**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**

**CIVIL APPELLATE JURISDICTION**

**APPELLATE SIDE**

RESERVED ON: 03.02.2023
DELIVERED ON:10.02.2023

**CORAM:**

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM**

**AND**

**THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**M.A.T. NO. 40 OF 2023**

**(CAN NO. 01 OF 2023)**

**KAMAL NATH**

**VERSUS**

**THE PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-9 AND OTHERS**

**Appearance:-**
**Dr. Abhishek Manu Singhvi, Learned Senior Advocate**
**Mr. J.P. Khaitan, Ld. Senior Advocate**
**Mr. A. Agarwala, Advocate**
**Mr. Saurabh Bagaria, Advocate**
**Mr. Varun Chopra, Advocate**

**.....For the Appellant**

**Mr. Tushar Mehta, Learned Solicitor General**
**Mr. Balbir Singh, Learned Additional Solicitor General**
**Mr. Dhiraj Trivedi, Learned Deputy Additional Solicitor General**
**Mr. Zoheb Hossain, Advocate**
**Mr. Tilak Mitra, Advocate**
**Mr. Soumen Bhattacharya, Advocate**
**Mr. Prasenjit Mahapatra, Advocate**

**.....For the Respondents**

***JUDGMENT***

***(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)***

1. This intra Court appeal filed by the writ petitioner is directed against the order dated January 6, 2023 in WPA No. 3868 of 2020. The appellant had filed the said writ petition challenging the order passed by the Principal Commissioner of Income Tax, Kolkata- 9 (PCIT) dated 23rd February, 2022 under Section 127 of the Income Tax Act, 1961 (the Act for brevity). The said writ petition was dismissed by the impugned order and challenging the correctness of the said order the appellant has preferred this appeal.

2. We have heard Dr. Abhishek Manu Singhvi, learned Senior Advocate and Mr. J.P. Khaitan, learned Senior Advocate appearing for the appellant and Mr. Balbir Singh, learned Additional Solicitor General of India appearing for the respondent revenue.

3. The facts leading to the filing of the writ petition are as hereunder:-

4. The PCIT issued show-cause notice dated September 5, 2009 stating that a search and seizure operation under Section 132(1) and survey under Section 133A of the Act was conducted on Praveen Kakkar, Rajendra Miglani and others on April 7, 2009 at different places in Kolkata, Delhi, Indore, Bhopal and other places by the Investigation Department, Delhi. It was stated that the appellant was also covered in the above search and seizure operation under Section 132(1) and survey under Section 133A of the Act. It was stated that the search and survey resulted in gathering of evidences indicating as to how key persons were involved in large scale collection of illegal money through various means/ entities and the same is

being used in elections and hawala transactions. Evidences have also been found indicating inter-linked transaction and close association of the appellant with Praveen Kakkar, Rajendra Miglani and others. It was further stated that in order to have coordinated investigation the entire group including the appellant's case is required to centralize in Delhi. The appellant was given an opportunity to show cause as to why the case should not be centralized in the region of Chief Commissioner of Income Tax (Central), New Delhi and was requested to submit the response either personally or through his authorized representative in writing within 14 days from the receipt of the show-cause notice failing which, it was stated that it would be presumed that the appellant has nothing to say in the matter. The appellant through his authorized representative responded to the show-cause notice by way of a preliminary response dated September 18, 2019 stating that the show-cause notice erroneously mentioned that the appellant was covered in the search and seizure operation as the appellant has never been part of the search, seizure and/or survey. The appellant denied all the allegations in the show-cause notice in relation to inter-linked transaction and those close associates with Praveen Kakkar, Rajendra Miglani and others as being without any basis. It is further stated that the appellant was at the relevant time not in Kolkata and was extremely busy managing and monitoring places situated in Bhopal where several thousands of people have been affected through flood and therefore, requested to grant 3 to 4 weeks' time to submit his response to the show-cause notice. The appellant after reiterating the stand in the letter dated September 18, 2019 by letter dated October 3, 2019, stated that the alleged

evidences/ documents based on which his case is proposed to be transferred has not been shared with him and requested to provide copies of all the statements recorded, evidence, information and documents collected during survey, search and seizure operations on Praveen Kakkar, Rajendra Miglani and others. Further, the appellant stated that he would be able to furnish his comments/ submissions to the proposed transfer of his case to New Delhi only after review of such evidences/ documents collected during the survey, search and seizure and forming basis of the proposed action by the Department. Further, it was stated that the evidences/ documents should be shared with him in the larger interest of justice, equity and fairness of things as the issues sought to be raised and responded to or are not merely procedural but the same would have a substantial bearing on the issues to be ultimately adjudicated. Without prejudice to the aforementioned submission, it was stated that the appellant understands that Mr. Praveen Kakkar has filed a writ petition challenging the very basis of the search initiated by the Income Tax Department thus, reserving the right to file a detailed reply to the show-cause notice or to challenge the same from a legal stand point. Further, the appellant stated that the contents of the letter dated October 3, 2019 are without prejudice to his rights and contentions legally available to him and requested the department that no presumption as suggested in the show-cause notice should be arrived at till the appellant is able to respond to the contents on substance after receipt of requisite underlying documents from the department. The appellant stated that he would be able to respond to the show-cause notice on substance within 2 to 3 weeks after receipt of the

