

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11/12/2009

CORAM

THE HONOURABLE MR. JUSTICE R.S.RAMANATHAN

W.P.(MD)No. 60 of 2009

and

M.P.(MD)No.1 of 2009

Noorul Islam Educational Trust,
Represented by its Chairman,
Mr.A.P.Majeed Khan

... Petitioner

Vs

1.The Commissioner of Income Tax-I,
Office of the Commissioner of Income Tax,
No.2, V.P.Rathinasamy Nadar Road,
Bibi Kulam, Madurai-2.

2.Income Tax Officer-Ward-I(I),
Nagercoil,
Tamil Nadu.

3.Deputy Commissioner of Income Tax,
Central Circle, Trivandram,
Kerala State.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the order passed in C.No.464/50/91-92/CIT-1, dated 16.12.2008, on the file of the Commissioner of Income Tax-I, Office of the Commissioner of Income Tax, Madurai, quash the same and direct, the first respondent to re-transfer the case of the petitioner Trust to the file of the 2nd respondent or any other competent Authority.

!For Petitioner ... Mr.S.Subramaniam
Senior Counsel for S.Hemalatha

^For Respondents ... Mr.R.Sathyamoorthy
SSC for Income Tax

:ORDER

Heard both sides.

2.The petitioner in the writ petition challenged the order of the first respondent passed under section 127 of the Income Tax Act 1961, transferring the case of the assessee trust from the Income Tax Officer, Ward No.I,(2),Nagercoil to the Deputy Commissioner of Income Tax, Circle-I, Division-I,Thiruvananthapuram.

3.Noorul Islam Education Trust (herein after called as assessee trust) is registered under section 12-A of the Income Tax Act, 1961 and as on 10.09.2001 the jurisdiction over the assessee trust was vesting with the Income Tax Officer, Ward No.1(2) Nagercoil. Mr.A.P.Majeed Khan, is the Chairman of the assessee-trust and he has got income from the house properties and business and the jurisdiction over the A.P.Majeed Khan, founder and Chairman of the assessee-trust was vesting with the Deputy Commissioner of Income Tax, Circle-I,Division-I, Tiruvananthapuram. A search under Section 132 of the Income Tax Act 1961 was conducted on 11.09.2001 in the case of A.P.Majeed Khan and the assessee-trust itself and after the conclusion of the said search, the jurisdiction of A.P.Majeed Khan was notified to vest with the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram. In order to co-ordinate the enquiry and investigation in the case of assessee-trust, the jurisdiction with the assessee-trust was also notified by the Commissioner of Income Tax, Ward No.1, Madurai, vide D.No.1/2002-2003, dated 1.4.2002, issued by C.No.440/TTN/2002-03, transferring the case from Income Tax Office, Ward 1(2),Nagercoil, to the Assistant Commissioner of Income Tax, Central Circle,Thiruvananthapuram, following the directions of the Chief Commissioner of Income Tax, Madurai, who in-turn acted on the request of the Director of Income Tax,(Investigation), Cochin, who conducted the search operation under Section 132 in this group of cases.

4.The Assistant Commissioner of Income Tax, Central Circle,Thiruvananthapuram, after assuming the jurisdiction over the assessee- trust on the strength of the notification, dated.1.4.2002, issued a notice under Section 158BC of the Income Tax, 1961, dated 14.02.2003 to the assessee-trust. The assessee-trust objected to the notification, dated 01.04.2002, by Commissioner of Income Tax No.1, Madurai, but submitted the 'Block return' for the block assessment period 01.04.1995 to 11.09.2001, on 01.04.2003, disclosing the 'undisclosed income' at Rs.Nil. before the Assistant Commissioner of Income Tax,Central Circle, Thiruvananthapuram. The assessee- trust also filed W.P.No.24865 of 2003, on the file of this court challenging the order of transfer of its file from the Income Tax Office, Ward No.1(2), Nagercoil to the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram and this court by order, dated 22.04.2008, quashed the transfer order and remanded the same to the Commissioner of Income Tax No.1, Madurai and directed the Commissioner of Income Tax, Madurai, to follow the procedure and pass fresh orders, in accordance with law.

5.It is seen from the order this court passed in W.P.No.24865 of 2003 that without giving opportunity to the assessee-trust, the transfer order should not have been passed and on that ground, the order was quashed and remanded to the Commissioner of Income Tax , Ward No.1, Madurai. As directed by this court,opportunity was given to the assessee-trust and the assessee-trust objected to the transfer by raising various objections and that was considered by the Commissioner of Income Tax, Ward No.1, Madurai and

the Commissioner of Income Tax, Ward No.1, Madurai, also after meeting various points and objections raised by the assessee-trust, passed the impugned order, which is challenged in this writ petition.

6.Mr.Subramaniam, the learned Senior Counsel appearing for the petitioner,submitted that without properly appreciating the provisions of Section 127,158BC and 158BD, the impugned order was passed and as per Section 127 (2)(a) of the Income Tax, the Commissioner of Income Tax, must have applied its mind and must have stated the reasons for transferring the case of the assessee trust to Thiruvananthapuram and no valid reason has been stated.

