IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Writ Petition No.24923 of 2013
Date of Decision:10th February, 2015

M/s Kuantum Papers Limited ..Petitioner

versus

Union of India and others ..Respondents

Civil Writ Petition No.25440 of 2013

Pavan Khaitan and another Petitioners

versus

Union of India and others Respondents

and

Civil Writ Petition No.25466 of 2013

Jagesh Kumar Khaitan and another Petitioners

versus

Union of India and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: Ms. Munisha Gandhi, Senior Advocate
with Mr. Gaurav Goel, Advocate,
for the petitioners.

Mr. Rajesh Katoch, Advocate
and Mrs. Savita Saxena, Advocate
for the respondents.

RAJIVE BHALLA, J.

By way of this order, we shall decide Civil Writ Petition Nos. 24923, 25440 and 25466 of 2013 as the petitioners pray for setting aside orders transferring their assessments from Patiala to Ghaziabad.

Counsel for the petitioners submits that the Amrit Group of Company underwent an acrimonious family settlement in July, 2010, M/s Amrit Banaspati Company and Amrit Corporation Limited fell to the share of the Bajaj Group while M/s ABC Papers Limited (now known as Kuantum Paper Limited) fell to the share of the family of Shri J.K.Khaitan. Consequent upon a search operation, notices were served upon the petitioners proposing to transfer their assessments from DCIT/ACIT Circle-I, (1) New Delhi to DCIT/ACIT and Chandigarh to Central Circle, Patiala. The petitioners conveyed their "no objection" and vide order dated 17.1.2013 and 30.8.2012, assessments were transferred. A fresh show cause notice was, however, served upon the petitioners for re-transfer to Ghaziabad. Despite vehement opposition,assessments were arbitrarily transferred to Ghaziabad. The orders were challenged in CWP No.8768 of 2013 titled Pavan Khaitan and another versus Union of India and others and CWP Nos.4129 and 14461 of 2013. The order of transfer was eventually set aside on 20.9.2013 by holding that the respondents have failed to assign any reasons, much less any reason for re-transfer from Patiala to Ghaziabad but with an opportunity to proceed afresh. The respondents thereafter served a fresh show cause notice upon the petitioners for re-transfer to Ghaziabad. The petitioners filed a detailed reply dated 1.11.2013 raising various objection, but vide order dated 5.11.2013, the objections were rejected and assessments have once been transferred to Ghaziabad.

Counsel for the petitioner submits that, admittedly, the assessees were originally assessed at Delhi and Chandigarh. The

Bajaj group was assessed at Ghaziabad. The petitioners agreed to the transfer of assessment from New Delhi and Chandigarh to Patiala. The assessments having been transferred to Patiala, the respondents were required to assign clear and cogent reasons for re-transfer to Ghaziabad. The petitioners and the Bajaj group are unrelated insofar as it relates to business after 2006. A perusal of the impugned order reveals that apart from using the words "co-ordinated investigation" and "administrative convenience", which were adversely commented upon by this court in order dated 20.9.2013, no fresh reason has been assigned. It is further contended that once a conscious decision was taken to centralise cases at Patiala, there is no justifiable reason, much less has a reason been assigned to review the decision and re-transfer the assessments to Ghaziabad. Counsel for the petitioners submits that the order of re-transfer is an order reviewing the earlier decision and as Section 127 of the Act does not confer the power of review, the impugned order is illegal and void. It is also urged that the impugned order has been passed without application of mind and apparently under pressure from the Bajaj group which has considerable influence in Ghaziabad. The cases of this group were also transferred to Patiala but they manipulated a retransfer to Ghaziabad. The mere fact that the the cases of the other group have been transferred to Ghaziabad cannot be a ground to transfer the petitioners' assessments to Ghaziabad. A reason, put forth for re-transfer, is that most of the assessees are being assessed at Ghaziabad. The reason is factually incorrect, as is apparent from the table set out at page 18 of the paper-book. Counsel for the petitioners submits that as all relevant facts were before the respondents when assessments were centralised at Patiala, the absence of any new fact to transfer the assessments to Ghaziabad renders the impugned orders null and void. Counsel for the petitioners relies upon Kalabharti Advertising versus Hemant Vimalnath Narichania and others, 2010(6)RAJ 457, Assistant Commissioner, Income Tax, Rajkot versus Saurashtra Kutch Stock Exchange Ltd. (2008)219 CTR (SC)90, Patel Narshi Thakershi and others versus Shri Pradyumansinghji Arjunsinghji, AIR 1970 SC 1273, Harbhajan Singh versus Karam Singh and others, AIR 1966 SC 641, Rajesh Mahajan and others versus Commissioner of Income Tax, 2002-(257)-ITR-0577-P&H, Deep Malhotra and others versus The Chief Commissioner of Income Tax and others [2011]334 ITR 232 (P&H) to contend that if power to review is not conferred by statute, such a power cannot be exercised. The other judgments pertain to the nature and exercise of power under Section 127 of the Act.

