IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

ITA No. 23 of 2017 alongwith
CWP No.6575 of 2014
Reserved on : 30.12.2024
Decided on: 02.01.2025

ITA No. 23 of 2017

M/s Deluxe Enterprises .....Appellant

Versus

Income Tax Officer ....Respondent

CWP No.6575 of 2014

M/s Deluxe Enterprises .....Petitioner

Versus

Union of India and others ....Respondents

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[Yes]

For the appellant/petitioner: In person.

For the respondents: Mr. Balram Sharma, Dy. SGI with Mr. Rajiv Sharma, Advocate, for respondent No.1 in CWP No.6575 of 2014.

Mr. Ishan Kashyap, Advocate for respondent in ITA No.23 of 2017 and for respondents No. 2 to 5 in CWP No. 6575 of 2014.

Justice Tarlok Singh Chauhan Judge

Since common questions of law and fact arise for consideration in both appeal and writ petition, therefore, they were

taken up together for hearing and are being disposed of by a common judgment.

2 Brief facts of the case are that Mr. Vivek Bhalla (appellant in ITA No.23/2017 and petitioner in CWP No. 6575/2014), hereinafter referred to as the appellant/petitioner, established M/s. Deluxe Enterprises, Delhi, in the year 1997 as partnership firm and obtained permanent account number (PAN) with registered office at E 143, Sector 1 Dwarka, New Delhi.

3 In the year 1999, the appellant/petitioner established industrial undertaking/manufacturing unit/branch at Village Ranguwal, Bhartgarh Road Nalagarh, Himachal Pradesh, and commenced its operations on 23.12.1999 manufacturing different types of cotton yarn, textiles etc.

4 On 13.03.2006, respondent No. 4 i.e. Assistant Commissioner of Income Tax Circle 24(1), New Delhi, assessed the income of the petitioner under section 143(3) of the Income Tax Act, 1961 (for short, the Act). Thereafter, on 14.09.2010 respondent No. 5, i.e. Income Tax Officer, Barotiwala Road, Baddi, issued notices under Section 143 (2) and 142(1) of the Act, initiating proceedings under Section 144 of the Act for the assessment year 2009-2010.

5 According to the appellant/petitioner, he had been regularly filing his income tax returns for the assessment years 1997-1998 to 2012- 2013 at Delhi with respondent No 4. On 27.12.2011

Assessing officer without considering the written reply submitted by the respondents framed the best judgment/assessment under section 144 of the Act for the assessment year 2009-2010 and made additions without first deciding the preliminary issue of jurisdiction.

6 On 24.01.2012, the appellant/petitioner filed an appeal before the Commissioner of Income Tax (Appeals), Shimla, which came to be rejected on 14.03.2013. Thereafter on 03.06.2013, the appellant/petitioner preferred second appeal before Income Tax Appellate Tribunal bench at Chandigarh against the order dated 14.03.2013, which too, has been decided against the appellant/petitioner on 16.1.2017, which has been separately assailed by medium of ITA No. 23/2017.

7 It is vehemently argued by the appellant/petitioner, who has appeared in person, that once he was being assessed by the Assistant Commissioner, Income Tax, New Delhi, respondent No.5 i.e. Income Tax Officer, Barotiwala road, Baddi had no authority to issue notice under Section 143(2) read with Section 142 (1) of the Act and finalize the assessment of the appellant/petitioner without transferring his case file under Section 127 of the Act.

8 Respondents No. 1, 2 and 5 have filed a common reply to the writ petition, wherein it has been averred that the matter in issue arose for the first time as far back as on 14.09.2010 when notice under Section 143(2) of the Act was issued to the petitioner by Income

Tax Officer, Solan and thereafter, the best judgment assessment was framed for that year on 27.12.2011. It is averred that the appellant/petitioner though had already availed alternate remedy of filing statutory appeals against the assessment orders for the assessment year 2009-10 and order of the CIT Appeals in respect of that year, hence, the appellant/petitioner cannot seek the same relief in respect of the present assessment year by filing the writ petition.

9 It is further averred that the best judgment assessment orders under Section 144 of the Act have been passed in respect of assessment year 2011-12 on 10.02.2014 and the petitioner has statutory remedy of appeal. It is not open to the assessee (appellant/petitioner) to choose a place of jurisdiction in contravention of statutory provisions and hence, the writ petition is liable to be dismissed.

10 It is also averred that the PAN of the assessee firm was generated as far back as on 18.02.1999 with the AO Code of I.T.O, Parwanoo as the industrial undertaking of the petitioner exists within his jurisdiction. The selection for scrutiny proceedings is PAN based and the principal place of business is Baddi in Himachal Pradesh.

11 The appellant/petitioner has controverted these allegations by filing rejoinder, wherein it has been averred that the first notice under Section 143 (2) of the Act was issued on 14.09.2010. However, the same was duly replied by the petitioner

and he had also submitted that the notice could not have been issued to the petitioner as the jurisdiction of the petitioner's PAN lies with respondent No.4. However, respondent No.5 went on to assess the petitioner without deciding the preliminary issue of jurisdiction against which, an appeal under Section 246 of the Act was filed and simultaneously, second appeal under Section 253 of the Act was also filed.

12 It has been reiterated that the jurisdiction of the appellant/petitioner has been transferred unilaterally. The appellant/petitioner had been filing his income tax returns at New Delhi mentioning his address of New Delhi on all the income tax returns and was assessed by respondent No.4 for the assessment year 2003-04 also as the jurisdiction was with respondent No.4.

