IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.707 OF 2019

Naresh Manakchand Jain ... Petitioner
versus
Principal Commissioner of Income Tax-20
and Ors. ... Respondents

Mr. Sumit Patni I/by Mr. S.S.Lanke, for Petitioner.
Mr. A.R.Malhotra, for Respondents.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 15th JULY, 2019

P.C.:

1. The Petition is filed by the Assessee to challenge the order dated 12th September, 2018 as at annexure A to the Petition, passed by the Principal Commissioner of Income Tax, Mumbai, transferring the Petitioner's assessments for the assessment years 2011-12 and 2012-13 in exercise of the powers under Section 127 of the Income Tax Act, 1961 ("the Act" for short).

2. Brief facts are as under :

The Petitioner is an individual and is regularly assessed to the tax. He had filed return of income for the assessment years 2011-12 and 2012-2013 before the appropriate Assessing Officer at Mumbai. It appears that one Ranka Jewellers Group, was subjected to search and seizure operation by the Income Tax Department. The said group of assessees was being assessed by the Assessing Officer under the jurisdiction of the Principal Commissioner of Income Tax, Pune. The Petitioner was visited with a show cause notice dated 21st January, 2017 issued by the department in which he was conveyed the proposal for transferring his assessments in following terms :

> *"Sub : Centralization of your case to DCIT/ACIT Central Circle-2(1), Pune date of search & Survey – 20.10.2016 – reg.*
>
> *Kindly refer to the above.*
>
> *The Pr. Commissioner of Income Tax (Central), Pune, has sent a proposal to centralize your case with DCIT/ACIT Central Circle-2(1), Pune consequent to the search and survey action carried out on 20.10.2016 in the case of Ranka Group of cases. You are requested to submit your objection if any, to the proposed centralization within five days from the receipt of this letter, failing which it will be presumed that you have no objection to the proposed centralization and accordingly order u/s 127 of the Income Tax Act, 1961 will be passed centralizing your case with DCIT/ACIT Central Circle-2(1), Pune under the charge of Pr. CIT (Central), Pune."*

3. In response to such notice, the Petitioner raised detailed objections under a communication dated 6th March, 2017 contending interalia that the proposed exercise of the powers was impermissible. The Petitioner had no dealings with any person in

the Ranka group. The need to centralize the Petitioner's assessments with the said group of assessees therefore, did not arise. The Petitioner relied on certain judgments. He also sought personal hearing.

4. On 11th May, 2017 the Income Tax Officer wrote to the Petitioner asking him to remain present with his objections before the concerned authority. The Petitioner responded to the said letter under a communication dated 16th May, 2017 contending that the Petitioner was out of station on the said and requested for fixing another date of hearing. On this communication itself, a remark was put by the officer stating that next date of hearing is fixed on 5th June, 2017. On 4th June, 2017 the Petitioner inwarded a letter in department reiterating his objections to the transfer of assessments and stated that if the authority still has any reservation, a personal hearing may be given. Admittedly, on 5th June, 2017 no one remained present on behalf of the Petitioner for personal hearing. Thereupon, the Principal Commissioner, Mumbai, passed the impugned order.

5. Appearing for the Petitioner learned Counsel Shri Patni raised the following contentions :

(i) The impugned order was passed in breach of the principle of natural justice. The show cause notice did not indicate any reasons why the assessments had to be transferred. In the final order, the authority has relied on several documents and materials never supplied to the Petitioner. There was no reference to such materials even at the show cause notice.

(ii) There was no agreement between the Principal Commissioner, Mumbai and the Principal Commissioner, Pune, as required under Section 127 of the Act. On that ground also, the impugned order must fail.

(iii) Counsel further submitted that the agreement between the said jurisdictional Commissioners must be arrived at before the issuance of the show cause notice itself, which in the present case, was totally absent.

(iv) Counsel further submitted that principle of natural justice which would include the requirement of fair hearing must take within its fold a right of personal hearing, which in the present case was not granted.

6. Counsel relied on certain judgments, reference to which would be made at the later stage.

7. On the other hand, learned Counsel appearing for the Department vehemently opposed the Petition contending that the show cause notice was issued and opportunity of hearing was granted to the Petitioner. Even personal hearing was allowed. The Petitioner did not avail of the opportunity. The Principal Commissioner, Mumbai has passed the impugned order. His concurrence to the proposal for transfer of the assessments is thus writ large of the face of the record. Such concurrence does not have to be stated in any precise words or any particular format. As long as the concurrence can be culled out from the record, the same would

be sufficient compliance to the requirement of Section 127 of the Act.

