

Court No. - 39

Case :- WRIT TAX No. - 393 of 2020

Petitioner :- Ajay Kumar Katta

Respondent :- The Principal Commissioner Of Income Tax

Counsel for Petitioner :- Ranvijay Chaubey, Ankit Saran, Krishna Dutt Tiwari, Shubham Agrawal

Counsel for Respondent :- Gaurav Mahajan

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

In re : C.M. Amendment Application No. of 07 of 2022.

For the reasons contained in the affidavit filed in support of the amendment application, the application is allowed.

Let necessary amendment be incorporated within a week.

Order Date :- 30.11.2023

SA

(Shiv Shanker Prasad, J.)

(S.D. Singh, J.)

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Counsel for Respondent :- Gaurav Mahajan

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Shiv Shanker Prasad, J.

1. Heard Shri Shubham Agrawal, learned counsel for the petitioner and Shri Gaurav Mahajan, learned counsel for the revenue.

2. Present writ petition is directed against the order dated 25.02.2020 passed by Principal, Commissioner of Income Tax, Moradabad, passed under Section 127 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), whereby he transferred the assessment case of the petitioner arising from the search proceedings conducted under Section 132 (1) of the Act from ITO-2(1), Moradabad to Central Circle 16, New Delhi.

3. At the stage of entertaining the writ petition a co-ordinate bench has passed the below quoted order :

"The contention of learned counsel for the petitioner is that the impugned order under Section 127 of the Income Tax Act has been passed without opportunity of hearing to the assessee inasmuch as the notice dated 14.02.2020 fixing 19.02.2020 was served on 18.02.2020 and, within such a short period, the petitioner could not appear, therefore, on 21.01.2020, he moved an application for adjournment of the date. Application seeking adjournment was served upon the Commissioner, but no further date of hearing was informed to the petitioner and straightway, on 25.02.2020, transfer order was passed under Section 127 of the Income Tax Act.

Sri Gaurav Mahajan has accepted notice for the respondent. He prays for 10 days' time to seek instructions so as to ascertain whether after receiving adjournment request, any notice or information was given to the petitioner as regards the date for hearing of the matter. He shall also seek instructions as to whether any subsequent development has taken place after the order dated 25.02.2020.

Put-up this matter on 8th October, 2020 in the additional cause list."

4. The writ petition has remained pending for three years. While pleadings have been exchanged, no interim order came to be granted to the petitioner as may have stayed the operation and effect of the transfer order dated 25.02.2020 or the assessment proceedings before the authority to whom the petitioner's assessment case was transferred.

5. In paragraph 3(iv) and paragraph 3(v) of the counter affidavit filed by the revenue, it has been averred as below :

"(iv) That it is most respectfully submitted that subsequent to the order dated 25.02.2020 passed u/s 127 of the Act, the petitioner has been participating in assessment proceedings for different assessment years before the Asstt. C.I.T, Central Circle-16, Delhi.

*In respect of A/Y-2018-19 the assessment proceedings carried out by the ACIT, Central Circle-16, Delhi has culminated in passing of assessment order dated 19.04.2021 u/s 143 (3) of the Act. **A photo copy of the Assessment Order dated 19.04.2021 u/s 143 (3) of the Act is enclosed and annexed herewith as Annexure C.A-1.***

(v) That it is further most respectfully submitted that subsequent to the order of transfer the petitioner is participating in assessment/reassessment proceedings being carried out by the ACIT, Central Circle-16, Delhi for various other assessment years.

