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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3535/2021 & CM APPL. 10693/2021**

SANJAY GANDHI MEMORIAL TRUST Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with
Ms.Kavita Jha, Mr.Vaibhav Kulkarni
and Mr.Anant Mann, Advocates.

versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir
Singh, ASG and Mr.Zoheb Hossain,
Sr.Standing Counsel, Mr.Vipul
Agrawal, Mr.Sanjeev Menon,
Mr.Prasanjeet Mohapatra, Mr.Shyam
Gopal, Mr. Vivek Gurnani and
Ms.Monica Benjamin, Advocates.

+ **W.P.(C) 3556/2021 & CM APPL. 10749/2021**

JAWAHAR BHAWAN TRUST Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with
Ms.Kavita Jha, Mr.Vaibhav Kulkarni
and Mr.Anant Mann, Advocates.

versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

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Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjimin, Advocates.

+ **W.P.(C) 3557/2021 & CM APPL. 10752/2021**

RAJIV GANDHI FOUNDATION Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjimin, Advocates.

+ **W.P.(C) 3558/2021 & CM APPL. 10754/2021**

RAJIV GANDHI CHARITABLE TRUST Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjimin, Advocates.

+ **W.P.(C) 3559/2021 & CM APPL. 10756/2021**

YOUNG INDIAN

..... Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

Versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjimin, Advocates.

+ **W.P.(C) 4076/2021 & CM APPLs. 12395/2021 AND 25584/2021**

SONIA GANDHI

..... Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

Versus

PR COMMISSIONER OF INCOME TAX DELHI 12 & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjamin, Advocates.

+ **W.P.(C) 4082/2021 & CM APPL. 12427/2021**

RAHUL GANDHI

..... Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

Versus

PR COMMISSIONER OF INCOME TAX DELHI 12 & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr.Vivek Gurnani and Ms.Monica Benjamin, Advocates.

+ **W.P.(C) 4083/2021 & CM APPLs. 12430/2021 AND 16524/2021**

PRIYANKA GANDHI VADRA

..... Petitioner

Through: Mr.Arvind Datar, Sr.Advocate with Ms.Kavita Jha, Mr.Vaibhav Kulkarni and Mr.Anant Mann, Advocates.

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Versus

PR COMMISSIONER OF INCOME TAX DELHI 12 & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr. Vivek Gurnani and Ms.Monica Benjamin, Advocates.

+ **W.P.(C) 6921/2021 & CM APPLs. 21839-21841/2021, 22853-22854/2021 AND 25581/2021**

AAM AADMI PARTY

..... Petitioner

Through: Mr.Amar Dave, Advocate with Mr.Vivek Jain and Mr.Abhinav Jain, Advocates.

versus

COMMISSIONER OF INCOME TAX (EXEMPTION) & ORS.

..... Respondents

Through: Mr.Tushar Mehta, SG with Mr.Balbir Singh, ASG and Mr.Zoheb Hossain, Sr.Standing Counsel, Mr.Vipul Agarwal, Mr.Sanjeev Menon, Mr.Prasanjeet Mohapatra, Mr.Shyam Gopal, Mr. Vivek Gurnani and Ms.Monica Benjamin, Advocates.

Reserved on : 15th March, 2023

Date of Decision: 26th May, 2023

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CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

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J U D G M E N T

MANMOHAN, J:

THE ISSUE

1. The primary issue that arises for consideration in the present batch of writ petitions is whether the assessments of the petitioners could be transferred to the Central Circle by way of the impugned orders passed under Section 127 of the Income Tax Act, 1961 (hereinafter be referred to as ‘the Act’) without sanction of the Central Board of Direct Taxes (‘CBDT’).

RELEVANT FACTS

2. It is pertinent to mention that the present batch of writ petitions has been preferred by five Charitable trusts viz. Sanjay Gandhi Memorial Trust, Jawahar Bhawan Trust, Rajiv Gandhi Foundation, Rajiv Gandhi Charitable Trust, Young India as well as three individuals viz. Mrs. Sonia Gandhi, Mr. Rahul Gandhi, Mrs. Priyanka Gandhi Vadra and a political party - Aam Aadmi Party (AAP).

3. In the present batch of writ petitions, the petitioners have challenged the transfer orders passed under Section 127 of the Act, whereby the jurisdiction of the petitioners have been transferred from Exemption Circle (in cases of Trusts) and ACIT Circle 52(1) (in cases of individuals) to DCIT Central Circle-27 and in the case of Aam Aadmi Party from Exemption Circle to DCIT, Central Circle -03. All the Income Tax Officers i.e. both transferor and transferee are located within the same city, namely, Delhi.

4. Since a common question of law arises in the present batch of writ petitions, the facts of Writ Petition (C) 3535 of 2021 (which was treated as

the lead writ petition with the consent of parties) are reproduced hereinbelow:-

4.1 The Petitioner (Sanjay Gandhi Trust) was established with the intent of providing health services, education and employment to the people of rural Uttar Pradesh. The Trust manages rural medical centre, the Sanjay Gandhi Hospital, educational institutes such as Indira Gandhi School and College of Nursing, Indira Gandhi Institute of Paramedical Sciences, Indira Gandhi Technical Institute and Rajiv Gandhi Computer Shiksha Kendra.

4.2 The petitioner is registered as a charitable institution under Section 12A of the Act and assessments have been completed under Section 143(3)/143(1) of the Act till the Assessment Year 2017-18. Charitable purpose of the petitioner has never been doubted by the revenue till the said Assessment Year.

4.3 By way of Finance Act, 2018, the concept of E-assessment was introduced in the Act by insertion of sub-Sections (3A), (3B) and (3C) to Section 143 of the Act and the Central Government was delegated with the power to make and notify a Scheme for conducting of E-assessments. Sub-Sections (3A), (3B) and (3C) to Section 143 of the Act are reproduced hereinbelow:-

*“Assessment
143....*

(3A) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) [or section 144] so as to impart greater efficiency, transparency and accountability by—

(a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based assessment with dynamic jurisdiction.

(3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, [2021].

(3C) Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.”

(emphasis supplied)

4.4 On 12th September, 2019, the E-assessment Scheme, 2019 was notified and implemented by the Central Government vide two Notifications No.61 and 62 of 2019. The relevant portions of the said Notifications are reproduced hereinbelow:-

A. Notification No.61/2019

“S.O. 3264(E).—In exercise of the powers conferred by sub-section (3A) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following Scheme, namely:-

1. Short title and commencement.— (1) This Scheme may be called the E-assessment Scheme, 2019.

...

2. Definitions .— (1) In this Scheme, unless the context otherwise requires, —

...

(iii) “assessment” means assessment of total income or loss of the assessee under sub-section (3) of section 143 of the Act;

....

(v) “automated allocation system” means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;

(vi) “automated examination tool” means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;

...
(xiii) “e-assessment” means the assessment proceedings conducted electronically in ‘e-Proceeding’ facility through assessee’s registered account in designated portal;
....

