2024:DHC:3722-DB

$~

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

\+ **Judgment reserved on: 03 April 2024**
Judgment pronounced on: 08 May 2024

ITA 124/2020

RAJ SHEELA GROWTH FUND (P) LTD. ..... Appellant
Through: Mr. N. P. Sahni & Mr. Deepanshu Mehta, Advs.

versus

INCOME TAX OFFICER, WARD – 21(1), DELHI ..... Respondent
Through: Mr. Sanjay Kumar, Ms. Easha & Ms. Hemlata Rawat, Advs.

\+ ITA 8/2021

PR COMMISSIONER OF INCOME TAX – 7 ..... Appellant
Through: Mr. Sanjay Kumar, Ms. Easha & Ms. Hemlata Rawat, Advs.

versus

RAJ SHEELA GROWTH FUND PVT. LTD ..... Respondent
Through: Mr. N. P. Sahni & Mr. Deepanshu Mehta, Advs.

\+ W.P.(C) 3777/2022 & CM APPL. 11224/2022 (Stay)

RAJSHEELA GROWTH FUND PVT LTD ..... Petitioner
Through: Mr. N. P. Sahni & Mr. Deepanshu Mehta, Advs.

versus

ITO WARD 21(1) NEW DELHI ..... Respondent
Through: Mr. Ruchir Bhatia, SSC with Ms. Deeksha Gupta, Adv.

2024:DHC:3722-DB

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

% **J U D G M E N T**

PURUSHAINDRA KUMAR KAURAV, J.

1. The principal issue in the present batch of cases is whether, in the absence of any order of transfer under Section 127 of the Act, the non-jurisdictional Assessing Officer ["**AO**"] can proceed with the assessment?

2. The brief facts that are pertinent to decide the controversy at hand would reveal that the assessee is a private limited company and pursuant to an order of centralization dated 16.07.2008, the office of Central Circle-16, New Delhi (which is now Central Circle-20, New Delhi since Assessment Year ["**AY**"] 2014-15) had jurisdiction over the case of the assessee. For the AY 2015-16, the assessee filed its Income Tax Return ["**ITR**"] before Central Circle-20, New Delhi declaring a total income of INR 7,920. Thereafter, the assessee's case was picked up for scrutiny.

3. However, on 21.03.2016 a notice under Section 143(2) of the Act was issued to the assessee by the office of Income Tax Officer ["**ITO**"] Ward 21(1), New Delhi, pursuant to which, the assessee participated in the assessment proceedings, assuming that a valid transfer order was passed in its case. Thereafter, on 31.12.2017, an assessment order was passed by ITO Ward 21(1), New Delhi, whereby, an addition amounting to INR 1,35,11,59,300 was made

under Section 56(2)(viia) of the Act to the total income of the assessee.

4. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] raising the ground of lack of jurisdiction and CIT(A) *vide* order dated 26.12.2018 rejected the appeal. Thereafter, the assessee preferred an appeal before the ITAT and the ITAT *vide* order dated 09.08.2019 has partly allowed the appeal, *inter alia*, remanded the matter back to the AO to ascertain whether any transfer order under Section 127 of the Act was passed. If that be so, further directions were issued to proceed with the assessment bearing in mind certain aspects.

5. Subsequently, on 22.09.2021, the assessee filed an application under Section 144A of the Act before the Assistant Commissioner of Income Tax [**"ACIT**"] enquiring about the transfer order under Section 127 of the Act. Pursuant thereto, on 27.09.2021 an order under Section 144A of the Act was passed holding that a transfer order under Section 127 of the Act was passed *vide* transfer order no. 200000047799 which was stated to have been issued by the Principal Commissioner of Income Tax [**"PCIT**"] (Central), Delhi-2 and also directed the AO to continue with the assessment proceedings in accordance with the directions passed in the ITAT order dated 09.08.2019.

6. Consequently, on 30.09.2021, an assessment order was passed by ITO Ward 21(1), New Delhi, whereby, after following the directions as per the ITAT order dated 09.08.2019, the addition of INR 55,55,67,090/- under Section 56(2)(viia) of the Act was made.