For the A/Y 2014-15 notice u/s 148 of the Act dated 20.03.2021 had been

issued by the Asstt. Commissioner of Income Tax, Central Circle 16, New Delhi requiring the assessee to submit a return of income for the said assessment year within 15 days. In response the assessee had furnished its return of income for A/Y-2014-15 on 07.04.2021 and has also led its objections to the reasons recorded. **Photocopies of the Notice issued u/s 148 of the Act, copy of Return and objections of the assessee in respect of A/Y - 2014-15 are collectively enclosed and annexed herewith as Annexure C.A-2.**

Similarly for the A/Y-2017-18 notice u/s 148 of the Act dated 01.03.2021 had been issued by the Asstt. Commissioner of Income Tax, Central Circle 16, New Delhi requiring the assessee to submit a return of income for the said assessment year within 15 days. In response the assessee had furnished its return of income for A/Y-2017-18 on 20.03.2021 and has also filed its objections to the reasons recorded. **Photocopies of the Notice issued u/s 148 of the Act, copy of Return and objections of the assessee in respect of A/Y - 2017-18 are collectively enclosed and annexed herewith as Annexure C.A-3.**"

6. In reply thereto, the petitioner furnished his reply in paragraph 6 of the rejoinder affidavit, it has been averred as below :

"6. That content of paragraph 3(iv) and 3(v) of the counter affidavit are denied, except what is matter of record. It is submitted that the petitioner has filed the writ petition in this Hon'ble court in June 2020 itself and since no interim order has been granted, hence the petitioner was compelled to participate in the assessment proceedings in Delhi to avoid any ex-parte assessment order, creating huge liability upon the petitioner. Though the petitioner has participated under protest, yet the petitioner was continuously pursuing its remedy before this Hon'ble court challenging the transfer of his case. It is submitted that if order transferring the case of the petitioner to New Delhi is set aside by this Hon'ble court, then all the consequential reassessment orders passed by the assessing authority would automatically be without jurisdiction and void-ab-initio. It is submitted that if the foundation goes then the superstructure automatically falls. It is submitted that for the

Assessment Year 2018-19, the return income of the petitioner has been accepted by the assessing authority as would be evident from **Annexure No. CA-1.**

It is submitted that for the Assessment Year 2014-15 also, reply filed by the petitioner was found to be satisfactory and hence no addition was made and the returned income of the petitioner has been accepted which has already enclosed by the petitioner alongwith the supplementary affidavit filed by it.

*For the Assessment Year 2017-18, assessing authority has passed the protective assessment order in the hands of the petitioner and has made substantial addition in the hands of Mohit Garg. It is submitted that the petitioner has already filed an appeal before CIT(Appeals) against the assessment order passed for the Assessment Year 2017-18. It is submitted that the aforesaid appeal is still pending adjudication. Photocopy of the assessment order passed for the Assessment Year 2017-18 both in the case of the petitioner and Mohit Garg alongwith the memo of appeal having been filed by the petitioner is enclosed as **Annexure No. RA-1** collectively."*

7. Thus, it is admitted to the petitioner that in absence of any interim protection granted in these proceedings, the Assessing Authority proceeded to pass assessment orders in the case of the petitioner for the Assessment Years 2014-15, 2017-18 and 2018-19, all of date 20.03.2022. Further, he would state that the assessee has preferred statutory appeal for the Assessment Year 2017-18 before the Appellate Authority at New Delhi. That appeal is still pending. For the other two Assessment Years 2014-15 and 2018-19, there is no surviving dispute between the parties.

8. In view of the facts noted above, we find that the turn of events arising from the search has completed. Statutory remedy of appeal has arisen to the petitioner. It has also been availed. Thus, we find no real grievance surviving as on date as may require our adjudication at this belated stage.

9. It is undeniable that the assessee was exposed to assessment proceedings as a result of the search proceedings. Though the assessee may have had a right to claim that he was liable to be assessed at Moradabad, it is a fact that the assessment proceedings were transferred under an order passed under the Act. Also, the assessee has participated in the proceedings before the authority to whom the case was transferred and has availed the remedy of appeal thereagainst.

10. At such late stage, we are disinclined to entertain the issue on merits of the transfer order as the assessment had to be made in the case of the assessee, the grievance that he had raised at Moradabad and not at New Delhi is seen to have been rendered practically academic.

11. In view of the above facts, we are disinclined to offer any interference in exercise of our extra ordinary jurisdiction under Article 226 of the Constitution of India at this belated stage.

12. Accordingly, the writ petition is **dismissed**.

Order Date :- 30.11.2023
SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)