

**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 27598/2018

Mahesh Kumar Jain S/o Shri Mali Ram Jain, Aged About 57  
Years, R/o 13/1032, Malviya Nager, Jaipur-302017

----Petitioner

Versus

1. The Principal Commissioner Of Income Tax-2, Room No. 111, New Central Revenue Building, Statue Circle, Jaipur.
2. Deputy Commissioner Of Income Tax (Dcit), Central Circle-1, Udaipur, (Now Assistant Commissioner Of Income Tax, (Acit), Central Circle-1), 2Nd Floor, Moomal Tower, 16 Saheli Marg, Udaipur.

----Respondents

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For Petitioner(s) : Mr. Mahendra Gargieya  
For Respondent(s) : Mr. Nikhil Simlote

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**HON'BLE MR. JUSTICE VEERENDR SINGH SIRADHANA**

**Order**

**24/05/2019**

The instant writ application has been instituted against the impugned order dated 27<sup>th</sup> September, 2018, wherein request of the petitioner has been declined by the Principal, Commissioner of Income Tax-2, Jaipur, only by recording of the reasons put-forth by the petitioner and comments received from the Principal, Commissioner of Income Tax (Central, Jaipur).

Heard and considered.

A glance of the impugned order dated 27<sup>th</sup> September, 2018, would reflect that the authority while adjudicating upon the matter did not apply its mind to either the reasons detailed out by the petitioner or the reasons resisting the prayer, furnished by Principal-CIT (Central, Jaipur).

In the case of **Ajantha Industries & Ors. Vs. Central Board of Direct Taxes & Ors:** (1976) 102 ITR 0281, a Larger Bench of the Apex Court of the land, while dealing with the issues of transfer under Section 127 of Income Tax Act, 1961, held thus:

"5. Unlike Section 5(7A) Section 127(1) requires to be recorded prior to the passing of an order of transfer. The impugned order does not state any reasons whatsoever for making the order of transfer.

It is submitted on behalf of the Revenue by Mr. Sharma that reasons were communicated to assesseees in the notice calling for objection against the proposed transfer. It is, therefore, manifest that the reasons given in that show cause notice, namely, "facility of investigation" can be read as a part of the impugned order although there is no mention of any reasons therein as such.

We are unable to accede to this submission. It appears Section 5(7A) of the Old Act came for consideration in Pannalal Binraj and Anr. v. The Union of India and Ors. (1), and this Court observed at page 589 as follows:

".....it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under Section 5(7A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is give to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing.... There is no presumption against the bona fide or the honesty of an assessee and normally the Income-tax authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure lead down in Section 64(1) and (2) of the Act is sought to be made against him be it a transfer from one Income-tax Officer to another within the State of from an Income-tax officer except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the, order reduced however briefly to writing it, will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income tax or the Central Board of

Revenue, as the case may be, to transfer his case under Section 5(7A) of the Act and it will also help the court in determining the bona fides of the order as passed if and when the same is challenged in court as mala fide or discriminatory. It is to be hoped that the Income-tax authorities will observe the above procedure wherever feasible.

6. This judgment was rendered by this Court on December 21, 1956, and we find that in the Act Section 127 replaced Section 5(7A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason, why before making an order of transfer the legislature has ordinarily imposed the requirement of a show cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127(1). We are unable to accept this submission.

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 to 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 malafide 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 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.

Mr. Sharma drew our attention to a decision of Delhi High Court in *Sunanda Rani Jain v. Union of India and Ors.* (2), where the learned single Judge has taken a contrary view, for the reasons, which we have given above, we have no hold that the said decision is not correct.

The appellant drew our attention to a decision of this Court in *Shri Pragdas Umar Vaishya v. Union of India and Ors.* (3), where Rule 55 of the Mineral Concession Rules, 1960, providing for exercise of revisional power by the Central Government was noticed. It was held that under Rule 56 the Central Government in disposing of the revision application must record its reasons and communicate these reasons to the parties affected thereby. It was further held that the reasons could not be gathered from the nothing in the file 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 v. Union of India and Ors.* (4), It is submitted that this Court took the view that orders under Section 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 Section 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 one Income-tax officer to another income tax officer in the same city, or, as stated in the judgment itself, "in the same locality" and the proviso to Section 127(1), therefore, applied.

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 cease 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."

Applying the principle deducible from the opinion of the Apex Court of the land, as extracted hereinabove, it is evident that the