requisite underlying documents. The appellant upon coming to know from the official portal of the Income Tax Department that his case has been transferred from Kolkata to New Delhi under Section 127 of the Act filed a writ petition in WPA 11901 of 2021 contending that the Income Tax Department never furnished any statements, evidences, information and documents to the appellant and there was no communication from the department to the preliminary responses sent by the appellant and by browsing the Income Tax Department web portal, the appellant was shocked to find that his case has been transferred from Kolkata to New Delhi. Thus, challenging the order of transfer the writ petition was filed. It appears that the Department was not directed to file any affidavit-in-opposition and the submissions of the Standing Counsel for the Department and the Court proceeds to record stating that the learned Counsel could not provide any information as to the fate of the representatives given by the appellant on September 18, 2019 and October 3, 2019. After noting the same, the learned Single Bench took note of the submission made on behalf of the appellant that without considering and disposing of the letters/ representation and without giving any opportunity of hearing and without communicating a formal order of disposal and/or rejection of the appellant's prayer made in the said letters such decision of transfer of the case of the appellant under Section 127(2) of the Act was not sustainable. That apart, the appellant was not communicated about the transfer and came to know only through the official portal of the Income Tax Department about the transfer. The learned Single Bench had directed the Department to produce the records, with regard to the receipt of the

objections/ representations dated September 18, 2019 and October 3, 2019 and as to whether they were received by the Income Tax Department and whether those were considered and disposed of by giving opportunity of hearing to the appellant before passing the order of transfer and also whether the order for transfer was served upon the appellant or not. Pursuant to the said direction, the Income Tax Department placed the records as well as the written instruction dated September 17, 2021 and upon perusal of the same, the learned Writ Court has observed that it is an admitted position that the objection/ representation of the appellant was received by the office of the respondent concerned, the objections/ representations of the appellant against the proposed transfer was not considered and not disposed of and without giving an opportunity of hearing the case of the appellant has been transferred and the said order was not even communicated with the appellant. The appellant filed a supplementary affidavit challenging the transfer of the case by order dated February 18, 2021 as also the intimation dated September 16, 2021, as being invalid and without jurisdiction and in gross violation of principles of natural justice and in violation of the statutory provisions since, the same was passed by not considering and disposing the representations/ objections given by the appellant and without recording the reason for not giving opportunity of hearing before passing such order of transfer and without disposing of the reply/ objection to the show-cause notice, the transfer of the case of the appellant is illegal, invalid and not sustainable in law and accordingly, the order of transfer dated July 18, 2019 was quashed. Further, the learned Writ Court observed that quashing of the

impugned order of transfer of the case of the appellant will not prevent the Income Tax Authority concerned from taking action of transfer in future after it is found by the respondent concerned that there is cogent material for doing so and by observing the statutory requirement under Section 127(2) of the Act. The learned Writ Court has further recorded that the writ petition is being allowed without calling for counter-affidavit in view of the submissions of the parties and admitted facts appearing from the records available as well as the records submitted by the Income Tax Authorities.

5. The PCIT issued fresh show-cause notice dated January 11, 2022 under Section 127 of the Act. After referring to the order and direction issued in WPA 11901 of 2021 dated September 27, 2021, the show-cause notice proceeds to set out certain facts, which we shall advert in the later part of the judgment, proposing that in view of the cogent materials pertaining to the appellant and also statement of associated parties recorded during search and seizure operations, linked to the appellant, it is necessary to transfer the jurisdiction to a specific charge where other related parties have been centralized for a concerted, deep investigation and proper assessment. The appellant was a given an opportunity of being heard to represent his case as to why the jurisdiction should not be transferred. 10 days' time was granted to file the objections. The appellant by reply dated February 7, 2022 stated that on going through the annexures appended to the communication dated January 11, 2022, there was no material whatsoever justifying the transfer of his personal income tax assessment to Delhi more particularly, when no search or survey had been conducted on the appellant or at any premises owned by him. In the

