

HIGH COURT OF BOMBAY

Sunisha Impex (P.) Ltd.

v.

Commissioner of Income-tax -7, Mumbai*

MOHIT S. SHAH, C.J.
AND M.S. SANKLECHA, J.
WRIT PETITION NO. 2498 OF 2013
JANUARY 6, 2014

ORDER

1. Leave to amend. Amendment to be carried out forthwith.
2. At the request of learned counsel for parties, the petition is taken up for final disposal at the stage of admission itself.
3. By this petition under Article 226 of the Constitution of India, the Petitioner has challenged the order of Commissioner of Income Tax dated 13 April 2011 passed under Section 127(2) of the Income Tax Act, 1961 ('the Act'). By the impugned order dated 13 April 2011 the Petitioner's case (all pending proceedings) has been transferred from Income Tax Officer 7(2)(4) Mumbai to Deputy Commissioner of Income Tax, CC 1(3), Bangalore with effect from 16 April 2012.
4. The Petitioner is a company engaged in trading of and also derives income by way of rent, interest and dividend. The business of the Petitioner company is looked after by one Hasmukhray Amin who is one of the Directors of the Petitioner company and seventy years of age. One of the other Director on board of the petitioner company is one Priyakant Amin, the son of Hasmukhray Amin.
5. In the course of a search action effected at Bangalore it was found prima facie that one Jitendra Salecha had facilitated accommodation entries for the benefit of Priyakand Amin and P.S. Wadhwa. The Revenue authorities also conducted search at the Petitioner's address at Mumbai and statement of Hasmukhray Amin was also recorded. Consequent to the above, a summons under Section 131(1A) of the Act was issued to Priyakant Amin as Director of the petitioner company to explain the losses derived which appears to be bogus. The said Priyakant Amin responded to the notice by letter dated 28 July 2011 and pointed out that only Hasmukhray Amin who looks after the petitioner will be able to explain.
6. Thereafter the Commissioner of Income Tax by the impugned order transferred the case of the petitioner from ITO, Mumbai to Deputy Commissioner of Income Tax, Bangalore for co-ordinated investigation and assessment. However, it appears that the copy of the impugned order was not served upon the petitioner and same came to the notice of the petitioner only on the revenue filing its affidavit in reply. Therefore, leave was sought to amend the petition to challenge the impugned order and the same was granted.
7. The grievance of the Petitioner is that the impugned order dated 13 April 2012 transferring the Petitioner's proceedings from Mumbai to Bangalore has been passed without indicating any reasons, save and except mentioning that the order of transfer has been issued for co-ordinated

investigation and assessment. Besides, the further grievance is that impugned order was not preceded by either any notice or personal hearing. Consequently it is submitted that the order transferring the petitioner's case from Mumbai to Bangalore passed under Section 127(2) of the Act is not sustainable.

8. As against the above, Mrs. Bharucha appearing on behalf of Revenue submits that a summons under Section 131(1A) of the Act was issued on 27 July 2011 to Mr. Priyakant Amin, inter alia, to explain certain transactions which the assessee had with one Jitendra Salecha and particularly, the loss claimed by the petitioner. This was on the basis that the loss which was claimed was bogus and only by way of accommodation entries. However, Mr. Priyakant Amin who is one of the Directors of the petitioner did not respond to the notice on merits and pointed out that the day to day business of the petitioner company was looked after by his father Hasmukhray Amin. In the above view, it is the submission of Mrs. Bharucha that as the Petitioner has been non-cooperative, it is necessary for the purpose of co-ordinated investigation and assessment that the petitioner's case be transferred at Bangalore. In the above view, it is submitted that the transfer order passed by the Commissioner of Income Tax need not be interfered.

9. We have considered the rival submissions. We are conscious of the fact that as assessee does not have a right to be assessed by a particular Assessing Officer or at a particular place. Nevertheless the power to transfer proceedings from one place to another under Section 127 of the Act cannot be exercised arbitrarily. We find that in the present case, neither any notice was issued to the Petitioner nor was any personal hearing was granted to the Petitioner before passing the impugned order dated 13 April 2012. Our Court in *Shikshan Prasarak Mandali v. CIT* <http://www.taxmann.com/fileopen.aspx?Page=CASELAWS&id=10101000000084335&source=link> has held that giving of notice of the proposed transfer and hearing before passing any order of transfer under section 127 of the Act is necessary otherwise it is in breach of audi alteram partem rule. Besides we also noticed that no reasons have been indicated in support of the impugned order dated 13 April 2012, save and except stating that the order of transfer is issued for the sake of "co-ordinated investigation and assessment". This Court in *Global Energy (P.) Ltd. v. CIT* has held that the transfer of proceedings for the purposes of co-ordinated investigation could be a good ground for transfer of a case. However, while transferring the case on the ground of co-ordinated investigation, it is incumbent upon the Commissioner of Income Tax to indicate the reasons why it is necessary to transfer the case for the purposes of co-ordinated investigation. It is not even remotely suggested by the revenue that it was not possible for them to issue notice or grant personal hearing before passing the impugned order. Therefore, on the above grounds of breach of natural justice i.e. not giving of notice, not giving a personal hearing and passing the order without reasons, the impugned order dated 13 April 2012 is set aside.

10. It is made clear that although the impugned order dated 13 April 2012 is set aside, it would be open to the Commissioner of Income Tax to pass an order under Section 127 of the Act after following the principles of natural justice and the procedure prescribed under Section 127 of the Act.

11. The petition is allowed in the above terms. No order as to costs.