IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.15173 of 2017
Date of decision: July 14, 2017

The Citizen Urban Cooperative Bank Ltd.

....Petitioner

versus

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Jorawar Singh Bhasin, Advocate and
Mr. Rajiv Sharma, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. Prayer in this petition filed under Article 226 of the Constitution of India is for quashing the impugned order dated 29.06.2017 (Annexure P-12) passed by respondent No.5 under Section 127 of the Income Tax Act, 1961 (in short, 'the Act') , transferring the petitioner's assessment proceedings from Circle-3, Jalandhar to Central Circle-I, Jalandhar under the charge of respondent No.4 without issuing any prior notice seeking petitioner's objections.

2. A few facts relevant for decision of the controversy involved as narrated in the petition may be noticed. The petitioner is a bank registered with the Registrar of Cooperative Societies, Chandiagrh. It is carrying on

business under license issued by the Reserve Bank of India in accordance with Banking Regulation Act, 1949. After the announcement of demonetization process in the country from 08.11.2016 to 31.12.2016, the petitioner was duly authorized to exchange and deposit old currency notes of ₹ 500/- and ₹ 1,000/- and to allow disbursal of new currency notes along with prevailing currency notes within the limits of prescribed by the Reserve Bank of India to its customers, from all its branches in and around Jalandhar. As a large amount of old currency notes were being deposited by the customers, the petitioner-Bank, not having the currency chest, was required to deposit the surplus cash, in excess of its retention limits, in other banks having arrangements with the petitioner. On 21.11.2016, when the demonetization of old currency notes was in full swing, three of the petitioner's employees, namely, Sh. Padam Gupta, Assistant Manager, Sh. Amit Bawa, Clerk-cum-Cashier and Sh. Rakesh Sobti, Daftri, deployed at its Sabzi Mandi Branch, Jalandhar with the approval from Head Office, took out ₹ 90 lacs from the safe custody of the Bank at around 9:20 AM, for deposit with the Branch of Punjab National Bank at Railway Road, Jalandhar. Since the Bank's vehicle was under repair at that time, Sh. Padam Gupta, Assistant Manager, used his car to carry the cash, at around 9:20 AM. At about 9:25 AM, the said employees, carrying the cash, were intercepted by the Police personnel at a Naka near Workshop Chowk, Jalandhar. They disclosed their identity. In the meanwhile, the Bank Manager along with Guard also reached at the site and intervened to clarify that the cash belonged to the Bank. The Police personnel took the vehicle along with cash to the nearby Police Chowki and made an entry in the General Diary Register (Annexure P-2). Thereafter, an Income Tax

