

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 05.12.2008

+ WP(C) 8339/2008

ANIL KUMAR SAHA

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8340/2008

ASHWANI TALWAR

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8341/2008

**ATS CONSTRUCTION & MAINTENANCE
PVT. LTD**

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8342/2008

**ATS PROMOTERS & BUILDERS
PVT. LTD**

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8343/2008

ATS INFRASTRUCTURE LTD

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8344/2008

ALSTONIA TOWNSHIP PVT. LTD

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

AND

WP(C) 8345/2008

GEETAMBAR ANAND

... Petitioner

- versus -

**CHIEF COMMISSIONER OF INCOME
TAX DELHI(1), NEW DELHI & ANR.**

... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Piyush Kaushik

For the Respondent : Ms Prem Lata Bansal with Mr M. P. Gupta and
Mr Sanjeev Rajpal

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. In this batch of writ petitions the order dated 07.10.2008 passed by the Commissioner of Income Tax, Delhi-I, New Delhi under Section 127(2) of the Income Tax Act, 1961 is under challenge. By virtue of the said order the Commissioner of Income Tax has transferred the cases of the petitioners to the Assessing Officer at Meerut, namely, ACIT, Central Circle, Meerut. The impugned order, in its entirety, reads as under:-

**“OFFICE OF THE
COMMISSIONER OF INCOME TAX
DELHI-I, NEW DELHI**

F. No.: CIT-I/ITO Hq-I/Centralisation/08-09 07.10.2008

ORDER U/S 127(2) OF THE I.T. ACT, 1961

In exercise of powers conferred by sub-section (2) of Section 127 of the Income Tax Act, 1961 (43 of 1961), Sec. 11 of the W. T. Act, 1957, Sec. 7 of the G. T. Act, 1958 and other powers enabling me in this behalf, I, Commissioner of Income Tax, Delhi-I, New Delhi hereby transfer the case, particulars of which are mentioned hereunder in Col. 2, from Assessing Officer mentioned in Col. 3 therein, to the Assessing Officer mentioned in Col. 4. after considering the objections filed by the assessee in response to show cause notice u/s 127.

S.No.		From	To
1	M/s Alstonia Township(P) Ltd PAN – AAECA 4455A	ITO Ward 1(3) New Delhi	ACIT Central Circle, Meerut
2	Sh. Ashwani Talwar PAN – AAAPT 0920E	DCIT, Cir.2(1) New Delhi	ACIT Central Circle, Meerut
3	Sh. Anil Kumar Saha PAN – AMYPS 1829D	DCIT, Cir.2(1) New Delhi	ACIT Central Circle, Meerut
4	Sh. Geetamber Anand PAN – ACHPA 0868 K	DCIT, Cir.2(1) New Delhi	ACIT Central Circle, Meerut
5	M/s ATS Infrastructure Ltd.	DCIT, Cir.2(1)	ACIT Central

	PAN- AADCA 0809B	New Delhi	Circle, Meerut
6	M/s ATS Promoters and Builders Pvt. Ltd, PAN-AABCA 4298C	ITO Ward 2(2) New Delhi	ACIT Central Circle, Meerut
7	M/s ATS Construction and Maintenance Pvt. Ltd PAN – AACCS0562 Q	ITO Ward 2(2) New Delhi	ACIT Central Circle, Meerut

This transfer is effected for administrative convenience and coordinated investigation.

This issues with the concurrence of the Commissioner of Income Tax (Central), Kanpur vide his letter no. CIT (C)/ KNP 58-02-08/08-09/620 dated 03.06.08.

The order shall come into force from 13th Oct., 2008.

sd/-
(VIJAY SHARMA)
Commissioner of Income Tax,
Delhi-I, New Delhi.”

2. The learned counsel for the petitioners submitted that on 30.09.2008 the Commissioner of Income Tax, Delhi had issued a letter with regard to the proposal for transferring the jurisdiction over the petitioners’ cases to Meerut from Delhi. On 06.10.2008 the petitioners submitted detailed representations before the said Commissioner of Income Tax containing several objections to the proposal for transferring their cases to Meerut. On 07.10.2008 the petitioners also submitted a detailed representation before the Chief Commissioner of Income Tax (respondent No.1). The said representation also contained several objections to the proposals for transfer of cases to Meerut. The objections taken by the petitioners were that the head office and the

registered office of the company were situated in Delhi at 711/92 - Deepali, Nehru Place, New Delhi and the directors' residences were either in Delhi or Noida only. The petitioners also took the objection that the main company being ATS Promoters and Builders Private Limited and other group entities and its directors were being assessed in Delhi since the very incorporation of the company and other entities. It was also contended that the business activities of the petitioners were located at Noida which is close to Delhi and that there was no activity of the petitioners in Meerut. It was, therefore, contended that it would be very difficult for the assessee to attend the assessment proceedings on a day to day basis at Meerut. They had no objection to the centralization of all the assessment proceedings at one place but, according to the petitioners, that could easily be done at Delhi which would be convenient for all parties. It is apparent that the impugned order passed by the Commissioner of Income Tax, Delhi -I, does not deal with the objections and merely states that "after considering the objections filed by the assessee in response to the show cause notice under Section 127" the cases were being transferred to the Assessing Officer at Meerut. The order also only states that the transfer was effected for administrative convenience and coordinated investigation.

3. The learned counsel for the petitioners has placed before us a decision of this Court in the case of *Nitin Developers and Const v.*

CIT: 284 ITR 605 wherein it has been observed that the order of transfer under Section 127(2) ought to disclose proper application of mind to the objections which the assessee may have raised. The Court observed that this principle is fairly well-settled. In the present case, we find that the order does not disclose proper application of mind to the objections and obviously the order does not indicate as to how the objections raised by the petitioners have been met.

4. In these circumstances, we set aside the impugned order. It would be open to the Commissioner of Income Tax (Delhi)-I, New Delhi to pass another order under Section 127(2) after granting a further opportunity of hearing to the petitioners. We make it clear that the order that would be passed by the Commissioner of Income Tax ought to deal with the objections, if any, raised by the petitioners.

These writ petitions stand disposed of accordingly.

Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 05, 2008
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