

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
(Original Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.O. 835 of 2024

Reserved on : 29.11.2024
Pronounced on: 04.12.2024

Pradeep Kumar Kajaria

...Petitioner

-Vs-

Union of India & Ors.

...Respondents

Present:-

Mr. S. M. Surana, Sr. Adv.

Mr. Bhaskar Sengupta

... .. for the petitioner

Mr. Soumen Bhattacharjee

Mr. Ankan Das

Ms. Shradhya Ghosh

... .. for the respondents.

Rajarshi Bharadwaj, J:

1. The Petitioner prefers the present petition Challenging the transfer being procedurally flawed and in violation of the principles of natural justice. The facts of the case in a nutshell are that the petitioner is an individual deriving income from various sources, including salary, share of profits from a partnership firm/LLP, and other sources. The Petitioner has been regularly filing income tax returns in Kolkata under PAN No. AFJPK5331E as per the provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The Petitioner is a permanent resident of Kolkata and has been assessed under the jurisdiction of the Income Tax Officer, Ward 36(1), Kolkata, for several years. Notices, including one issued under Section 148A(b) of the Act, dated March 28, 2023, bearing DIN: ITBA/AST/F/148A(SCN)/2022-23/1051521182(1), evidence this assessment history. The Petitioner's PAN record address with the department is **12, Bonfield Lane, Burrabazar, Kolkata-700001, West Bengal, India.**

3. The Petitioner is a minority partner in **M/s. Saraidhela Developers LLP**, a firm engaged in property construction, having its registered office at **62 Bentick Street, Kolkata-700069**, and operations in Saraidhela, Dhanbad, Jharkhand.

4. A search was conducted on October 31, 2023 at the premises of a partner, one Mr. Alok Satnaliwala and the offices of the LLP, including its Dhanbad branch, under a search warrant issued by the Deputy Director of Income Tax (Investigation), Dhanbad.

5. A consequential search was conducted at the Petitioner's residential premises under a warrant issued on October 31, 2023. No undisclosed assets, cash or jewellery were found, although certain papers were seized as evidenced by the Panchnama served on the Petitioner.

6. On December 13, 2023, the Principal Commissioner of Income Tax (Pr. CIT), Kolkata-5 herein respondent no. 3, issued a notice under Section 127(2) of the Act proposing the transfer of the Petitioner's assessment records to the Assistant Commissioner of Income Tax, Central Circle, Dhanbad, citing vague reasons, including the presence of "incriminating documents" and instructions under CBDT Instruction No. 05/2001. However, no such instructions were attached.

7. The Petitioner objected to this proposal through a detailed letter dated December 19, 2023, emphasizing the absence of incriminating documents or valid grounds for transfer and highlighting that the Petitioner neither resides nor conducts business in Dhanbad. The Petitioner sought a copy of any material relied upon but did not receive any further response.

8. The respondent no.3, did not provide an opportunity of being heard or supply the incriminating material, contrary to the principles of natural justice and the procedural requirements under Section 127(2).

9. Subsequently, the case was transferred to the jurisdiction of the Assistant Commissioner of Income Tax, Central Circle, Dhanbad, without proper intimation to the Petitioner.

10. The Petitioner later received a notice under Section 148A(b), dated March 30, 2024, and notices under Section 142(1) for various assessment years from the Dhanbad Assessing Officer, which were objected to by the Petitioner on jurisdictional grounds.

11. The Petitioner, having received no copy of the transfer order despite requests, filed an RTI application on July 02, 2024 and obtained a copy of the order only on August 02, 2024.

12. The transfer order, issued under Section 127(2), lacked valid reasons and did not address the Petitioner's objections or provide any supporting material. No evidence demonstrated an agreement between the respondent no.3 and respondent no.4, for such transfer resulting in the initiation of the present petition.

13. The Learned Counsel appearing for the petitioner submits that the transfer of their assessment under Section 127(2) of the Income Tax Act, 1961, is arbitrary, lacking valid justification and violative of statutory and procedural requirements. The Respondents have failed to comply with the

mandatory provisions, including granting the Petitioner a proper opportunity to be heard and disclosing the incriminating material relied upon. The reliance on vague and unsubstantiated grounds for such transfer undermines the principles of procedural fairness, rendering the impugned action legally unsustainable.

14. The Petitioner further submits that the mandatory procedural safeguards under Section 127(2) were not adhered to, specifically the requirement of an agreement between the Principal Commissioners concerned. The transfer order in question fails to address the objections raised by the Petitioner and does not provide any substantive material to justify the necessity of the transfer. This non-compliance with statutory provisions vitiates the validity of the order.

15. The Petitioner contends that the notices subsequently issued by the Dhanbad Assessing Officer are without jurisdiction, as the purported transfer of records was executed invalidly and without adherence to statutory mandates. The failure of the Respondents to comply with legal provisions has caused grave prejudice to the Petitioner, necessitating intervention by this Hon'ble Court.

16. The Petitioner acknowledges that a coordinated and sustained investigation may, under appropriate circumstances, serve as a valid ground for transfer. However, such action requires the existence of cogent reasons and prima facie material justifying the necessity of the transfer. The issuance of a notice under Section 127(2) is not a mere procedural formality but a statutory requirement. This provision must be interpreted to mandate the application of mind by the authorities, with the reasons for the transfer being clearly stated and disclosed to the assessee.

17. The Petitioner relies upon authoritative judicial precedents underscoring the procedural and substantive requirements under Section 127(2). The

Hon'ble Delhi High Court in ***Mul Chand Malu v. Union of India*** reported in **(2016) 383 ITR 367** emphasized that actions under Section 127(2) must be based on cogent material. Furthermore, the Hon'ble Calcutta High Court in ***Kamalnath v. The Principal Commissioner of Income Tax, Kolkata & Ors.*** reported in **(2023) 453 of ITR 588** set aside a transfer for violation of natural justice, holding that materials supporting the transfer and their relevance must be disclosed to the affected party.