4. E-assessment Centres.– (1) For the purposes of this Scheme, the Board may set up-

(i) a National e-assessment Centre to facilitate the conduct of e-assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme;

(ii) Regional e-assessment Centres as it may deem necessary to facilitate the conduct of e-assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make assessment in accordance with the provisions of this Scheme;

(iii) assessment units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making assessment;

(iv) verification units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of accounts, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification.

(v) technical units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this Scheme; and

(vi) review units, as it may deem necessary to facilitate the conduct of e-assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in

the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of modifications proposed, if any, and such other functions as may be required for the purposes of review, and specify their respective jurisdiction.

....

5. Procedure for assessment.—(1) *The assessment under this Scheme shall be made as per the following procedure, namely:-*

....

(xix) The National e-assessment Centre shall, upon receiving the revised draft assessment order,-

(a) in case no modification prejudicial to the interest of the assessee is proposed with reference to the draft assessment order, finalise the assessment as per the procedure laid down in sub-paragraph (a) of paragraph (x); or

(b) in case a modification prejudicial to the interest of the assessee is proposed with reference to the draft assessment order, provide an opportunity to the assessee, as per the procedure laid down in subparagraph (b) of paragraph (x);

(c) the response furnished by the assessee shall be dealt with as per the procedure laid down in paragraphs (xvi), (xvii), and (xviii);

(xx) The National e-assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over such case., for –

(a) imposition of penalty;

(b) collection and recovery of demand;

(c) rectification of mistake;

(d) giving effect to appellate orders;

(e) submission of remand report, or any other report to be furnished, or any representation to be made, or any record to be produced before the Commissioner (Appeals), Appellate Tribunal or Courts, as the case may be;

(f) proposal seeking sanction for launch of prosecution and filing of complaint before the Court;

(xxi) Notwithstanding anything contained in paragraph (xx), the National e-assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case.”

B. Notification No.62/2019

“S.O. 3265(E).—*In exercise of the powers conferred by sub-section (3B) of section 143 of the Income-tax Act, 1961 (43 of 1961), for the purposes of giving effect to the E-assessment Scheme, 2019 made under sub-section (3A) of section 143 of the Act, the Central Government hereby makes the following directions, namely:-*

1. *The provisions of clause (7A) of section 2, section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, section 142, section 142A, section 143, section 144A, section 144BA section 144C and Chapter XXI of the Act shall apply to the assessment made in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely: -*

“A. (1) *The assessment shall be made as per the following procedure, namely:-*

....

(xxi) *Notwithstanding anything contained in paragraph (xx), the National e-assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case.”*

(emphasis supplied)

4.5 In the Budget Speech, 2019, referring to the fact that the existing system of scrutiny assessments in the Income Tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials, the Finance Minister introduced the concept of Faceless Assessment, with the intention of eliminating such instances.

4.6 On 23rd September, 2019, notice under Section 143(2) of the Act was issued to the petitioner, as per the E-assessment Scheme, for scrutiny assessment for the Assessment Year 2018-19.

4.7 On 13th August, 2020, with the goal of making the tax system faceless, painless and seamless, the Hon’ble Prime Minister launched the Faceless Assessment Scheme. The most important feature of the Faceless Assessment Scheme is that there is no communication/contact between the

Assessing Officer and the assessee and the allotment of the Assessing Officer for any case is done by an automated system. The two above mentioned notifications issued in 2019 were amended by two other notifications No.60 and 61 of 2020 dated 13th August, 2020. The relevant portions of the new notifications are reproduced hereinbelow:-

A. Notification No.60/2020

“S.O. 2745 (E). —In exercise of the powers conferred by sub-section (3A) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the E-assessment Scheme, 2019 published vide notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, in the Gazette of India, Extraordinary, vide number S.O 3264 (E) dated the 12th September, 2019, namely:-

1. In the said Scheme, —

(1) in sub-paragraph (1) of paragraph 1, for the word “E-assessment”, the words “Faceless Assessment” shall be substituted;

...

(4) for paragraph 5, the following paragraph shall be substituted, namely,—

“5. Procedure for assessment. — (1) The assessment under this Scheme shall be made as per the following procedure, namely: —

...

(xxvi) The National e-assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act;”

(2) Notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National e-assessment Centre, may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.”

B. Notification No.61/2020

“S.O. 2746(E). —In exercise of the powers conferred by sub-section (3B) of section 143 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby makes the following amendments in the notification of the Government of India, Ministry of Finance (Department of Revenue), Central Board of Direct Taxes, published in the Gazette of India, Extraordinary, vide number S.O 3265 (E) dated the 12th September, 2019, namely:-

1. In the said notification, —
(1) in the opening portion, for the word “E-assessment”, the words “Faceless Assessment” shall be substituted.

(2) for clause 1, the following clause shall be substituted, namely:— “1. The provisions of clause (7A) of section 2, section 92CA, section 120, section 124, section 127, section 129, section 131, section 133, section 133A, section 133C, section 134, Chapter XIV, and Chapter XXI of the Act shall apply to the assessment made in accordance with the said Scheme subject to the following exceptions, modifications and adaptations, namely:

“A. (1) The assessment shall be made as per the following procedure, namely:—

...

(xxvi) ***The National e-assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act;***

(2) ***Notwithstanding anything contained in sub-paragraph (1), the Principal Chief Commissioner or the Principal Director General, in charge of National e-assessment Centre, may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.”***

(emphasis supplied)

4.8 On 14th October, 2020, the petitioner received a letter from National e-Assessment Centre stating that pending E-assessment for the Assessment Year 2018-19 will now be completed under the Faceless Assessment Scheme.

4.9 On 23rd November and 30th December, 2020, the petitioner received notices from National e-Assessment Centre under Section 142(1) of the Act, calling upon to submit certain documents/details for the ongoing assessment proceedings for the Assessment Year 2018-19, which according to the Petitioner-Trust were duly complied with.

4.10 On 8th January, 2021, i.e. during the pending of ongoing E-assessment, Respondent No. 1/Commissioner of Income Tax, (Exemption), New Delhi passed the impugned order under Section 127 of the Act, transferring jurisdiction of the Petitioner from Respondent No. 3/Deputy Commissioner of Income Tax (Exemption), New Delhi to Respondent

No.4/Deputy Commissioner of Income Tax, Central Circle-27, New Delhi, stating the following reason for transfer:

“...transfer the following cases (supplementary cases in Sanjay Bhandari Group of cases)...for –better coordination, effective investigation and meaningful assessment of the cases and with prior approval of CCIT(C) Delhi...”

(emphasis supplied)

4.11 On 13th January and 25th January, 2021, by way of notices under Section 142(1) of the Act, the National e-Assessment Centre called upon the petitioner to submit certain additional information for the ongoing E-assessment proceedings for the Assessment Year 2018-19. On 3rd February, 2021, Respondent No. 4 issued impugned notice under Section 142(1) of the Act to the petitioner for the Assessment Year 2018-19.

4.12 By way of the present petition, the petitioner has challenged the impugned order dated 8th January, 2021 passed under Section 127 of the Act and the impugned notice dated 3rd February, 2021 issued by Respondent No.4 under section 142(1) of the Act.

