

M/S. Ajantha Industries and Others

Vs

Central Board of Direct Taxes, New Delhi and Others

Civil Appeal No. 724 of 1975

(K. K. Mathew, P. K. Goswami, N. L. Untwalia JJ)

05.12.1975

JUDGMENT

GOSWAMI, J. -

1. The appellant No. 1 is a registered firm and appellants Nos. 2 and 3 are the only two partners of that firm. They are assesseees under the income-tax Act. Their assessments have been made for a number of years in Nellore district in the usual course. On January 23, 1973, the Central Board of Direct Taxes (briefly the Central Board) sent a notice to the appellants under Section 127 of the Income-tax Act, 1961 (briefly the Act) proposing to transfer their case files "for facility of investigation" from the respective Income-tax Officer at Nellore to the Income-tax Officer, B Ward, Special Circle II, Hyderabad. By this notice they were also asked to submit in writing if they had any objection to the proposed transfer within 15 days of receipt of the notice. The appellants made their representation objecting to the transfer and on July 26, 1973, the Central Board passed the impugned order transferring the cases from Nellore to Hyderabad.

2. There is no provision of appeal or revision under the Act against such orders of transfer. The appellants, therefore, preferred an application under Article 226 of the constitution before the high Court of Andhra Pradesh questioning the validity of the order chiefly on the ground of violation of the principle of natural justice inasmuch as no reasons were given nor communicated in the said order. The learned Single Judge after having called for the relevant file found that certain reasons were recorded by the Central Board prior to the passing of the impugned order and held that there failure to communicate the reasons to the appellants was not fatal to the order. The writ petition was, therefore, dismissed.

3. The appellants' Letters Patent appeal before the Division Bench of the High Court also met with the same fate. Hence this appeal by special leave.

4. The short question that arises for consideration is whether failure to record the reasons in the order which was communicated to the appellants is violative of the principles of natural justice for which the order should be held to be in valid.

5. Section 5(7A) was the corresponding section in the Income-tax Act, 1922 (briefly the old Act). The section may be set out :

The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any

stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred.

The successor section under the Income-tax Act, 1961 is Section 127 and the same may be set out :

Transfer of cases from one Income-tax Officer to another. - (1) The 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 Income-tax Officer subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one Income-tax Officer to another :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Income-tax Officer to another whose offices are situated in the same city, locality or place.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary to re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

Explanation. - In this section and in Section 121 and 125, 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.

The section was amended by Section 27 of Finance (No. 2) Act, 1967, and Section 127 since then stands as under :

(1) The 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 any Income-tax Officer or officers subordinate to him to any other Income-tax Officer or Income-tax Officers also subordinate to him and the Board may similarly transfer any case from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers :

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers and the Officers of all such Income-tax Officers are situated in the same city, locality or place :

Provided further that where any case has been transferred from any Income-tax Officer or Income-tax Officers to two or more income-tax Officers, the Income-tax Officer to whom the case is so transferred shall have concurrent jurisdiction over the case and shall perform such functions in relation to the said case as the Board or the Commissioner (or any Inspecting Assistant Commissioner authorised by the Commissioner in this behalf) may, by general or special order in writing, specify for the distribution and allocation of the work to be performed.

(2) The transfer of a case under sub-section (1) may be made at any stage of the

proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer or Income-tax Officers from whom the case is transferred.

Explanation. - In this section and in Section 121, 123, 124 and 125, 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.

6. Unlike Section 5(7A) Section 127(1) requires reasons to be recorded prior to the passing of an order of transfer. The impugned order does not state any reasons whatsoever for making the order of transfer.

7. It is submitted on behalf of the Revenue by Mr. Sharma that reasons were communicated to the assessee in the notice calling for objection against the proposed transfer. It is, therefore, manifest that the reasons given in that show-cause notice, namely, "facility of investigation" can be read as a part of the impugned order although there is no mention of any reasons therein as such.

