IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21214 of 2014(O&M)
Date of Decision: 6.1.2015

M/s Piyush Shelters India Private Limited
... Petitioner

Versus

Commissioner of Income Tax, Gurgaon & ors.
... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. Deepesh Aneja, Advocate,
for the petitioner.

Mr. Rajesh Sethi, Advocate, and
Mr. Arun Biriwal, Advocate,
for the respondents.

RAJIVE BHALLA, J.(Oral)

By way of this order we shall decide CWP Nos.21214, 22852 and 22856 of 2014 as controversy in these petitions relates to legality of an order passed under Section 127(2) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

Counsel for the petitioner submits that order dated 30.5.2014 transferring jurisdiction, in respect of the petitioner-company, to Kanpur has been passed without service of a show cause notice or affording an opportunity of hearing to the petitioner. Counsel for the petitioner further contends that Section 127(1) of the Act envisages transfer of jurisdiction only after the assessee is provided a reasonable opportunity of being heard. A perusal of the record reveals that what to talk of a reasonable opportunity of being heard, no notice was ever served upon the petitioner. Counsel for the petitioner further submits that in case, a show cause notice had been issued/served to the petitioner they would have brought it to the notice of the officer that in the interregnum the registered office has shifted to Meerut. Counsel for the petitioner prays that the impugned order may be set aside and the Commissioner may be directed to reconsider the matter.

Counsel for the revenue, while accepting the fact that a written show cause notice was not issued, points out that in a post decisional reply, the assessee has admitted that a telephone call was received thereby proving that the petitioner was aware that proceedings for transfer of jurisdiction were in progress. This apart, a perusal of note-sheet prepared on 29.5.2014 reveals that proceedings have been signed by the petitioner's representative thereby proving that an opportunity of hearing, as required by Section 127(2) of the Act, was granted to the petitioner.

We have heard counsel for the parties, perused the impugned orders as well as Section 127 of the Act, which empowers officers named in the said provision to transfer of jurisdiction from one Assessing Officer to another. The power conferred by Section 127 of the Act may be exercised, but only after affording the assessee a reasonable opportunity of being heard and by recording reasons for the transfer. The requirement of affording an assessee a reasonable opportunity of hearing inheres service of a notice calling upon the assessee to show cause why jurisdiction should not be transferred from one to another Assessing Officer. The requirement of a reasonable opportunity of hearing would require the officer concerned to form an opinion of the necessity of transfer from one to another jurisdiction, apprise the assessee of such an impending eventuality and upon receipt of a reply, if any, from the assessee, afford an opportunity of hearing and then pass a reasoned order as required by Section 127 of the Act.

A perusal of the record as well as the reply reveals that the respondents are unable to refer to any show cause notice much less any communication that may answer to the description of a notice informing the assessee about the proposed change of jurisdiction. A reference in the post decisional representation filed by the assessee to a telephone call may give rise to an inference that the assessee was aware of a proposal to transfer jurisdiction, but does absolve the authority of its obligation to disclose the particulars of the proposed transfer. The presence of a representative of the assessee on 29.5.2014, as recorded in the order-sheet could have been relevant if this fact had been recorded in the impugned order or if the impugned order had recorded any contention raised by the said representative. A perusal of the impugned order reveals that it does not refer to any contention raised on behalf of the assessee thereby clearly proving that the assessee was not afforded any opportunity of hearing.

In view of what has been recorded hereinabove, we have no hesitation in holding that the impugned orders are contrary to the provisions of Section 127 of the Act and consequently, allow the writ petitions, set aside the impugned orders and direct the Commissioner of Income Tax, Gurgaon, to pass a fresh order after affording an opportunity to the petitioners to file their reply to the proposed transfer of jurisdiction. The matter be concluded within one month from the receipt of certified copy of this order.

(**RAJIVE BHALLA)**
JUDGE

6.1.2015 **(B.S. WALIA)**
monika **JUDGE**