8. At the outset, we may record that when the assessment of an Assessee is being transferred from one Commissionerate to another, the requirement of hearing and following the principle of natural justice is inbuilt in the statutory provisions contained in Section 127 of the Act. Several courts have taken such a view. It is not necessary to load this judgment with all such pronouncements. Reference to a decision of this Court in case of *Shikshana Prasaraka Mandali, Sharda Sabhagruha, S.P.College Campus, Pune V/s. The Commissioner of Income Tax (Central) and Ors.*[1] would suffice. In the said case, the Court quashed the order of transfer of assessment on the ground that the proceedings were in breach of the principle of natural justice. It was held that the grounds stated in the impugned order were never put to the Petitioner for his remarks. The Court observed as under :

> *"15. The giving of notice containing the reasons for the proposed action is a basic postulate for compliance of the Audi Alteram Partem Rule. It is axiomatic that unless a party is informed of the reasons for the proposed action, it would be impossible for the noticee to put forth its point of view with regard to the reasons for the proposed action. The views of the noticee are to be considered by the authority before taking any decision to confirm or drop the notice. A show cause notice to be effective must be adequate so as to enable a party to effectively object/respond to the same. The authority concerned is obliged to consider the objections, if any,*

1 2013 SCC Online 379

> *and thereafter, reach a finding one way or the other. This along ensures absence of arbitrary exercise of powers by the authorities. Thus, there has been failure of Audi Alteram Partem Rule and the case of the Petitioner has been transferred in breach of natural justice de hors the non giving of personal hearing to the Petitioner. In that view of the matter also the order dated 2/8/2012 passed by the respondent cannot be sustained."*

9. This aspect has been elaborated by this Court in an another decision in the case of *Sahara Hospitality Ltd. V/s. Commissioner of Income Tax-8 and Ors., dated 12th September, 2012 in Writ Petition No.596 of 2012*.

10. Neither of these decisions nor other decisions placed before us by the Counsel for the Petitioner, however, lays down the proposition in law that such requirement of hearing would include personal hearing. However, in facts of the present case, we are not inclined to test the impugned order on this ground, since admittedly the Department had offered such personal hearing, which the Petitioner did not avail of. We have noted that initially personal hearing was fixed on 16th May, 2017. The Petitioner conveyed his unavailability on said date and sought an adjournment. Hearing was refixed on 5th June, 2017, on which date also the Petitioner merely filed his written submissions and did not participate personally or through authorized representative. The Petitioner therefore, cannot complain that personal hearing though asked for, was not granted. Such hearing was granted, but not availed of.

11. Despite such observations, we did not find that in the present case, the procedure adopted by the concerned authority in passing the impugned order passes the test of following the principles of natural justice which would include fair hearing. We have reproduced the entire show cause notice issued to the Petitioner, which merely conveyed to him that search and survey action was carried out in case of Ranka Group of cases and the Petitioner should therefore, submit an objection to his assessments being centralized. This show cause notice no where points out how the Petitioner was connected with the said Ranka Group and what useful purpose would be served in centralizing his assessments with the said group of assessees.

12. Far more importantly, in the impugned order, the Principal Commissioner of Mumbai has relied on various statements of the assessees of the said group, on the basis of which he came to the conclusion that it would be necessary to centralize the Petitioner's assessments with the said group of assessees also. Relevant portion of the impugned order reads as under :

> *"The assessee Shri Naresh M. Jain in his statement recorded u/s. 132(4) of the Act has admitted tht by using the bank and Demat accounts of the entry providers, has systematically provided bogus exempt LTCG entry to Ranka Jewellers Group and other beneficiaries. Further Shir Abhinandan Suresh Jain has in his statement recorded u/s. 132(4) of the Act accepted the fact that Naresh M. Jain inflated the scrip price of Risa International Ltd., with connivance of other operators. The mediators Shri Bhupesh*

> *Harishchandra Rathod and Rakesh H. Shah have accepted in their recorded statements that they provided signed cheques and other documents related to bank accounts and demat accounts of the entry providers to Naresh M. Jain for certain commission. The statement recorded u/s. 132(4) of the Act is itself admissible evidence as per the Indian Evidence Act. The statements of all the persons mentioned above clearly indicate the involvement of Shri Naresh M. Jain in organizing the artificial price rise in the shares of M/s. Risa International Ltd. It is also clear that co-ordinated investigation in the cases of M/s. Ranka Group cannot take place unless the case of Shri Naresh M. Jain is also centralized with the same officer who is assessing the other cases of M/s. Ranka Jewellers Group."*

13. In this portion thus, the Principal Commissioner referred to the statements of one Abhinandan Jain recorded under Section 132(4) of the Act, suggesting that the Petitioner had inflated the script price of one Risa International Ltd., in connivance with other operators. The statements of other witnesses were referred to suggest that the Petitioner had received commission for such activities. According to him, such statements establish the involvement of the Petitioner in organizing artificial price rise in the shares of the said Company. Admittedly, none of these aspects were stated in the show cause notice, nor the statements or even the gist of the statements to the extent relevant, was provided to the Petitioner. The Petitioner therefore, had no opportunity to meet with such adverse material which the Principal Commissioner

pressed in service for passing the impugned order. Under the circumstances, the impugned order is quashed. In view of such conclusion, we need not examine the Petitioner's alternative contention that there was no concurrence between the two jurisdictional Commissioners about transfer of the assessments. The Writ Petition is accordingly disposed of.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**