IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3894 OF 2022

Rajiv Saxena)
S/o. Late Shamsher Bahadur Saxena)
R/o. Villa No. 249/2, Laughing Waters,)
Airport Varthut Road, Bengaluru,)
Karnataka) ...Petitioner

Versus

1. Commissioner Income Tax (IT)-4)
Room No. 1704, 17TH, Air India Building)
Nariman Point, Mumbai)
Maharashtra – 400 021)
Email: Mumbai.cit.1t4@incomtax.gov.in)

2. Principle Commissioner Income)
Tax (Central),)
Room No.: 341, E-2, 2nd Floor, ARA Centre)
Jhandewalan Extension, New Delhi-110055)
Email: delhi.cit.cen2@incomtax.gov.in)

3. Assistant Commissioner Income Tax)
Room No. 108, First Floor, Income Tax)
Building, E-2, ARA Centre,)
Jhandewalan Extension, New Delhi-110055)
Email:delhidcit.cen20@incometax.gov.in ...Respondents

WITH
INTERIM APPLICATION (LODG.) NO. 30757 OF 2022
IN
WRIT PETITION NO. 3894 OF 2022

Commissioner of Income Tax (IT), ... Applicant

26 August, 2024

Mumbai (Orig.Respondent)

In the matter between :

1. Rajiv Saxena
S/o. Late Shamsher Bahadur Saxena
R/o. Villa No. 249/2, Laughing Waters,
Airport Varthut Road, Bengaluru,
Karnataka ...Petitioner

Versus

1. Commissioner of Income Tax (IT)-4,
Mumbai, Maharashtra – 400021.

2. Principle Commissioner, Income Tax
(Central) New Delhi-110055.

3. Assistant Commissioner of Income Tax,
New Delhi-110055. ...Respondents

Mr. Persi Pardiwalla, Senior Advocate with Mr. Suraj Iyer, Mr. Rajat Manchanda, Ms. Gauri Joshi i/b Ganesh & Co. for Petitioner.
Mr. Akhileshwar Sharma for Respondent No.1.
Mr. Debesh Panda with Mr. Ashish Venugopal, Mr. Pramod Kathane for Respondent Nos. 2 and 3.

CORAM: G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

Reserved on : 22 July, 2024.
Pronounced on : 26 August 2024.

Judgment (Per G. S. Kulkarni, J.) :-

1. The petitioner being aggrieved by an order dated 14 June, 2021 passed

by respondent no. 1 under the provisions of Section 127 of the Income Tax Act, 1961 (for short, "the **Act**"), by which the case of the petitioner was transferred from Commissioner of Income-tax (CIT), Mumbai to be centralized with "Central Circle – 20, Range-5, Principal Commissioner of Income Tax (Central) – 2, New Delhi" has filed the present proceedings under Article 226 of the Constitution of India. The substantive prayers as made in the petition are required to be noted which read thus:-

> "a) Issue the writ in the nature of certiorari thereby quashing the show cause notice dated 19.03.2021 issued by CIT (IT), Mumbai – 4 under Section 127 of the Income Tax Act, 1961;
>
> b) Issue the writ in the nature of certiorari thereby quashing the order dated 14.06.2021 passed by CIT (IT), Mumbai – 4 u/s. 127 of the Income Tax Act, 1961 thereby transferring and centralizing the case of the petitioner with Central Circle – 20 under Range – 5 of Pr. Commissioner of Income Tax (Central) – 2, New Delhi;
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> c) Issue the writ in the nature of certiorari thereby quashing all the consequential proceedings initiated by the office of ACIT, Central Circle – 20 under Range – 5 of Pr. Commissioner of Income Tax (Central) – 2, Delhi."

2. The relevant facts are :

The petitioner is a Non-Resident Indian (NRI), who is stated to be living in Dubai since 1992. The petitioner is also an Indian assessee having a Permanent Account Number (PAN) and is assessed to income-tax with the jurisdictional income tax officials at Mumbai.

3. The Income-tax department had carried out search proceedings involving the petitioner on 30 June 2019 at New Delhi. It appears that the petitioner had transactions with Indian citizens namely Mr. Ratul Puri, Gautam Khaitan, Sushen Mohan Gupta, Pankaj Jain and Sanjay Jain. Such persons were subjected to search and seizure, whose assessments were also centralized with the Central Circle at New Delhi. On such backdrop, a proposal was mooted on 30 July, 2020 by the Principal Commissioner, Income Tax (Central) New Delhi-respondent no.2 to centralize the petitioner's case at New Delhi.

4. Accordingly, on 19 March 2021, a show cause notice was issued to the petitioner under subject *"Centralization of the case with Central Circle-20, New Delhi …"*. The notice recorded that search and seizure action was undertaken in the petitioner's case on 30 June, 2019 by the DDIT (Inv.), Unit – 3(2), New Delhi. It further recorded that during the course of post search proceedings, a proposal for centralization of the petitioner's case was forwarded to the Chief Commissioner of Income Tax (Central), New Delhi by the office of the Principal Director of Income Tax (Inv)-1, New Delhi and an approval to such proposal was granted on 12 March 2020. The notice further recorded that during the course of search/ survey proceedings, on related entities/parties

and the pre-search and post-search investigations, it was noticed that the petitioner, an Indian citizen, based in Dubai, had multiple financial interests in India and abroad. It was stated that the investigations revealed petitioner's involvement in evasion of taxes, abetment and facilitation of the evasion of taxes by various other individuals and companies. It was noticed that the petitioner had many transactions with the said persons who were covered separately under Section 132 and their cases were already centralized in Central Circle, Delhi. It was stated that since the cases of all such entities were centralized in Delhi, the case of the petitioner was also proposed to be centralized with the Delhi charge for coordinated investigation. The petitioner was called upon to show cause as to why the petitioner's case should not be centralized with the Principal Commissioner of Income Tax (Central-2) New Delhi, for post search coordinated investigation and assessment proceedings. The petitioner was called upon to submit his response either personally or through authorized representative in writing within 14 days of receipt of such notice, failing which, it was to be presumed that the petitioner had nothing to say. It is the case of the petitioner that the said show cause notice was received by the petitioner through speed post.