7.He would further submit that the transfer order was consequent to the search conducted under section 132 of the Income Tax Act and also on the basis of the 'Block assessment' in respect of A.P.Majeed Khan and the assessment of A.P.Majeed Khan was already over and has become final and therefore, the case of the assessee-trust need not be transferred to Thiruvananthapuram and it is also against the provisions of Section 158 BC & 158 BD.

8.The learned Senior Counsel appearing for the petitioner also referred the judgment reported in [2007] 290 ITR 316 (Cal), in the case of P.S. Housing Finance P. Ltd., and others vs, Union of India and others, [2007]293 ITR 399 (Gauhati), in the case of Smt.Aviyeeth Mohanty Casshyap vs. Commissioner of Income-Tax and others and [2006]286 ITR (All) in the case of Sahara Airlines Ltd, and others vs. Director General of Income-Tax, (Investigation) and others,in support of his contention.

9.Mr.R.Sathiyamoorthy, the learned standing counsel appearing for the respondents Department submitted that the petitioner cannot have any objection for transferring the case from Madurai Circle to Thiruvananthapuram Circle,without pleading or proving the prejudice caused to him and the petitioner's trustee also filed 'Block return' of the Block assessment from 1.4.1995 to 11.09.2001 in response to the notice u/s.158BC of the Income Tax Act and thus,the petitioner's trust has acquiesced itself to the jurisdiction of the Assistant Commissioner, Central Circle,Thiruvananthapuram and the Officers within whose territorial jurisdiction, the petitioner's trust is situate, are not competent to make the assessment as the Assessing Officer should not be below the rank of Assistant Commissioner of Income Tax and it is the prerogative of the authorities to decide which cases are to be transferred and that cannot be questioned by the petitioner, unless it is shown that the order is ex facie perverse and not in accordance with law.

10.He would further submit that for the purpose of detailed and coordinated investigation, the transfer is necessary and there is no mala-fide on the part of the Commissioner of Income Tax, to transfer the case to Thiruvananthapuram Circle.

11.In order to appreciate the contention of rival parties, we will have to analyse the provision of Section 127 and the provision of chapter XIVB, which are the special provision for assessment of search cases under the I.T. Act.

12. Chapter XIII deals with the Income Tax Authorities jurisdiction and as per 124 (2)- 'where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Director General or the Chief Commissioner or the Commissioner; or where the question is one relating to areas within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, Specify."

Therefore, in case of dispute about the jurisdiction of Assessing Officer and if the question is one relating to assessment within the jurisdiction of different Directors General or Chief Commissioners or Commissioners, by the Directors General or Chief Commissioners or Commissioners concerned or, if they are not in agreement, by the Board or by such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, specify.

Therefore, when the assessment relates to different areas, then it can be decided by the authorities concerned, if there are in agreement and if they are not in agreement, by superior Officer named therein.

13. Section 127(2) (a) & (b), also deals with the same and Section 127(2)(a) & (b) reads as follows: "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 Director General or Chief Commissioner or Commissioner,-

"(a) where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief 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 Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf."

14. As per the above sections, when the Assessing Officer from whom, the case is to be transferred and the Assessing Officer to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner, then if both the superior authorities to whom Assessing Officers are subordinate are in agreement, then the Director General or Chief 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 and after recording the reasons for doing so, pass the order. If they are not in agreement, the order shall be passed by the

Board or any such Director General or Chief Commissioner or Commissioner as the Board, may, by notification in the official Gazette authorise in this behalf.

15.A conjoint reading of section 124 & 127 2((a) & (b)of the Income Tax, 1961 reveals that in the case of transfer of case from one Assessing Officer to another Assessing Officer, who are under the control of different Commissioners,the statutes requires compliance of three requirements:

[i] that both the transferring Commissioners and the Commissioner within whose jurisdiction, the case is to be transferred must agree for the transfer.

[ii]The assessee must be given reasonable opportunity of hearing; and

[iii] The reason for transfer should be recorded in the order.

16.In this case, it is not in dispute that the assessee-trust is coming within the jurisdiction of Commissioner of Income Tax No.1, Madurai and the Assessing Officer, is the Income Tax Officer, Ward No.1,(2) Nagercoil and A.P.Majeed Khan, is the Chairman of the trust was under the jurisdiction of the Deputy Commissioner of Income Tax No.1,Thiruvananthapuram and after search, the jurisdiction over A.P.Majeed Khan, was notified to vest with the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram. Therefore, both the assessee-trust and A.P.Majeed Khan are coming under the jurisdiction of two Commissioners of Income Tax and as per Section 127(2)(a), the case can be transferred, if the Commissioner of Madurai and Thiruvananthapuram are in agreement, then the Commissioner of Income Tax, Madurai, after recording his reasons for doing so. Therefore, the preliminary requirement is the two Commissioners must be in agreement for such transfer and in that case, either of the Commissioner can pass, an order of transfer after giving opportunity to the assessee.