On the question of jurisdiction the AO has held that the order under Section 127 of the Act was made in the Income Tax Business Application ["**ITBA**"] system on 18.02.2016 and pursuant to this order, the PAN of the assessee was migrated to the ITO Ward 21(1), New Delhi on 19.02.2016.

7. The assessee, therefore, in W.P.(C) 3777/2022, assails the orders dated 31.12.2017 and 30.09.2021, on the ground of lack of jurisdiction. Whereas, in ITA 124/2020 and ITA 8/2021 which are the cross-appeals at the instance of the assessee and Revenue respectively, the order dated 09.08.2019 passed by the Income Tax Appellate Tribunal ["**ITAT**"] is under challenge.

8. Mr. N. P. Sahni, learned counsel appearing on behalf of the assessee submitted that the impugned orders are liable to be set aside as they suffer from jurisdictional error. He submitted that since AY 2008-09, the assessee had been regularly assessed by the Central Circle-16/20, New Delhi and therefore, without any decentralization order or any transfer order made under Section 127 of the Act, the case of the assessee could not have been transferred from Central Circle-20, New Delhi to ITO Ward 21(1), New Delhi. He further submitted that the legislative mandate of Section 127 of the Act clearly elucidates that the transfer of the case of the assessee can only be done through an order passed under Section 127 of the Act.

9. Mr. Ruchir Bhatia and Mr. Sanjay Kumar, learned counsels appearing on behalf of the Revenue, vehemently opposed the submissions advanced. They submitted that the transfer order had duly been passed, which was also reflected on the ITBA portal. They

further argued that the ITO Ward 21(1), New Delhi has inherent jurisdiction as per the CBDT circular dated 15 November 2014 and therefore, the assessment orders do not suffer from any infirmity of jurisdictional error.

10. We have heard the learned counsel appearing on behalf of the parties and perused the record.

11. In our order dated 21.03.2024, we have succinctly captured the nature of the controversy involved in the current *lis*. For the sake of convenience, the order dated 21.03.2024 is reproduced herein:-

> "1. Mr. Bhatia, learned counsel appearing for the respondent has placed for our perusal a copy of the counter affidavit in W.P(C) 3777/2022, which has been duly circulated. Let the same be included on our digital record.
>
> 2. Presently and upon going through the counter affidavit which has been tendered, we note that the respondents essentially rely upon the Central Board of Direct Taxes notification dated 22 October 2014 and the subsequent notification promulgated under the pen of the Additional Commissioner of Income Tax dated 15 November 2014.
>
> 3. According to Mr. Bhatia, the case of the petitioner would clearly fall within the jurisdiction of the prescribed Deputy Commissioner of Income Tax as per the extracts of the notification appearing at page 26 of the counter affidavit.
>
> 4. We are, however, faced with a case where the petitioner's assessment is stated to have been centralized and pursuant to which assessments right from Assessment Years 2008-09 to 2015-16 were being made by the Assessing Officer ["**AO**"] posted in the Central Circle-16. This is evident from paragraph 3 of the writ petition itself which is extracted hereinbelow: -
>
> > "3. That in the present case, the Petitioner/assessee's income was regularly being assessed to tax by the Central Circle-16 which is now Central Circle-20, New Delhi since AY 2008-09. A Chart evidencing the jurisdictional Assessing Officer of the assessee is set out below for ready

reference:

A.Y.	PAN	Filed Ward/Circle	Assessing Officer
2008-09	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2009-10	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2010-11	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2011-12	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2012-13	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2013-14	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2014-15	AAACR0024N	CENTRAL CIRCLE-16	CENTRAL CIRCLE-16
2015-16	AAACR0024N	CENTRAL CIRCLE-20	Ward 21(1)-under challenge

5. The question which therefore arises is whether the notification dated 15 November 2014 would have the effect of reversing centralization. This aspect would also have to be examined, bearing in mind the Explanation appended to Section 127 of the Income Tax Act, 1961 ['**Act**'] as well as the Note set out in the notification of 22 October 2014 and which read as follows:-

> "Note:
> The Income-tax authorities referred to in column (2) of the schedule annexed to this notification shall not exercise powers and perform functions, which have specifically been assigned through separate notification(s), to an Income-tax authority having designation other than those mentioned in column (2) below."

