

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5068 OF 2009
(Arising out of SLP(C) NO. 11364/2007)

M/S. UNNAO DISTILLERIES AND BRAVERIES LTD. Appellant(s)

VERSUS

COMMISSIONER OF INCOME-TAX-II AND ORS. Respondent(s)

ORDER

Leave granted.

An order of transfer passed by the Commissioner of Income Tax on 18.1.2007, purported to be under Sub-section (2) of Section 127 of the Income Tax Act, 1961 is questioned in this appeal, which arises out of a judgment and order dated 21.2.2007 passed by the High Court of Allahabad, dismissing the writ petition filed by the appellant herein.

The basic fact of the matter is not in dispute.

A search was conducted in the premises of M/s. Radico Khaitan Ltd. on 14.2.2006 wherein, inter alia, it was found that some payments had been collected by the U.P. Distilleries Association for payment to public servants. By a notice dated 10.11.2006, the appellant was directed to attend the office of the Commissioner of Income Tax, stating:

“As per result of search & seizure operation u/s. 132 of the Income Tax Act, 1951 in the case of the above mentioned group conducted on 14.02.2006, the Commissioner of Income Tax, Delhi (Central-III), New Delhi vide his letter F. NO.CIT(C-II) Cent/010/CC-19/2006-07/45/807 dated 18.10.2006 has proposed to centralise your case u/s 127 of the Income Tax Act, 1961 with Deputy Commissioner of Income Tax, Central Circle 19, New Delhi for the purpose of coordinated investigation and meaningful assessment.”

By an order dated 2.1.2007, the appellant prayed for an opportunity of hearing, inter alia, contending:

“(3) That the notice dated 10.11.2006 issued on us is not having proper jurisdiction, inexplicit in nature and do not reflect specific reasons for centralization of our case with Deputy Commissioner of Income Tax, Central Circle-19, Delhi.

(4) That due to shortcomings of the impugned notice we are in no position to give any explanation in this respect as well as to plead our position before your honour on hearing as per the notice.

(5) That without prejudice to the submissions made above and reserving our right of natural and legal justice, we categorically state here that we have our head office at Kanpur factory at adjoining District at Unnao. We have no business or other transactions at New Delhi. Our directors are also residing at Kanpur and Unnao. There is no person at New Delhi to look after any proceedings or to take care of any work concerning to income tax matters.”

No response thereto was made and the impugned order was passed on 18.1.2007 solely on the basis of the search made in the premises of M/s. Radico Khaitan Ltd.

Although a large number of contentions including non-grant of a reasonable opportunity of a hearing have been raised before us, but it is not necessary for us to go thereinto in view of the fact that now it is contended that the Assessing Officer had passed an order of assessment in the case of the appellant for the year 2006-07 on or about 24.12.2008, from a perusal whereof it appears that that aspect of the matter, namely, search and seizure in the premises of M/s. Radico Khaitan Ltd. and the effect thereof have been taken into consideration and the amount allegedly paid by the Association has been held to be added as an unexplained amount in the assessment of M/s. Radico Khaitan Ltd.

It has further been stated that M/s. Radico Khaitan Ltd. had also filed an application before the Settlement Commission and the order passed therein in favour of M/s. Radico Khaitan Ltd. is the subject matter of challenge before the Delhi High Court, at the instance of the revenue.

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In view of the above subsequent events, we are of the opinion that the proceedings for transfer of the file of the appellant from Kanpur to Delhi, for the purpose of centralising the cases for coordinated investigation and meaningful assessment has become infructuous. In this view of the matter, the impugned order cannot be sustained which is set aside accordingly. The appeal is allowed.

.....J.
[S.B. SINHA]

.....J.
[HARJIT SINGH BEDI]

New Delhi.
JULY 28, 2009.

