

Co. informing about shifting of registered office not to be treated as request for transfer of assessment proceedings

Summary – The High Court of Madras in a recent case of Aircel Ltd., (the Assessee) held that where assessee company wrote a letter to revenue to inform that its registered office was shifted from Chennai to Mumbai, however, assessee clarified that correspondence address remained unchanged and requested revenue to use Chennai address for any communication, said letters could not be reckoned as request for transfer of assessment proceeding to Mumbai

Facts

- The refund application filed by the assessee company had been pending for almost a year, and no orders were passed, in spite of repeated representations. Therefore, the assessee sought for a direction upon the revenue to dispose of the refund application within a time frame. Meanwhile, the assessee wrote two letters to the revenue and informed that their registered office of the company was shifted from Chennai to Mumbai. However, the assessee clarified that the correspondence address would remain unchanged and requested the department to use the said Chennai address for any communication with them.
- However, the Commissioner, Chennai transferred the file of assessee to Mumbai.
- In instant writ petition the assessee contended that the transferring of files from Chennai to Mumbai was nothing but a method adopted by the revenue to circumvent the assessee's request for refund with an intention either to delay in considering such request or to defeat the refund claim made by the assessee, which remain unprocessed. The second contention of the assessee was that, the order of transfer stood vitiated for non-compliance of mandatory requirement under section 127. The assessee should have reasonable opportunity of being heard in the matter and after recording the reasons for doing so, the case might be transferred.

Held

- The only stand taken by the respondent for issuance of the impugned communication is that, taking cognizance of the assessee's letters, assessee's cases had been transferred from Chennai to Mumbai. But, on a reading of the assessee's letters, it was seen that, the assessee, by the said letters had informed the Deputy Commissioner, that their Registered office of the Company was shifted to Mumbai. However, the assessee clarified that the correspondence address would remain unchanged, and requested the department to use the said Chennai address for any communication with them. Thus, it is clear that, by communication, assessee did not seek for transfer of file to Mumbai, rather they specifically requested the Deputy Commissioner to send all the communications to the Chennai address, therefore, the communications, could not be reckoned, as if, they were letters, requesting for change of assessment files to Mumbai.

- Thus, it is a clear misreading of the petitioner's letters, that resulted in issuance of the impugned communication, by which, the petitioner's files have been transferred to the file of the Assessing Officer at Mumbai. This, in fact, would be sufficient to hold that the impugned communication is unsustainable and issued with total non-application of mind. Nevertheless, since arguments were advanced by both sides on the merits of the matter, the Court proceeds to consider the same.
- The second contention of the petitioner is that, the order of transfer stands vitiated for non-compliance of mandatory requirement under section 127. Sub-section (1) of section 127 deals with the Power to transfer cases, where, the Principal Director General or Director General or Principal Chief Commissioner or Chief 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 reasons for doing so, transfer the 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. Similarly, sub-section (2) of section 127 deals with the power to transfer in respect of the case outside the jurisdiction. Thus, in either case, the assessee should have reasonable opportunity of being heard in the matter and after recording the reasons for doing so, the case may be transferred. Admittedly, the petitioner had no opportunity of being heard in the matter, nor there was any material placed by the Revenue to show that, opportunity was given to the assessee before issuing the impugned communication. That apart, the respondent has not recorded any reasons for transfer, and he has merely stated that, taking cognizance and pursuance to the petitioners' letter which has been misconstrued and misunderstood by the respondent.
- Thus, the order of transfer has been effected in violation of the statutory provision. This is one more reason to hold that the order of transfer is not sustainable.
- It is interesting to note that the Assistant Commissioner, Chennai, had issued a notice to the petitioner under section 143(2) for the assessment year 2016-17 stating that the said assessment has been selected for scrutiny. The notice is dated 06-07-2017. Admittedly, the said notice was served on the petitioner only on 27-09-2017. The date, on which, the petitioner was required to file the return of income is printed in the said notice as '28-07-2017' which has been corrected manually as '29-09-2017'. Thus, it appears that the department itself was in a quandary what was the exact position of the petitioner's case. Furthermore, it is submitted by the assessee, all the files have not been transferred, and this required to be done in case of transfer.
- Thus, the transfer of the files of the petitioner to Mumbai is completely flawed, and it is contrary to statutory provisions and the same should be set aside. Further, it is not disputed that the petitioner has not been put on notice, prior to transfer of their files and straight away the impugned communication has been issued intimating that the transfer has been effected and he may contact the Income Tax Office, Mumbai for any queries. Therefore, by the quashing the impugned communication, it has to be necessarily held that the order of transfer, if any, is also unsustainable.

- As a consequence thereof, necessary directions are required to be issued in first set of writ petitions where, the petitioner seeks for a direction for refund of the excess tax paid by them. In this regard, it is submitted that, several representations and letters have been sent by the petitioner but the petitioner was not favoured with any reply. When the Act provides for a remedy for refund, in case of excess tax paid or collected, it is bounden duty for the department to pass orders on the assessee's refund claim without delay.
- In the result, the impugned communication, is set aside and the files are directed to be re-transferred to Chennai.