

**M.A.E.K.K. Varma and ors. Vs. Central Board of Direct Taxes and ors.**

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**Court :** Andhra Pradesh

**Decided On :** Jan-17-1978

**Reported in :** [1981]129ITR31(AP)

**Judge :** S. Obul Reddi, C.J. and ;Gangadhara Rao, J.

**Acts :** [Income Tax Act, 1961](#) - Sections 124, 124(1), 127 and 127(1); [Gift Tax Act, 1958](#) - Sections 7 and 7B; [Wealth Tax Act, 1957](#) - Sections 8B

**Appeal No. :** Writ Petition No. 2961 of 1977

**Appellant :** M.A.E.K.K. Varma and ors.

**Respondent :** Central Board of Direct Taxes and ors.

**Advocate for Def. :** P. Rama Rao, Adv.

**Advocate for Pet/Ap. :** S. Dasaratharama Reddy and ;S.R. Ashok, Advs.

**Judgement :**

**Gangadhara Rao, J.**

1. The petitioners 1 to 4 were income-tax assesseees on the file of the ITO, A-Ward, and the petitioners 5 to 8 were assesseees on the file of the ITO, J-Ward, Circle I, Hyderabad. The petitioners are closely related to one another. While so, the Commissioner of Income-tax, Andhra Pradesh, Hyderabad, constituted a new

circle called ' Income-tax Officer, Special Circle III, Hyderabad ' under Section 124(1) of the I.T. Act, 1961, by his notification dated 3rd November, 1973. That notification came into effect from 5th November, 1973. On the same date he issued an order under Section 124(1) of the I.T. Act, 1961, directing that the ITO, Special Circle III, Hyderabad, shall exercise all the functions of an ITO in respect of all cases which had been assigned or deemed to have been assigned to him under Section 127(1) of the I.T. Act. That order came into force with effect from 5th November, 1973. On 5th November, 1973, the Commissioner, Andhra Pradesh-I, Hyderabad, appointed Sri G. Ramadas, ITO, A-Ward, Visakhapatnam, to hold additional charge of ITO, Special Circle-III, Hyderabad, with effect from 5th November, 1973, until further orders. On 30th November, 1973, the CBDT transferred the cases of the petitioners from the ITO, A-Ward, and ITO, J-Ward, Circle-I, Hyderabad, to the ITO, Special Circle-III, Hyderabad. The Commissioner, Andhra Pradesh-II, Hyderabad, gave his concurrence for transfer of the said cases from Andhra Pradesh-II charge to Andhra Pradesh-I charge. Immediately the petitioners did not file any writ petition questioning these proceedings. They submitted to the jurisdiction of the ITO, Special Circle III, Hyderabad. On 10th December, 1975, they filed Writ Petition No. 5941/1975 in this court questioning the order of transfer of their cases. They withdrew that writ petition on August 16, 1977, with liberty to file a fresh writ petition and filed the present writ petition on August 17, 1977. Meanwhile, in respect of some of the assessments the petitioners have filed appeals before the AAC and they are pending,

2. Sri Dasaratharama Reddy, learned counsel for the petitioners, has questioned the order transferring the cases of the petitioners to the ITO, Special Circle-III, Hyderabad, on the following grounds : First, the ITO, Special Circle-III, Hyderabad, is non est in law, and so, the transfer of cases to such circle is not valid. Secondly, in fact and in substance, the transfer is to the ITO, A-Ward, Visakhapatnam, and since no notice was given to the petitioners under Section 127(1) of the I.T. Act, the transfer is invalid. Thirdly, there was no separate order of transfer of the petitioners' cases under the W.T. Act or the G.T. Act.

3. With regard to the first contention that the ITO, Special Circle III, Hyderabad, is non est in law, it is contended that that circle was not validly constituted by the

CBDT in accordance with Section 126 of the, I.T. Act, for, no notification was published in the Official Gazette under that section. It is also submitted that there is no order vesting that circle with the jurisdiction to hear the cases of the petitioner.

4. It is not disputed that the Commissioner has jurisdiction to create additional circles. In this case, the Commissioner has created the circle of ' The Income-tax Officer, Special Circle-III, Hyderabad ' under Section 124(1)of the I.T. Act on 3rd November, 1973. On the same date byanother order the Commissioner has directed under Section 124(1) of the Act, that the ITO, Special Circle-III, Hyderabad, should hear all cases which have been assigned or deemed to have been assigned to him under Section 127(1) of the I.T. Act. On 5th November, 1973, he has appointed the ITO, A-Ward, Visakhapatnam, to hold additional charge of ITO, Special Circle-III, Hyderabad. Thus, a new circle was created in the City of Hyderabad, some cases were assigned to that circle and an officer was appointed for that circle.

5. It is true that the Commissioner in his order dated 3rd November, 1973, has not stated that the cases of the petitioners had been transferred to the ITO, Special Circle-III, Hyderabad. But, we are of the opinion that it makes no difference. Under Section 124(1) of the I.T. Act what is material is that the ITO shall perform his functions in respect of such cases or classes of cases as the Commissioner may direct. In this case, the Commissioner had directed that the ITO, Special Circle-III, should perform his functions in respect of the cases mentioned in that order. That is sufficient compliance with Section 124(1). Therefore, there is valid constitution of ' Income-tax Officer, Special Circle-III, Hyderabad '.

