

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On 12.09.2019
Delivered On 27.09.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.Nos.6334 and 6336 of 2019
and
W.M.P.No.10771, 7170 and 7172 of 2019

M/s.MRL Posnet Private Limited
(Rep. by its Chief Financial Officer Mr.B.Sundar
Age-50 years),
8/17, B Block, 1st Floor,
Sunnyside, Shafte Mohammed Road,
Nungambakkam,
Chennai 600 034,
PAN: AAECF7679M ... Petitioner in both W.Ps.

Vs

- 1.The Principal Commissioner of Income Tax,
Chennai-4,
301, Wanaparthi Block, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.
- 2.The Deputy Commissioner of Income Tax,
Central Circle-1 (1), 3rd Floor,
Central Revenues Building,
Queen's Road, Bangalore 560 001.
... Respondents in both W.Ps.

Prayer in W.P.No.6334/2019:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent bearing Notification No.10/2018-19 in C.No.27/Centralisation/PCIT-4/2017-18 dated 13.02.2019 and quash the same.

Prayer in W.P.No.6336/2019:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the second respondent bearing F.No.AAECF7679M/DCIT/CC-1(1)/2018-19 dated 19.02.2019 and quash the same.

For Petitioner : Mr.Sandeep Bagmar
in both W.Ps.

For Respondents : Mrs.Hema Muralikrishnan,
in both W.Ps. Senior Standing Counsel (I.T.)

C O M M O N O R D E R

W.P.No.6364 of 2019 is filed challenging the notification issued by the first respondent dated 13.02.2019, transferring the petitioner/assessee's case from ITO Corporate WD(4)(1), Chennai-2 DCIT Central Circle (1), Bangalore under Section 127 of Income Tax Act, 1961 for the purpose of a coordinated investigation.

2. W.P.No.6336 of 2019 is filed challenging the proceedings of the second respondent dated 19.02.2019, wherein and whereby, the petitioner/assessee was called upon to produce the books of accounts and furnish in writing and verified in the prescribed manner information called for and on the points or matters specified therein.

3. Both these writ petitions are filed by one and the same assessee. While the first writ petition is filed challenging the transfer of the assessee's case from Chennai to Bangalore, the second writ petition is filed against the consequential notice issued by the Assessing Officer at Bangalore. Therefore, the facts and circumstances warranting the filing of these two writ petitions are one and the same and they are as follows:

The petitioner is a Private Limited Company incorporated under the Companies Act, 1956. It is engaged in the business of providing point of sale technology infrastructure to banks and consumer service providers. The petitioner Company was acquired by the Worldline Group, France through its Singapore subsidiary i.e. Worldline IT and Payment Services (Singapore) Pte. Ltd. (Worldline Singapore) in October 2017. Prior to the acquisition, one Kishore Kothapalli and Satish P.Chandra were Directors of the petitioner Company. They resigned from the Directorship of the petitioner with effect from 25.10.2017. On 01.02.2018, a survey under Section 133A of the Income Tax Act, 1961 was conducted at the office premises of the petitioner at Chennai. During the course of survey proceedings, the petitioner had produced share purchase agreement dated 29.09.2017, Indemnity escrow agreement dated 29.09.2017 and transaction escrow agreement dated 29.09.2017 to the Assistant Director of Income Tax (Inv.) Unit-3, which had been impounded. Pursuant to the said survey, a show cause notice dated