5. The petitioner contends that by his letter dated 01 April 2021, which

was uploaded on income tax web portal, reply to the show cause notice was submitted by him in the stipulated time. The same is annexed to the petition. In his reply to the show cause notice, the petitioner has made a grievance on the search and seizure operations to be illegal. He also complained that the petitioner was illegally brought to India on 30 January, 2019. The petitioner stated that he had deep roots in Mumbai, and was filing his income tax returns as NRI from Mumbai, hence transferring his case was an attempt to cause unnecessary trouble and mental pressure, so as to implicate the petitioner in false investigation. He made a grievance that the show cause notice was contrary to law and without any basis. The petitioner also recorded that the show cause notice merely stated that the case needs to be centralized for coordinated investigation which had no basis in law and the same cannot be said to be a proper reasoning, in terms of the mandate under Section 127 of the IT Act. The petitioner also denied that he was in any manner involved, in the evasion of taxes, abetment and facilitation of the evasion of taxes by various other individual and companies. However, most importantly, the petitioner in paragraph 7 of the reply admitted that the petitioner had transactions/business dealings with the said persons, which according to the petitioner had taken place outside India and therefore, Delhi Circle had no jurisdiction for

conducting investigation and assessment in the petitioner's case. The petitioner also stated that if at all there has to be an investigation or assessment, the petitioner was ready and willing to participate and appear before the Delhi authorities, however, at Mumbai. The petitioner stated that transferring the case to Delhi would cause an unnecessary harassment to him. The petitioner also set out the medical issues which the petitioner was facing thereby referring to an order dated 25 February 2019 passed by the Special Judge, CBI, Rouse Avenue Court, under the provisions of "Prevention of Money Laundering Act" and thus on the ground of such medical condition and as the doctors are available in Mumbai, the petitioner contended that the petitioner's case ought not to be not transferred to the Delhi Authorities.

6. The petitioner has contended that although he submitted the aforesaid reply dated 1 April 2021, to the said show cause notice issued to him under Section 127 of the Act, no order was passed on such show cause notice and that the department had remained silent. It, however, appears that respondent no.1 passed an order dated 14 June 2021 transferring the proceedings to New Delhi and confirming the show cause notice.

7. After the order dated 14 June 2021 was passed by respondent no.1 transferring the proceedings qua the petitioner's case to the competent officer

at Delhi, notice was issued to the petitioner under Section 153A of the IT Act for the Assessment Year 2014-15 to AY 2019-20 on 16 June 2021. A further notice dated 21 June 2021 was issued under Section 143(2) of the IT Act for AY 2020-21. On 07 September 2021, another notice under Section 153A for the Assessment Year 2010-11 to AY 2013-14 was issued to the petitioner. Thereafter on 04 July 2021, a corrigendum to the order under Section 127 was uploaded on the portal and shared by e-mail. All these notices were issued by the Delhi authorities. It also appears that on 13 March 2022, a show cause notice was issued to the petitioner calling upon the petitioner to explain as to why the case of the petitioner from AY 2010-11 to AY 2020-21 should not be referred to special audit. Thereafter on 19 March 2022, Central Circle 20-Delhi issued a notice under Section 142(1) of the Act to the petitioner directing the petitioner to furnish accounts and documents for the assessment year 2020-21 before 24 March 2022. A reminder titled "Show Cause Notice referring the matter for a special audit u/s.142(2A) of the Act", was also issued to the petitioner.

8. Significantly, on 24 March 2022, the petitioner filed his objections to the notice dated 19 March 2022. On 25 March 2022, Central Circle 20-Delhi rejected the petitioner's objections and the case of the petitioner was referred to

the Principal Commissioner, Income Tax, New Delhi for seeking approval, for referral of the petitioner's case for special audit. The petitioner has not disputed these facts. All these orders are stated to be sent by e-mail, as one of the petitioner's email-id was operational.

9. The petitioner has also referred to a communication received by the petitioner from the Income Tax authorities at Delhi dated 26 March 2022 calling upon the petitioner for a hearing, on the backdrop of the notices issued to the petitioner dated 13 March 2022, 19 March 2022 and 25 March 2022, which were in the context of the proposed special audit, sought by the respondent under Section 142(2A) of the Act, *inter alia* recording that considering the nature, volume, complexity of accounts and the interests of revenue, before an approval is granted to the proposal of the PCIT, New Delhi, the petitioner needs to explain, as to why the special audit under the said provision should not be carried out in the petitioner's case. Accordingly, a hearing was fixed on 29 March 2022 at 02.30 p.m.

10. Further, the Delhi Authority also passed an order under Section 272A(1)(d) of the Act imposing penalty on the petitioner of Rs.10,000/- for the reason that the petitioner defaulted in complying with any of such notices under Sections 153(A), 142(1) dated 16 June, 2021 and 3 August, 2021

respectively. In such context, a show cause notice dated 08 September 2021 was issued to the petitioner fixing the case for 14 September 2021 which was not responded by the petitioner, much less another notice under Section 274 read with Section 272A(1)(d) of the Act, as issued to the petitioner on 04 March 2022, fixing the case for hearing on 11 March 2022, however, the petitioner did not file any response to the same and no reasonable cause was shown by the petitioner for furnishing the requisite details. As the petitioner did not comply with the requirements of the provisions of Section 142(1) of the Act, as also did not reply to the penalty show cause notice issued under Section 272A(1)(d) of the Act, the Delhi Authority imposed a penalty of Rs.10,000/- on the petitioner under Section 272A(1)(d) of the Act. This order imposing penalty has also been annexed by the petitioner to the petition at Exhibit 'H'.

11. The case of the petitioner is, however, that the Delhi Authority had passed such order without granting an opportunity of hearing to the petitioner and that the petitioner received the knowledge of the said order from the notice dated 31 March 2022 issued by Central Circle 20, Delhi, directing the petitioner to get the accounts audited under Section 142(2A) of the Act. Such notice dated 31 March 2022 is annexed to the petition.

12. The petitioner has contended that although the petitioner was not served with the order passed under Section 127 of the Act, transferring the petitioner's case from Mumbai IT Authority to the Delhi Authority, the petitioner on receiving knowledge (as to when such knowledge is received, is not pleaded in the petition), the petitioner approached the respondent calling upon him to serve a copy of such order. The petitioner has contended that the petitioner's mail was replied by the respondents enclosing a copy of the order dated 14 June 2021 being forwarded to the petitioner by e-mail.