show-cause notice names of 5 persons had been mentioned on whom search/ survey operations were conducted and the appellant was sought to be linked with those persons. The appellant in his reply though acknowledged that one of the persons was his officer on special duty when he was the Chief Minister of Madhya Pradesh and the other was the advisor of the Chief Minister denied having known the other three persons. Further, the appellant stated that he did not have any financial transactions with Praveen Kakkar and three others whom he denied to have known, but stated that he may have had financial transaction with Rajendra Miglani before he became the Chief Minister of the State of Madhya Pradesh which is not the period of consideration in the present case. However, he has stated that he had no financial transaction with Rajendra Miglani after he became the Chief Minister. Further, with regard to the certain sums of money which was mentioned in the show-cause notice, it was stated that those sums were shown in the books of the political party received from a State Committee and they have nothing to do with his personal income tax assessment. The appellant also stated as to how he had fully cooperated with the investigation and had personally appeared before the Deputy Director of Income Tax, Investigation, Unit 5(3), New Delhi on January 11, 2021. Further, it was stated that he reliably understands that the search assessments were all completed on September 30, 2021 and if that be the case, there can be no question of any concerted or coordinated investigation or assessment as alleged in the show-cause notice. Further, the appellant stated that transfer of his case to Delhi would cause inconvenience, harassment and hardship to him as his

accounts staff and authorized representatives are located at Kolkata and it would be practically impossible for them to participate in any proceedings in Delhi or comply with any requisition made on Delhi without incurring huge and unnecessary expenses. With these submissions, the appellant requested to drop the proposal to transfer his case to Delhi as there is no material or any justifiable reason to transfer his case from Kolkata to Delhi. In addition to the reply, written note of submission dated February 17, 2022 was also filed.

6. The PCIT offered an opportunity of personal hearing to the assessee which was fixed on February 9, 2022 however, it appears that the appellant did not personally appear but his representative had appeared on the said date and sought for adjournment and the request was accepted and the hearing was fixed on February 17, 2022. On the said date the appellant had submitted a letter sent through a messenger reiterating the stand taken earlier in the written statement dated February 7, 2022 and in addition stating that the appellant is an Indian politician who served as the 18th Chief Minister in Madhya Pradesh for approximately 15 months and resigned after political crisis. He is the leader of the Madhya Pradesh Legislative Assembly since 2020 and as a leader of the Indian National Congress, the assessee has served as the Minister of Regional Development and thus, he is the longest serving and senior most Member of the Lok Sabha. Further, the assessee stated that he was appointed the pro tem Speaker of the 16th Lok Sabha and he was elected 9 times to Chhindwara Lok Sabha Constituency of Madhya Pradesh and was elected as President of the Madhya Pradesh Congress Committee in May 2018, leading the party

in the November- December 2018 Assembly Election. Further, it was stated that the assessee resumed the office of the Chief Minister on 17th December, 2018 and resigned on 20th March, 2020 due to lack of majority in Government. The above submission made by the assessee in the letter dated February 17, 2022 has been taken note of by the PCIT and recorded together with the submission made by the appellant by way of additional reply and the written submissions dated February 7, 2022.

7. The PCIT by order dated February 23, 2022 rejected the objections raised by the appellant and ordered the appellant's case be transferred from the jurisdiction of the ITO, 132(1) Kolkata 2, DCIT Central Circle- 19, Delhi. This order was impugned in the writ petition.

8. The learned Writ Court by order dated March 8, 2022 directed the department to maintain status quo with regard to the order of transfer till March 16, 2022 or until further orders whichever is earlier. By order dated March 10, 2022, the interim order was extended till March 28, 2022 or until further orders whichever is earlier. The interim order was further extended till June 30, 2022 or until further orders whichever is earlier by order dated March 29, 2022 subsequently the interim order was extended till August 30, 2022. By order dated July 5, 2022 the interim order was extended till September 30, 2022. By order dated August 10, 2022, the interim order was further extended till November 30, 2022, by order dated September 28, 2022 and by order dated November 11, 2022 the interim order was extended till one week after the winter vacation or until further orders whichever is earlier. The writ petition was finally heard and judgment was reserved on December 15, 2022 and the respondent

department was injuncted from carrying out any assessment on the appellant till the delivery of the judgment. In the writ petition, pursuant to the leave granted by the Court the appellant had filed a supplementary affidavit dated March 9, 2022 along with annexures. The department filed an affidavit-in-opposition dated June 23, 2022 to which a reply affidavit was filed on behalf of the appellant dated August 8, 2022.