04.06.2018 was issued by the first respondent, asking the petitioner as to why centralization of the petitioner's case should not be done with the Assessing Officer, Bangalore, being the second respondent. The first respondent in the said notice barely stated that there are substantial linkages between the petitioner and Satish P Chandra and his Company M/s GTPL, without exactly stating as to what those linkages are. The petitioner vide its reply dated 13.06.2018, has specifically stated that the said Satish P Chandra, Kishore Kothapalli and M/s.GTPL did not play any part in the management of the petitioner ever since Worldline Singapore became 100% owner of the petitioner. It was specifically submitted that the petitioner had no connection with those persons. It was also stated that the petitioner's operations were in Chennai along with its registered officer and all its records are also in Chennai. Therefore, the petitioner requested that the assessments may be completed at the present jurisdictional office at Chennai, as it would cause immense hardship, if the case is to be transferred to Bangalore. The first respondent issued a notification dated 26.06.2018, without considering the merits of the petitioner's reply and without providing any reasons, transferring the petitioner's case from Chennai to Bangalore. Pursuant to the said transfer order, a notice dated 18.07.2018 was also issued by the second respondent. Aggrieved against those proceedings, the petitioner filed W.P.Nos.19415 and 19416 of 2018. This Court, by order dated 26.06.2018, quashed the order of transfer and remitted the matter back to the first respondent to pass fresh order on merits and in accordance with reasons. Insofar as the consequential notice issued by the second respondent dated 18.07.2018 is concerned, this Court directed the said notice to be kept in abeyance. Pursuant to the order of this Court, the first respondent passed the present impugned order of transfer and consequently, the second respondent issued the notice under Section 142(1) read with Section 129 of the said Act. Hence, these present writ petitions are filed.

4. A counter affidavit is filed on behalf of the respondents. The case of the respondents is as follows:

The petitioner Company became 100% owned Company by Worldline Group only after purchasing the shares from one Satish Chandra, Kishore Kothapalli and M/s.Global Tech Park Pvt. Ltd. The purpose of centralization of cases is to investigate the transactions among the various related entities during the last six previous years to the previous year in which the search and survey operations are conducted and to assess the income of all the persons concerned for the assessment years in question. Since the transfer of shares had happened in October 2017, which is well within six years prior to previous year, in which survey was conducted, the transactions needs to be investigated in

order to have a clear picture before the final assessment of income is made. Therefore, it cannot be said that there was no nexus/linkage. Though the nexus/linkage, which may seem to be absent on the date of survey, the purpose of centralization is not limited to investigate the transactions, if there exists nexus/linkage on the date of survey only, but of six years prior to the year also, in which search and survey happened. Provisions of Section 127 is only for necessitating the transfer of the petitioner for jurisdictional purpose and not for adjudicating the issues involved. Moreover, the seized/impounded materials are in the possession of DCIT, Central Circle, Bengaluru and the actual financial, commercial or other relevant nexus will be known only after the coordinated investigation by the DCIT, Bengaluru. The reasons were communicated to the petitioner and a speaking order in this regard has been passed on 13.02.2019. No new facts and reasons have been given enlarging the scope of the show cause notice. As per the provisions of Section 127(1) and (2) of the Income Tax Act, 1961, the Principal Commissioner of Income Tax can transfer any case from one Assessing Officer to any other Assessing Officer, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so and after recording his reasons for doing so, by passing an order. In view of the above enabling provision, there is no necessity for the Principal Commissioner of Income Tax to provide the nature of investigation, as it is out of scope of the provision. Since the seized/impounded materials are also in the possession of the second respondent, the nature of investigation could not be provided. As long as centralization is done in accordance with the provisions of the Act and for coordinated investigation and assessment, the same is to be construed for the purpose of safeguarding the Revenue and in public interest. The inconvenience, if any to the petitioner cannot stand in the way of public interest as long as none of the rights of the petitioner like proper opportunity, right to carry on business etc., are affected. Therefore, both the impugned proceedings were passed well within law.

5. The petitioner filed a reply to the counter affidavit filed by the respondents, wherein it is stated as follows:

The centralization cannot give unfettered powers to the officers to investigate transactions, which are admittedly disclosed and income therefrom is offered to tax. The reasons supplied by the respondents for transfer did not form part of the show cause notice dated 04.06.2018. The impugned order was passed under assumption that the nexus/linkage may exist in respect of the six years prior to the year in which search or survey conducted. Therefore, the entire action is contrary to the provisions of Section 127 of the Act. The first respondent erroneously exercised powers under Section 127 of the Act

without recording reasons to justify the necessity of coordinated investigation. In the absence of any agreement for the purpose of transfer under Section 127(2) of the Act between the authorities of equal rank, any transfer made under this Section is bad in law and illegal. In the present case, there is no agreement by the first respondent for transfer as requested by the Principal Commissioner of Income Tax (Central), Bangalore. The very admission of the respondent that the nature of transaction, which requires verification and investigation, is unknown means that the entire exercise is without any basis and without material on record. Therefore, transfer under Section 127 cannot be made merely for facilitating coordinated investigation.