13. It is in these circumstances, the petitioner has filed the present petition on 05 July, 2022 *inter alia* assailing the order dated 14 June 2021 passed under Section 127 of the Act, transferring the petitioner's case from the jurisdiction of Mumbai to Delhi.

14. A reply affidavit is filed on behalf of respondents *inter alia* contending that the petitioner is a non-resident Indian staying in UAE. A search and seizure operation under Section 132 of the Act was carried out on the petitioner's premises by Delhi Investigation Wing of Income Tax [DDIT (Inv.), Unit 3(2), Delhi). It is stated that as per the procedure, all related cases were centralized with PCIT(C)-2, New Delhi vide order of CCIT (Central), New Delhi F. No. CCIT(C)/Del/Centralization/ CD-172/2019-20/1854 dated

12 March 2020 for co-ordinated and effective investigation and meaningful assessment. It is stated that paragraph 2(ii) of the Board's letter F. No. 299/14/2013-DIR(Inv.III)/605 dated 11 February 2013 would contemplate that where Inter-State transfer of jurisdiction is involved, the investigation wing shall send draft show cause notices to be issued by the jurisdictional PCITs to give an opportunity of being heard to the petitioner. It is stated that since the PAN (Permanent Account Number) of the petitioner was lying in the jurisdiction of respondent no.1, a centralization proposal was received from the office of PCIT(C)-2, New Delhi vide e-mail dated 30 July 2020 as also a reminder vide letter dated 29 January 2021. It is stated that accordingly, a show cause notice dated 19 March 2021 was issued to the petitioner. The petitioner was requested to submit response either personally or through authorized representative in writing, failing which it shall be presumed that the petitioner has nothing to say. It is stated that the petitioner's contention that no hearing or opportunity of being heard was granted to the petitioner, is false and misleading. It is further stated that the show cause notice dated 19 March 2021 was sent on the e-mail id of the petitioner the details of which are set out in paragraph 6(e) of the reply affidavit. It is stated that the physical letter was also sent through speed post, which was returned with remarks "incomplete

address". The show cause notice dated 19 March 2021 was also shared with the petitioner's e-proceedings portal on 20 March 2021. It is stated that another opportunity was afforded to the petitioner by way of show cause notice dated 01 April 2021 which was addressed to the petitioner by e-mail on the registered e-mail id of the petitioner as also the said show cause notice was shared with the petitioner's e-proceedings portal on 02 April 2021. It is stated that considering the facts of the case, an order under Section 127 of the Act was passed on 14 June 2021 transferring the jurisdiction of the petitioner from CIT (IT)-4 Mumbai to PCIT (C)-2 New Delhi. It is stated that as there was typographical error in the said order, which was corrected by issuance of a corrigendum dated 14 June 2021. The corrigendum was also served on the e-mail id of the petitioner as also the e-mail id on which the earlier correspondence was sent and the same was received by the petitioner. It is stated that the corrigendum order was also sent on another e-mail id, which was furnished in the latest income tax return (ITR) filed by the petitioner for Assessment Year 2020-21, which was delivered to the petitioner on 14 June 2021. It is thus stated that the impugned order dated 14 June 2021 centralizing the case of the petitioner with the DCIT Central Circle-20, New Delhi was passed after giving an adequate opportunity to the petitioner. The

affidavit categorically states that both the notices dated 19 March 2021 as also corrigendum of the even date were sent through e-mail which was shared on the e-proceedings portal of the petitioner and hence, the petitioner's contention that he received the former but not the latter, ought not to be accepted. It is hence contended that the petitioner, therefore, cannot take a plea of non-receipt of any such correspondence from the department and such plea as advanced in the petition is an attempt to subvert the legal and legitimate proceedings initiated against the petitioner. It is, hence, contended that the petition be dismissed.

15. On behalf of the petitioner, rejoinder affidavit is filed denying the case of the respondents as pleaded in the reply affidavit. It is contended that no acceptable reasons are set out in the order passed under Section 127 of the Act transferring the petitioner's case from the IT Authority, Mumbai to Delhi Authority.

Submission on behalf of the Petitioner

16. Mr. Pardiwalla, learned senior counsel for the petitioner has made extensive submissions. His contention is that the impugned order passed under Section 127 is required to be held illegal as it is passed in breach of the principles of natural justice, in as much as no hearing was granted to the

petitioner. It is his submission that it is apparent that although the petitioner had replied to the show cause notice dated 19 March 2021 by his reply dated 01 April 2021, the same has not been taken into consideration in passing the order under Section 127 of the Act. Mr. Pardiwalla would submit that the mandate of the provision, that the assessee is required to be given reasonable opportunity of being heard in the matter, has been clearly breached.

17. Mr. Pardiwalla would next submit that on a bare reading of the show cause notice dated 19 March 2021, it is clear that already a decision was taken to transfer the proceedings and hence issuance of show cause notice dated 19 March 2021 was a farce. It is submitted that even such show cause notice was vague and did not make out any substantial ground for transfer of the proceedings to the Delhi authorities from the Mumbai Authority. Mr. Pardiwalla would also submit that even assuming that the show cause notice dated 19 March 2021 was lawfully issued, as also the reply dated 01 April 2021 submitted by the petitioner to such notice was received by the respondents, however, none of the contentions as urged on behalf of the petitioner have been taken into consideration while passing the impugned order under Section 127 of the Act, and for such reason also, the impugned order would be required to be held to be illegal and bad in law.

18. Thus, the primary contention of Mr. Pardiwalla is that the impugned order to transfer the proceedings from the Mumbai authority to the Delhi authority/jurisdiction is arbitrary, illegal and in breach of principles of natural justice and the mandate of Section 127 of the Act.

19. In support of his contentions, Mr. Pardiwalla placed reliance on the decisions in (i) **Darshan Jitendra Jhaveri vs. Commissioner of Income Tax and others**[1], (ii) **Shikshana Prasaraka Mandali, Sharda Sabhagruha, S.P. Collect Campus Vs. Commissioner of Income Tax (Central) & Others**[2] and (iii) **Pegasus Assets Reconstruction Private Limited vs. Principal Commissioner of Income Tax, Mumbai-3 & Ors.**[3].

