

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF APRIL, 2015

BEFORE

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

WRIT PETITION NOs.16038/2015

&

17799-803/2015 (T-IT)

BETWEEN:

SHRI FAROOQ ALI KHAN
AGED ABOUT 48 YEARS
S/O.SHRI GULZAR ALI KHAN
400, I BLOCK, I FLOOR,
II MAIN ROAD, R.T.NAGAR,
BENGALURU - 560 032.

... PETITIONER

(BY SRI.NARASIMHA PRASAD.B.S, ADVOCATE)

AND:

1. THE PRINCIPAL COMMISSIONER OF
INCOME TAX
BENGALURU - 6, I FLOOR,
C.R.BUILDING, QUEEN'S ROAD,
BENGALURU - 560 001.

2. THE ASST. COMMISSIONER OF
INCOME TAX,
CENTRAL CIRCLE -8(2),
ROOM NO.658, 6TH FLOOR, AAYAKAR
BHAWAN, MAHARSHI KARVE ROAD,
MUMBAI - 400 020

.....RESPONDENTS

(BY SRI.K.V.ARAVIND, ADVOCATE)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED NOTICE ISSUED BY THE R-1 U/S 127 OF THE ACT, ENCLOSED WITH THIS PETITION AS ANNEX-H AND THE IMPUGNED NOTICES ISSUED BY THE R-2 U/S 153 A OF THE ACT, ENCLOSED WITH THIS PETITION AS ANNEX-E TO K DT. 26.03.2015.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner is seeking for quashing of notices dated 26.03.2015. Annexures - E to K issued under Section 153A and order/notification dated 06.03.2015, Annexure-M, issued under Section 127 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act' for short), whereunder assessment proceedings of petitioner has been transferred from jurisdictional Assessing Officer namely Assistant Commissioner of Income Tax / Deputy Commissioner of Income Tax, Circle - 6(2)(1), Bengaluru, to the

Assessing Officer, Assistant Commissioner of Income Tax / Deputy Commissioner – Income Tax, Central Circle – 8(2), Mumbai.

2. I have heard the arguments of Sri.Narasimha Prasad.B.S, learned counsel appearing for petitioner and Sri.K.V.Aravind, learned panel counsel appearing for respondents.

3. Search proceedings came to be conducted under Section 127 of the Act at the residence of petitioner, consequent to search conducted in the business premises of Associate Group, Mumbai on 24.02.2014 and 25.02.2014. Sworn statement of the petitioner came to be recorded during the search proceedings under Section 132(4) of the Act before impounding certain documents under Section 133A(3)(ia), which consisted of pen drive, folders, files, registers, etc.

4. On 14.01.2015 first respondent issued notice to petitioner proposing to transfer jurisdiction over the petitioner's case from the Deputy Commissioner of Income Tax, Circle - 6(2)(1), Bengaluru, to second respondent at Mumbai and called upon petitioner to submit his objections, if any, to such transfer by fixing the hearing date as 22.01.2015. Petitioner appeared and filed his response on 20.01.2015 and through his authorized representative made oral submissions in support of his objections filed for transfer.

5. On account of change of incumbent Officer who had issued notice of transfer, second notice came to be issued to petitioner calling for personal hearing before the first respondent on 02.03.2015. Petitioner appeared again and reiterated his earlier objections. Subsequently an order has

been passed on 06.03.2015, Annexure-M, transferring the petitioner's assessment from the jurisdiction of Assistant Commissioner of Income Tax / Deputy Commissioner of Income Tax, Circle 6(2)(1), Bengaluru to Assistant Commissioner of Income Tax, Circle -8(2) of Mumbai. Thereafter, notice came to be issued under Section 153A of the Act to petitioner on 26.03.2015 as per Annexures – E to K calling upon petitioner to deliver a true and correct return of income for the assessment years under reference. Petitioner is questioning said notices and order of transfer contending interalia that:

- (i) order of transfer is not communicated to petitioner;
- (ii) reasons are not assigned in the order of transfer;
- (iii) all relevant particulars ought to have been made available to petitioner at the

time of issuing notice viz., reasons for transfer ought to have been disclosed;

- (iv) reasons assigned in the impugned order namely for the sake of administrative convenience, is vague, general and stock phraseology is used and not based on valid, specific or cogent reasons, which can be said as germane for having nexus to the facts of case;

Reasons assigned does not fulfill the parameters fixed under Section 127 of the Act for the Commissioner to transfer the case of petitioner from Bengaluru to Mumbai.