6. Mr.Sandeep Bagmar, learned counsel appearing for the petitioner submitted as follows:

The impugned order is contrary to the scope and ambit of 127 (2)(a) of the Income Tax Act. There must be an agreement between the two Commissioners and such agreement must be specifically stated in the order of transfer. In this case, no such agreement is referred to or reflected in the order of transfer. Thus, it violates the mandatory requirement of Section 127(2)(a). On this aspect, the following decisions are relied on:

- i) 2017 (12) SCC 805, Noorul Islam Educational Trust vs. CIT and others;
- ii) (2011) 332 ITR 97 (Madras), Noorul Islam Educational Trust vs. CIT and others;

b) When the show cause notice refers as though the proposed transfer was for coordinated investigation, the impugned order states reasons beyond the show cause notice. The impugned order assigns reasons on assumptions without material. Even according to the respondents, as spelt out in their counter, nexus will be known only after investigation. Therefore, it is evident that as on date, no material, no linkage for transferring the case. No material or transaction is brought down, which necessitates for coordinated investigation. While the show cause notice is totally silent anything about the past six years, the impugned order refers the same. Therefore, the impugned order is beyond the scope of show cause notice. In this aspect, the following case laws are relied on:

- i) 1976 (102) ITR 281 (SC); Ajantha Industries vs. CBDT;
- ii) 2004 (186) CTR 428 (P&H); Rajesh Mahajan vs. CIT;
- iii) 2016 (387) ITR 223 (Mum); Zodiac Developers (P) Ltd. vs.

Pr.CIT;

iv) 2015 (234) Taxmann 468, RSG Foods (P) Ltd. vs. Commissioner
of Income Tax.

7. Per contra, Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing for the respondents submitted as follows:

a) This is the second round of litigation on the very same issue of transfer of case. The petitioner has not specifically raised the question with regard to the agreement between the two Commissioners either in this writ petition or in the earlier writ petition. The only objection raised in the earlier writ petition was that the transfer was made without assigning reasons. Therefore, this Court has set aside the order of transfer and remitted the matter back to the Authority concerned to pass fresh order expressing the reasons for transfer. Consequently, the reasons for transfer are now communicated. Therefore, the learned counsel for the petitioner is estopped from raising the ground with regard to the agreement between the two Commissioners, while making his oral submissions. When this ground was not raised in the first writ petition, the same cannot be raised in the second round. Even otherwise, agreement between the two Commissioners can be inferred from their conduct. Therefore, it is not necessary to specifically state in the order of transfer that an agreement was reached between the two Commissioners. On this aspect, (2017) 86 Taxmann.com 39 (Guj), Genus Electrotech Ltd. vs. Union of India, is relied on.

b) On the very same day, survey was conducted at the petitioner's premises and GTPL, Bangalore. GTPL held 24.56 shares in the petitioner's Company. This 24.56% shares is sold to the petitioner's owner in the month of October 2017. The search was conducted in February 2018. Records were seized. Therefore, financial implication between the parties out of such transfer of shares can definitely be inferred. Merely transferring the file from one Office to the other Office does not cause prejudice to the assessee. Mere inconvenience cannot be a ground to refuse or reject the transfer. Since there was search and survey at GTPL, Bangalore, the Assessing Officer, Bangalore, has power to do block assessment. The impugned order is not beyond the scope of the show cause notice. On the other hand, it only gave the reasons. The case laws relied on by the learned counsel for the petitioner are factually distinguishable and thus, not applicable to the facts and circumstances of the present case.

8. Heard the learned counsel for the petitioner and the learned Senior Standing counsel for the respondents and perused the materials placed before this Court.