9. It is a submission of the learned Senior Counsel for the appellant that the entire proceedings commencing from the issuance of the show-cause notice is wholly vitiated and the department has travelled beyond the allegations in the show-cause notice and had pre-decided the entire issue. Further, it was contended that the department should not be permitted to set up a new case in the course of arguments of the writ petitioner stating that the group of persons whose cases are to be centralized though mentioned as five persons initially has been subsequently mentioned as thirty four persons. After elaborately referring to the orders passed in the earlier writ petition and as to how the Court came to the conclusion that the first order of transfer, uploaded in the official web portal was set aside as being illegal as the response given by the appellant to the show-cause notice was not considered as to how the opportunity of hearing was not offered and no order of transfer was communicated to the appellant. While referring to the show-cause notice dated January 11, 2022 it is submitted that there were certain details of cash transactions which were mentioned in the show-cause notice since those allegations pertain to the merits of the assessment which is yet to be made, we refrain from referring to those details in this judgment but suffice to state that in the submissions made

before the learned Writ Court the appellant has sought to explain those transactions, the sum and substance being that such information/ transactions can have no bearing on the personal income tax assessment of the appellant which has always been done in Kolkata.

10. The Learned Senior Advocate appearing for the appellant had elaborately referred to certain information which are in the nature of messages to explain as to how the appellant's name could never have been drawn into controversy so as to justify the order of transfer. Further after referring to Section 127 of the Act and the requirements which are to be complied with therein, the learned senior advocate referred to the explanation in Section 127 which defines the word "case". It is submitted that the "case" comprises all proceedings under the Act in respect of any year which may be pending or which may have been completed as also all proceedings which may be commenced and transfer of such proceedings under Section 127 is from one assessing officer to another assessing officer, the proceedings adverted to in the explanation in respect of any year or proceedings relating to determination of income and consequential financial liability of the assessee under the Act which may be pending or may have been completed or which may be commenced. It is further submitted that the income tax department is an All-India body and has officers all over the country in every state. The officer performs mostly quasi-judicial functions independent of any interference unless the statutes stipulate approval/sanction of an higher authority. The mere desire of transferring authority to transfer the income tax case of an assessee on the ground that the transferee officer will be the most suitable

assessing officer cannot be the basis for transfer of the case from one assessing officer to another. The choice of the assessing officer is neither with the assessee nor with the revenue. Further it is submitted that while the transfer is proposed under Section 127 of the Act, it has to be strictly according to the statutory provisions, an order of transfer should not be mala fide or arbitrary or based on irrelevant or extraneous consideration, the reasons for transfer must be real and not illusory and mere suspicion is not enough, reasons must show actual financial nexus which require coordinated investigation and assessment to determine the income correctly and consequent financial liability. Further it is submitted that Section 127 does not provides for clubbing the case of a mere witness, like the appellant with the case of persons on whom investigation and assessment were made. This is because, such investigation and assessment proceedings will have nothing to do with the personal income and taxation of the witness like the appellant. Further it is submitted that the foundation of the proceedings under Section 127 is the show cause notice dated January 11, 2022 and the case in the show cause notice cannot be improved upon. It is not the case of the revenue in the show cause notice or the order of transfer that the appellant should not be assessed at Kolkata because he has no earning or bank account at Kolkata and allegations in that behalf has been made for the first time in the affidavit-in-opposition which amounts to introducing new material/allegations. Further it is reiterated that the appellant was not subjected to any search or survey operations. The averments which were raised in the writ petition were reiterated as also the explanation with

regard to the financial transactions which were referred to in the show cause notice were sought to be explained to state that there is nothing to link the appellant with those financial transactions more particularly, with regard to his personal income tax assessment. As mentioned earlier, we refrain from going into those facts nor recording any of those facts in this judgment as we are only required to decide the legal issue as to the scope and power of the authority while invoking Section 127 of the Act qua the facts which are germane for invoking such power.

11. The learned Additional Solicitor General after referring to the necessity to centralize the cases of thirty four persons and the facts which are relevant for such purpose submitted that few of those persons whose cases have been centralized had filed the writ petitions before the High Court of Madras in WP No. 12186 of 2020 etc. and they were dismissed by order dated March 25, 2021 and as of now, the assessment of the appellant has already commenced and the assessment is required to be completed before 31.03.2023 or else it may become time barred subject to the exclusion of the period during which an appropriate interim orders were operating when the writ petition was pending. Further it is contended that there is no fundamental right in assessee to be assessed in a particular locality or area and it is incorrect to contend that the order of transfer is a quasi-judicial exercise rather it is an administrative exercise resulting in an administrative order which will seldom be referred and interfered by the courts. Further it is submitted that the appellant has in his reply to the show cause notice has accepted that he has had financial dealings with one of the five persons who have been named in the show cause notice

which would be sufficient to ground for centralizing the appellant's assessment along with all such persons who have been searched which is numbering about thirty four. Further it is submitted that the contention of the appellant that the transactions which he might have had with one of such persons is not relating to the period under consideration is an incorrect submission because in a case of block assessment all previous years are to be assessed and therefore the department was fully justified in centralising the cases at Delhi. Further it is submitted that in terms of the circular issued by the Central Board of Direct Taxes (CBDT) dated June 10, 2021 cases falling under Section 153C should be transferred to the Central charge under Section 127 of the Act and this aspect was noted by the High Court at Madras while dismissing the writ petitions filed by the three assessees vide an order dated March 25, 2021.