ARGUMENTS BY LEARNED SENIOR COUNSEL FOR GANDHIS AND FIVE CHARITABLE TRUSTS

5. Mr. Arvind Datar, learned Senior Counsel for Mrs. Sonia Gandhi, Mr. Rahul Gandhi and Mrs. Priyanka Gandhi Vadra and for the five charitable trusts stated that in the Budget speech of 2019, the Finance Minister set out the concept of the Faceless e-assessment Scheme as under:

“124. The existing system of scrutiny assessments in the Income-tax Department involves a high level of personal interaction between the taxpayer and the Department, which leads to certain undesirable practices on the part of tax officials. To eliminate such instances, and to give shape to the vision of the Hon’ble Prime Minister, a scheme of faceless assessment in electronic

mode involving no human interface is being launched this year in a phased manner. To start with, such e-assessments shall be carried out in cases requiring verification of certain specified transactions or discrepancies.

125. Cases selected for scrutiny shall be allocated to assessment units in a random manner and notices shall be issued electronically by a Central Cell, without disclosing the name, designation or location of the Assessing Officer. The Central Cell shall be the single point of contact between the taxpayer and the Department. This new scheme of assessment will represent a paradigm shift in the functioning of the Income Tax Department.”

6. He further stated that in the Budget for 2020, the concept of Faceless Appeals was introduced on the lines of Faceless Assessment. After referring to the Notifications No. 61/2019 and 62/2019 issued in 2019 as well as the Notifications Nos. 60 and 61 of 2020 issued in 2020 to give effect to the concept of Faceless Assessment, he summarised the Faceless Assessment procedure as under:

- a. A National e-Assessment Centre, to facilitate and conduct assessment proceedings in a centralized manner shall be vested with jurisdiction to make assessment;
- b. Notices under section 143(2) of the Act shall be issued by the National e-Assessment Centre;
- c. After receiving reply from the assessee, the National e- Assessment Centre shall assign the case selected for the purpose of e-assessment towards specific assessment unit in any one Regional e-Assessment Centre through an automated allocation system;
- d. After assignment of a case, if any information/enquiry required to be conducted, the Regional e-Assessment Centre, may make such request to National e-Assessment Centre;
- e. Thereafter, the National e-Assessment Centre shall issue appropriate notice to the assessee requesting for the required information;

- f. The information called upon by the National e-Assessment Centre shall be submitted by the assessee to the National e-Assessment Centre, which shall thereafter be forwarded to the Assessment Unit;
- g. In case of enquiry or technical assistance required by the Regional e-Assessment Centre, such request is also required to be forwarded to the National e-Assessment Centre, which shall thereafter be allocated by the National e-Assessment Centre to other Unit through an automated allocated system;
- h. Pursuant to receipt of the information and report from National e-Assessment Centre, the Regional e-Assessment Centre will prepare a draft assessment order, which shall thereafter be examined in accordance with risk management strategy specified by the Board, including by way of automated examination tool;
- i. Thereafter, the review unit may concur or suggest modifications in the assessment order and send its suggestions to the National e-Assessment Centre;
- j. Pursuant thereto, the National e-Assessment Centre, after considering the suggestions, assign the case to Regional e-Assessment Centre other than the one who has made the draft assessment order;
- k. After completion of assessment, the National e-Assessment Centre shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case.

7. According to him the aforesaid highlighted the intention of the Central Government to eliminate personal interaction in Faceless Assessments and Appeals which is now the new method of assessing income tax cases and deciding appeals. He emphasised that the assessments have to be processed only on the basis of written submissions and in electronic mode. Thus, the existing assessment of a person in Jaipur will no longer be carried out by the Jurisdictional Assessing Officer, ITO in Jaipur, but the

assessment will be completed by the National e-Assessment Centre and through the Regional Assessment Centres and also units of assessment. The location where the assessment is done and the Assessing Officer will remain unknown.

8. He stated that the CBDT has issued instruction dated 17th September, 2020, setting out guidelines for the compulsory selection of returns for complete scrutiny for Financial Year 2020-21 under the Faceless Assessment Scheme as under:-

“F. NO. 225/126/2020/ITA-II
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes (ITA-II division)

North Block, New Delhi, the 17th September, 2020

To

All Pr. Chief-Commissioners of Income-tax/ Chief-Commissioners of Income-tax

All Pr. Director-Generals of Income tax/ Director-Generals of Income – tax.

Madam/Sir

Subject: Guidelines for compulsory selection of returns for Complete Scrutiny during the Financial Year 2020-21 -- conduct of assessment proceedings in such cases – regarding.-

Kindly refer to above.

2. Keeping in view of the Faceless Assessment Scheme, 2020 implemented by the Department and the difficulties being faced amid COVID-19 pandemic, the parameters for compulsory selection of returns for Complete Scrutiny during Financial Year 2020-21 and conduct of assessment proceedings in such cases are prescribed as under:

S No	The Parameter	Assessment Proceedings to be conducted by
1	Cases pertaining to survey u/s 133A of the Income-tax Act, 1961 ('Act')	
	Cases pertaining to survey u/s 133A of the Act, excluding those cases where books of	

	account, documents, etc. were not impounded and returned income (excluding any disclosure made during the Survey) is not less than returned income of preceding assessment year. However, where assessee has retracted from disclosure made during the Survey, such cases will be considered for scrutiny. (i) In respect of such cases selected for compulsory scrutiny and where there is impounded material (ii) In respect of such cases selected for compulsory scrutiny and where there is no impounded material	(i) After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, such cases shall be transferred to Central Charges u/s 127 of the Act within 15 days of issue of notice u/s 143(2) of the Act. (ii) After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC. The Assessing Officer shall upload the Survey Report in the ITBA at the time of issue of notice u/s 143(2) of the Act.
2	Cases pertaining to Search and Seizure	
	Assessments in Search and Seizure cases to be	The cases falling u/s 153C,

	<i>made under section(s) 153A, 153C read with section 143(3) of the Act and also for return filed for assessment year relevant to previous year in which authorization for Search and Seizure was executed under section 132 or 132A of the Act.</i>	<i>if lying outside Central Charges, shall be transferred to Central Charges u/s 127 of the Act within 15 days of issue of notice u/s 143(2) for compulsory selection.</i>
3	<i>Cases in which notices u/s 142(1) of the Act, calling for return, have been issued</i>	
	<i>Cases where no return has been furnished in response to a notice u/s 142(1) of the Act.</i>	<i>These cases will be taken up for compulsory scrutiny by NeAC.</i>
	<i>(ii) Cases where return has been furnished in response to notice u/s 142(1) of the Act and where notice u/s 142(1) of the Act was issued due to the information contained in NMS Cycle/AIR information/information received from Directorate of IC&I.</i>	<i>These cases will <u>not</u> be taken up for compulsory scrutiny and the selection of such cases for scrutiny will be through CASS cycle.</i>
	<i>Cases where return has been furnished in response to notice u/s 142(1) of the Act and where notice u/s 142(1) of the Act was issued due to the specific information received from Law Enforcement Agencies, including the Investigation Wing; Intelligence/ Regulatory Authority/Agency; Audit Objection; etc.</i>	<i>After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.</i>
4	<i>Cases in which notices u/s 148 of the Act have been issued</i>	
	<i>(i) Cases where no return has been furnished in response to notice u/s 148 of the Act.</i>	<i>In such cases, Jurisdictional Assessing shall issue notice u/s 142(1) of the Act, calling for information regarding the issues on the basis of which notice u/s 148 was issued, subsequent to which, assessment proceedings in such cases</i>