9. The petitioner is aggrieved against the transfer of the case from Chennai to Bangalore. Earlier similar order of transfer under Section 127 of the Income Tax Act was passed transferring the petitioner's case from ITO, Corporate Ward 4 (1), Chennai to DCIT, Central Circle 1 (1), Bangalore. The said order dated 26.06.2018 was put to challenge before this Court by the petitioner in W.P.No.19415 of 2018. The only objection raised therein against transfer was that the order impugned therein did not assign specific reasons for transfer except stating that the objections raised by the assessee cannot be the basis for non centralising the case and that the materials, which were seized and impounded, need to be further investigated. This Court, after hearing both sides, allowed the writ petition and set aside the said order dated 26.06.2018 and remitted the matter back to the first respondent to pass a fresh order on merits and in accordance with law with reasons within a period of two weeks. This Court passed the said order only on the ground that the first respondent has to record his reasons for transferring the case, as required under Section 127(1) of the Income Tax Act, by specifically observing that the reasons stated in the show cause notice are only prima facie view of the Authority and therefore, subsequent order passed should necessarily state the reasons. It is to be noted, at this juncture that except raising the above objection, the petitioner did not raise any other objections, as has been raised in this writ petition. It is not the case of the petitioner that the question now raised by them with regard to agreement between two Commissioners was not available at the time of filing the earlier Writ Petition. It is not a new event which had come into existence after the filing and disposal of the earlier Writ Petition. On the other hand, this issue was very much available to the petitioner even at that time and however, they have not chosen to raise the same. It is well settled that when a challenge is made against an order, all the grounds available and legally sustainable should be raised at the first instance. Piece meal raising of grounds one after another in successive writ petitions, in respect of the very same challenge is not permissible, since such kind of practice, if allowed, would only result in entertaining successive writ petitions on the same issue by the same party.

10. Keeping the above position in mind, let me consider the case further. Consequent upon the said order made in W.P.No.19415 of 2018 dated 11.12.2018, a fresh order dated 13.02.2019 in Notification No.10/2018-2019 was issued by the first respondent, which is impugned in this writ petition. Perusal of the said detailed order would show that the first respondent has considered the objections raised by the petitioner, dealt with the same and thereafter, chosen to pass

the order of transfer of the petitioner's case once again from ITO, Corporate Ward 4(1), Chennai to DCIT, Central Circle 1(1), Bangalore under Section 127 of the Income Tax Act, 1961, for the purpose of a coordinated investigation, which is necessary for proper assessment of the income.

11. A careful perusal of the said order would show that apart from saying that the transfer is made for the purpose of coordinated investigation, the first respondent has observed at paragraph No.9.2 as follows:

"...9.2 The objections raised above are dealt as under:

1) So far as objection of non-existent nexus/linkage between the assessee and others (Mr.Satish Chandra, Mr.Kishore Kothapalli and M/s.Global Tech Park Ltd) on the date of survey is concerned the fact is that the assessee company became 100% owned company by Worldline Group only after purchasing the shares from Mr.Satish Chandra, Mr.Kishore Kothapalli and M/s.Global Tech Park Pvt Ltd. before the date of survey. The acquisition of the assessee company by Worldline Group happened in October 2017 by way of transfer of shares by Mr.Satish Chandra, Mr.Kishore Kothapalli and M/s.Global Tech Park Pvt Ltd. The purpose of centralization of cases is to investigate the transactions among the various related entities during the last six previous years prior to the previous year in which search and survey are conducted in addition to the previous year in which the search and survey operations are conducted and to assess income of all the persons concerned for the assessment years in question. Since, the transfer of shares happened in October 2017 which is well within 6 years prior to previous year in which survey was conducted, the transactions need to be investigated in order to have a clear picture before the final assessment of income is made in all the related cases. Hence, it cannot be said that there was no nexus/linkage as claimed by the assessee. In fact there is indeed a nexus/linkage which may seem to be absent on the date of survey, but as mentioned earlier the purpose of centralization is not limited to investigate the transactions if there exists nexus/linkage on the date of survey only, but of six years prior to the year also, in which search and survey happen. Since the basis of objection itself is not in conformity with the provisions of law, this objection is rejected.

2) So far as objection of no major document found is concerned it must be mentioned here that the materials found during search and survey are considered and investigated during assessment proceedings only. In

any case this cannot be taken as basis to object centralization, because the centralization is done in the public interest to safeguard the revenue. And while invoking the provisions of section 127 i.e. at this stage of order of centralization, consideration of documents and giving 'detail' reasons are not needed as has been held by various courts.

