WP(C) 4487/2009
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

1. Heard Mr. Kanan Kapoor, learned counsel for the petitioner as well as Mr. U. Bhuyan, learned Standing counsel, Income Tax Department.

2. This writ petition is directed against the order dated 01.08.2007 (Annexure-B) by which the writ petitioner was directed to furnish true and correct return of income regarding assessment year 2000-01 in respect of which the petitioner was shown assessable as an assessee. The notice further provides that the return should be furnished in the form as prescribed in sub-rule (1) of Rule 12 of the Income Tax Rule, 1962 and should be delivered in the office within 15 days after service of the notice. In the last paragraph of the notice, it has been stated as follows:

It is also being intimated to you that vide order Memo No. 18/127/Centralisation/ CIT/GHY-II/02-03/1365-69 dated 24.07.2007 of the Commissioner of Income Tax, Guwahati-II, Guwahati jurisdiction over you case has been transferred to this Office and therefore, you are requested to direct all your income tax related correspondence to this office and from now onwards Income Tax returns are also to be filed in this office only.

3. From the above what is seen is that by an order dated 24.07.07 passed by the Commissioner of Income Tax, Guwahati-II, Guwahati jurisdiction over the petitioner had been transferred to the office of the Assistant Commissioner of Income Tax, Central Circle-5, New Delhi and accordingly the petitioner was requested to make all the income tax related correspondences to the said office.

4. It is the case of the petitioner that he was never intimated about the order dated 24.07.07 and no reason whatsoever was assigned to him towards transferring the jurisdiction from Guwahati to New Delhi.

5. By Annexure-A notice dated 10.07.07 issued under Section 142 (1) of the Income Tax Act, 1961, the petitioner was directed to prepare true and correct return of his income in respect of the assessment year of 2005-06 and to submit the same to the Assessing Officer who is the Assistant Commissioner of Income Tax, Circle -3, Guwahati.

6. Mr. Kapoor, learned counsel for the petitioner upon a reference to the provision of Section 127 (1) of the Act, submits that the impugned order is palpably illegal being violative of the said provision and thus it requires to be interfered with. He has also placed reliance on the decision of the Apex Court reported in (1976) 102 ITR 281 (SC) (Ajanta Industries & ors. vs. Central Board of Direct Taxes & ors.) as well as the decisions reported in (2010) 320 ITR 361 (Cal.) (Naresh Kumar Agarwal vs. Union of India and others) and (1991) 187 ITR 405 (AP) (Vijayasanthi Investments (P) Ltd. vs. Chief Commissioner of Income Tax & ors.).

7. Referring to the counter affidavit filed by the respondents, Mr. Kapoor, learned counsel for the petitioner has contended that the order dated 24.07.07 purportedly passed under Section 127 of the Income Tax Act, 1961 does not disclose any reason whatsoever. The reasons for transfer as have been disclosed in the said order dated 24.07.07 is administrative convenience and coordinating and effective investigation . He submits that the reasons shown in the order dated 24.07.07 being vague and indefinite, same can not be said to be in compliance of the requirements of the reasons to be assigned as per the provisions of Section 1

27 (1) of the Act.

8. Mr. U. Bhuyan, learned Standing counsel, Income Tax Department, on the other hand, supporting the aforesaid order dated 24.07.07, submits that the reasons assigned in the order being sufficient, the writ Court exercising its power of judicial review under Article 226 of the Constitution of India, will be reluctant to interfere with the same. He submits that if the petitioner is aggrieved by non-furnishing of the notice, it is always open for him to approach the authority for such notice with reasons.

9. I have considered the submissions made by the learned counsel for the parties as well as the materials on record. In the rejoinder affidavit, the petitioner has submitted that he being a permanent resident of Guwahati and having regard to his background and root in Guwahati, it is unbelievable that the authority was unable to serve notice on him. Further, stand of the petitioner is that since the requirement of assigning reasons as contemplated in Section 127 (1) of the Act has also not been complied with, the impugned order is liable to be set aside and quashed.

10. In Ajanta Industries (supra), the Apex Court dealing with the requirement of assigning reasons in the order has made the following observations:

6. &The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Art. 226 of the Constitution or even this Court under Art. 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

7. We are clearly of opinion that the requirement of recording reasons under s. 127() is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

Mr. Sharma drew our attention to a decision of the Delhi High Court in Sunanda Rani Jain Vs. Union of India (1975) CTR (Del) 135: (1975) 99 ITR 391 (Del): TC 69R. 693, where the learned single Judge has taken a contrary view. For the reasons, which we have given above, we have to hold that the said decisions is not correct.

The appellant drew our attention to a decision of this Court in Shri Pragdas Umer Vaishya vs. Union of India (1967) 12 MPLJ 868, where r. 55 of the Mineral Concession Rules, 1960, providing for exercise of revisional power by the Central Government was noticed. It was held that under r. 55 the Central Government in disposing of the revision application must record its reason and communicate these reasons to the parties affected thereby. It was further held that the reasons could not be gathered from the notings in the files of the Central Government. Recording of reasons and disclosure thereof is not a mere formality.