		will be conducted by NeAC.
	(ii) Cases where return has been furnished in response to notice u/s 148 of the Act and where notice u/s 148 of the Act was issued due to the information contained in NMS Cycle/AIR information/information received from Directorate of IC&I.	These cases will not be taken up for compulsory scrutiny and the selection of such cases for scrutiny will be through CASS cycle.
	(iii) Cases where return has been furnished in response to notice u/s 148 of the Act and where notice u/s 148 of the Act was issued due to the specific information received from Law Enforcement Agencies, including the Investigation Wing; Intelligence /Regulatory Authority/Agency; Audit Objection; etc.	After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.
5	Cases related to registration/approval under various sections of the Act, such as 12A, 35(1)(ii)/(iia)/(iii), 10(23C), etc.	
	Cases where registration/approval under various sections of the Act, such as section 12A, 35(1)(ii)/(iia)/(iii), 10(23C), etc. have not been granted or have been cancelled/withdrawn by the Competent Authority, yet the assessee has been found to be claiming tax-exemption/deduction in the return. However, where such orders of withdrawal of registration/approval have been reversed/set aside in appellate proceedings, those cases will not be selected under this clause.	After the issue of notice u/s 143(2) of the Act by the Jurisdictional Assessing Officer for compulsory selection, assessment proceedings in such cases will be conducted by NeAC.

3. Without prejudice to the above, the cases which are selected for compulsory scrutiny by the International Taxation and Central Circle charges following the above prescribed guidelines, shall, as earlier, continue to be handled by these charges.

4. The exercise of selection of cases for compulsory scrutiny on the basis of the above parameters shall be completed by **30th September 2020**.

5. These instructions may be brought to the notice of all concerned for necessary compliance.

Sd/-
(Rajarajeswari R.)
Under Secretary-ITA.II, CBDT"

9. He stated that in view of the aforesaid, all assessments will now be subject to the Faceless Assessment procedure except those relating to international taxation and assessments which are required to be dealt with by the Central Circle. He emphasised that the CBDT has issued circulars to decide the types of cases that ought to be dealt with by the Central Circle. He stated that usually cases where income-tax raids or searches have been carried out, are dealt with by the Central Circle. He contended that the CBDT circulars indicate that the transfer to the Central Circle are not to be at the whim of any ITO or Commissioner, but the stipulated guidelines of the CBDT have to be strictly followed.

10. He stated that none of the assessee herein has been subjected to any raid or search but their cases are being sought to be transferred to the Central Circle. He submitted that transfers are completely contrary to statutory provisions and vitiated by legal malice.

11. He submitted that the notifications issued on 12th September, 2019, para 5(xxi) permitted transfer from the National e-Assessment Centre only to the Assessing Officer having jurisdiction over the case.

12. He stated that this notification was amended by another notification dated 13th August, 2020 and the procedure for transfer was further subjected to prior approval of the CBDT.

13. He submitted that in all these writ petitions, this requirement has been completely violated, as there is no “prior approval” of the CBDT and in any event the transfer has to be made only to the Assessing Officer and not the Central Circle.

14. He submitted that these notifications have a statutory character and cannot be altered or changed by any circular issued by the CBDT under Section 119 of the Act.

15. He further submitted that even assuming that there is a power of transfer, the transfer to Central Circle can only be on the basis of the circulars. He contended that in none of these petitions are these conditions satisfied. Therefore, according to him, even if the cases are transferred to the Jurisdictional Assessing Officer, they cannot be further transferred to the Central Circle.

16. He submitted that the respondents' reliance on the decision of the Supreme Court in *Kashiram Agrawalla vs. Union of India and Ors., (1965) 1 SCR 671* in the counter affidavits is misconceived as the present writ petitions were concerned with the new notification issued under Sections 143(3A) and 143(3B) of the Act.

17. He pointed out that though in the writ petitions filed by Trusts and Gandhis, the orders of transfer were sought to be justified on the basis that they were concerned with the Sanjay Bhandari group of cases, yet no material was forthcoming as to what is the connection with these appeals and the Sanjay Bhandari group of cases. He contended that even in the latest counter, no factual details of such a connection had been placed on record.

18. He lastly contended that just because transfer of Shri Robert Vadra's case had not been objected to, the cases of the Gandhis and the Trusts could not be transferred. He submitted that there can be no 'guilt by association' or 'guilt due to relationship'. In support of his submission, he relied upon the judgment of the Supreme Court in *Chintalapati Srinivasa Raju vs. Securities and Exchange Board of India, (2018) 7 SCC 443*.

ARGUMENTS BY LEARNED COUNSEL FOR THE AAM ADMI PARTY

19. Learned counsel Mr. Amar Dave, who appeared for the Aam Admi Party in W.P.(C) 6921/2021 submitted that the cogent rights have been embedded in the statutory framework under which the Faceless Assessment Mechanism has been incorporated in the Scheme of the Act itself, which undeniably leads to a conclusion that any deviation from giving the benefit to an assessee of this mechanism must be construed strictly.

20. He also submitted that the very nature of the Faceless Assessment Mechanism incorporated in the provisions of the Act itself, provides for a wide ranging statutory rights such as inter-alia:

- (i) the assessment being carried out in a dynamic and team-based manner i.e. the exercise being undertaken simultaneously with the assistance of various specialised units itself;
- (ii) multiple layers of scrutiny before finalisation of the assessment;
- (iii) the automated assignment of the case eliminating any prejudice etc. No Manual Selection of Cases.
- (iv) Draft assessment order whereby opportunity is given to Assessee before Finalizing the Assessment Order in case of order prejudicial to Assessee.
- (v) No Physical Meeting with any officer. No Officer to call Assessee to Income Tax Office. Minimal Interface with Maximum Governance.

21. He stated that any deprivation of such rights qua an assessee will obviously affect the assessee prejudicially. He contended that perusal of Section 143(3A) and Section 143 (3B) of the Act itself leaves no room for doubt that under this special mechanism, the assessee is provided with the

comfort of a transparent mechanism under which the assessment is undertaken.

22. He pointed out that the scheme clearly shows that not only a dynamic mechanism is contemplated for undertaking the assessment but the same also provides for various specialised units such as the assessment unit, verification unit, technical unit, and the review unit to simultaneously be a part of the assessment process in a dynamic manner.

23. He contended that the scheme clearly incorporates various checks and balances including a multi-layered review mechanism before reaching to a conclusion on the assessment process, clearly, this bundle of statutory rights flowing from the scheme and cognate provisions of the Act provides the assessee the assurance of greater efficiency, transparency and accountability which are the core objectives, statutorily recognised by the Legislature itself in the provisions of the Act.