20. Mr. Pardiwala would hence submit that this is the case where the proceedings are required to be remanded to the authorities for an opportunity of a hearing to be granted to the petitioner and appropriate order to be passed in accordance with law on the proceedings under Section 127 of the Act.

Submissions on behalf of the Respondents

21. On the other hand, Mr. Panda, learned counsel for the respondents has opposed the submission as made on behalf of the petitioner to contend that

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[1] 2021 SCC OnLine Bom 3081
[2] 2013 SCC OnLine Bom 379
[3] Writ Petition No. 1067 of 2022, dated 05.02.2024

none of the submissions in the facts of the case deserve acceptance. In making the submissions reliance is placed on the reply affidavit of Mr. Ajay Kumar Sharma. It is submitted that the impugned order under Section 127 of the Act is merely an administrative order which does not affect any legal right of the petitioner and hence, there is no prejudice which in any manner caused to the petitioner in the facts of the present case. It is submitted that being assessed by any one of the Assessing Officers belonging to any particular Circle is neither a fundamental right under the Constitution nor a vested right under any statute, so as to consider the same to be breached, so as to entitle the petitioner to seek a writ of this Court. In support of such submission, reliance is placed on the decision of the Supreme Court in **Pannallal Binraj vs. Union of India**[4] wherein the Supreme Court repelled a challenge to the erstwhile *pari materia* provision of Section 5 of the Indian Income Tax Act, 1922. It is, hence, submitted that it is well settled that the exercise of power under Section 127 of the Act is a mere administrative power based on administrative exigencies of assessment and collection of taxes, which does not adversely affect the petitioner as the petitioner's right to a fair assessment under the law remains intact. It is contended that if reasons exist for transfer, the scope of interference against an administrative order would be limited and the Courts ordinarily refrain from

[4] [1957] 31 ITR 565 (SC)

interfering with exercise of such power. It is contended that in the facts of the present case, there are valid reasons to transfer the petitioner's case from Mumbai to the Delhi authorities. It is submitted that the petitioner has not shown any justification much less acceptable as set out in the show cause notice dated 19 March 2021.

22. On the petitioner's contention on breach of principles of natural justice, Mr. Panda has also placed reliance on the decision of the Supreme Court in **Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati & Ors.**[5] and **Union of India & Anr vs. Jesus Sales Corporation**[6]

Analysis & Conclusion

23. On the above conspectus, we have heard learned counsel for the parties. We have also perused the record.

24. The question which falls for our consideration in the present proceedings is as to whether there is any illegality in respondent no. 1 passing the impugned order dated 14 June 2021 under Section 127 of the Act, transferring the petitioner's assessment from the Assessing Authority at Mumbai to the Delhi Authority. As the power to transfer cases is conferred under Section 127 of the Act, as also the contentions of the parties revolve

[5] (2015) 8 Suprme Court Cases 519
[6] (1996) 4 Supreme Court Cases 69

around the exercise of such powers by the respondents. At the outset, we may note the provisions of Section 127 of the Act, which read thus:-

> "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 Director General or Director General] or [Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] 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 Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner] 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."

25. On a plain reading of Section 127, it is clear that sub-section (1) ordains that a decision under the said provision is required to be taken after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording of reasons for doing so, the case of the assessee can be transferred from one Assessing Officer to another Assessing Officer as prescribed in sub-section (1).

26. In the facts of the present case, it cannot be said that there was no material which would lay down a foundation for the respondents to exercise powers under Section 127 of the Act. Moreover, substantive material

justifying the transfer was disclosed to the petitioner in the show cause notice dated 19 March 2021 issued to the petitioner. The receipt of such show cause notice is not denied by the petitioner. The contents of show cause notice are required to be noted which read thus:-

> " Sub:- Centralization of your case with Central Circle-20, New Delhi under Central Range-5 of Principal Commissioner of Income Tax, (Central-2), New Delhi-reg.
>
> Please refer to the subject cited above
>
> A search and seizure action was carried out in your case on 30.06.2019 by the DDIT (Inv.), Unit- 3(2) New Delhi. During the course of post search proceedings, a proposal for centralization of case was forwarded to the Chief Commissioner of Income Tax (Central), New Delhi by the office of the Pr. Director of Income Tax (Inv)-1, New Delhi and the approval to the said proposal has been granted on 12.03.2020.
>
> **During the course of search/survey proceedings on related entities/ parties and the pre-search & post-search investigations, it was seen that you are an Indian citizen based in Dubai and have multiple financial interests in India and abroad. The investigations have revealed your involvement in evasion of taxes, abetment and facilitation of the evasion of taxes by various other individuals and companies. You have many transactions with persons like Ratul Puri, Gautam Khaitan, Sushen Mohan Gupta, Pankaj Jain and Sanjay Jain. They have also been covered separately u/s. 132 and their cases have been centralized in Central Circle, Delhi.**
>
> **Since the cases of all the entities mentioned above have been centralized in Delhi, your case is also proposed to be centralized with Delhi charge for coordinated investigation.**
>
> In view of the above mentioned facts, you are hereby given an opportunity to show cause as to why your case should not be centralized with the Pr. Commissioner of Income Tax (Central)- 2, New Delhi for post search coordinated investigation and assessment proceedings. You are requested to submit your response either

personally or through your authorized representative in writing (within 14 days of receipt of this notice) failing which, it shall be presumed that you have nothing to say in the matter.

AJAY KUMAR SHARMA
CIT (IT), Mumbai-4."

(emphasis supplied)

27. It is thus clear from the show cause notice that there was a search and seizure action carried out in the petitioner's case on 30 June 2019 by Delhi authorities. The search/survey on such related entities/parties and the pre-search and post-search investigations as undertaken by the department revealed that the petitioner, who is an Indian citizen but based in UAE, Dubai, had multiple financial interests in India and abroad. Such material also revealed the petitioner's involvement in evasion of taxes, abetment and facilitation of the evasion of taxes by various other individuals and companies and that the petitioner had many transactions with persons whose names are set out in the show cause notice. The cases of such related parties/persons were covered separately under Section 132 and their cases were also centralized in Central Circle, Delhi and it is for such reason, the petitioner's case was proposed to be centralized with Delhi charge for coordinated investigation. It is in such context and reasons the petitioner was called upon to reply to the show cause notice. As noted above, the petitioner responded to the show cause notice by

his letter dated 01 April 2021, however, except for a vague denial and some health ground, the petitioner appears to have not made out any case against transfer of the said proceedings.