6. Let the matters be called again on 03.04.2024."

12. It is thus evident that the short controversy which is sought to be canvassed before us is whether, in the absence of any decentralization order or transfer order made under Section 127 of the Act, the case of the assessee can be transferred from the board of one AO to another?

13. The Revenue draws sustenance to the impugned action on the strength of the order dated 15.11.2014. At this juncture, it is relevant to point out that *vide* order dated 15.11.2014 passed under Section 120 of the Act under the pen of ACIT, the jurisdiction of certain income tax authorities was outlined. As per this order, the ITO Ward 21(1), New Delhi shall have jurisdiction over the companies registered under the Companies Act, 2013, having its registered office or principal place of business in NCT, Delhi. Furthermore, as per the postulates of such an order, the ITO Ward 21(1), New Delhi shall have jurisdiction over the companies with names starting with the alphabets "Rai to Real" and have an income or loss less than or equal to INR 30 Lakhs. The relevant extracts of the said notification are reproduced herein for reference:-

> "**ORDER UNDER SECTION 120 OF THF INCOME-TAX ACT, 1961**
>
> In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income Tax Act, 1961 (43 of 1961) and in accordance with Notification Number S.O. No. 2752(E) dated the 22nd October, 2014 of Government of India, Central Board of Direct Taxes, published in the Gazette of India, Extra-Ordinary, Part-II, Section 3 (ii), dated the 22nd October, 2014, [Notification No. 50 /2014/F. No. 187/38/2014 (ITA:I)] and Order dated 15.11.2014 under Section 120 of the Act issued by the Commissioner of income Tax, Delhi-7, New Delhi vide No. Pr. CIT/ClT-7./Juris/2014-15/2 and in supersession of all the earlier orders in this regard passed by this office, assigning jurisdiction over any case(s) to any Assessing Officer, I, the Addl. Commissioner of Income-tax, Range 21, New Delhi hereby direct that the Deputy/Assistant Commissioners of income Tax and Income Tax Officers mentioned in Column No. 2 of the Schedule attached herewith shall exercise the powers and perform the functions of Assessing Officer, in respect of such cases or classes of cases specified in the corresponding entries in column (6) of the Schedule attached herewith, of such persons or classes of persons specified in the corresponding entries in column (5) of the said Schedule, in such territorial areas specified in the corresponding

entries in column (4) of the said Schedule, having their headquarters specified in the corresponding entries in column (3) of the said schedule, in respect of all incomes or classes of income thereof;

***

	Designation of Income Tax Authorities	Head-quarters	Territorial Area	Persons or classes of persons	Cases and classes of cases
…	Income Tax Officer Ward 21 (1), Delhi	Delhi	National Capital Territory of Delhi	(a) Persons being companies registered under the Companies Act, 2013 or under the Companies Act, 1956 and having its registered office or having its principal place of business in the area mentioned in column (4); (b)persons being individuals referred to in item (b) of column (6).	**(a)All cases of persons referred to in corresponding entry in item (a) of column (5) whose names begin with the alphabet "Rai to Real" and having income or loss less than or equal to Rs. 30 Lakhs or as prescribed by the competent authority from time to time.** (b) all cases of individuals being managing director or director or manager or secretary in the companies referred to in corresponding entry in item (a) of column (6).