12. The learned senior counsel appearing on behalf of the appellants placed reliance on the decisions of the Hon'ble Supreme Court in ***Ajantha Industries and Others Versus Central Board of Direct Taxes, New Delhi and Others*** [1] and the decision in ***P.S. Housing Finance Private Limited and Others Versus Union of India and Others*** [2] ***Dilip Kumar Agarwal and Others Versus Commissioner of Income Tax*** [3] ***Rajesh Mahajan and Others Versus Commissioner of Income Tax*** [4] ***Anil Kumar Kothari Versus Union of India and Others*** [5], ***Global Energy***

[1]1976 1 SCC Page 1001
[2]2007 290 ITR 316 (Cal)
[3]2009 314 ITR 291 (Cal)
[4]2002 257 ITR 577
[5] 2010 SCC Online Gauhati 775

***Private Limited Commissioner of Income Tax[6].***

13. The learned Additional Solicitor General also referred to the decision in ***Ajantha Industries*** and the decision of the Constitution Bench in ***Pannallal Binjraj and Another Versus Union of India[7]*** and the decision of the Constitution Bench in ***Kashiram Aggarwalla Versus Union of India and Others [8]***.

14. In ***Pannalal Binjraj*** writ petitions were filed under Article 32 of the Constitution before the Hon'ble Supreme Court raising a common question of law whether Section 5(7-A) of the Indian Income Tax Act, 1921 is ultra vires to the Constitution as infringing the fundamental rights enshrined in Article 14 and Article 19(1)(g) of the Act. Section 5(7-A) of the 1922 of the Act is akin to Section 121 of the 1961 Act which gave power to the Commissioner of Income Tax to transfer any case from one income tax officer subordinate to him to another and the Central Board of Revenue may transfer any case from anyone income tax officer to another and such transfer will be made at any stage of the proceedings and shall not render necessary to reissue of any notice already issued by the Income Tax Officer from whom the case is transferred. In the said decision, the Constitution Bench pointed out that there is no fundamental right in the assessee to be assessed in a particular area or locality. Even considering in the context of Section 64(1)(2) of the 1922 Act this right which is conferred upon the assessee to be assessed in a particular area or locality is not an absolute right but is subject to the exigency of tax collection. It was further pointed

[6]2013 356 ITR 502 (Bom)
[7]AIR 1957 SC 397
[8]AIR 1965 SC 1028

out that there is a broad distinction between discretion which has to be exercised with regard to the fundamental right guaranteed by the Constitution and some other right which is given by the statute and if the statute deals with the right which is not fundamental in character, the statute can take it away but a fundamental right is a statute cannot take away.

15. In ***Kashiram Aggarwalla*** the Constitution Bench dealt with a challenge to an order passed by the High Court summarily dismissing the challenge to an order of transfer under Section 127(1) of the Act. After taking note of Section 124 of the Act which deals with the limits of the area assigned to an income tax officer, the Hon'ble Supreme Court pointed out that the said provision clearly indicates that where a transfer is made under the proviso to Section 127(1) from one income tax officer to another in the same locality it merely means that instead of one income tax officer who is competent to deal with the case another income tax officer has been asked to deal with it and such an order is purely in the nature of an administrative order passed for considerations of convenience of the department and no possible prejudice can be involved in such transfer. Thus, the decisions of the Constitution Bench clearly holds that the assessee has no right to be assessed in a particular area or locality, if it is not a fundamental right, the statute can take away such a right to be assessed in a particular area in a manner provided for under the Act. Though the decision in ***Pannalal*** was rendered in 1957 under the old act still it continues to be of significance for the legal principle laid down therein that there is no fundamental right in an assessee to be assessed in

a particular area or locality. Furthermore, as held in ***Kashiram Aggarwalla,*** an order of transfer is purely in the nature of an administrative order passed for consideration of convenience of the department and no possible prejudice can be involved when the cases have been transferred.

16. As mentioned earlier, the decision in ***Ajantha Industries*** were relied on by the learned Senior Counsel appearing for the appellant as well as by the learned Additional Solicitor General. The following paragraphs of the decision would be of significance:-

> *9. 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.*

*10. 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.*

*14. 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 held 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.*

*15. 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.*

17. The legal principle that could be culled out from the above decision is that while making an order of transfer reasons have to be recorded and if such an order is passed recording reasons it would provide an opportunity to the assessee to approach the High Court under Article 226 of the Constitution or the Hon'ble Supreme Court under Article 136 of the Constitution in an appropriate case for challenging the order. The Hon'ble Supreme Court while holding so, also holds that the challenge in an appropriate case inter alia would be either on the ground that the order of transfer is mala fide or arbitrary or that it is based on irrelevant and extraneous consideration.