Counsel for revenue, on the other hand, submits that the petitioners' apprehension of bias or influence of the other party at Ghaziabad is misplaced as during pendency of the writ petition, the other group has been assessed and a huge demand has been raised pertaining to the transfer of shares. The petitioners have filed the present writ petitions with the sole object of delaying the assessments. A perusal of the impugned order reveals that clear and cogent reasons have been assigned for transferring assessments to Ghaziabad, namely, the petitioners and others were, during relevant period, a common entity and the matter pertains to transfer of shares and other activities of these companies. Counsel for the respondents further submits that power under Section 127 of the Act to transfer an assessment from one Assessing Officer to another, is administrative in nature and, therefore, inhers the power of re-transfer. The power to retransfer cannot be said to be exercise of the power of review. It is true that initially, all assessments were centralized at Patiala, but as orders were passed with respect to other group transferring their assessments to Ghaziabad, the petitioners had to follow suit and therefore, their assessments were transferred to Ghaziabad. A perusal of the order passed as well as averments in the additional affidavit reveals that clear and cogent reasons have been assigned for transferring assessments to Ghaziabad. Even otherwise, an order passed under section 127 of the Act, is an administrative order and if clear and cogent reasons are assigned such an order, cannot be set aside in the exercise of writ jurisdiction. The assessee was originally assessed at Delhi and as Ghaziabad is much closer to Delhi than Patiala, the petitioners should be satisfied. The fact that there may have been an acrimonious parting of ways between the petitioners and the other assessees, cannot be a ground to cast aspersions upon the department, particularly when the other assessees have already been assessed and huge demands have been raised against the assessees.

We have heard counsel for the parties, perused the impugned orders and duly considered the precedents pressed into service by counsel for the petitioners.

Admittedly, the petitioners were initially assessed at Delhi and Chandigarh but after a search and seizure operation, their assessment was centralized along with other assessees at Patiala but before assessments could commence, the assessments of other assessees, who had parted ways with the petitioners, were transferred to Ghaziabad. The respondents, therefore, served a show cause notice under section 127 of the Act, proposing to transfer the petitioners' assessments to Ghaziabad. An order was eventually passed transferring assessments to Ghaziabad. The petitioners filed separate writ petitions challenging these orders. The writ petitioners were allowed and orders of transfer were set aside for failure to assign any reason, much less a reason for re-transfer. The respondents were, however, granted an opportunity to proceed afresh. A fresh show cause notices were served upon the petitioners. The petitioners filed a reply and after they were afforded a reasonable opportunity, the impugned orders transferring assessments to Ghaziabad, came to be passed. A relevant extract from the impugned order reads as follows:-

> " It is also stated that the group has remained a joint business which was started in 1940, till the year 2010, i.e., just before the date of search. The connectivity of group business for such a long time cannot be struck off at once. As per assessee's own submission the group had remained a joint business till the year 2010 (just

before the date of search, i.e. 04.05.2011) and thereafter had undergone an acrimonious family settlement in July, 2010 resulting in division of business between the two family factions. Consequent to search, the assessment for six preceding years gets opened for assessment, which is the period in which the business was joint. This group and its various transactions are intricately connected at least for the period before the 2010 when the group had the joint existence. There is thus a need to have coordinated investigation in the group and the assessee's case also needs to be centralized with the rest of the cases of the ABC Group at Ghaziabad. Cases of the group are proposed to be transferred to Central Circle, Ghaziabad for better coordinate as well for convenience of majority of the assessees and analysis of seized material during assessment in this group of cases....."