3) So far as inconvenience in attending proceedings at Bangalore is concerned, the objection is not acceptable because the assessee company is supported/assisted by learned counsels. And in any case this cannot be taken as objection by the assessee because the centralization being an administrative process is being done in the public interest to safeguard revenue.

On all the above issues the relevant observations of Gujarat High Court in case of Shree Ram Vessel Scrap Pvt. Ltd. Vs. Commissioner of Income Tax-VI (Special Civil Application No.16883, 16886, 16888 & 16896 of 2012) dated 23/01/2013 are worth mentioning which are reproduced as under:

"The contention of the petitioner that the Department should have furnished information with them (as claimed by them in their reply) is not at all sound as the Department cannot be compelled or required at the initial stage to disclose the "material" or "information" as it may "embarrass or prejudice" the assessment. The legal position is crystal clear and settled by a catena of the decisions of this Court and the apex court on this issue. This Court cannot go into the "sufficiency" of the reasons."

"Undoubtedly, the order of transfer of assessment file of an assessee to a far off place puts the assessee in a great inconvenience and ought not to be ordered unless necessary in public interest to safeguard revenue by centralisation of cases for co-ordinated investigation. Such an order cannot be passed arbitrarily and can be justified only if there are valid reasons. The principles of natural justice as well as the statutory provision require that the reasons must be recorded in writing in the order itself and disclosed to the assessee to enable the assessee to take its remedies against such an order. At the same time, the power conferred for transfer cannot be interfered with having regard to the object for which such power is conferred."

12. Perusal of the reasons stated at paragraph 9.2 of the impugned order undoubtedly indicate that the transfer is made not simply by stating that it was made for coordinated investigation and on the other hand, the above reasons speak for themselves justifying such intended coordinated investigation. As the reasons stated at paragraph 9.2 are in respect of factual aspects of the matter and that the investigation is yet to be completed, any discussion on the above reasons and rendering findings on the same, as regard to correctness or otherwise of those reasons, will not be proper at this stage, as it would amount to giving a finding in respect of those issues even before the completion of the investigation. Therefore, this Court is of the firm view that the reasons stated in the impugned proceedings are in conformity with the show cause notice already issued and therefore, the petitioner is not entitled to state that the reasons stated are beyond the scope of the show cause notice.

13. The learned counsel for the petitioner relied on 1976 102 ITR 281 (SC) (Ajantha Industries vs. CBDT). Perusal of the facts of the said case would show that the assessee therein questioned the validity of the order of transfer passed by the Central Board on the ground of violation of principles of natural justice, since before passing such order, no reasons were given nor communicated to the assessee therein. The facts of the present case are totally different as discussed supra. Therefore, the above decision of the Apex Court is not applicable to the present case.

14. The next decision relied on is reported in 2004 (186) ITR 428 (Rajesh Mahajan vs. CIT) of the Punjab and Haryana High Court. Perusal of the facts and circumstances of the said case would also show that the impugned order of transfer therein only stated that the transfer of assessment proceedings of the assessee therein was made for a coordinated investigation. In this case, I have already pointed out that paragraph 9.2 of the order of transfer has clearly spelt out certain reasons. Therefore, it is to be noted that in the present case, the transfer is made not by simply stating for a coordinated investigation, but by furnishing the reasons as well in support of such investigation. Hence, the above decision is also factually distinguishable.

15. 2015(234) Taxman 468 (RSG Foods (P) Ltd. vs. Commissioner of Income Tax), again a decision of the Punjab and Haryana High Court is relied on by the petitioner's counsel to contend that mere suspicion cannot be sufficient for taking recourse to action under section 127 of the said Act. I do not think that the above decision, which is again factually

distinguishable, would help the petitioner in any manner. In this case, it is evident that the impugned order was not made based on mere suspicion. On the other hand, such suspicion is based on the transactions entered between the parties, as is referable to the documents seized. No doubt, the correctness or otherwise of such suspicion is a matter for investigation and therefore, before concluding the investigation, it is better to refrain from expressing any view on such suspicion. Accordingly, I find that the above case law is also not applicable to the present case.