6. Per contra, Sri.K.V.Aravind, learned panel counsel appearing on behalf of respondents would support the impugned order and contends that on account of search conducted in the business

premises of Associate Group, Mumbai, it resulted in consequential search conducted on petitioner's premises and certain share holders of Associate Group of Mumbai / Directors being associated with the company ADL, Malur, of which petitioner is the Managing Director, necessitated Commissioner to exercise the power under Section 127 of the Act to transfer the assessment proceedings of petitioner from the jurisdictional Assessment Officer, Bengaluru to Assessing Officer at Mumbai, who is framing the assessment proceedings of Associate Group, Mumbai. Hence, he supports the impugned order as well as notices.

7. Having heard the learned Advocates appearing for parties and on careful perusal of case papers and bestowing my careful consideration to rival contentions raised at the bar, it would emerge that under Section 127 of the Act it enables the

Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or Assessing Officers, whether with or without concurrent jurisdiction after giving the assessee a reasonable opportunity of being heard in the matter.

8. In the instant case, undisputedly petitioner is assessed under income tax under the jurisdiction of Deputy Commissioner of Income Tax, Circle 6(2)(1). Petitioner is the Managing Director of ADL having its registered office at Malur near Bengaluru. Said company is a joint venture between Associate Group, Mumbai and petitioner and they hold 67% and 37% shares respectively and said Associate Group which is engaged in the business of real estate, trading, timber, etc. was subjected to

search under Section 132 of the Act on 24.02.2014 and 25.02.2014 namely business premises of Associate Group and residential premises of its Directors in Mumbai. A consequential search operation also came to be conducted at the residence of petitioner and at the office of ADL. This resulted in issuance of notice dated 14.01.2015, Annexure-A, whereunder the Commissioner of Income Tax, Bengaluru, proposed to transfer the petitioner's case from Bengaluru to Mumbai in exercise of his power under Section 127 of the Act namely from Deputy Commissioner of Income Tax, Circle 6(2)(1), Bengaluru, to Deputy Commissioner of Income Tax / Deputy Commissioner of Income Tax, Central Circle 8(2), Mumbai and as such, called upon the petitioner to file objections, if any, to the proposed transfer. Petitioner has filed his objections to the same on 20.02.2015, Annexure-B, and on account of change

in the incumbent Officer, fresh notice came to be issued on 26.02.2015, which also came to be replied to by petitioner on 02.03.2015, Annexures - C and D respectively. An order has been passed on 06.03.2015 transferring the petitioner's case as proposed under show cause notice dated 14.01.2015, Annexure-A. Said order has been impugned in the present writ petition.

9. Any order that is passed by the Commissioner in exercise of power under Section 127 of the Act should contain reasons and recording of reasons is mandatory as otherwise the noticee would not be in position to assail the said order before this Court under the extraordinary jurisdiction. In fact, Coordinate Bench of this Court had an occasion to consider the import of Section 127 of the Act and it has been held that assigning of reason is a must.

10. In the case of **Y.MOIDEEN KUNHI & CO. vs. INCOME-TAX OFFICER** reported in (1993) 71 **TAXMAN 177 (KAR.)** the Co-ordinate Bench of this Court after considering the various contentions raised at the bar has held to the following effect:

“17. Whenever a group of files are transferred from the jurisdictional Assessing Officers at the place where the assesseees are carrying on business or reside, to a place outside the city, locality or place, the assesseees will invariably be put to undue hardship and inconvenience. Therefore, there must be justifiable and valid reasons for such transfer. Whenever several files pending with various assessing authorities are transferred to a single authority, it is necessarily to facilitate co-ordinated investigation. Hence, that cannot be the reason for the transfer. To say that the transfer of several files is being done to facilitate proper co-ordinated investigation does not amount to giving the reason for transfer, but stating the result sought to be achieved by the transfer. Take the example of a group of assesseees each of whom is maintaining true and correct accounts, but assessed with different assessing authorities. It will certainly be convenient and time saving to transfer all the file to a single officer, even though

there is no tax evasion. But on that ground can the files be transferred to a far away place? The answer will be 'no'. The section itself makes a distinction between a transfer to another authority in the same city/locality and a transfer to an authority outside the city/locality. Sub-section (2) of section 127 provides that if the transfer is to another assessing authority in the same city or locality, no opportunity to show cause need be given. That is because there is no stigma attached to such a transfer as the transfer is deemed to be merely a matter of convenience. But if the transfer is outside the city, the transfer ceases to be one of convenience but becomes one with the purpose of countering evasion of tax or a similar reason which is sought to be prevented by the transfer. In such cases, merely stating that the transfer is to facilitate coordinated investigation will not be sufficient reason for the transfer.

18. In this case, xxxxxxxxxxxxxxxxxxxxxxxx can give rise to such a transfer.

19. Whenever the Commissioner orders transfer of the files of a group from one city to another, a tax evasion or misdemeanour by all or several of the parties constituting the group is assumed. Before such a stigma is cast, it is necessary that the affected parties should be notified of the reason for the proposed transfer in the show-cause notice, so that

they can effectively explain why such a course is not necessary. Similarly, it is necessary that the order communicated should also contain the reasons for making the order for transfer. Thus, where the transfer is to another city, then mere mention of stock – phrases like ‘to facilitate coordinated investigation’ or variations thereof will not be in compliance with the mandatory requirement of section 127(1) and contrary to the principles enunciated by the Supreme Court in *Ajantha Industries*’ case (supra). If the decisions of the High Courts of Rajasthan, Calcutta, Delhi, Allahabad and Madhya Pradesh referred to in para 16 above are to be taken as laying down a proposition that even in case of transfers to other cities, it is sufficient to state ‘to facilitate co-ordinated investigation’ or similar formal words as reason for the transfer in compliance with the statutory requirement in section 127(1) relating to giving and communicating reasons, then I respectfully dissent from such a view.”

11. Hon’ble Apex Court in the case of ***AJANTHA INDUSTRIES vs. CBDT*** reported in (1976) **102 ITR 281** has held that while making an order of transfer under Section 127 of the Act requirements of

recording reasons is mandatory and non communication of same to the assessee would not save such order by showing that reasons existed in file although not communicated to assessee. It has been held by the Hon'ble Apex Court in the said judgment to the following effect:

“The reasons 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 or special leave *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.

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.”

“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.”

12. Now turning my attention back to the facts on hand when impugned order is perused it would indicate that there are no reasons forthcoming from the impugned order as to why the assessment proceedings of the petitioner pending before the jurisdictional Assessing Officer at Bengaluru is being transferred to Assessing Officer at Mumbai, except indicating that “transfer is being effected to facilitate effective and coordinate the investigations in the connected case of petitioner”, in which search and seizure operations under Section 132 of the Act was conducted on 24.02.2014 by the Director of Investigations, Mumbai. This would not satisfy the

criteria of reasons as indicated under Section 127 of the Act or the dicta laid down by this Court as well as by the Hon'ble Apex Court in the cases referred to hereinabove. In that view of the matter, I am of the considered view that it would suffice and meet the ends of justice if the impugned order is set aside and matter is remitted back to the Principal Commissioner of Income Tax, Bengaluru-560 006 to redo the matter after affording opportunity to petitioner. If further objections, if any, is filed to proposed transfer same shall also be considered. It is also made clear that no fresh notice for personal hearing shall be issued to petitioner by first respondent and petitioner shall appear before the Principal Commissioner of Income Tax, Bengaluru - 560 006 (first respondent herein) on 11.05.2015 at 11.00 a.m. and after hearing petitioner or his authorized representative first respondent shall

proceed to pass orders on merits and in accordance with law. No opinion is expressed with regard to merits of the case.

Ordered accordingly.

**Sd/-
JUDGE**

DR