13 As regards respondent No.4, separate reply has been filed on his behalf, wherein it has been averred that it has now come to the knowledge of respondent No.4 that the assessee had applied for PAN with his address "Ranguwal Bharatgarh Road, Nalagarh, Solan, Himachal Pradesh" and therefore, the assessee was allotted PAN:AAAAD022BN on 18.02.1999 with the Income Tax Officer, Parwanoo as per the territorial jurisdiction.

14 It has not been denied that the appellant/petitioner had filed the income tax return manually for the assessment year 2003-04 with respondent No.4 on 28.11.2003 at Delhi's address " Village

Mahipal Pur, New Delhi" and at that time, cases were selected manually for scrutiny, so this case was selected at the office i.e. Office of respondent No.4 for scrutiny for the assessment year 2003-04.

15 Lastly, it has been averred that the case of the appellant/petitioner could not have been picked up for scrutiny assessment by any officer at Delhi as his PAN belonged to I.T.O., Baddi jurisdiction. The PAN of the assessee was never migrated from Himachal Pradesh to Delhi as the assessee since inception was allotted PAN with ITO Parwanoo as per the territorial jurisdiction. Due to this, there was no reason to issue any notice under Section 127 of the Act to transfer the jurisdiction.

16 The appellant/petitioner has filed rejoinder to the reply filed on behalf of respondent No.4 and has reiterated that the income tax record of the appellant/petitioner was originally with respondent No.4, which has been transferred to respondent No.5 unilaterally without first putting the notice to the appellant/petitioner under Section 127 of the Act.

17 We have heard the learned counsels for the parties and have also gone through the material placed on record.

18 The appellant/petitioner had been filing his income tax returns with respondent No.4 ever since the date of inception. The assessment was finalized by respondent No.4 even for the assessment year 2003-04.

19 Once that be so, obviously the income tax returns of the appellant/petitioner which were originally with respondent No.4 could not have been unilaterally transferred to respondent No.5 without complying with the provisions of Section 127 of the Act.

20 Section 127 of the Act reads as under:-

> *127.Power to transfer cases.—(1) The [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal 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.*
>
> *(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 [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner],— (a) where the [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal 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 [Principal Directors General or Directors General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal 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.]

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

21 The twin conditions to be complied with by the respondents for transferring the case of the appellant/petitioner from

respondent No.4 to respondent No.5 are: (i) the assessee should have been given a reasonable opportunity of being heard and (ii) the reasons for transfer should have been recorded.

22 Admittedly, the above procedure has not at all been complied with and the only explanation offered for the same is that Section 127 of the Act was not attracted to the instant case as it was respondent No.5 alone, who had the authority to issue notices under Section 143(2) read with Section 142 (1) of the Act.

23 Such stand of the respondents is simply not tenable as it virtually amounts to putting the cart before the horse and additionally being judge in its own cause, reason being that the respondents would first contend that one of the respondents i.e. respondent No.4 did not have the jurisdiction, which stand is vetoed by respondent No.4 thereafter and this would form the basis of claiming that it was respondent No.5 alone, who had authority and jurisdiction to issue notice. Raising the question and thereafter answering by the respondents themselves cannot furnish a ground sufficient enough to come to conclusion that the provisions of Section 127 of the Act are not attracted in the instant case. This question had essentially to be decided by taking recourse to Section 127 of the Act and not otherwise.

24 After all, even the respondents cannot dispute that the assessing officer in this case has been changed and the records too

stands transferred to him which could have only been done after complying with provisions of Section 127 of the Act and an order passed in absence of any reasons for transfer has essentially to be construed to be the one as having been passed without application of mind.

25 Somewhat identical issue came up for consideration before one of us (Justice Tarlok Singh Chauhan) in **Anand Chauhan vs. The Commissioner of Income Tax, 2015 (1)Him L.R. (DB) 454**, wherein it was observed as under:-

> *31. It is in terms of Section 127 of the Act that the respondent has ordered the transfer of the cases of the petitioners. This provision was subject-matter of consideration before the Hon'ble Supreme Court in M/s Ajantha Industries and others v. Central Board of Direct Taxes, New Delhi and others AIR 1976 SC 437 and relevant observations are as follows:-*
>
> > *10. 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 Article 226 of the Constitution or even this Court under Article 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.*
> >
> > *11. We are clearly of opinion that the requirement of recording reasons under Section 127 (1), 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.

15. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated."

32. A perusal of the aforesaid observations makes it clear that the requirement 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 article 226 of the Constitution so as to enable him to challenge 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 as would be clear from the perusal of para-10 thereof.

33. Furnishing of specific and intelligible reasons for the proposed transfer of the case is only a concomitant of the concept of reasonable opportunity enshrined in section 127 (1) and (2). Unless the assessee knows the precise reasons for the transfer, he would be handicapped in putting forth his objections effectively and in case the transfer of case is based on extraneous considerations then issuance of show cause notice becomes meaningless and is reduced to an idle formality.

26 A valuable right of assessee is clearly involved in the matter, when he objected to jurisdiction of the assessing officer and transfer of his case, which obviously could not have been adjudicated upon without affording an opportunity of hearing and disclosing to him the reasons for not accepting his point of view.

27 Accordingly, we find merit in both the appeal as well as writ petition. Consequently, the impugned order(s) framing the best judgment assessment for the respective assessment years are quashed and set aside. However, this judgment shall not prevent the respondents for initiating proceedings afresh by either resorting to Section 127 of the Act or by initiating or continuing the proceedings through respondent No.4.

(Tarlok Singh Chauhan)
Judge

(Rakesh Kainthla)
Judge

2.1.2025
(pankaj)