18. In ***Ajantha Industries***, the decision of the Constitution Bench in ***Kashiram Aggarwalla*** was referred wherein it was held that orders under Section 127(1) are purely administrative in nature. Therefore, we are required to examine the order of transfer of the case of the appellants from Kolkata to New Delhi on the parameters as to how the administrative order has to be tested for its validity and correctness. The test permissible to be applied are whether there is an error in the decision-making process the decision itself may not be open of being questioned by a court exercising writ jurisdiction. The broad parameter is by applying the Wednesbury principles, to see as to whether the aggrieved person had reasonable opportunity to put forth his case, whether the authority exercised its jurisdiction with due application of mind, whether the relevant factors were

taken into consideration and nothing irrelevant was the basis of such decision. If the administrative order passes this test, the Writ Court would refuse to exercise their jurisdiction and interfere with those decisions as it would amount to converting the jurisdiction of the Court to that of an appellate authority over a decision of an administrative authority.

19. In ***Rajesh Mahajan and Others***, the court pointed out that the authority must not only take into consideration the objections raised by the assessee but the reasons recorded in the order must also have direct nexus/bearing to the object sought to be achieved and that suspicion even though bona fide cannot be sufficient justification for taking recourse to any action contemplated under Section 127 of the Act. In ***P.S. Housing Finance Private Limited***, the learned Writ Court had interfered with the order of transfer after having found that there was no business connection between the assessee company and the other entity and in the absence of any findings that valuables or documents seized from the residence of the assessee had any relationship with the other entity or any of its sister concern, it was held that there is no question of transferring the case to Mumbai. In ***Dilip Kumar Agarwal*** the order of transfer was set aside as it did not disclose any nexus of the petitioners therein with the other group of companies who had come under the scanner of the department. In ***Anil Kumar Kothari*** it was held that merely by stating administrative convenience and for coordinating effective investigation cannot be a reason as envisaged under Section 127 of the Act for transfer of a case. In ***Global Energy Private Limited***, it was held that coordinating investigation can

always be a good ground for transfer from one place to another and after taking note of the decision in ***Ajantha Industries,*** it was held that while transferring "case" on the ground of coordinated investigation, some reasons has to be given by the Commissioner which reveals why it is necessary to transfer the case for the purpose of coordinated investigation and in the said case there was no reason given and therefore the order of transfer was quashed. The decisions which we have noted above all revolve upon the factual matrix in each of the cases. Therefore, no universal test can be made applicable while considering the correctness/validity of an order under Section 127 of the Act.

20. At this juncture, it would be relevant to refer to the decision of the Hon'ble Supreme Court in ***K.P. Mohammed Salim Versus Commissioner of Income Tax in Civil Appeal No. 2946-2956 of 2008*** dated April 24, 2008 wherein it was held as follows:-

> *An order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest.*
>
> *Only because in the said provision the words "any case" has been mentioned, the same, in our opinion, would not mean that an order of transfer cannot be passed in respect of cases involving more than one assessment year.*
>
> *It would not be correct to contend that only because explanation appended to Section 127 refers to the word 'case' for the purpose of the said Section as also Section 120, the source of power for transfer of the*

> *case involving block assessment is relatable only to Section 120 of the Act. It is awell-settled principle of interpretation of statute that a provision must be construed in such a manner so as to make it workable. When the Income Tax Act was originally enacted, Chapter XIVB was not in the statute book. It was brought in the statute book only in the year 1996.*

21. The Hon'ble Supreme Court held that the power of transfer is in effect provides for machinery provision and it must be given its full effect and must be construed in a manner so as to make it workable and that even Section 127 of the Act is a machinery provision it should be construed to effectuate a charging section so as to allow the authorities concern to do so in a manner where for the statute was enacted.