8. We are unable to accede to this submission. It appears Section 5(7A) of the old Act came for consideration in *Pannalal Binraj v. Union of India* ((1957) 31 ITR 565 : 1957 SCR 233 : AIR 1957 SC 397), and this Court observed at page 589 as follows :

..... it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under Section 5(7A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing ..... There is no presumption against the bona fide or the honesty of an assessee and normally the income-tax authorities would not be justified in refusing to an assessee as reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Section 64(1) and (2) of the Act is sought to be made against him, be it a transfer from one Income-tax Officer to another within the State or from an Income-tax Officer within the State to an Income-tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the order are reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, to transfer his case under Section 5(7A) of the Act and it will also help the court in determining the bona fides of the order as passed if and when the same is challenged in court as mala fide or discriminatory. It is to be hoped that the income-tax authorities will observe the above procedure wherever feasible.

9. This judgment was rendered by this Court on December 21, 1956, and we find that in the 1961 Act Section 127 replaced Section 5(7A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer.

It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127(1). We are unable to accept this submission.

10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

11. We are clearly of opinion that the requirement of recording reasons under Section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

12. Mr. Sharma drew our attention to a decision of the Delhi High Court in *Sunanda Rani Jain v. Union of India* ((1975) 99 ITR 391 (Delhi) : 1975 Tax LR 865), where the learned Single Judge has taken a contrary view. For the reasons, which we have given above, we have to hold that the said decision is not correct.

13. The appellant drew our attention to a decision of this Court in *Shri Pragdas Umer Vaishya v. Union of India* ((1967) 12 MPLJ 868 : 1967 Jab LJ 817), where Rule 55 of the Mineral Concession Rules, 1960, providing for exercise of revisional power by the Central Government was noticed. It was held that under rule 55 the Central Government in disposing of the revision application must record its reasons and communicate these reasons to the parties affected thereby. It was further held that the reasons could not be gathered from the nothings in the files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality.

14. Mr. Sharma drew our attention to a decision of this Court in *Kashiram Aggarwala v. Union of India* ((1965) 56 ITR 14 : (1965) 1 SCR 671 : AIR 1965 SC 1028). It is submitted that this Court took the view that orders under Section 127(1) are held in that decision to be "purely administrative in nature" passed for consideration of convenience and no possible prejudice could be involved in the transfer. It was also held therein that under the proviso to Section 127(1) it was not necessary to give the appellant an opportunity to be heard and there was consequently no need to record reasons for the transfer. This decision is not of any assistance to the Revenue in the present case since that was a transfer from one Income-tax Officer to another Income-tax Officer in the same city, or, as stated in the judgment itself, "in the same locality" and the proviso to Section 127(1), therefore, applied.

15. When 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.

16. Mr. Sharma also drew our attention to a decision of this Court in *S. Narayanappa v. C. I. T., Bangalore* ((1967) 63 ITR 219 : (1967) 1 SCR 590 : AIR 1967 SC 523), where this Court was dealing with Section 34 of the old Act. It is clear that there is no requirement in any of the provisions of the Act or any section laying down as a condition for the initiation of the proceedings that the reasons which induced the Commissioner to accord sanction to proceed under Section 34 must also be communicated to the assessee. The Income-tax Officer need not communicate to the assessee the reasons which led him to initiate the proceedings under Section 34. The case under Section 34 is clearly distinguishable from that a transfer order under Section 127(1) of the Act. When an order under Section 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has no such remedy under the Act to question the order of transfer. Besides, the aggrieved assessee on receipt of the notice under Section 34 may even satisfy the Income-tax Officer that there were no reasons for reopening the assessment. Such an opportunity is not available to an assessee under Section 127(1) of the Act. The above decision is, therefore, clearly distinguishable.

17. We are, therefore, clearly of opinion that non-communication of the reasons in the order passed under Section 127(1) is a serious infirmity in the order for which the same is invalid. The judgment of the High Court is set aside. The appeal is allowed and the orders of transfer are quashed. No costs.

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