Mr. Sharma drew our attention to a decision of this Court in Kashiram AGgarwalla vs. Union of India (1965) 56 ITR 14 (SC) : TC 69R. 660. It is subitted that this Court took the view that orders under s. 127(1) are held in that decision to be purely administrative in nature passed for consideration of convenience and no possible prejudice could be involved in the transfer. It was also held therein that under the proviso to s. 127(1) it was not necessary to give the appellant an opportunity to be heard and there was consequently no need to record reasons for the transfer. This decision is not of any assistance to the Revenue in the present case since that was a transfer from the ITO to another ITO in the same city, or, as stated in the judgment itself in the same locality and the proviso to s. 127(1), therefore, applied.

When the law requires reasons to be recorded in a particular order affecting prejudicially the interest of any person, who can challenge the order in Court, it ceases to be a mere administrative order and the vice of violation of th

e principles of natural justice on account of omission to communicate the reason s is not expiated.

8. Mr. Sharma also drew our attention to a decision of this Court in S. Nar ayanappa vs. CIT (1967) 63 ITR 219 (SC) : TC 51 R. 651, where this Court was dea ling with s. 34 of the old Act. It is clear that thee is no requirement in any o f the provisions of the Act or any section laying down as a condition for the in itiation of the proceedings that the reasons which induced the CIT to accord san ction to proceed under s. 34 must also be communicated to the assessee. The ITO need not communicate to the assessee the reasons which led him to initiate the p roceedings under s. 34. The case under s. 34 is clearly distinguishable from tha t of a transfer order under s. 127(1) of the act.

When an order under s. 34 is made the aggrieved assessee can agitate the matter in appeal against the assessment order, but an assessee against whom an order of transfer is made has no such remedy under the Act to question the order of transfer. Besides, the aggrieved assessee on receipt of the notice under s. 34 may even satisfy the ITO that there were no reasons for reopening the assessm ent. Such an opportunity is not available to an assessee under s. 127(1) of the Act. The above decision, is therefore, clearly distinguishable.

11. In the case of Vijayasanthi Investments (supra), the Andhra Pradesh High Court has observed thus:

8. From the aforesaid decisions, it is clear that, in the matter of the transfe r of a case under s. 127 of the Act, it is necessary that the authority which pr oposes to transfer the case must, wherever it is possible to do so, give the ass essee a reasonable opportunity of being heard with a view to enable him to effec tively show-cause against the proposed transfer. The notice must also propose to give a personal hearing. It is also necessary to mention in the notice the reas ons for the proposed transfer so that the assessee could make an effective repre sentation with reference to the reasons set out. It is not sufficient merely to say in the notice that the transfer is proposed to facilitate detailed and co-o rdinated investigation . The reasons cannot be vague and too general in nature b ut must be specific and based on material facts. It is again not merely sufficie nt to record the reasons in the file but it is also necessary to communicate the same to the affected party.

12. In Naresh Kumar Agarwal (supra), the Calcutta High Court also observed t hus:

8. So far as the notice is concerned though it has been mentioned that the prop osed transfer is for co-ordinated investigation and assessment , it does not me ntion any specific reasons for transfer. Merely stating that transfer is for co -ordinated investigation and assessment is not at all sufficient as the assess should be intimated about the reasons in a comprehensive manner in order to enab le him to make effective representation.

13. Section 127 mandats that assessee must be given a reasonable opportunity of being heard while exercising the power to transfer cases. Although a rider wherever it is possible to do so is also there, it is not the case of the respo ndents that it is not possible to do so. Further, the order is to be passed afte r recording the reasons for doing so. Apart from the fact that the petitioner wa s not provided with any opportunity of being heard in the matter, the reasons as signed in the order dated 24.07.07 which is administrative convenience and for co-ordinating effective investigation also cannot be said to be the reasons as envisaged in Section 127 (1) of the Act. It is in this context, Mr. Kapoor, lear ned counsel for the petitioner has referred to the aforesaid two decisions rende red by Andhra Pradesh High court and Calcutta High Court. In both the decisions, the High Courts have emphasised on the need to assign detailed reasons while h olding that it is not sufficient merely to show in the notice that the transfer

is proposed to facilitate the detail and coordinated investigation . In the And hra Pradesh High Court decision the said quoted portion, was assigned to be t he reasons, which did not find favour of the court.

14. In view of the above, the writ petition succeeds on both counts, i.e. no n issuance of notice to the petitioner and non-furnishing of reasons for transfe rring the matter from Guwahati to New Delhi. Consequently, the impugned order dated 01.08.07 (Annexure-B) stands set aside and quashed. The writ petition is a llowed, however, without any order as to costs.

15. Setting aside of the impugned order may not preclude the respondents fr om proceeding with the matter in accordance with law, if so advised.