14. Furthermore, the aforenoted order also highlights the Central

Board of Direct Taxes ["**CBDT**"] notification dated 22.10.2014 which delineates the jurisdiction of the AO and also puts the embargo that the income tax authorities mentioned in the notification shall not exercise the powers which have been specifically assigned to other authorities *vide* the provisions of separate notifications. For the sake of convenience, the relevant extracts of the said notification are reproduced herein below:-

> "**S.O. 27S2(E)**.—In exercise of the powers conferred by sub-sections (1) and (2) of section 120 of the Income Tax Act, 1961 (43 of 1961), and in supersession of Government of India, Central Board of Direct Taxes, notification number S.O. 732(E) dated the 31st July, 2001, published in the Gazette of India, Extra-Ordinary, Part-II, Section 3, Sub-section (ii), dated the 31st July, 2001 except as respects things done or omitted to be done before such supersession, the Central Board of Direct Taxes, hereby,-
>
> ***
>
> Note:
>
> The Income-tax authorities referred to in column (2) of the schedule annexed to this notification shall not exercise powers and perform functions, which have specifically been assigned through separate notification(s), to an Income-tax authority having designation other than those mentioned in column (2) below.
> 2. This notification shall come into force with effect from 15th day of November, 2014.
>
> ***

S. No.	Designation of Income Tax Authorities	Head-quarters	Territorial Area	Persons or classes of persons	Cases and classes of cases

94	Principal Commissioner/ Commissioner of Income-tax, Delhi-7	Delhi	National Capital Territory of Delhi	(a) Persons being companies registered under the Companies Act, 2013 or under the Companies Act, 1956 and having its registered office or having its principal place of business in the area mentioned in column (4); (b)persons being individuals referred to in item (b) of column (6).	a)All cases of persons referred to in corresponding entry in item (a) of column (5) whose names begin with the alphabet "O" or "P" or "Q" or "R" ; (b) all cases of individuals being managing director or director or manager or secretary in the companies referred to in corresponding entry in item (a) of column (6).

15. It is the contention of the Revenue that the conjoint reading of the order dated 15.11.2014 passed under Section 120 of the Act under the pen of ACIT and the CBDT notification dated 22.10.2014 would establish that the ITO Ward 21(1), New Delhi shall have inherent jurisdiction over the assessee and, therefore, an order of transfer made under Section 127 of the Act was not required.

16. Before advancing to the merits of the aforesaid contentions, it is to be noted that the purported order of transfer passed under Section 127 of the Act *vide* transfer order no. 200000047799, which was stated to have been uploaded on the ITBA system on 18.02.2016 is not traceable and has also not been produced before us for our consideration.

17. In light of such undisputed position of facts, we now proceed to examine the contention of the Revenue, which tries to give the colour

of inherent jurisdiction to ITO Ward 21(1), New Delhi over the case of the assessee, on the purported anvil of a conjoint reading of the order dated 15.11.2014 passed under Section 120 of the Act under the pen of ACIT and the CBDT notification dated 22.10.2014.

18. We notice the underlying legislative mandate of Section 127 of the Act, whereby, it is clear that the transfer of cases under Section 127 of the Act is based on the objective of public interest and administrative convenience. The Constitution Bench of the Supreme Court in the case of ***Kashiram Aggarwalla v. Union of India,***[1] discussed the scope and ambit of Section 127 of the Act while emphasizing upon the administrative character of the order. The relevant paragraphs of the said decision are reproduced herein below:-

> **"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

[1] 1964 SCC OnLine SC 26.

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.

7. In this connection, it is also necessary to take into account the background of the provision contained in Section 127. In *Pannalal Binjraj* v. *Union of India* [(1957) SCR 233] the validity of Section 5(7-A) of the earlier Act of 1922 was challenged before this Court. The said Section had provided that the Commissioner of Income Tax may transfer any case from one Income Tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income Tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income Tax Officer from whom the case is transferred. The argument which was urged before this Court in challenging the validity of this provision was that it infringed the citizens' fundamental rights conferred by Articles 14 and 19(1)(*g*) of the Constitution. In support of this argument, reliance was placed on the fact that Section 64(1) and (2) conferred a right on the assessee to have his tax matter adjudicated upon by the respective officers mentioned in the said provisions; and since Section 5(7-A) authorised the transfer of the assessee's case from one Income Tax Officer to another, that involved infringement of his fundamental rights guaranteed by Articles 14 and 19(1)(*g*) read with Section 64(1) and (2). It is necessary to emphasise that Section 5(7-A) authorised transfer of income tax cases from one officer to another not necessarily within the same place. In other words, the transfer authorised by Section 5(7-A) would take the case from the jurisdiction of an officer entitled to try it under Section 64(1) and (2) to another officer who may not have jurisdiction to try the case under the said provision. That, indeed, was the basis on which the validity of Section 5(7-A) was challenged. This Court, however, repelled the plea raised against the validity of the said section on the ground that the right conferred on the assessee by Sections 64(1) and (2) was not an absolute right and must be subject to the primary object of the Act