16. The decision of the Mumbai High Court reported in 2016 (387) ITR 223 (Zodiac Developers (P) Ltd. vs. Pr.CIT) relied on is also factually distinguishable, since the facts of the said case would show that the notice and the consequential order of transfer are bereft of any particulars except to state that the transfer is required for the sake of coordinated investigation along with another connected case for administrative convenience. As discussed supra, in this case, the facts are different and therefore, the above decision is also not applicable to the present case.

17. Further contention of the petitioner that no material or transaction is brought down which necessitates for coordinated investigation, is also liable to be rejected for the reason that the petitioner is not entitled to get all those material details in respect of the transactions, which are sought to be investigated by way of coordinated investigation even before the completion of such investigation. In my considered view, disclosing those materials at this stage, that too, in the order of transfer, would certainly affect and hamper the investigation process. Therefore, I find that the above contention of the petitioner also cannot be sustained.

18. Main contention raised by the learned counsel for the petitioner is that there is no agreement between the two Commissioners. In other words, according to him, no agreement as required under Section 127(2)(a) of the Act was arrived between the Bangalore Commissioner and Chennai Commissioner for transferring the file from Chennai to Bangalore. Therefore, he contended that in the absence of such agreement, the transfer is bad.

19. Before answering the above issue, it is relevant to note at this juncture that this point was not at all raised specifically by the writ petitioner in the present writ petition. It is also to be noted that even in the earlier writ petition filed in W.P.No.19415 of 2018, this issue was not raised. However the learned counsel for the petitioner sought to raise this issue first time before this Court orally by

contending that it is a question of law based on mandatory statutory requirement under Section 127(2)(a) and therefore, this Court can go into such issue and decide.

20. On the other hand, it is the contention of the learned Senior Standing Counsel for the respondents that when the above issue has not been specifically raised either in the earlier writ petition or in the present writ petition, the learned counsel for the petitioner is not entitled to raise the same, since there was no opportunity for the Revenue to deny such contention in their counter pleadings. I have already observed supra that the grounds cannot be raised in piece meal in successive writ petitions in respect of the very same challenge. Admittedly, the above issue is not raised in the affidavit filed in support of the writ petition, except to say that the impugned order was passed in contrary to the relevant provision. However, this Court is not inclined to leave this issue at this stage and on the other hand, would like to deal with such issue and answer the same as discussed hereunder, since it is raised as a question of law.

21. Section 127 of the Income Tax Act, 1961 deals with Powers to transfer cases, which reads as follows:

"127. Power to transfer cases:

(1) The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal 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 his reasons for doing so, transfer any 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.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner,-

(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the [Principal

Director General or Director General] or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order ;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation : In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year."

22. Perusal of the above provision of law would show that a case can be transferred from one Assessing Officer to the other Assessing Officer or Assessing Officers, after giving the assessee reasonable opportunity of being heard and after recording the reasons for transfer. However, if the Assessing Officer, from whom the case is to be transferred and the

Assessing Officer, to whom the case is to be transferred, are not subordinate to the same Commissioner, the Commissioner from whose jurisdiction, the case is to be transferred, would pass order after giving the assessee, a reasonable opportunity of being heard and after recording his reasons, if the transferring Commissioner and the Commissioner, within whose jurisdiction the case is transferred, are in agreement for such transfer. A careful perusal of Section 127(2)(a) would show that only when those two Commissioners are in agreement, the transferring Commissioner would issue notice to the assessee and pass orders by giving reasons, that too after giving the assessee a reasonable opportunity of being heard. Therefore, it is evident that only when there is an agreement between the two Commissioners, the event of issuing show cause notice itself would arise from the transferring Commissioner. In other words, the very conduct of the transferring Commissioner in issuing the show cause notice itself is enough for drawing a legal inference that both Commissioners are in agreement to transfer the case.