28. It is most significant that on such show cause notice and even assuming that the reply of the petitioner was to be taken into consideration, an order on the show cause notice transferring the petitioner's case to Delhi Circle was passed on 14 June 2021 and what is further noteworthy is as to what transpired after the transfer of the petitioner's case from Mumbai Authority to the Delhi Circle.

29. It is seen that after such transfer, the Delhi Authorities had issued notices to the petitioner under Section 153A of the IT Act for the Assessment Year 2014-15 to AY 2019-20 on 16 June 2021. A further notice dated 21 June 2021 was issued under Section 143(2) of the IT Act for AY 2020-21. On 07 September 2021, a further notice under Section 153A for the Assessment Year 2010-11 to AY 2013-14 was issued to the petitioner. On 04 July 2021, a corrigendum to the order under Section 127 was uploaded on the portal and shared by e-mail. Again on 13 March 2022, a show cause notice was issued to the petitioner calling upon the petitioner to explain as to why the case of the petitioner from AY 2010-11 to AY 2020-21 should not be referred to special

audit. On 19 March 2022, Central Circle 20-Delhi issued a notice under Section 142(1) of the Act to the petitioner directing the petitioner to furnish accounts and documents for the assessment year 2020-21 before 24 March 2022. A reminder titled "*Show Cause Notice for referring the matter for a special audit u/s.142(2A) of the Act*" came to be issued to the petitioner. On 24 March 2022, the petitioner filed his objections to the notice dated 19 March 2022. On 25 March 2022, Central Circle 20-Delhi rejected the petitioner's objections which were raised by the petitioner on 24 March 2022 and the case of the petitioner was referred to the Principal Commissioner, Income Tax, New Delhi for seeking approval for referral of the petitioner's case for special audit. The petitioner has not disputed that all these notices/orders were sent by e-mail on the petitioner's email-id which was operational.

30. Further, on 26 March 2022, the Delhi authorities addressed a letter to the petitioner calling upon the petitioner for a hearing on the backdrop of the notices issued to the petitioner dated 13 March 2022, 19 March 2022 and 25 March 2022, which was in regard to the proposed special audit under Section 142(2A) of the Act. As the petitioner failed to comply with the notices, an order came to be passed against the petitioner under the provisions of Section 271(1)(d) of the Act imposing a fine of Rs.10,000/-. Subsequent thereto, on

31 March 2022 the petitioner was issued a letter by Delhi authorities directing to get his accounts audited by M/s. KRA & Co. on the backdrop that an order under Section 142(2A) of the Act was issued with the prior approval of the Principal Commissioner of Income Tax, Central-II, New Delhi.

31. Throughout the flow of all these events after the transfer of jurisdiction under Section 127, the petitioner did not think it necessary to challenge the order dated 14 June 2021. These events being accepted by the petitioner gives an impression of the petitioner having acquiesced with the order of transfer, as the petitioner, after a period of more than one year after the impugned order being passed has moved this petition on 05 June 2022. On 25 July 2022, a co-ordinate Bench of this Court while adjourning the proceedings passed an ad-interim order in terms of prayer clause (e) which reads thus:-

> "(e) that pending the hearing and final disposal of this petition the Respondents, their successors in office, subordinates, servants and agents be restrained by an order and injunction of this Hon'ble Court be pleased to stay the execution, operation and implementation and from taking any steps pursuant to order dated 14.06.2021 passed by CIT(IT), Mumbai-4 u/s.127 of the Income Tax Act, 1961 thereby transferring and centralizing the case of the petitioner with Central Circle – 20 under Range – 5 of Pr. Commissioner of Income Tax (Central) – 2, New Delhi."

32. In pursuance of the nature of the aforesaid relief which is not in the nature of a simplicitor stay of the impugned order, the respondents have stated

that, they could not proceed with the assessment of the petitioner at the hands of the Delhi authorities. As the interim order continued to operate for a period of two years, the revenue moved this petition for vacating of the interim order and it is at such stage, as the pleadings on the petition were complete, we had taken up the petition for final disposal.

33. In the circumstances as noted by us above, we find that this writ petition being filed with a delay of almost one year, is certainly a vital factor to be considered by the Court when the Court is called upon to exercise its discretionary and extraordinary jurisdiction under Article 226 of the Constitution of India, the reasons for which, we discuss hereafter. The argument that the petitioner was unaware of the transfer proceedings does not inspire confidence since the very show cause under section 127 had indeed been received and was also responded to. Therefore, even while the impugned order erroneously states that the petitioner had not replied to the show cause notice, in our opinion, the error of the Revenue does not turn the needle in the petitioner's favour.

34. When the petitioner calls upon this Court to exercise its discretionary, equitable and extraordinary jurisdiction, necessarily the approach of the Court would be to ascertain not only the bonafides of the petitioner, but also all the

surrounding circumstances which would weigh with the Court, on whether to exercise such jurisdiction. This is can be imminently ascertained from the facts of the case. This would also include an endeavour of the Court to consider whether any plea of breach of principles of natural justice is a realistic plea worthy of intervention in judicial review under Article 226.

35. In the facts of the present case, it is seen that the search and seizure action against the petitioner was in fact taken by Delhi authorities on 30 June 2019 at New Delhi. It also appears to be not in dispute that there are materials with the Delhi authorities that the petitioner had transactions with certain individuals whose names we have referred hereinabove and that search and seizure operations were undertaken against such persons and the assessment of such persons were also transferred with the Central authority at Delhi. The petitioner has not denied that he had transactions with such persons, as his only contention is that such transactions had not taken place in India. In our opinion, if this be the position, then certainly there was not only a substantial but an imminent reason and cause available with the respondents to exercise powers under Section 127 of the Act to deal with such cases, so as to centralize the assessment at one place. If such is the foundation in the facts of the case, then it cannot be said that there was any absence of reasons and/or no basis for

the respondents to initiate proceedings against the petitioner under Section 127 of the Act.