Officer with two of his Inspectors, reached the Police Chowki and verified the documents and other evidence available with the employees and recorded their statements. On the same day, in the afternoon, the Assistant Direct of Income Tax (Investigation), Jalandhar [in short, the ADIT(Inv.)] conducted a survey at the petitioner's Head Office and personally checked and verified the various documents. The cash was not released to the petitioner-Bank and on the contrary, a warrant was issued under Section 132A(1) of the Act, requisitioning of the said cash from Police and thereafter, deposited in the Personal Deposit Account of the Principal Commissioner. No official intimation of the said seizure was given either to the petitioner or any of its employees. The petitioner moved a letter dated 01.12.2016 (Annexure P-4) to the Director General of Income Tax (Investigation), Chandigarh (in short, 'the DGIT'), seeking release of the said cash but no response was received. The petitioner vide letter dated 14.12.2016 (Annexure P-5) approached its Assessing Officer to adjust the seized cash against its advance tax liability due on 15.12.2016. Vide letter dated 15.12.2016 (Annexure P-6), the Assessing Officer conveyed that as per information received from ADIT (Inv.), only survey under Section 133A of the Act was conducted on the petitioner and thus, denied adjustment of cash seized. Payment of advance tax was sought by 15.12.2016. On 19.12.2016, Sh. Padam Gupta, Assistant Manager, from whom immediate possession the cash was seized, filed a petition (Anenxure P-7), with his Assessing Officer ITO Ward III(3), Jalandhar, under proviso to Section 132B (1)(i) of the Act, seeking release of seized cash and also filed an affidavit Annexure P-8, deposing that the said cash did not belong to him, but was the exclusive property of the Bank. After waiting for three months, the petitioner filed another letter i.e. Annexure P-9, with respondent No.5, with a request to release the seized amount. On 07.04.2017 (Annexure P-10), the concerned three employees of the petitioner-Bank filed a collective letter with the ADIT(Inv.), with a request to supply copy of requisition with copy of authorization issued under Section 132A(1) of the Act and copies of the statements recorded under Section 131(1A) of the Act. On persistent failure of the department in not releasing the cash seized, the petitioner along with its employees filed Civil Writ Petition No.10139 of 2017 in this Court which is pending. Notice was issued in the said writ petition. According to the petitioner, inspite of the notice issued by this Court, respondent No.1 passed order dated 17.04.2017 (Annexure P-11)(colly.), under Section 127 of the Act, transferred the assessment cases of the petitioner from the respective territorial jurisdiction to the Central Circle-I, Jalandhar, on the proposal received from respondent No.2 for the reason that the cash of ₹ 90 lacs found from their possession was requisitioned and seized pursuant to execution of warrants issued under Section 132A of the Act. Further, the assessment case of third employee, namely, Sh. Amit Bawa, too had been transferred by the Principal Commissioner of Income Tax-I, Jalandhar to Central Circle-I, Jalandhar. Hence, the present writ petition filed by the petitioner-Bank.

3. We have heard learned counsel for the petitioner.

4. Admittedly, cash of ₹ 90 lacs was seized from Sh. Padam Kumar, by the police authorities on 21.11.2016. The said amount was requisitioned from police authorities under warrant of authorization under Section 132A of the Act. A survey operation was conducted under Section 133A of the Act on the petitioner-Bank and certain books/documents were

impounded. The cases of Sh. Padam Kumar and Sh. Rakesh Sobti, who were employees of the Bank had already been centralized with DCIT, Central Centre-I, Jalandhar. Therefore, the Principal Commissioner of Income Tax in exercise of powers under Section 127 of the Act transferred the cases from one Assessing Officer to the other in the same area. At this stage, it would be expedient to refer to the provisions of Section 127 of the Act which reads thus:-

> "127. **Power to Transfer Cases**
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> (1) The Director General or Chief Commissioner or 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 or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.
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> (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-
>
> > (a) where the Directors General or Chief Commissioners or Commissioners,. to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred 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, pass the order;

(b) where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub- section (1) or sub- section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

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

5. A perusal of the above provision shows that Principal Director General or Director General or Principal Chief Commissioner may after giving the assessee a reasonable opportunity of hearing and recording reasons for doing so, transfer any case from one Assessing Officer to another subordinate to him. Sub-section (3) provides that no opportunity of hearing is required if the transfer is from one assessing office to another if

they are situated in the same city, locality or place. Here the assessment case of the petitioner has been transferred from Circle 3, Jalandhar to Central Circle-I, Jalandhar and therefore, no prior notice was required to be issued to the petitioner. A perusal of the grounds raised for challenging the order of transfer passed under Section 127 of the Act would show that the petitioner under the garb of present petition is attempting to challenge the merits of the controversy which could not be the scope of the present petition challenging transfer order.

6. In view of the above, in the facts and circumstances of the case, it is concluded that there is no reason to hold that the transfer order passed under Section 127 of the Act is illegal, perverse or is in violation of any statutory provision under the Act. Learned counsel for the petitioner-Bank has not been able to show any error in the impugned order warranting interference by this Court under Articles 226/227 of the Constitution of India. Consequently, finding no merit in the petition, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(AVNEESH JHINGAN)
JUDGE

July 14, 2017
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Whether speaking/reasoned? **Yes**

Whether reportable? **Yes**