24. He argued that such additional rights vested in the statute itself cannot be taken away unless specifically provided for (even if provided for the basis of the exercise has to demonstrate no other alternate as also overwhelming justifiable reasons for doing so).

25. He submitted that the earlier judgment in the case of **Kashiram Agarwalla** (supra) has no bearing post such amendments. He further submitted that alternatively, assuming the power under Section 127 of the Act can continue to be exercised even post amendment, the same requires a different interpretation bearing in mind the nature and scope of the assessment mechanism now prevailing.

26. He emphasised that the very nature of the Faceless Assessment Mechanism shows that the contemplation of transfer under Section 127 of

the Act cannot have the same meaning as it was prior to such insertion of the Faceless Assessment Mechanism, and therefore, by the very special nature of the Faceless Assessment Mechanism, the earlier interpretation of transfer within the city or between different cities etc. will clearly have a separate connotation in the background of the special nature of the scheme itself. He argued that when the matter is examined from these angles, bearing in mind the purport and scope of the special scheme, there is no question of contending that the ratio of the judgment in ***Kashiram Agarwalla*** (supra) applies even after the introduction of such a special scheme.

ARGUMENTS BY LEARNED SOLICITOR GENERAL AND LEARNED ADDITIONAL SOLICITOR GENERAL

27. Learned Solicitor General submitted that the impugned orders transferred the cases from Exemption Circle in case of Trusts or ACIT Circle 52(1) in cases of individuals in New Delhi to DCIT, Central Circle-27 and both the officers are indisputably within the same city, namely, New Delhi, at about 3 kms distance only, under different PCITs. He stated that the reason mentioned in the impugned orders is '*better coordination, effective investigation and meaningful assessment*' which reflects administrative convenience and exigency viz. the need of the assessment taking place under the same Assessing Officer and any future possibility of conflicting views/ treatment in similar transactions is averted.

28. He submitted that the present case is squarely covered by the Constitution Bench judgment of the Supreme Court in ***Kashiram Agarwala*** (supra), wherein the Supreme Court has held that neither is there any

requirement for recording of reasons under Section 127 of the Act nor any requirement that a reasonable opportunity is to be given to the assessee, when the transfer is within the same city, locality or place.

29. Without prejudice to the above, he relied on the judgments in *Kamlesh Rajnikant Shah v. Principal Commissioner of Income-tax*, [2022] 138 taxmann.com 59 (Gujarat) Para 17-25; *Advantage Strategic Consulting Pvt. Ltd. V PCIT Chennai (2021) 124 Taxmann.com 511 (Mad) Paras 09-11]* and submitted that it is well settled that the exercise of power under Section 127 of the Act is a mere administrative power based upon administrative exigencies of tax assessment and tax collection and does not adversely affect the assessee as its right to a fair assessment under the law remains intact.

30. He further relied on the judgment in *Chaudhary Skin Trading Company v. Pr. Commissioner of Income Tax-21 2016 SCC OnLine Del 5943 : (2016) 290 CTR 533 Para 11* and submitted that the power of transfer under Section 127 of the Act cannot be likened to a quasi-judicial power and hence even the briefest of reasons and discernible public interest would be sufficient for exercise of such power and Courts would not interfere with such exercise of power.

31. He submitted that this Court in *ATS Infrastructure Ltd. v. Commissioner of Income Tax*, (2009) 318 ITR 299 (Delhi) whilst distilling the principles of transfer under Section 127 of the Act has held that firstly, there is no fundamental right of an assessee to be assessed at a particular place. Under Section 124 of the Act, the assessment must be carried out at the principal place of business but when powers under Section 127 of the Act are invoked, territorial nexus becomes irrelevant. Secondly, the

determination of the venue of the assessment would be governed by the greatest effectivity for collection of taxes. Thirdly, whilst the convenience of the assessee should be kept in mind, it would always be subservient to the interests of adjudication and collection of taxes.

32. He relied on the judgment in ***K.P. Mohammed Salim -vs- CIT, [2008] 300 ITR 302*** wherein the Supreme Court has held that the "*power of transfer in effect provides for a machinery provision. It must be given full effect. It must be construed in a manner so as to make it workable. Even Section 127 of the Act is the machinery provision. It should be construed to effectuate a charging section so as to allow the authorities concerned to do so in a manner wherefor the statute was enacted*".

33. Without prejudice to the above, he submitted that nevertheless the transfer order categorically records that the transfer as mentioned is effected for the purpose of better coordination and meaningful assessment.

34. He argued that the requirement of a coordinated investigation or coordinated assessment has been held to meet the requirement of law for the purpose of transfer. To substantiate his submission, he placed reliance on the judgment of Division Bench of the Chhattisgarh High Court in the case of ***Commissioner of Income Tax v. Union of India & Ors., (2013) 358 ITR 341*** wherein it has been observed that the expression '*coordinated investigation*' is not a vague expression and that transfer orders using similar expressions have been upheld by almost all the High Courts in the country. He submitted that similar views have been taken by the Madras High Court in ***General Exporters v Commissioner of Income Tax & Ors. (2008) 307 ITR 132*** and the Gujarat High Court in ***Kamlesh Rajnikant Shah v***

Principal Commissioner of Income Tax (2022) 138 Taxmann.com 59 (Gujrat).

35. He also placed reliance on the judgment in ***Virendra Kumar Jain v. CIT 2006 156 taxman 332 (ALL)*** and stated that the Courts have held consistently that the paramount consideration for transfer of a case under Section 127 of the Act is public interest and reason to have coordinated investigation in the matter of family members or group of companies is a good ground for transfer which cannot be faulted with and that at the stage of transfer, it has been held that sufficiency of reasons cannot be gone into.

36. He submitted that the petitioners submission is that after coming into force of the Faceless Assessment Scheme notified under sub-Sections (3A), (3B) and (3C) of Section 143 of the Act, the power to transfer cases under Section 127 of the Act no longer exists and it can only be exercised in terms of the Notifications issued thereunder permitting transfer from the National Faceless Assessment Centre only to the Assessing Officer having jurisdiction is untenable in law as it fails to consider that the Notification dated 13th August, 2020 does not interfere with the power of transfer under Section 127 of the Act.

37. The petitioners' claim to have a vested right of faceless assessment is fallacious as there is no challenge laid to the statutory Notifications which empower the board to apply the Faceless Assessment Scheme in respect of certain classes of cases and exclude certain other classes of cases. In exercise of such power contained in Clause (3) of the Notification dated 12th September, 2019, the Board has decided to exclude Central Charges and International Taxation charges from the Faceless Assessment Scheme. There is neither a challenge to clause (3) as stated above, nor a challenge to the

CBDT order dated 13th August, 2020 passed under clause (3) of the Faceless Assessment Scheme, 2019, which excludes Central Charges and International Taxation charges from Faceless Assessment Scheme. Therefore, the argument that faceless assessment is a vested right, fails to consider that the statute itself provides for certain exceptions. Hence, when by way of a legal exercise of power under Section 127 of the Act for the purpose of coordinated investigation, certain parties are centralized then as a legal consequence, they are no longer assessed under the faceless regime. He emphasised that there is no vested right to choose either manner of assessment or the Assessing Officer so long as the statutory provisions are followed.