36. Having noted the basis for the respondents to initiate an action to transfer the petitioner's case from Mumbai to Delhi exercising powers under section 127 of the Act, we now examine the question as posed by the petitioner whether the impugned order is in breach of the principles of natural justice. We are afraid that such contention in the facts of the present case cannot be accepted, the reason being that admittedly the petitioner was issued a show cause notice dated 19 March 2021, the same was replied by the petitioner and as to whether such reply has made out any case, we have already commented hereinabove that the reply was primarily denying the reasons for the transfer, which in the facts of the case cannot be a ground for the respondents to not pass an order under Section 127 of the Act. Even if the authoritiey passing the order inadveertantly records that the reply was not filed by the petitioner, such mistake in the order would not enure to the benefit of the petitioner in the absence of any real and substantial prejudice, which the petitioner has grossly failed to demonstrate. Secondly, the ground of petitioner's health as set out by the petitioner also can be a valid ground for not transferring the petitioner's case to the Delhi authorities as the facts stand. In any case, the petitioner is a

resident of Dubai and not a resident of Mumbai.

37. We have made the above observations considering the object, intention and purport of the provisions of Section 127(1) of the Act which it recognizes the principles of natural justice, albeit in a manner as specifically envisaged by the express language of the provision. However, in our opinion, there cannot be a straight jacket formula in deciding any grievance in regard to breach of principles of natural justice. Certainly in a given situation as in the present case, and more particularly, when a provision as contained in a taxing statute, the Court would be guided by the language and the wording of the provision as the legislature has desired to frame the provision, in recognizing the extent of the applicability of such principles. Sub-section (1) of Section 127 makes a peculiar and specific reading when it provides "*after giving the assessee a reasonable opportunity of being heard in the matter,* ***wherever it is possible to do so*** *and* ***after recording of reasons for doing so***", a case can be transferred from one Jurisdictional Assessing Officer to another. It is well settled that a reasonable opportunity of being heard would not necessarily mean an oral hearing and it would certainly take within its ambit a written reply or a representation and/or any other conduct of acquiescence of a party. The provision further contemplates that the hearing would be required to be given

wherever it is possible to do so and further reasons are to be recorded for passing of an order to transfer the case.

38. In our opinion, the impugned transfer order cannot be faulted on the ground that it is in breach of the principles of natural justice for several reasons. In such context the petitioner's contention that the impugned order furnishes no reasons or has insufficient reasons , or it furnishes incorrect reasons, in a decision being taken by the respondents to transfer the proceedings from Mumbai to the Delhi jurisdiction cannot be accepted on the face of the impugned order. This more pertinently when the petitioner has admitted that the petitioner had transactions with the persons whose cases are already centralized with the Delhi Authority. For such reason the respondents found it necessary, appropriate and in the eminent interest of the revenue that the petitioner's case is considered by the Central authorities at Delhi, who were *seisin* of the investigation, materials from the search and seizure operations, carried out not only in respect of the petitioner's premises, but also the premises of the related parties. Secondly, we are also not inclined to accept the petitioner's plea of breach of principles of natural justice, on the ground that a personal hearing was not granted to the petitioner. Such plea as urged on behalf of the petitioner would be required to be holistically considered, by

taking into account the overall facts and circumstances of the case and by applying the test as to whether such contention is genuine and bonafide. In such context, we may observe that the impugned order transferring the proceedings in the petitioner's case from the Mumbai to Delhi Authority was passed on 14 June 2021 and as noted above, much water has flown under the bridge, namely after such order was passed, the petitioner was issued notices under Sections 153A, 143(2), 142(1) and 142(2A) of the Act, as also an order of penalty under Section 270 of the Act was passed. These proceedings cannot be discarded and overlooked as these are substantial events which have transpired after passing of the impugned order dated 14 June 2021, till the filing of the petition. Thus, post transfer of the petitioners case to the Delhi authorities, it is implicit in the receipt of such notices and the several proceedings initiated against the petitioner under such notices, including an order passed against the petitioner of imposing penalty, that the petitioner has certainly acquiesced in the order dated 14 June 2021 passed under Section 127 of the Act, which was already implemented and acted upon. On such backdrop, possibly to avoid the said proceedings and quite belatedly, well after the impugned order transferring the petitioner's case to Delhi was passed and consequential actions were undertaken by the Revenue, the petitioner has

approached this Court in the present proceedings. For all these reasons we cannot accept the petitioner's plea of the impugned order to be illegal and or in any manner in breach of the principles of natural justice.

39. We now refer to the decisions as relied on behalf of the respondents which in our opinion would fortify the view we have taken. In **Dharampal Satyapal Limited vs. Deputy Commissioner of Central Excise, Gauhati & Ors.**[7] the Supreme Court has held that mere infraction of principles of natural justice would not warrant the order to be set aside and the proceedings remanded to the authority, as a remand necessarily has to serve the effective purpose, and when the fact itself shown that there would not be any requirement of remand. The Supreme Court in coming to the conclusion referred to the decision in *Escorts Farms Ltd. v. Commissioner (2004) 4 SCC 281* made the following observations:

> "45. Keeping in view the aforesaid principles in mind, even when we find that there is an infraction of principles of natural justice, we have to address a further question as to whether any purpose would be served in remitting the case to the authority to make fresh demand of amount recoverable, only after issuing notice to show cause to the appellant. In the facts of the present case, we find that such an exercise would be totally futile having regard to the law laid down by this Court in R.C. Tobacco(supra).
>
> 46. To recapitulate the events, the appellant was accorded certain benefits under Notification dated July 08, 1999. This Notification

[7] (2015) 8 Suprme Court Cases 519

stands nullified by Section 154 of the Act of 2003, which has been given retrospective effect. The legal consequence of the aforesaid statutory provision is that the amount with which the appellant was benefitted under the aforesaid Notification becomes refundable. Even after the notice is issued, the appellant cannot take any plea to retain the said amount on any ground whatsoever as it is bound by the dicta in R.C. Tobacco (supra). Likewise, even the officer who passed the order has no choice but to follow the dicta in R.C. Tobacco (supra). It is important to note that as far as quantification of the amount is concerned, it is not disputed at all. In such a situation, issuance of notice would be an empty formality and we are of the firm opinion that the case stands covered by 'useless formality theory'.

47. In Escorts Farms Ltd. (Previously known as M/s. Escorts Farms (Ramgarh) Ltd.) v. Commissioner, Kumaon Division, Nainital, U.P. & Ors. [24], this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms:

> "64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under Article 136 of the Constitution of India."