itself, namely, the assessment and collection of the income tax; and it was also held that where the exigencies of tax collection so required, the Commissioner of Income Tax or the Central Board of Revenue had the power to transfer his case under Section 5(7-A) to some other officer outside the area where the assessee resided or carried on business. That is how Section 5(7-A) was sustained.

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 according 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]

19. The Division Bench of this Court in the case of ***ATS Infrastructure Ltd. v. Commissioner of Income-tax,***[2] after following the dictum of the Supreme Court in the case of ***Pannalal Binjraj v. Union of India,***[3] has held that when powers are invoked under Section 127 of the Act, territorial nexus becomes irrelevant and what becomes more prominent are the interests of adjudication and collection of taxes. The Court in the said decision held as follows:-

"9. In Pannalal Binjraj v. Union of India [1957] 31 ITR 565 (SC) the Constitution Bench had repulsed a siege laid to the vires of section 5 of the Indian Income-tax Act, 1922. The assessee had one of its branches in Calcutta where the karta of the Hindu

[2] 2009 SCC OnLine Del 1627.
[3] (1957) SCR 233.

undivided family resided and carried on business. The Hindu undivided family, however, was being assessed at Patna but the cases were transferred to Calcutta and subsequently to Circle-VI, New Delhi. Their Lordships observed thus (pages 580 and 587) :

> "Prima facie it would appear that an assessee is entitled under those provisions to be assessed by the Income-tax Officer of the particular area where he resides or carries on business. Even where a question arises as to the place of assessment such question is under section 64(3) to be determined by the Commissioner or the Commissioners concerned if the question is between places in more States than one or by the Central Board of Revenue if the latter are not in agreement and the assessee is given an opportunity of representing his views before any such question is determined. This provision also goes to show that the convenience of the assessee is the main consideration in determining the place of assessment. Even so the exigencies of tax collection have got to be considered and the primary object of the Act, viz., the assessment of Income-tax, has got to be achieved. The hierarchy of Income-tax authorities which is set up under Chapter II of the Act has been so set up with a view to assess the proper Income-tax payable by the assessee and whether the one or the other of the authorities will proceed to assess a particular assessee has got to be determined not only having regard to the convenience of the assessee but also the exigencies of tax collection. In order to assess the tax payable by an assessee more conveniently and efficiently it may be necessary to have him assessed by an Income-tax Officer of an area other than the one in which he resides or carries on business. It may be that the nature and volume of his business operations are such as require investigation into his affairs in a place other than the one where he resides or carries on business or that he is so connected with various other individuals or organisations in the way of his earning his income as to render such extra territorial investigation necessary before he may be properly assessed. .. There is no fundamental right in an assessee to be assessed in a particular area or locality. Even considered in the context of section 64(1) and (2) of the Act this right which is conferred upon the assessee to be assessed in a particular area or locality is not an absolute right but a subject to the exigencies of tax collection."

