on December 26, 2001, failing which it was made clear that the issue should be decided on merits considering its earlier reply. Therefore, as and when the reply was accepted on December 26, 2001, there was no occasion for the authority concerned to give any hearing and to pass an order without considering at length. The petitioners herein are not challenging the order of assessment but the order of transfer alone. Therefore, the authority concerned cannot pre-judge the issue or make any colourable exercise of power in the garb of the order of transfer.

11. Thus, there is hardly any scope of keeping the matter pending for exchanging the affidavits and hearing for second round particularly when the authority concerned is interested to expedite the matter within the time frame provided for block assessment.

12. Thus, I dispose of the writ/petition by holding that the order impugned stands set aside. The authority concerned is directed to issue a notice calling upon them and upon giving fullest opportunity of hearing pass a reasoned order particularly dealing with point of forum convenience which is a material issue herein.

13. There will be no order as to costs.

14. Since no affidavit-in-opposition has been used, the allegations contained in the writ petition shall not be deemed to have been admitted.

15. Let urgent xerox certified copy of this order, if applied for, be given to learned counsellor the parties within a period of fortnight from the date of putting the requisites.