23. Further, Section 127(2)(a) of the Act does not stipulate anywhere or indicate in any manner as to how or in what manner/format such agreement has to be arrived at or recorded. On the other hand, this Court is of the considered view that the language of the above provision of law has been carefully coined to infer the presence of such agreement by conduct, once the show cause notice is issued by the transferring Commissioner to the assessee.

24. It is to be noted at this juncture that power to transfer cases within the jurisdiction of the same Commissioner from one Assessing Officer to another Assessing Officer, if both are subordinate to him, is dealt with under Sub Section (1) of Section 127. In the case, where both the Assessing Officers are not subordinated to the same Commissioner, procedure to transfer is dealt with under sub Section (2) of Section 127, which contains two eventualities. While sub clause (a) of 127(2) deals with transfer of cases, when there is an agreement between the two Commissioners, sub clause (b) of Section 127(2) deals with transfer of cases by the Board or any such Officer as the Board may, by notification, authorise in this behalf, where the two Commissioners are not in agreement to transfer the case. While carefully perusing the provision under Section 127(2)(a), it is evident that the word "agreement" referred to therein is to be construed as an agreement by conduct and not necessarily an agreement in writing. The above emphasis is made based on the word "then" referred to under Section 127(2)(a) after the word "agreement". Therefore, it is apparent that only when there is an agreement between the two Commissioners, then the transferring Commissioner has to issue show cause notice and pass orders thereon. If no agreement is reached between the two

Commissioners, there is no occasion for the transferring Commissioner to issue show cause notice at all. Therefore, the word "then" assumes significance, only to indicate that the issuance of the show cause notice itself is enough to draw inference of such statutory compliance viz., existence of an agreement between the two Commissioners. Only when there is no disagreement between the two Commissioners, such disagreement must be reflected in writing, so as to invoke the power of the Board to transfer as contemplated under Section 127(2) (b).

25. Keeping the above statutory position in mind, if the facts and circumstances of the present case are looked into, it would show that the Chennai Commissioner has passed the impugned order of transfer, after issuing show cause notice to the assessee and after giving them an opportunity of being heard as well. Therefore, I find that the statutory requirement under Section 127(2) (a) is fully complied with in this case. In other words, the very conduct of the respective Commissioners would show that there is an agreement between them for transfer and therefore, it cannot be contended otherwise, merely because it is not so stated in the impugned order. Very issuance of the show cause notice followed by passing an order of transfer would, on the face of those proceedings, reflect the agreement of the Chennai Commissioner for transferring the case to the Bangalore Commissioner.

26. At this juncture, it is relevant to quote the Division Bench decision of the Gujarat High Court reported in (2017) 86 Taxmann.com 37 (Guj), Genus Electrotech Ltd. vs. Union of India, wherein at paragraph No.18, it has been observed as follows:

"18. Thus clearly the Principal Commissioner of Income-tax, Lucknow, had shown his agreement to the case of the petitioner being transferred and centralised before ACIT, Central Circle, Moradabad along with other group cases. It is true that no such formal letter has been written by the Principal Commissioner of Ahmedabad indicating his agreement. However, the record would suggest that previously he had passed the order dated 30.12.2015 transferring the assessment of the petitioner. Before passing this order, he issued a notice asking the petitioner to remain present. As noted, this order was struck down by judgment dated 18.7.2016. Thereafter, the said authority issued fresh notices dated 3.11.2016 and 23.11.2016 calling upon the petitioner to participate in the hearing and indicating the grounds on which he proposed to transfer the assessment. After considering the opposition of the petitioner, the said authority passed the order which is impugned in the present petition. The agreement of the Principal Commissioner,