10. The Division Bench of this court in Sameer Leasing Co. Ltd. v.

> Chairman, CBDT [1990] 185 ITR 129 gave its imprimatur to assessment previously being carried out at Delhi, being transferred to Meerut, keeping in view the fact that the business activities of the assessee were located in Muzaffarnagar and also keeping in perspective the fact that other cases of the assessee pertaining to the same group were also transferred to Meerut. Another Division Bench of this court in K. K. Loomba v. CIT [2000] 241 ITR152 applied Bidi Supply Co. v. Union of India [1956] 29 ITR 717 (SC) and Pannalal Binjraj v. Union of India [1957] 31 ITR 565 (SC) to reject the challenge to the transfer of cases from Amritsar to Delhi. In K. P. Mohammed Salim v. CIT [2008] 300 ITR 302 (SC) their Lordships have clarified that: "The power of transfer is 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.
>
> 11. In this conspectus and analysis of the law it will be relevant to note that, firstly, there is no fundamental right of an assessee to be assessed at a particular place. Under section 124, the assessment must be carried out at the principal place of business but when powers under section 127 are invoked, territorial nexus becomes irrelevant. Secondly, the determination of the venue of the assessment would be governed by the greatest exigencies for the collection of taxes. Thirdly, the decision to transfer cases cannot be capricious or mala fide. If the venue is changed from year to year, or periodically for no apparent reason, it would not manifest an instance of the exercise of power which is not available, but an example of an abuse of power in the manner in which it is exercised. Fourthly, 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."
>
> [Emphasis supplied]

20. Furthermore, in the case of W.P.C. 4054/2024 titled ***Dollar Gulati v. PCIT***, we have also considered the ambit of Section 127 of the Act and made the following pertinent observations :-

> "25. Therefore, it is evident from the legislative mandate and dictum laid down by the abovementioned judicial pronouncements on the scope and ambit of Section 127 of the Act, that it is a machinery provision which is aimed at larger public interest. On the touchstone of public interest, the powers under Section 127 of

the Act can be exercised. Furthermore, the legislative mandate advises that the order of transfer under Section 127 of the Act ought to be passed after providing a reasonable opportunity of hearing to the assessee.

26. In addition to that, the order passed under Section 127 of the Act should duly reflect the application of mind while disposing of the objections filed by the assessee. Moreover, the convenience of parties shall be considered by the Revenue while exercising the powers under Section 127 of the Act, however, in view of the administrative nature of such an order, the administrative convenience of the Revenue and the need for 'coordinated investigation' would take precedence over the logistical difficulties faced by the assessee. It is also fundamental to point out that despite being a machinery provision, the reasons recorded in the order of transfer should not be capricious or *mala fide* and such order shall not run contrary to the *bona fide* objectives of the Act."

[Emphasis supplied]

21. At this juncture, it is also pertinent to rely on the decision of this Court in the case of ***Abhishek Jain v. Income Tax Officer (supra)***, wherein, the Court discussed the interplay between Sections 120, 124 and 127 of the Act and ultimately held as follows:-

"16. Section 120 of the Act which relates to jurisdiction of the Income-tax authorities stipulates that the Income-tax authorities shall exercise any of the powers and perform all or any of the functions conferred or assigned to such authority by or under this Act as per the directions of the Board, i.e., the Central Board of Direct Taxes. As per Explanation to sub-section(1), the power can also be exercised, if directed by the Board, by authorities higher in rank. Under sub-section (2), the Board can issue orders in writing for exercise of power and performance of functions by the Income-tax authorities and while doing so in terms of sub-section (3), the Board can take into consideration and have regard to the four-fold criteria, namely, territorial area ; persons or classes of persons ; incomes or classes of income ; and cases or classes of cases. Thus, the Act does not authoritatively confer exclusive jurisdiction to specific Income-tax authority. It is left to the Board to issue directions for exercise of power and functions taking into consideration territorial area, class/types of persons, income and case, and Board have been given wide power and latitude. The said section by necessary implication postulates and acknowledges that

multiple or more than one Assessing Officer could exercise jurisdiction over the particular assessee. Concurrent jurisdictions are therefore not an anathema but an accepted position under the Act. The term "jurisdiction" in section 120 of the Act has been used loosely and not in strict sense to confer jurisdiction exclusively to a specified and single Assessing Officer, to the exclusion of others with concurrent jurisdiction. It would refer to "place of assessment", a term used in the Indian Income-tax Act, 1922. Sub-section (5) of section 120 of the Act again affirms and accepts that there can be concurrent jurisdiction of two or more Assessing Officers who would exercise jurisdiction over a particular assessee in terms of the four-fold criteria stated in sub-section (3) of section 120. Second part of sub-section (5) states that where powers and functions are exercised concurrently by the Assessing Officers of different classes, then the higher authority can direct the lower authority in rank amongst them to exercise the powers and functions.