22. Having noted the legal position that exercise of power under Section 127 of the Act is an administrative exercise with the ultimate object of assessments and collection of taxes, an assessee cannot be heard to say that it would adversely affect its interest. If reasons exist for transfer, the scope of interference of the Writ Court against such an administrative exercise is narrow and limited and the courts will exercise utmost restrain in stepping into the realm of administrative matters which are best to be left to the decision of the authorities. The learned single bench had elaborately taken note of the factual position and upheld the order of transfer. It is the submission of the learned senior counsel for the appellant that all the findings rendered by the learned single bench makes deep in-road into the merits of the matter and thereby grossly prejudicing the interest of the

assessee. In our view partly the blame lies on the assessee himself as it was the case of the assessee when he first approached this court by filing the writ petition, contending that there has been flagrant violation of principles of natural justice in as much as no reasons have been mentioned to justify the invocation of the power under Section 127 of the Act. This submission was accepted by the learned writ court which led to setting aside the earlier order of transfer and giving liberty to the department to initiate fresh action. The observations made by the learned writ court in this regard had been referred to earlier. Thus, when the show cause notice dated January 11, 2022 was issued the Income Tax department was bound to disclose the reasons for the proposed transfer which had been provided in the show cause notice. The assessee has submitted his response as to how those reasons may not be germane for exercise of jurisdiction under Section 127 of the Act. The appellant assessee had been afforded effective opportunity to place all materials including an opportunity of personal hearing which has been availed. After considering the response given by the assessee, the PCIT has passed the order of transfer with elaborate reference to all the factual details which were brought on record by the appellant. In paragraph 13 of the order of transfer dated February 23, 2022, the authority records that the seized documents, recorded statements of parties indicating unaccounted money was transferred from the assessee's official residence at Delhi. The source of the said money is required to be properly established and can only be identified by proper investigation and assessment. Further the claim of the assessee that such transactions are not linked to his personal income account cannot be taken at face value without proper investigation and

assessment. Therefore, the authority opined that the assessing officer who is entrusted with assessment of all other parties involved in the unaccounted money transactions is the most suitable assessing officer to complete the assessment as he is aware of the whole picture of the case and can do justice to the revenue as well as to the assessee. Further in the order it has been stated that contrary to the claim of the appellant, mobile phones of the involved persons and the copy of its chat as was seized and subsequently shared with the assessee, clearly identifies the appellant's active role in unaccounted money transfer and also his links with the persons involved in the unaccounted money transfer. The learned Senior Counsel of the appellant submitted that no mobile phones chat was furnished or shared with the assessee as set out in the order of transfer and only screen shot of certain information appearing in the mobile phones had been shared. While examining the correctness of the administrative action, we cannot be called upon to do and hair-splitting exercise or else we would be converted to doing the role of an assessing officer which is not permissible in a writ proceeding. Several other factual details have been elaborately set out by the learned single bench. These factual details which were set out by the learned single bench are to justify the order of dismissal of the writ petition can at best be construed to be reasons for refusing to exercise jurisdiction to interfere with the order of transfer and nothing more, the findings rendered by the learned writ court are only prima facie findings and they can never cause any dent upon the ultimate decision which the assessing officer in the transferred place would take after taking note of the relevant facts and documents placed before it.

23. It is submitted by the Learned Senior Counsel for the appellant that "better coordination & investigation", as mentioned in the order of transfer are vague, suitable to have the case transferred to Delhi cannot be a reason for transfer under Section 127 of the Act. Further, merits cannot be reasons for transfer, neither administrative conveyance could be a reason. It is further submitted that the appellant does not claim any vested right to be assessed at Kolkata, however, the transfer having been initiated by the income tax department, onus is on them to justify the order, as, the income tax department also cannot have a right to choose the place where the assessment would be made. It is submitted that in Paragraph 28 of the impugned order, it has been held that the income tax officer at Delhi is best suited to investigate and carry out the assessment of the appellant. This concept of "suitable boy" theory is unacceptable, it cannot be a valid ground for transfer.

24. The learned Senior Counsel for the appellant contends that the appellant is a witness, a person who was not searched nor any survey conducted, hence there is no justification to transfer his personal income tax assessment to Delhi. Further the income tax department is expanding the scope by submitting a compilation, giving new facts that thirty four cases are being contested.

25. Learned Additional Solicitor General would contend that there are two sets of cases which have been centralized, those falling under Section 153A and the other set falling under Section 153C, the appellant's case falls in the second category. It is submitted that what is required to be considered is

whether there is sufficient ground for transfer, the facts are not subject matter of consideration in this litigation. It is submitted that Chapter XIII of the Income Tax Act has four parts, Part (A) comprising of Sections 116 to Section 119A, Part (B) Section 120 to Section 128, Part (C) Section 131 to Section 136 and Part (D) Section 137 to Section 138. The assessee has no right to question the jurisdiction of an officer under Chapter XIII of the Act. It is further submitted that there is no allegation of mala fide and in the absence of any such allegation/ pleading, paragraph 10 of the judgment in ***Ajantha Industries*** would not be of assistance to the appellant. On the plea of inconvenience as raised by the assessee, the learned Additional Solicitor General would submit that there is no income for the assessee in Kolkata, income of the assessee is from Delhi and other places, the bank account of the assessee is in Delhi, thus no inconvenience can be pleaded by the assessee on account of the transfer of his assessment. The travel of the consultants or accountants from Kolkata to Delhi cannot be pleaded to be an inconvenience.