40. In **State of Uttar Pradesh vs. Sudhir Kumar Singh & Ors.**[8], the Supreme Court analysed the test of prejudice and on the backdrop of a party admitting

[8] (2021) 19 Supreme Court Cases 706

and/or not disputing the case against him. This decision is cited by the learned counsel for the respondents to canvass the proposition that the petitioner has not disputed that he had transactions with the related parties whose assessments were centralized with the Delhi authorities. In such context, the Supreme Court made the following observations:-

> 42. **An analysis of the aforesaid judgments thus reveals:**
>
> "42.1 Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
>
> "42.2 Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
>
> 42.3 No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
>
> 42.4 In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
>
> 42.5 The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of 50 fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-

observance of natural justice.

> 45. We, therefore, uphold the impugned judgment of the High Court on the ground that natural justice has indeed been breached in the facts of the present case, not being a case of admitted facts leading to the grant of a futile writ, and that prejudice has indeed been caused to Respondent No.1. In view of this finding, there is no need to examine the other contentions raised by the parties before us."

41. In **Union of India & Anr vs. Jesus Sales Corporation**[9], the Supreme Court categorically held that under different situations and conditions the requirement of the compliance of the principle of natural justice vary. It was held that the Courts cannot insist that under all circumstances and under different statutory provisions personal hearing ought to be given to the persons concerned. It was held that if this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. The Court further held that many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same and that such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned,

[9] (1996) 4 Supreme Court Cases 69

however, it was observed that it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. The Court held that when principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The Court further held that any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing was afforded and this was held to be more important in the context of taxation and revenue matters. The observations of the Court are required to be noted which read thus:-

> "5. The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred. It need not be pointed out that under different situations and conditions the requirement of the compliance of the principle of natural justice vary. The courts cannot insist that under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or

> applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters."

42. Insofar as Mr. Pardiwalla's reliance on the decisions as noted hereinabove are concerned, in our opinion, in the facts of the present case, these decisions would not support the petitioner's case , which we discuss hereafter.

43. In **Darshan Jitendra Jhaveri** (supra) the Court observed that Sub-Section (1) of Section 127 is not applicable in the said case because the transfer proposed was from one commissionerate to another commissionerate. The Court had come to a conclusion that the show cause notice itself was vague. In the facts of the case, it was held that reasonable opportunity of showing cause against an order of transfer being made by the Commissioner was not given to the assessee. However, such are not the facts in the present case, and

consequently, this decision does not advance the case of the petitioner.

44. In **Shikshana Prasaraka Mandali, Sharda Sabhagruha, S.P. College Campus** (supra) the Court dealing with the facts of the case, opined that there was breach of principles of natural justice. It was the case wherein the authorities called upon the petitioner to show cause on the proposed transfer, however, none of the reasons found in support of the impugned order was mentioned in the show cause notice. Such are not the facts in the present case. On the ground of inadequacy of the show cause notice, the Court in the facts of such case allowed the petition.

45. Also the reliance on the order passed by this Court on **Pegasus Assets Reconstruction Private Limited** (supra) would not assist the petitioner as in such case the assessment was completed and for such reason the Court was of the opinion that the transfer in question itself had become redundant and it is in these circumstances, the order of transfer was quashed.

46. It cannot be overlooked that the petitioner is not a permanent resident of India/Mumbai. Although he is an Indian citizen, he is a resident of Dubai. The search and seizure operations have taken place at New Delhi is an undisputed position. Also the petitioner's involvement with related parties

leading to evasion of tax and substantial material in that regard being gathered in search and seizure operations also appears to be quite evident. Further, the cases of such related parties are also transferred with the Central Authorities at Delhi. The assessment of such persons would certainly have a bearing on the assessment of the petitioner, as there are *inter se* transactions between such parties. Thus, in the facts of the present case, it is eminently desirable that the assessment be clubbed at one place, i.e., with the Delhi Authority and it is in such circumstances, the powers under Section 127 appears to have been exercised with all justification. In these circumstances, it would be difficult to accept the petitioner's contention of any prejudice being caused to the petitioner and more so on the ground which was urged in the before us as also the grounds which are urged in the reply to the show cause notice. No prejudice would be caused to the petitioner, if he cooperates with Delhi Authorities in all matters relating to the assessment.

47. It is well settled that Section 127 of the Act is a procedural provision for ascertaining the tax liability for the assessee in fair, impartial and effective manner. In the present case as noted above, there were material and significant reasons which weighed with the authorities to transfer the case of the petitioner at Delhi as also the impugned order has recorded reasons for such transfer.

Thus, these vital considerations of Section 127 being satisfied, we cannot accept the contention of the petitioner that as a personal hearing was not given to the petitioner, the impugned order needs to be set aside. This also for the reason that Section 127(1) of the Act itself provides that it would not be obligatory to the authority to give hearing in every case and it would be required to be given "wherever it is possible to do so" and this would be the discretion of the authority as recognized by the legislature and in doing so, the authority is required to act reasonably and bonafide. The Supreme Court in the context of requirement of Section 127 referring to the decision in **Pannallal Binraj vs. Union of India** (supra), held that the mere fact that the opportunity was not given shall not vitiate the order of transfer.

48. In this context, we may also refer to the decision of Allahabad High Court in **Rohtas Project Ltd. v. Principal Commissioner of Income Tax (Central)**[10] . Interpreting the provisions of Section 127 of the Act, the Division Bench of the Allahabad High Court made the following observations:

> "21. However, in this particular case, looking into the facts, we have to examine, whether respondents are justified in contending that non issue of notice and giving reasonable opportunity to Assessee would not vitiate order of transfer in view of the fact that requirement of notice is qualified with the phrase "wherever it is possible to do so" and, therefore, in every case law does not require that opportunity is must and also "whether this defence is available in this case".

[10] [2018] 100 taxmann.com 383

22. Phrase "wherever it is possible to do so" as such could not be shown to have been used in any other statute and came up for consideration before Court, but a similar phrase "as far as possible" has been used in several statutes and considered by Courts, time and again.