***

18. S. S. Ahluwalia (supra), examines several decisions which were relied upon by the assessee in the said case and were held to be not germane and applicable. This decision also explains the provisions of section 127 of the Act and scope and ambit of the said power, to observe that the section does not speak of the transfer of jurisdiction but transfer of case as defined in section 127. The expression "concurrent jurisdiction" is mentioned in sub-section (3) to section 127 of the Act. Elucidating the legal effect of sections 120, 124 and 127 of the Act, it was observed in S. S. Ahluwalia (supra):

> "(13) The provisions indicate that sections 120, 124 and 127 of the Act recognizes flexibility and choice, both with the assessee and the authorities, i.e., the Assessing Officer before whom return of income could be filed and assessment could be made. The Assessing Officer within whose area an assessee was carrying on business, resided or otherwise income had accrued or arisen (in the last case, subject to the limitation noticed above) has jurisdiction. Similarly, the Assessing Officer also has authority due to class of income or nature and type of business. The Act, therefore, recognized multiple or concurrent jurisdictions. The provisions of section 124 ensure and prevent two assessments by different Assessing Officers, having or enforcing concurrent jurisdiction. There cannot be and the Act does not envisage two assessments for the same year by different officers. (Reassessment order can be by a different

officer)."

> 20. Sub-section (5) of section 124, though limited in scope, would also be applicable in the facts and circumstances of the present case as the Income-tax Officer, Ward-1(1), Noida had the power to assess income accruing or arising within the area as it is not the case of the petitioner- assessee that the said officer did not have jurisdiction in view of location of the bank account and/or the petitioner's place of work. Section 124(5) of the Act saves assessment made by an Assessing Officer provided that the assessment does not bring to tax anything other than income accruing, arising or received in that area over which the Assessing Officer exercises jurisdiction. However, notwithstanding section 124(5), the Act does not postulate multiple assessments by different Assessing Officers, or assessment of part or portion of an income (see Kanji Mal and Sons v. CIT (1982) 138 ITR 391 (Delhi)). Thus, the Assessing Officers having concurrent jurisdiction must ensure that only one of them proceeds and adjudicates. This is the purport and objective behind sub-section (2) of section 124 of the Act."
>
> [Emphasis supplied]

22. Therefore, in light of the legislative mandate enshrined under Sections 120, 124 and 127 of the Act and the judicial pronouncements mentioned above, it is clear that Section 124 of the Act deals with the jurisdiction of the assessing officers, whereby, the AO has been vested with the jurisdiction over any person carrying on business or profession over any prescribed territorial limit or where the principal place of business of persons is within such area and any person residing within such prescribed territorial limits. However, in cases where the case was transferred from one AO having jurisdiction over the assessee to another AO who otherwise did not have jurisdiction in terms of the direction of the Board under Section 120 and 124 of the Act, then transfer order under Section 127 is mandatory, without which the jurisdiction of the AO cannot be conferred to pass any assessment order.

23. It is imperative to point out that the underlying objective of such a statutory procedure is to avoid chaos and to ease the administrative convenience on the part of the Revenue for coordinated investigation.

24. Furthermore, the Explanation appended to Section 127 of the Act, evidently explains the aforesaid position, which reads as under:-

> "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. As is apparent from the bare reading of the abovenoted Explanation, the word 'case' includes the umbrella or class of all cases related to the assessee, wherein, the order has been passed under Sections 120 and 127 of the Act. Section 127 of the Act is a machinery provision and it must be construed in a manner to finally effectuate a charging section and for the purpose of effective collection of tax. The Supreme Court in the case of ***K.P. Mohammed Salim v. CIT***,[4] wherein, the transfer of block assessment was concerned, laid impetus on the machinery nature of Section 127 of the Act and also discussed the germane effect which is sought to have been canvassed by virtue of the said Explanation appended to Section 127 of the Act and held as follows:-

> "13. An order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest. Only because in the said provision the words

[4] (2008) 11 SCC 573.

