

**Benz Corporation Vs. Income Tax Officer and ors.**

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**Court :** Kerala

**Decided On :** Nov-03-1997

**Reported in :** (1998)146CTR(Ker)164

**Appeal No. :** OP No. 15113 of 1992

**Appellant :** Benz Corporation

**Respondent :** income Tax Officer and ors.

**Judgement :**

G. SIVARAJAN, J. :

The petitioner, who was an assessee to income-tax on the files of the 1st respondent, made an application to him for transfer of the said files to Delhi, where the petitioners administrative office also was transferred. It is stated that, since no reply was received from the 1st respondent, the petitioner filed return before the Asstt. CIT, Circle 10(1), New Delhi, and the assessment for the year 1990-91 has been completed by him evidenced by Ext. P2. It is stated that, while the matter stood thus, the 2nd respondent issued Ext. P3 communication stating that the assessment files of the petitioner has been transferred from the 1st respondent to the 2nd respondent. Within one month thereafter, the petitioner received a communication Ext. P. 4 from the 4th respondent, Chief CIT, Kochi, stating that he proposes to transfer the petitioners assessment files from the 1st respondent to the 3rd respondent for administrative convenience and called for the petitioners objection, if any, to the above. The petitioner filed Ext. P. 5 objection stating that the petitioner was then assessed to income-tax by the IT authorities at Delhi. The 4th respondent issued Ext. P6 notification transferring the assessment of the petitioner to the 3rd respondent. The petitioner then filed Ext. P7 objection, which was disposed of by Ext. P8 communication stating that the objections raised by the petitioner in Ext. P5 was considered while issuing Ext. P5 notification and that no further circumstances have been brought for fresh consideration.

2. The petitioner has filed this original petition for quashing Exts. P3, P4, P6 and P8 communications and for directing the respondents not to give effect to Ext. P6 notification. The petitioner also seeks for a direction to the respondents not to transfer the files of the petitioner from Delhi to any other place.

3. A counter-affidavit is filed on behalf of the 4th respondent. In the said counter-affidavit, the 4th respondent has stated certain facts and circumstances which were not disclosed in any of the communications issued by respondents 2 and 4.

4. Learned counsel appearing for the petitioner submitted that the petitioner filed Ext. P1 application before the respondent No. 1 for transfer of the files to Delhi, since the administrative office of the petitioners firm was transferred to Delhi and the petitioner has no transaction in the State of Kerala. Learned counsel also submitted that since no reply was received from the 1st respondent, the petitioner assumed that the 1st respondent has no objection in the matter and accordingly the petitioner filed his returns in Delhi and the

assessments were also completed there. Learned counsel further submitted that in reply to Ext. P4 notice issued by the 4th respondent, petitioner filed Ext. P5 objection setting out all those circumstances. Learned counsel submitted that the 4th respondent did not consider any of the objections taken by the petitioner in Ext. P5 and that Ext. P6 notification had been issued in a mechanical manner. Learned counsel also submitted that there is absolutely nothing in Ext. P6 to show that the 4th respondent had considered the objections raised in Ext. P4.

5. I have also heard Sri N. R. K. Nair, learned counsel appearing for the respondents. He submitted that the 4th respondent had considered all the facts and circumstances stated in the counter-affidavit and that it is only thereafter the 4th respondent issued Ext. P6 notification.

6. I have considered the matter. The power of transfer of the assessment files from one authority to another is conferred on the CIT under s. 127(1) of the IT Act, 1961. The power vested in the 4th respondent under the said section is a quasi-judicial one. Such power has to be exercised in a fair and reasonable manner and not in an arbitrary or mechanical way. The 4th respondent issued Ext. P4 notice proposing to transfer the files from the 1st respondent to the 3rd respondent and called for the objections of the petitioner. The petitioner filed his objections evidenced by Ext. P7. From Ext. P8 communication, it is clear that the said objection was received by the 4th respondent. Curiously enough, there is no reference to the objections filed by the petitioner in Ext. P6. There is absolutely nothing to show that the 4th respondent had considered the said objections before issuing Ext. P6 notification except from Ext. P8 communication where it is stated that the objections taken in Ext. P5 had been considered by the 4th respondent before issuing Ext. P6 notification. As already stated a quasi-judicial authority discharging statutory functions is expected to act in a fair and reasonable manner and that passing of a reasoned order is one of the requirements of fairness in action. The 4th respondent cannot supplement Ext. P6 by the averments made in the counter-affidavit. It is also relevant to note that the 4th respondent, at the time of issuing Ext. P4 notice, was not aware of the transfer of the assessment files of the petitioner from the 1st respondent to the 2nd respondent.

7. Since Ext. P6 does not satisfy the above requirements, I am of the view that Ext. P6 notification in so far as it relates to the petitioner, cannot be sustained. The transfer of the assessment file of the petitioner from the 2nd respondent to the 3rd respondent is accordingly set aside. I direct the 4th respondent to consider the objections taken by the petitioner in Ext. P5 afresh and to take a decision on Ext. P4 notice with an opportunity of personal hearing of the petitioner as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a copy of this judgment. Further, proceedings pursuant to obtaining of the assessment files of the petitioner from Delhi to the 3rd respondent, will be kept in abeyance till a decision is taken on Ext. P4. I make it clear that I have not considered the merits of the matter in this original petition.

The original petition is disposed of as above.

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