38. He contended that even when the function of assessment is outsourced to the Faceless Assessment Officer, the Jurisdictional Assessing Officer continues to exercise concurrent jurisdiction and perform several functions after completion of assessment like i) imposition of penalty; ii) collection and recovery of demand; iii) rectification of mistake; iv) giving effect to appeal orders; v) proposal seeking sanction for launch of prosecution and filing of complaint before the Court etc.

39. He also contended that Section 127 of the Act falls under Chapter XIII which relates to Jurisdiction of Income Tax authorities and in contrast, Chapter XIV is only a procedural chapter limited to only assessment function. He submitted that Section 144B under Chapter XIV provides for faceless scheme of assessment and the jurisdiction continues to be governed under Chapter XIII.

40. He argued that allegation of malice demands proof of high order of credibility and apart from the bald averments of legal malice, the petitioner

has not been able to demonstrate any malice in law or fact on the part of the revenue, therefore, the present writ petitions deserve to be dismissed being devoid of any merit.

41. He submitted that the reliance placed by petitioner's counsel on judgment in *Chintalapati Srinivasa Raju vs. Securities and Exchange Board of India* (supra) is misplaced for the reason that the said judgment related to the Petitioner being labelled as an "insider" for the purposes of the SEBI Prohibition of Insider Trading Regulations, 1992 on the ground that he was co-brother of Ramalinga Raju without anything more, which led to serious adverse consequences in the nature of the Petitioner therein being barred from accessing the securities market for a period of seven years and being made to disgorge the amount mentioned against his name, which was an amount of Rs 136.64 crores.

COURT'S REASONING

CONSTITUTION BENCH IN KASHIRAM AGGARWALLA (SUPRA) HAS AUTHORITATIVELY INTERPRETED AS WELL AS OUTLINED THE SCOPE AND AMBIT OF SECTION 127 OF THE ACT.

42. Having heard learned counsel for the parties, this Court is of the view that the present cases involve the interpretation of Notifications dated 12th September, 2019 and 13th August, 2020 and not Section 144B, as at the time of passing of the impugned orders dated 8th January, 2021 (in the cases of Mrs. Sonia Gandhi, Mr. Rahul Gandhi and Mrs. Priyanka Gandhi Vadra and five charitable trusts) and 22nd February, 2021 (in Aam Aadmi Party), the Faceless Assessment Scheme was governed by the Notifications issued under Sections 143(3A) & 143(3B) of the Act.

43. It is pertinent to mention that the Faceless Assessment Scheme was incorporated in the Act vide the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 with effect from 1st April, 2021. Consequently, this Court is of the view that it is necessary to examine the scope, ambit as well as interpretation of Section 127 of the Act and whether in view of the two Notifications each dated 12th September, 2019 and 13th August, 2020, the power of transfer under Section 127 of the Act has been denuded.

44. The Constitution Bench of the Supreme Court in ***Kashiram Aggarwalla vs. Union of India and Others, (1965) 1 SCR 671*** has authoritatively interpreted as well as outlined the scope and ambit of Section 127 of the Act. The Supreme Court has held that a transfer order under Section 127 of the Act is a mere administrative order invariably made on ground of administrative convenience. Neither is there any requirement of recording of reasons under Section 127 nor any requirement that a reasonable opportunity is to be given to the assessee, when the transfer is within the same city – like in the present batch of writ petitions. The relevant portion of the said judgment is reproduced as under:-

“6. There is another consideration which is also relevant. Section 124 of the Act deals with the jurisdiction of Income Tax Officers. Section 124(3) provides that within the limits of the area assigned to him the Income Tax Officer shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

This 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. 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 a transfer. Where, as in the present proceedings, assessment cases pending against the appellant before an officer in one ward are transferred to an officer in another ward in the same place, there is hardly any occasion for mentioning any reasons as such, because such transfers are invariably made on grounds of administrative convenience, and that shows that on principle in such cases neither can the notice be said to be necessary, nor would it be necessary to record any reasons for the transfer. The provisions contained in Section 124(3) of the Act deal with the same topic which was the subject-matter of Section 64(1) and (2) of the earlier Income Tax Act, 1922 (11 of 1922). There is, however this difference between these two provisions that whereas Section 124 fixes jurisdiction, territorial or otherwise, of the Income Tax Officers, Section 64 fixed the place where an assessee was to be assessed.

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9. It is in the light of these considerations that we have to construe the proviso to Section 127(1). As we have already indicated, the construction for which Mr Jain contends is a reasonably possible construction. In fact, if the words used in the proviso are literally read, Mr Jain would be justified in contending that the requirement that reasons must be recorded applies even to cases falling under it. On the other hand, if the obvious object of the proviso is taken into account and the relevant previous background is borne in mind, it would also seem reasonable to hold that **in regard to cases falling under the proviso, an opportunity need not be given to the assessee, and the consequential need to record reasons for the transfer is also unnecessary, and this view is plainly consistent with the scheme of the provision and the true intent of its requirements. We would accordingly hold that the impugned orders cannot be challenged on the ground that the Board has not recorded reasons in directing the transfer of the cases pending against the assessee from one Income Tax Officer to another in the same locality.**"

(emphasis supplied)

45. Almost all the High Courts have held that transfer under Section 127 of the Act for the purpose of coordinated investigation is a sufficient reason for passing of such an administrative order. Consequently, it is settled law

that a transfer order under Section 127 of the Act does not affect any fundamental or legal right of an assessee and the Courts ordinarily refrain from interfering with exercise of such power.

CENTRAL CIRCLE JURISDICTION IS NOT CONFINED TO SEARCH CASES

46. Further, Central Circle jurisdiction is not confined to search cases only. Central Charge is also conferred with jurisdiction over non-search case where coordinated investigation is required. The Circular dated 25th April, 2014 makes it clear that there is no restriction upon transferring of non-search cases to Central Circle. The relevant portion of the said Circular is reproduced hereinbelow:

“2. The matter has been considered by the Board and it is clarified that the transfer/centralization of cases is done as per provisions of section 127 of the Act which is not limited to transfer/centralization of only search cases. The above mentioned guidelines do not deal with centralization or transfer of non search cases u/s 127 of the Act and are not intended to preclude centralization of non-search cases in any manner.

3. While it is neither feasible nor desirable to draw an exhaustive list of categories of non-search cases which may also be centralized, cases falling in the categories (only illustrative) could be considered for the purpose:

i. Non-search cases connected with the search cases where findings of the search have material bearing and needs of coordinated investigation/interest of revenue require such cases to be assessed in Central Charge.

ii. Survey cases or enquiry case (whether such enquiries were conducted by any wing of the department or an outside agency) wherein some organized/systematic manipulation of accounts/fraud/substantial revenue is involved and/or coordination with outside agencies of a large number of officers within the department is required.

iii. Cases arising out of a scam as a result of investigation/enquiry conducted by some other Law Enforcement Agency where needs of coordinated investigation/interest of revenue require centralization.

iv. Complex cases of substantial revenue implication requiring in-depth investigation.

v. Any other case which is required to be centralized for administrative requirement or other reasons stated by the DsGIT. CCsIT, as the case may be.”