26. By way of reply, the learned Senior Counsel for the appellant contended that the impugned order is fully coloured on facts, the foundation of the show-cause notice is also coloured on facts, as facts cannot be gone into the impugned order would call for interference. It is reiterated that no right is claimed under Section 127 of the Act. What the income tax department seeks to do is to place a technical trap argument which is impermissible.

27. At the first instance, the assessee approached this Court challenging the order of transfer as being devoid of reasons, the objections/ response of

the assessee was no considered, the assessee was not heard, no order was passed nor communicated to the assessee therefore, the order was in violation of the statutory mandate apart from being in violation of the principles of natural justice. This argument of the assessee was accepted by the learned Single Bench, the order of transfer was quashed with liberty to the income tax department to initiate fresh action. The natural corollary which has to follow is that the income tax department was required to assign reasons for proposing the transfer. These reasons were set out in the show-cause notice dated 11.01.2022. The assessee is thus precluded from stating that the show-cause notice is coloured on facts. This being a result of the order obtained by the assessee in the earlier writ petition, the assessee is barred from raising such a contention.

28. In ***Global Energy*** the Hon'ble Division Bench of the Bombay High Court pointed out that coordinating investigation can always be a good ground for transfer from one place to another. Relying on the judgment of the Hon'ble Supreme Court in ***Ajantha Industries***, it was pointed out that while transferring the case on the ground of coordinated investigation, some reason has to be given by the Commissioner which reveals why it is necessary to transfer the case for the purpose of coordinated investigation. The facts that emerge, shows there are sufficient reasons assigned in the order of transfer. The sufficiency or insufficiency of such reasons is beyond the pale of adjudication in the present litigation, lest it may prejudice the assessee. We are of the clear view, upon appreciation of the facts, the onus on the income tax department to justify the order of transfer has been

proved/ established. In such circumstance the question of applying the "suitable boy" theory would/ does not arise.

29. It was argued that the appellant is only a witness, not searched, no survey on him, hence no jurisdiction for transfer. We find no material on record to hold that the appellant is only a witness, such contention, being self serving, is rejected.

30. Argument was made that the income tax department is expanding the scope by submitting additional information, bringing on record new facts. This again is on account of the facts that the assessee in the writ petition has sought to justify his stand on the reasons recorded, this has necessitated that income tax department to bring facts on record, thus the assessee having invited such a response cannot be heard to raise any complaint in this regard.

31. All that is required by the Writ Court is to consider as to whether there are grounds for transfer as emanating from the reasons recorded. We are satisfied there are adequate reasons. We refrain from commenting upon the reasons as it would impinge upon the rights of the assessee during the assessment proceedings at Delhi as a part of the centralization done by the income tax department in the cases of thirty four other assessees.

32. The plea of mala fide exercise of power has not been pleaded (as required), and from the facts placed by the learned Additional Solicitor General it is clear that such a plea of assessee is specious.

33. Once again it is reiterated that when the assessee himself complained that no reasons were recorded in the show-cause notice dated 05.09.2019 and the order of transfer (quashed in the earlier writ proceedings), the income tax department was duty bound to follow the directions in WPA 11901/2021 dated 27.09.2021. Therefore, to state the show-cause notice, and order of transfer were coloured on facts is unacceptable. Further, it appears that the assessee, before the learned Writ Court has embarked on facts, as was done before us, this has resulted in the learned Writ Court to consider the same and render a finding. In any event in this litigation adjudication of the merits is out of bounds, hence any argument as advanced on behalf of the appellant in that regard has to necessarily fail. If the assessee states that he claims no right to be assessed at a particular place while exercising the power under Section 127 of the Act, our task becomes easier. This is so because the assessee had been provided with adequate opportunity to put further his submissions on the proposal for transfer, opportunity of personal hearing was granted and availed of, reasons have been recorded by the department. There is no challenge to the decision making process. The plea of mala fide has not been pleaded or proved. The plea of inconvenience has been found to be not tenable. In the net result, we have to necessarily uphold the order of transfer.

34. Therefore, we are of the clear view that the appellant has not been able to make out any case for interference with the order of transfer on anyone of the settled principles for interference of an administrative order. The learned

single bench had made an elaborate exercise and upheld the order of transfer and we find no good grounds to interfere with the same.

35. In the result, the appeal fails and the same is dismissed. No costs.

**(T.S. SIVAGNANAM, J.)**

**I Agree.**

**(HIRANMAY BHATTACHARYYA, J.)**

*(P.A – PRAMITA/SACHIN)*