> "any case" has been mentioned, the same, in our opinion, would not mean that an order of transfer cannot be passed in respect of cases involving more than one assessment year.
>
> 14. It would not be correct to contend that only because Explanation appended to Section 127 refers to the word "case" for the purpose of the said section as also Section 120, the source of power for transfer of the case involving block assessment is relatable only to Section 120 of the Act. It is a well-settled principle of interpretation of statute that a provision must be construed in such a manner so as to make it workable. When the Income Tax Act was originally enacted, Chapter XIV-B was not in the statute book. It was brought in the statute book only in the year 1996.
>
> The power of transfer in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even Section 127 of the Act is a machinery provision. It should be construed to effectuate a charging section so as to allow the authorities concerned to do so in a manner wherefore the statute was enacted."
>
> [Emphasis supplied]

26. Considering the case in hand, *vide* order of centralization dated 16.07.2008, the case of the assessee was transferred from the jurisdictional AO to the DCIT, Central Circle-16, New Delhi. It be noted that since AY 2008-09 to AY 2015-16, the assessee was being assessed by the office of DCIT, Central Circle-16/20, New Delhi. Furthermore, as the record would reflect that the case of the assessee was transferred to ITO Ward 21(1), New Delhi without any transfer order passed under Section 127 of the Act, which is a pre-requisite before transferring the case.

27. It be noted that till date no decentralization order has been placed before us which may evidence a legitimate transfer of the assessee's case from DCIT, Central Circle-16/20, New Delhi to ITO Ward 21(1), New Delhi. Furthermore, we find no merit in the

contention of the Revenue that by virtue of an order dated 15.11.2014 passed under Section 120 of the Act under the pen of ACIT read with CBDT notification dated 22.10.2014, the office of ITO Ward 21(1), New Delhi has inherent jurisdiction over the assessee. Such a position if accepted would lead to confusion and chaos as it would lead to a position where at one point, one or more assessing officers not only will have jurisdiction over the assessee but also can proceed with the assessment proceedings simultaneously. Such a situation cannot be countenanced in the law.

28. In addition to that, a bare perusal of the order dated 15.11.2014 passed under Section 120 of the Act under the pen of ACIT read with CBDT notification dated 22.10.2014, would reveal that these notifications cannot run contrary to the legislative mandate of Section 127 of the Act. Moreover, the jurisdiction of the DCIT, Central Circle-16, New Delhi over the case of the assessee is assigned *vide* a separate order of centralization dated 16.07.2008. Thus, it is discernible that once the case of the assessee is centralized, then the transfer of the case of the assessee to another AO would not be permissible without a decentralization order or transfer order under Section 127 of the Act as contrary to such a position *dehors* the underlying objective which the Act seeks to achieve by virtue of powers enshrined under Section 127 of the Act. We accordingly set aside the impugned orders dated 31.12.2017 and 30.09.2021.

29. In view of the aforesaid, the writ petition is allowed and disposed of accordingly, alongwith pending applications, if any.

30. Moreover, it is pertinent to point out that since the impugned

orders 31.12.2017 and 30.09.2021 are hereby quashed and set aside on the ground of jurisdictional error, therefore, in view of the aforesaid, the ITAT order dated 09.08.2019 which is impugned in ITA 124/2020 and ITA 8/2021 is also set aside.

31. In light of the foregoing, ITA 124/2020 and ITA 8/2021 are disposed of, alongwith pending applications, if any.

32. Additionally, it is apposite to point out that these observations made hereinabove are limited to the extent for the purpose of the challenge which stands posited before us i.e., whether in the absence of any order of transfer under Section 127 of the Act, the non-jurisdictional AO can proceed with the assessment and we seek to answer that question in negative. The Revenue, however is at liberty to take fresh steps through jurisdictional authorities, if otherwise permissible, in accordance with law.

PURUSHAINDRA KUMAR KAURAV, J.

YASHWANT VARMA, J.

MAY 08, 2024/MJ