(emphasis supplied)

POWER UNDER SECTION 127 OF THE ACT IS IN NO MANNER TRAMMELLED UPON OR NEGATED BY THE TWO NOTIFICATIONS EACH DATED 12th SEPTEMBER, 2019 AND 13th AUGUST, 2020

47. Now, the question that arises is whether the power under Section 127 of the Act is in any manner trammelled upon or negated by introduction of the E-assessment and Faceless Assessment Scheme vide two Notifications each dated 12th September, 2019 and 13th August, 2020.

48. This Court is of the view that though in the year 2019, the concept of E-assessment and in 2020, the concept of Faceless Assessment were introduced, yet the Jurisdictional Assessing Officer continues to exercise concurrent jurisdiction with Faceless Assessing Officer. In fact, pursuant to exercise of power under Section 120(5) of the Act which empowers CBDT to confer concurrent jurisdiction on two or more Assessing Officers for proper management of the work, the CBDT has vide Notification No.64/2020 dated 13th August, 2020 conferred power upon the Income-tax Authorities of the National e-Assessment Centre to exercise the power and function of assessment “concurrently” while the original jurisdiction continues with the Jurisdictional Assessing Officer. The relevant portion of the said Notification is reproduced hereinbelow:-

S.O. 2756(E).—In pursuance of the powers conferred by sub-sections (1), (2) and (5) of section 120 of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the said Act), the Central Board of Direct Taxes hereby directs that the Income-tax Authorities of the National e-Assessment Centre

(hereinafter referred to as the NeAC) specified in Column (2) of the Schedule below, having its headquarters at the place mentioned in column (3) of the said Schedule, shall exercise the powers and functions of Assessing Officer concurrently, to facilitate the conduct of Faceless Assessment proceedings)...

(emphasis supplied)

49. It is clarified in the E-assessment and Faceless Assessment Scheme that once a case is selected for scrutiny, for the limited purpose of passing assessment order for a particular assessment year, the case is assigned to National e-Assessment Centre and after assessment, the electronic records of the case are to be transferred back to the Jurisdictional Assessing Officer.

50. Further, the E-assessment Scheme, 2019 and Faceless Assessment Scheme issued vide two Notifications each dated 12th September, 2019 and 13th August, 2020 under Section 143(3A) and Section 143(3B) of the Act clearly stipulate that the provision of Section 127 of the Act shall apply subject to exceptions, modifications and adaptations as stipulated therein. In other words, if the Faceless Assessment Scheme has not modified Section 127 of the Act, the powers under the said Section would continue to apply to all cases in an unmodified manner.

51. Clause (xxi) of the Notifications No.61/2019 and 62/2019 dated 12th September, 2019 issued in exercise of powers under Sections 143(3A) and 143(3B) of the Act in order to give effect to the E-assessment Scheme authorises the National e-Assessment Centre to transfer the case of the assessee at any stage of the assessment (i.e., only when the assessment proceeding is pending before the National e-Assessment Centre) to the Assessing Officer having jurisdiction over such case, as the scope of power and functions of National e-Assessment Centre is limited to facilitating the conduct of E-assessment.

52. Consequently, this Court is of the view that the two Notifications dated 12th September, 2019 enlarge and supplement the power of transfer by authorising the National e-Assessment Centre to transfer at any stage of assessment the case of the assessee to the Assessing Officer having jurisdiction over such case i.e., from Faceless Assessing Officer to Jurisdictional Assessing Officer (an Assessing Officer always having concurrent jurisdiction).

53. To the same effect are the Notifications dated 13th August, 2020, which clarify, “*The provisions ofSection 127 of the Act shall apply to the assessment made in accordance the said Scheme subject to the following exceptions, modifications and adaptations....*”. Clause (2) of the Notifications No.60 and 61 of 2020 dated 13th August, 2020 enable the Principal Chief Commissioner or Principal Director General in charge of National e-Assessment Centre, at any stage of the assessment i.e. during assessment, to send back the case to the Assessing Officer having jurisdiction over such case, with prior approval of the Board. Clause (2) of the Scheme only authorises a transfer back to the Jurisdictional Assessing Officer holding original jurisdiction, which he never loses as it is only the function of assessment that is to be carried out by the Faceless Assessing Officer having concurrent jurisdiction. Consequently, Clause (2) of the Scheme only re-transfers the function of assessment to the Jurisdictional Assessing Officer holding concurrent jurisdiction. Further, the said clause confers power of transfer upon Principal Chief Commissioner or Principal Director General of National e-Assessment Centre and not upon any other Principal Director General or Director General or Principal Chief

Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

54. Also, this power under Clause (2) is nowhere akin to the power to transfer under Section 127(2) of the Act wherein the jurisdiction over a ‘case’ of an assessee is transferred by Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from one Assessing Officer under one Commissioner to another Assessing Officer under another Commissioner i.e. to another Assessing Officer not holding concurrent jurisdiction over the assessee.

55. Consequently, even in case of assessee wherein the assessment proceeding is pending before the National e-Assessment Centre, it does not have the power either under E-assessment or Faceless Assessment Scheme to transfer the case from Jurisdictional Assessing Officer to Central Circle, as its power and functions are limited to facilitation of E-assessment/Faceless Assessment proceedings.

56. The above mentioned sub-clauses in the Notifications dated 12th September, 2019 and 13th August, 2020 refer to transfers made from the ‘National e-Assessment Centre at any stage of the assessment i.e. during the process of assessment alone, whereas any transfer order under Section 127 of the Act changes the Assessing Officer having jurisdiction over such case from one officer to another at any stage i.e. even when there is no pending proceeding.

57. The contention of the petitioners that the requirement of “prior approval” of CBDT (as stipulated in the Notifications dated 12th September, 2019 and 13th August, 2020) has been violated is untenable as the transfers

in the present writ petitions fall under Section 127 of the Act and not under the said Notifications.

58. Consequently, the transfer of a case under Section 127 of the Act is an altogether different power which continues to exist even after introduction of the E-assessment/Faceless regime. Accordingly, the said Scheme does not in any manner trammel upon or negate the existing powers contained in Section 127 of the Act to transfer the cases as provided for thereunder. Consequently, the power of transfer under Section 127 of the Act is not in any manner denuded by the Faceless Assessment Scheme when the transfer is sought to be made from a Jurisdictional Assessing Officer under one Principal Commissioner of Income Tax to another Assessing Officer under a different Principal Commissioner of Income Tax who are not exercising concurrent jurisdiction over the case.

RELIANCE PLACED BY PETITIONERS UPON THE GUIDELINES DATED 17th SEPTEMBER, 2020 IS MISPLACED.