6. Next it is submitted that, in fact, no circle was created at Hyderabad, there was no office, no staff and it is the ITO, Visakhapatnam, who was transacting the business only from Visakhapatnam, but not at Hyderabad. To substantiate this contention, reference is made to some of the notices given to the petitioners. In one notice, the petitioner was asked to attend the ITO's office at Visakhapatnam. A cover sent by the Supreme Court in a special leave petition to the ITO, Hyderabad, was returned unserved. In the counter-affidavit filed on behalf of the respondents,

it is stated that Special Circle-III was situated at Hyderabad in Room No. 1, 1st Floor, N. T. R. Estate, with a board conspicuously hung. It is further stated that arrangements were made to receive tapals relating to Special Circle-III by the staff of Special Circle-I in view of the paucity of extra staff. Tapals so received used to be forwarded to the assessing ITO at Vizag. This administrative arrangement was being adhered to by the department as well as the petitioners except on occasions when the petitioners chose for their convenience to directly send some of the urgent communications to the ITO, A-Ward, Vizag, addressed in the capacity as ITO, Special Circle-III, Hyderabad. It is further stated that whenever the ITO, A-Ward, Vizag, came to Hyderabad on camp to transact the business belonging to the Special Circle-III, he was sitting in the room allotted to him in Room No. 1, 1st Floor, N. T. R. Estate, and on all the occasions the petitioners and their authorised representative, Sri U.V. Subba Rao, were heard in connection with their income-tax, wealth-tax and gift-tax matters in the room of the ITO, Special Circle-III, N. T. R. estate, except on one occasion, i. e., on October 27, 1975, when the petitioners' chartered accountant signified his willingness to go over to Vizag on camp, as he had some other professional work to attend. It is averred that for the convenience of Sri M.T. Raju (M. P.) (second petitioner) and his close relatives, who are residing at Hyderabad, Circle-III had been stationed at Hyderabad; otherwise, as the petitioners' vacant sites are situated at Vizag and as most of them have been acquired by the land acquisition authorities by paying huge compensation (resulting in capital gains) by way of deposits in various courts in Vizag, not only the assessing ITO but also the circle would have been, in normal circumstances, located at Vizag. It is stated that this arrangement of keeping the officer, i. e., Special Circle-III, Hyderabad, is only a facility extended to Sri M. T. Raju and his close associates by the department. In view of these averments we hold that the contention that in fact there is no ITO, Special Circle-III, Hyderabad, and the transfer is in substance to the ITO, A-Ward, Vizag, is not tenable.

7. Section 126 relied upon by the petitioners has no relevancy. That section applies to the powers of the Board with regard to specified area, classes of persons or incomes. That is not the position here. Consequently, the first contention is rejected.

8. If the cases of the petitioners were transferred from the file of the ITO, A-Ward, and the ITO, J-Ward in Circle-I, Hyderabad, to the ITO, Special Circle-III, Hyderabad, there is no need to give any notice by virtue of the proviso to Section 127(1) of the I.T. Act, since the offices of all the three officers are situate in the City of Hyderabad. The question of giving notice under Section 127(1) arises only if a case is transferred from one ITO to another ITO, whose offices are not situate in the same city, locality or place. That is not the situation here. Consequently, the decision of the Supreme Court in *Ajantha Industries v. CBDT* : [1976]102ITR281(SC) has no application. That was a case where the Central Board proposed the transfer of the case of an assessee from the file of the ITO, Nellore, to the ITO, B-Ward, Special Circle-II, Hyderabad. Therefore, the Supreme Court has rightly held that under Section 127(1) of the I.T. Act, notice should be given to the assessee and reasons should be recorded before transferring the case. On the other hand, in *Kashiram Aggarwalla v. Union of India* : [1965]56ITR14(SC) , the Supreme Court has held that if a case is transferred from the ITO of one ward to the ITO of another ward in the same city, there is no need to give notice to the assessee. Therefore, the second contention is rejected.

9. The last contention that there should be a separate order of transfer under Section 8B of the W.T. Act and Section 7B of the G.T. Act is misconceived. Section 8 of the W.T. Act provides that every ITO having jurisdiction or exercising powers as such under the I.T. Act in respect of any individual, HUF or company shall perform the functions of a WTO under this Act in respect of such individual, HUF or company. Similarly, Section 7 of the G.T. Act provides that every ITO having jurisdiction or exercising powers as such under the I.T. Act in respect of any person shall perform the functions of a GTO under this Act in respect of that person. Thus, the ITO is statutorily entrusted with jurisdiction to discharge the functions of a WTO or a GTO. Section 8B of the W.T. Act provides that the Commissioner may transfer a case from one WTO to another WTO, after giving a reasonable opportunity to the assessee and after recording his reasons. But, if the offices of both the WTOs are situated in the same city, locality or place, there is no need to give any such notice. To the same effect are the provisions of Section 7B of the G.T, Act. In this case, the ITO, Special Circle-III, Hyderabad, has jurisdiction to assess the petitioners under Section 8 of the W.T. Act and Section 7 of the G.T.

Act. Section 8B of the W.T. Act and Section 7B of the G.T. Act are not attracted, for, the case of the petitioners is not transferred from one WTO to another WTO or from one GTO to another GTO. Therefore, this contention fails.

10. Before we conclude, we have to add that the petitioners have submitted to the jurisdiction of the ITO, Special Circle-III, Hyderabad, and some assessments were made by him and appeals are pending. Further, they have also been guilty of laches, in the sense, that they have filed the previous writ petition on 10th December, 1975, when the orders of transfer were made on 3rd November, 1973. It is no answer to say that the decision of the Supreme Court in *Ajantha Industries v. CBDT* : [1976]102ITR281(SC) has given them the inspiration to file this writ petition. Apart from that, no substantial injustice had been caused to the petitioners. They were previously assessed by two ITO's in Hyderabad City. They are now being assessed by another ITO in the same city. Therefore, no prejudice is caused to them.

11. In the result, this writ petition is dismissed with costs. Advocate's fee Rs. 250.

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