18. Learned Counsel appearing for the respondent submits that the transfer order under Section 127 of the Income Tax Act, 1961, was duly passed by the respondent no.3, on March 21,2024, after following the statutory provisions and affording sufficient opportunity to the Petitioner to present their case. The Petitioner filed the present Writ Petition in August 2024, belatedly, despite being aware that the assessment proceedings are time-barred in March 2025. This delay indicates an attempt to derail the statutory process.

19. It is further submitted that the transfer of the Petitioner's case was not an isolated action but part of a coordinated effort to centralize related cases. Other partners of M/s. Saraidhela Developers LLP, including one Mayank Kajaria, Usha Devi Kajaria, Neha Kajaria, Sri Gaurav Kajaria, Sri Pawan Kumar Kajaria and Shri Surajit Kajaria have also had their cases transferred to the Deputy Commissioner of Income Tax, Central Circle, Dhanbad. This was necessitated due to incriminating material discovered during searches conducted at the firm's offices in Kolkata and Dhanbad, which pointed to potential concealment of income.

20. The transfer was based on cogent material requiring coordinated investigation and meaningful assessment, as mandated by the Income Tax Act. It is emphasized that the order under Section 127 is primarily administrative rather than quasi-judicial. The Petitioner submitted their response to the show cause notice and all objections raised were duly

considered. Thus, the contention that principles of natural justice were violated is without merit.

21. The respondent authority also assert that the Petitioner cannot claim a right to choose their assessing authority. The Petitioner, being a partner in a business operating in Dhanbad, faces no undue hardship or inconvenience due to the transfer. The absence of any grievance regarding hardship further reinforces the validity of the order.

22. Additionally, proceedings under Section 148A(b) were initiated by the Central Circle, Dhanbad, on March 30, 2024, in furtherance of the transfer order. The Respondents rely on judicial precedents, including **General Exports vs. Commissioner of Income Tax** reported in **(1999) 104 Taxman 566 (Madras)**, which held that orders passed after issuing show-cause notices, providing sufficient opportunity, and recording reasons warrant no interference. Similarly, in **Dollar Gulati vs. Principal Commissioner of Income Tax** reported in **(2024) 162 Taxmann.com 348 (Delhi)**, it was held that transfers for administrative convenience and meaningful assessment are justified.

23. Furthermore, as established in **Shri Rishikul Vidyapeeth vs. Union of India** reported in **(1982) 136 ITR 139 (Rajasthan)**, transfers facilitating coordinated investigations with connected cases are valid. These rulings affirm that the impugned transfer order aligns with statutory provisions and administrative necessities.

24. Upon a thorough examination of the documents presented to the Court and taking into account the arguments put forth by the parties, this Court allows the writ petition on the grounds that the transfer order issued under Section 127(2) of the Income Tax Act, 1961, is found to be procedurally flawed. The respondent no.3 herein the Principal Commissioner of Income Tax, Kolkata-5, failed to adhere to the principles of natural justice. Despite the

Petitioner's detailed objections to the proposed transfer and a request for the disclosure of incriminating material, no opportunity of being heard was provided and the requested material was not furnished. Such omissions violate the procedural safeguards enshrined under Section 127(2), rendering the transfer order invalid.

25. The impugned order also lacks cogent reasons to justify the necessity of transferring the Petitioner's case. The reasons cited, such as the presence of "incriminating material" and reliance on CBDT instructions, are vague and unsubstantiated. Moreover, no supporting documentation or prima facie evidence was provided to demonstrate the relevance or existence of such material. The statutory mandate for the application of mind and proper reasoning under Section 127(2) was not fulfilled.

26. Further, the Respondents failed to demonstrate compliance with the requirement of agreement between the jurisdictional Principal Commissioners, as required by law. The absence of documented concurrence between the respondent no.3 herein the Principal Commissioner of Income Tax, Kolkata-5, and respondent no. 4 herein the Principal Commissioner of Income Tax, Central Patna, is a significant procedural lapse, vitiating the legality of the transfer order.

27. The Respondents' argument that the transfer was necessitated for coordinated investigation and meaningful assessment holds merit only when supported by valid reasons and material evidence. In the present case, the purported need for coordination is not substantiated by specific or credible evidence linking the Petitioner's assessment to the alleged concealment of income by the partnership firm.

28. Moreover, judicial precedents emphasize the importance of adhering to statutory provisions and principles of natural justice in such matters. The

failure to comply with these requirements, as noted in ***Mulchand Maloo (supra)*** and ***Kamalnath (supra)***, warrants judicial interference.

29. The Hon'ble Supreme Court in ***Smt. Chandra Prabha Kushwaha & Ors. v. Commissioner of Income Tax and Anothers*** reported in **(2014) 361 ITR 66** held that:

"6. We are not inclined to express any opinion on the merits of the issue as to whether the cases are required to be centralised since that has to be determined after following the procedure prescribed under section 127(2) of the Act. Moreover, the reasons have to be spelt out in the order which has been passed under section 127(2) of the Act which is admittedly not the case here."

30. For the foregoing reasons, this Court concludes that the impugned transfer order is legally unsustainable. All subsequent notices and actions taken by the Dhanbad Assessing Officer, based on this invalid transfer, lack jurisdiction. Accordingly, the writ petition is allowed and the transfer order is set aside. All pending applications are accordingly disposed of.

31. There shall be no order as to costs.

32. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

04.12.2024

PA (BS)