59. The submission of the petitioners that Section 127 of the Act requires that transfer order can be made only if there is seized material qua an assessee is untenable in law. The reliance placed by learned counsel for the petitioners upon the guidelines dated 17th September, 2020 is misplaced as the said guidelines are limited for the purpose of compulsory selection of returns for complete scrutiny during the FY 2020-21. The aforesaid guidelines do not in any manner curtail or control the power of transfer under Section 127 of Act. Para 3 of the aforesaid guidelines clearly provides that *“without prejudice to the above, cases which are selected for compulsory scrutiny by the international taxation and central charges following the above prescribed guidelines shall as earlier continue to be*

handled by these charges”. This reiterates the position of the statutory scheme that cases which are transferred to the Central Circle are not required to be assessed in a faceless manner.

NO ASSESSEE HAS ANY FUNDAMENTAL OR VESTED LEGAL RIGHT TO BE ASSESSED BY A FACELESS ASSESSING OFFICER BY VIRTUE OF AMENDMENT OF SECTIONS 143(3A) AND 143(3B)

60. This Court is also of the opinion that no assessee has any fundamental or vested legal right to be assessed by a Faceless Assessing Officer by virtue of amendment of Sections 143(3A) and 143(3B) of the Act. Firstly, Section 143(3A) of the Act stipulates that the Central Government ‘*may make a Scheme*’ to eliminate the interface between the Assessing Officer and the Assessee. This implies that the Central Government has the discretion to frame or not to frame a Faceless Assessment Scheme. Consequently, the argument that Faceless Assessment is a vested right, fails to consider the language of the statute itself.

61. Secondly, the Notification No.61/2019 dated 12th September, 2019 itself clarifies under the heading ‘*3. Scope of the Scheme – The assessment under this Scheme shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board*’. There is neither a challenge to clause (3) as stated above, nor a challenge to the CBDT order dated 13th August, 2020 passed under clause (3) of the Faceless Assessment Scheme, 2019, which excludes Central Charges and International Taxation charges from Faceless Assessment Scheme. Consequently, when by way of a legal exercise of power under Section 127 for the purpose of coordinated

investigation, certain parties are centralized then as a legal consequence, they are no longer assessed under the Faceless regime.

62. Even under the Central Charges, the assessment proceedings are conducted through the e-proceeding functionality, and as such, the assessee or its authorised representative would not be bound to physically appear before the Assessing Officer on each date of hearing. In view of the above, no prejudice shall be caused to the assessee on account of their cases being transferred to the Central Circle.

UNDOUBTEDLY, THERE CAN BE NO 'GUILT BY ASSOCIATION' OR 'GUILT DUE TO RELATIONSHIP', YET IN THE PRESENT MATTERS THE ASSESSMENTS HAVE BEEN TRANSFERRED FOR THE PURPOSES OF COORDINATED INVESTIGATION

63. Undoubtedly, the principle of law laid down by the Supreme Court in *Chintalapati Srinivasa Raju vs. Securities and Exchange Board of India* (supra) is that there can be no 'guilt by association' or 'guilt due to relationship', yet in the present batch of writ petitions, the assessments of the petitioners have been transferred only for the purposes of coordinated investigation and meaningful assessment.

64. Transfer in the present batch of writ petitions would also not be violative of the guidelines issued by the CBDT, as the transfers according to the counter affidavit have taken place for the purposes of better coordination and meaningful assessment of the present cases either with those of Sh.Robert Vadra [the husband of the petitioner in *W.P.(C) No.4083 of 2021*] and Sh.Sanjay Bhandari and Satyendar Kumar Jain, Member of AAP and former Cabinet Minister in Govt. of Delhi. No final view has been or can be taken without a fair and adequate opportunity given to the assessee to

explain that they are not connected in any manner with the said cases for the purpose of assessment during the assessment proceedings. Consequently, there are absolutely no adverse civil consequences against the petitioners thereby making this judgment inapplicable to the present batch of writ petitions.

65. This Court clarifies that in the present batch of writ petitions, it has not relied upon the original files produced by the respondents, as there are sufficient reasons to justify the administrative decision to transfer the cases of the petitioners from Jurisdictional Assessing Officer to Central Circle.

THE ARGUMENT THAT THE POWER OF TRANSFER UNDER THE NOTIFICATIONS IS A TWO-STEP PROCESS IS UNTENABLE IN LAW.

66. The argument of the petitioners that the power to transfer cases under Section 127 of the Act, after coming into force of the Faceless Assessment Scheme and Notifications is a two-step process i.e. from Faceless Assessing Officer to Jurisdictional Assessing Officer and then from Jurisdictional Assessing Officer to the transferee Assessing Officer, is untenable in law for the reason stated hereinabove that in Clause (2) of Notification No.62/2019, the Principal Chief Commissioner or Principal Director General in charge of National e-Assessment Centre has the power to transfer back the case to the Jurisdictional Assessing Officer at any stage of the assessment to complete assessment, whereas the power under Section 127 of the Act can be exercised at any stage even when no assessment is pending. This is apparent from the definition of the expression ‘case’ in Explanation to Section 127 of the Act. For the sake of convenience the expression “case” as defined in Section 127 of the Act is extracted as below:-

“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.”

67. Also, as stated hereinabove, neither the E-assessment nor the Faceless Assessment Scheme in any manner modifies the power to transfer cases from one Assessing Officer under a Principal Commissioner of Income Tax to another Assessing Officer under another Principal Commissioner of Income Tax who are holding non-concurrent charges. The aforesaid Schemes only authorise transfer back of the case to the Jurisdictional Assessing Officer holding original jurisdiction which he never loses as only the function of assessment is carried out by the Faceless Assessing Officer holding concurrent jurisdiction. But, when a ‘case’ is transferred under Section 127 of the Act, “all proceedings under this Act” gets transferred. The power under Section 127 of the Act to transfer the “case” or “all proceedings under the Act” is nowhere provided for under the aforesaid schemes. Moreover, the submission that the Notifications dated 12th September, 2019 and 13th August, 2020 permits transfer in the first instance only from National e-Assessment Centre to the Jurisdictional Assessing Officer is untenable in law as there may be cases where no assessment is pending before the Faceless Assessing Officer, yet the case of the Assessee is transferred to Central Circle. Consequently, Section 127 of the Act to the extent it permits transfer from one Assessing Officer under a Principal Commissioner of Income Tax to another Assessing Officer under another

Principal Commissioner of Income Tax who are holding non-concurrent charges remains untouched and continues to apply in its pristine form.

CONCLUSION

68. Keeping in view the aforesaid conclusions, this Court is of the view that the assessments of the petitioners have been transferred to the Central Circle in accordance with law by way of the impugned orders passed under Section 127 of the Act. Accordingly, the present writ petitions along with pending applications are dismissed, without any order as to costs and the interim orders passed by this Court stand vacated. However, this Court clarifies that it has not examined the controversy between the parties on merits and they shall be at liberty to raise all their contentions and submissions before the concerned statutory authorities.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 26, 2023
TS/AS