The impugned order, thereafter, goes on to reproduce section 127 of the Act and after analysis thereof, assigns the following reasons for transferring assessments to Ghaziabad:-

" 10. From the above, it is clear that it is only after fulfilling the relevant conditions prescribed u/s 127 of the Act, your case being a search case is proposed to be transferred and centralized with Central Circle, Ghaziabad. In a search case, detailed inquiry/investigation are required to be conducted for verification of seized material and other issues arising in such cases for framing a meaningful assessment. The inquiries and investigation are required to be conducted, verification/reconciliation of seized material and transactions of all the assessees involved in the searched group are required to be done in a coordinated manner. In your case, your group also had remained joint business, which was started in 1940 till the year 2010 i.e. just before the date of search. The connectivity of the group business for such a long time cannot be severed at once. Otherwise also the assessments for the last six years preceding the year of search are also made in the cases where action u/s 132 has been taken like in your group of cases. From the above, it follows that assessment for assessment years starting from A.Y.2006-07 to 2012-13 are required to be completed as per provisions of the Act governing assessment for the assessment year 2006-07 to 2011-12 preceding the year of search had common linkage in your group of cases which cannot be severed at once."

As regards the question of re-transfer, the officer has held as follows:-

"13. In view of above discussion and since there is no bar under I.T.Act, 1961, for re-transferring a case or a group of cases from a particular A.O or station to another A.O. or station, your case for the reasons discussed above has been proposed to be retransferred from

Central Circle, Patiala to Central Circle, Ghaziabad...."

A perusal of the impugned order reveals that instead of using the words normally used in such orders, namely, "administrative convenience" and "co-ordinated investigations", the authority has, after examining the necessity to transfer assessments to Ghaziabad, assigned detailed reasons for transfer of assessments to Ghaziabad, namely, that the two groups were so entwined before the search on 4.5.2011 as to warrant assessments at one place and the nature of the relationship between the two groups requires their assessments at one place so as to ensure a co-ordinated investigation into account statements and various documents seized during investigation. The authority has also opined that a detailed inquiry/investigation is required to be conducted for verification of the seized material and other issues for framing a meaningful assessment.

As submitted by counsel for the revenue, assessments relating to the other group have been finalised by raising a demand pertaining to certain transaction to which the petitioners are a party. The entire material has been transferred to the officer at Ghaziabad and, therefore, in our considered opinion, would require assessments to be carried out at Ghaziabad.

The petitioner does not urge that centralisation of assessments is not warranted or not permissible but that once centralisation was ordered at Patiala, there is no ostensible reason for re-transfer to Ghaziabad and that such an order amounts to a review. We have considered this argument with a great degree of care but are not inclined to answer it in favour of the petitioners. Section 127 of the Act, confers a power to transfer assessments but with a few caveats, namely, the affording of a reasonable opportunity to the assessees and the assigning of reasons. The power to transfer an assessment is administrative in nature. An order passed under section 127 of the Act would, therefore, fall for judicial review only where it has violated statutory safeguards provided by Section 127 of the Act or the order has been passed without assigning any reasons or is mala fide or arbitrary. A perusal of the impugned order reveals that clear and cogent reasons, as reproduced in a preceding paragraph, have been assigned for re-transfer of the assessments from Patiala to Ghaziabad, which are preceded by a credible process of reasoning, a just and fair consideration of the objections thereby negating arguments as to a mala fide or perverse exercise of jurisdiction.

An argument raised by counsel for the petitioners that as assessments were initially centralised at Patiala, their re-transfer to Ghaziabad is a review of the earlier order must necessarily be rejected. The power to transfer assessments is an administrative power and necessarily inhers the power to re-transfer. We are unable to read into Section 127 of the Act any impediment prohibiting the re-transfer of an assessment. The fact that the other assessees have already been assessed at Ghaziabad renders imperative that the petitioners are also assessed at Ghaziabad.

As regards judgments cited by counsel for the petitioners, we can not possibly have any quarrel with these precedents as they hold that an order under section 127 of the Act cannot be passed without assigning reasons. A perusal of the impugned order reveals that the reasons have been assigned for re-transfer from Patiala to Ghaziabad. The other judgments relate to the argument that power of review cannot be exercised if it is not conferred by a statute. As we have held that the order of retransfer is not an order of review, these judgments are irrelevant.

In view of what has been recorded hereinabove, the writ petitions are dismissed.

( RAJIVE BHALLA )
JUDGE

( HARINDER SINGH SIDHU)
JUDGE

10th February,2015
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