Ahmedabad, to transfer the case, therefore, can be culled out from the record. Clause(a) of sub-section(2) of section 127 of the Act refers to the agreement of the two heads of the jurisdiction from where as assessment is transferred to where it is being transferred. There is no format in which such agreement must be recorded or conveyed. As noted, the additional duty of the authority from whose jurisdiction the assessment is being transferred is to give a reasonable opportunity of being heard to the assessee and then to pass an order citing reasons. This would necessarily be after he agrees to allowing the assessment to be transferred. When therefore, Principal Commissioner of Ahmedabad had issued notices to the petitioner on more occasions than one proposing to transfer the assessment, his agreement for such transfer was writ large on the face of the record. Had this been a case where the authority to whom the assessment was being transferred and whose agreement is not found on record, the issue would have to be seen in a different light. We cannot put the requirement of clause(a) to sub-section(2) to section 127 of the Act in such a straight-jacket formula that even when the competent authority grants a hearing to the assessee and, thereafter, passes a reasoned order transferring the assessment, his action would fail merely because in writing he did not record his agreement. Contrary to what was canvassed before us, decision of the Supreme Court in case of Noorul Islam Educational Trust v. CIT [2016]388 ITR 489/243 Taxman 519/76 taxmann.com 144 does not lay down any such proposition. It was a case where the affidavit filed on behalf of the Revenue did not disclose that there was any agreement as required under section 127(2)(a) of the Act. It was merely averred in the affidavit that there was no disagreement between the two Commissioners. In this background, the Supreme Court observed that absence of disagreement cannot tantamount to agreement as visualised under section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income tax which is conspicuously absent in the said case. The Supreme Court has used the expression "positive state of mind" referring to the requirement of agreement contained in the said provision."

27. Perusal of the above findings rendered by the Gujarat High Court would support my view expressed supra.

28. No doubt, the learned counsel for the petitioner heavily relied on the decision of the Hon'ble Supreme Court reported in (2017) 12 SCC 805, Noorul Islam Educational Trust vs. CIT, wherein the Apex Court has observed that absence of disagreement cannot tantamount to agreement. However, the perusal of the facts and circumstances of the said case would show that the counter affidavit filed therein on behalf of the Revenue did not disclose that there was any such agreement. In this case, as already pointed out, the petitioner has not raised the point on the question of agreement either in the present writ petition or in the earlier writ petition. Therefore, the Revenue cannot be faulted in not meeting out the point in the counter pleadings. In fact, the above decision of the Apex Court was considered and discussed by the Gujarat High Court in the case cited supra and distinguished the same. I am in full agreement with the above decision of the Gujarat High Court, more particularly, when the facts and circumstances of the present case are totally different and distinguishable from the facts and circumstances of Noorul Islam Educational Trust's case.

29. The other decision relied on by the petitioner's counsel is reported in (2011) 332 ITR 97 (Madras), Noorul Islam Educational Trust vs. CIT and others. It is true that the learned Judge found that no material has been placed before him that there was agreement between two Commissioners and therefore, in the absence of such agreement, the transfer cannot be made. In this case, I have already pointed out that the very issuance of the show cause notice itself is reflection of the agreement arrived by the respective Commissioners and therefore, the show cause notice is the relevant material to arrive at a conclusion that there was an agreement between the Commissioners. In other words, the agreement referred to under Section 127(2)(a) is to be inferred based on the conduct of the concerned officials, since such inference is statutorily permitted as discussed supra. Therefore, I am of the view that the above decision of this Court would not help the petitioner in any manner.

30. No doubt, there may be some inconvenience for the assessee to attend the enquiry before the Assessing Officer, to whom the case is transferred. Mere inconvenience or facing certain practical difficulties themselves cannot be a ground to refuse the transfer of investigation. Certainly, the administrative exigencies of the Investigating Agency would outweigh the practical difficulties or inconvenience of the person to be investigated. It should be borne in mind that it is for the Investigating Agency to take the call and decide as to how and in what manner, the investigation has to be proceeded with. Of course, while making such transfer, the statutory requirement need to be followed and when such compliance is

evident on the face of the proceedings, it is better that such transfer proceedings are not interfered with at the very stage of investigation itself.

31. Considering the above stated facts and circumstances, I find that the impugned order of transfer and the consequential impugned notice do not warrant any interference. Accordingly, these writ petitions fail and the same are dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vri

To

1.The Principal Commissioner of Income Tax,
Chennai-4,
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Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
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+2cc to Mr.Sandeep Bagmar, Advocate Sr.83352
+1cc to M/s.Hema Murali Krishnan, Advocate Sr.82955

W.P.Nos.6334 and 6336 of 2019
and
W.M.P.No.10771, 7170 and 7172 of 2019

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srg 01/11/2019