23. Section 127 is a procedural provision for ascertaining liability of an Assessee to determine in a fair, impartial and effective manner, so that no one is unduly benefited and wherever competent authority, having power of transfer under section 127 or any Assessee has apprehension, or for other administrative reason, it is found necessary that case should be transferred from jurisdiction of one authority to another, the same may be done. Statute also incorporates requirement of principles of natural justice as also recording of reason but simultaneously has used phrase "whenever it is possible to do so". This has been noticed by a Constitution Bench in Kanshi Ram Agarwal Vs. Union of India, AIR 1965 SC 1028. Reading Section 127, Court has said that Section 127(1) imposes an obligation on the authority exercising power under the said Section to record 'reasons' for directing transfer of a case from one Income Tax Officer to another. It further requires that whenever power conferred by Section 127 is intended to be exercised, an opportunity should be given to Assessee, "whenever it is possible to do so" and reasons have to be recorded for making order of transfer. Court thus held that opportunity to Assessee shall be offered "whenever it is possible to do so" but order must contain reasons for transfer. Court held that "requirement that opportunity should be given, cannot be said to be obligatory, because it has been left to discretion of authority to consider whether it is possible to give such opportunity to Assessee. This is of course, true, in coming to the conclusion, that Authority must act reasonably and bona-fide; but if Authority comes to conclusion that it is not possible to give a reasonable opportunity to Assessee, same can be dispensed with. However, it is not so with regard to requirement that reasons must be recorded for making transfer.

24. So far as Section 127(1) is concerned, there is no dispute about this position. The twin requirement under Section 127(2) has some complication. It is true that under Act, 1961 i.e. Section 120 read with Section 124, Assessing Officer is vested with jurisdiction over an area where any person carrying on the business or profession resides. Therefore, in normal course, an Assessee is entitled to be assessed by Assessing Officer having jurisdiction as stated in the aforesaid provisions but there is no such vested right in an Assessee to be assessed by a particular Assessing Officer. In given case, Competent Authority may transfer a matter from one Assessing Officer to another, may be having effect of change of place also but that will not affect any substantial right of Assessee.

25. On this aspect, we find support from judgment in Panna Lal Binjraj Vs. Union of India, AIR 1957 (SC) 397, wherein Court held that infringement of right to be assessed by Assessing Officer having jurisdiction in a particular area by transferring case to another cannot be said to be an infringement, material in nature. It is only a deviation of a minor character from general standard and does not necessarily involve a denial of equal rights for simple reason that even after such transfer, case is dealt with under the normal procedure which is prescribed in the Act, 1961. Production and investigation of books of account, enquiries to be made by Income Tax Officer are same in a transferred case as in others which remain with Assessing officer of area in which other Assessee resides or carries on business. There is thus no differential treatment and no scope for argument that particular Assessee is discriminated with reference to other Assessees similarly situated whose cases are not transferred, therefore, transfer of case from one place to another is a matter which may disturb some convenience of Assesseee but if other factors of importance of higher degree are available, an order of transfer otherwise validly passed, is not to be assailed as something which has caused no serious prejudice to Assessee.

26. An attempt on the part of learned counsel for Assessee that mere fact that opportunity was not given shall vitiate order of transfer, in our view, cannot be accepted for the reason that Statute does not make requirement of opportunity mandatory but it is subject to condition "wherever it is possible to do so" and in a given case, the mere fact that notice was not given to Assessee, will not vitiate order if the circumstances do justify such non affording of opportunity.

27. Thus, at the pain of repetition, we hold that careful reading of Section 127(2)(a) leads no manner of doubt that requirement of "reasonable opportunity" to Assessee is subjected and conditional i.e. "whenever it is possible to do so" department may proceed to pass an order of transfer without giving such opportunity. When a phrase has actually been used by Legislature in a statute, we cannot either ignore it or omit or render it redundant by reading that in every case an opportunity is must, else order of transfer would be rendered bad. The words used by legislature have to be read and given due meaning and effect and that is the basic principle of interpretation. Each and every word used by legislature has some meaning or consequence and whenever an statute is considered, every word must be given its logical meaning and consequence unless there appears to be some inconsistency or conflict resulting in consequences to be disturbing or there are other compelling reasons showing that some part does not convey the same meaning as it ought to be or the same is redundant or is inconsistent with

rest of the provisions. However that is not so particularly in this case and from judgment of Constitution Bench in Panna Lal Binjraj Vs. Union of India (supra) also we find that requirement of opportunity has not been held mandatory. The mandate is available only for requirement of recording of 'reason'.

28. Then comes the question "whether order of transfer contains any reason and whether mandatory requirement of recording of reason is satisfied or not". The reason mentioned in the order is "decentralization of cases". Requirement of reason under Section 127 has a basic condition that before causing some inconvenience or prejudice to Assessee, Competent Authority passing order of transfer must show, from order of transfer, a conscious application of mind on its part that transfer order is not a mechanical exercise. Requirement of reasons does not mean that order must contain a detailed discussion on several grounds for justifying order of transfer, but requirement of statute stands satisfied if from a bare reading of order, any person of ordinary prudence may come to know as to what is the reason which has prevailed in the mind of Competent Authority to exercise power of transfer and such reason or ground is not flimsy, imaginary, whimsical. It must disclose that patently, logic and prudence has been applied before passing it.

29. Looking to the entire facts and circumstances and the impugned order, we find it difficult to read substantial compliance of Section 127(A) that any reason has been given in the impugned order. Hence we allow this writ petition, partly, to the extent that impugned order dated 30.6.2016 (Annexure IX-A to the writ petition) passed by Principal Commissioner of Income Tax (Central), Kanpur under Section 127, in so far as it pertains to petitioner, is hereby set aside."

49. The Supreme Court in **Principal Commissioner of Income Tax (Central) vs. Rohtas Project Ltd.**[11] rejected a Special Leave Petition filed against the aforesaid decision of Allahabad High Court in **Rohtas Project Ltd.** (supra).

50. In the light of the above discussion, we are of the clear opinion that in the facts of the present case, no case for interference in exercise of our

[11] [2018] 100 taxmann.com 384 (SC)

jurisdiction under Article 226 of the Constitution of India is made out by the petitioner, in assailing the impugned order dated 14 June 2021 passed under Section 127 of the Income Tax Act 1961. The writ petition is accordingly rejected No costs.

51. At this stage, learned counsel for the petitioner makes a request for continuation of ad-interim relief for a period of four weeks. Considering the facts of the case, the request is rejected.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI, J.)