17.In this case, it is admitted and has also been made clear in the impugned order that the jurisdiction over the assessee-trust was notified by Commissioner of Income Tax Ward No.1, Madurai, by order, dated 01.04.2002,transferring the case from Income Tax Office, Ward No.1(2) Nagercoil, to the Assistant Commissioner, Central Circle,Thiruvananthapuram, following the direction of the Chief Commissioner of Income Tax, Madurai, who in-turn acted on the request of the Director of Income Tax (Investigation) Cochin, who conducted search operation under section 132 in the group of cases. Though, these details were not stated in the order, dated 01.04.2002, this has been stated clearly in para 4 of the impugned order. Therefore, originally the Commissioner of Income Tax, Madurai, passed the order of transfer, following the direction of the Chief Director of Income Tax, Madurai, who in-turn acted on the request of Director of Income Tax, Cochin. Therefore, the agreement contemplated under section 127(2)(a) between the two Commissioners for transferring the case from one Commissioner to another Commissioner was conspicuously absent, even at the time of passing the original order dated 01.04.2002 and also later while passing the impugned order.

18.A reading of 127(2)(a), according to me, would mean that only when they are in agreement, then the transfer order can be passed by one Commissioner to another Commissioner and no material has been placed before me that there was an agreement between the two Commissioners viz., Madurai and Thiruvananthapuram and in pursuance

of that, the order of transfer was made by the Commissioner of Income Tax, Madurai. In the absence of such agreement, in my opinion, the transfer cannot be made.

19. In this case, admittedly the original order of transfer, dated 01.04.2002 by the Commissioner of Income Tax, Ward No.1, Madurai, was challenged in W.P.No.24865 of 2003 and in that writ petition, an order was passed quashing the said order of transfer and the matter was remitted to the Commissioner of Income Tax Office, Madurai, for giving opportunity to the parties and to pass orders stating the reasons. Thereafter, notice was issued and in the notice, dated 15.07.2008 issued under section 127(2) of the Income Tax Act 1961, it has been stated as follows: "It is proposed to transfer your case from the ITO, Ward I(2), Nagercoil, to the Asst. Commissioner of Income Tax, Central Circle, Thiruvananthapuram, under Section 127 of the Income Tax Act, 1961. As a search and seizure operation u/s.132 of the Income Tax Act, 1961, was conducted on 11.09.2001 in the case of Shri A.P.M.Abdul Majid Khan, the Author & Managing Trustee, Thiruvananthapuram, and other related assesseees, detailed coordinated centralized investigation is necessary in this group of cases. Therefore, this transfer of your case to Trivandram is proposed."

20. Even in the notice under section 127(2), no whisper is made about an agreement between the two Commissioners or two authorities and it has been stated that for detailed co-ordinated Centralized Investigation, transfer is necessary in this group of cases. No details have been stated for having coordinated Centralized Investigation, except the statement that a search and seizure operation under section 132 of the Income Tax Act 1961 was conducted on 11.09.2001, in the case of A.P.M.Abdul Majid Khan, the Author & Managing Trustee, and other related assesseees. The notification, did not even state what are the related assesseees with A.P.M.Abdul Majid Khan. In the impugned order, also the agreement between the two officials was not stated and 10 reasons have been stated for transferring the case of the assessee-trust from Nagercoil to Thiruvananthapuram..

21. Before going into the reasons or appreciating the reason for transferring stated in the impugned order, we will have to see the provision of chapter and XIVB Special procedure for assessment of search cases. It is admitted that under Section 132, a search was conducted in respect of A.P.Majeed Khan and Section 158(1)BC, deals with the procedures for Block assessment.

22. In this case, it is admitted that 'Block assessment' was ordered in the case of A.P.M.Abdul Majid Khan, and it was found that 'Block assessment' in the case of A.P.M.Abdul Majid Khan, was made on 30.09.2003 and a total undisclosed income of Rs.70,17,400/- was made and it has become final and no appeal was preferred against that order.

23. Further, it is not stated by the respondents that undisclosed income found in the case of A.P.Majeed Khan have connection with the income belonging to the Assessee-trust. Therefore, merely because A.P.Majeed Khan had given a total undisclosed income of Rs.70,17,400/- as a result of the 'Block assessment' in the absence

of any evidence that the undisclosed income has got any bearing on income relating to assessee-trust the transfer can not be passed. Under these circumstances, the judgment reported in [2006]286 ITR 33(All), in the Sahara Airlines Ltd and others vs. Director General of Income Tax (Investigation) and others is relevant.

24. In that case while upholding the transfer, the High court of Allahabad - Lucknow Bench has held as follows:

"Since it was admitted that there was inter-lacing and inter connection of funds and business activities amongst the different entities in the group, the view taken by the Commissioner that such an assessment should be made by a single officer, could not be faulted. In a group where several companies, firms, institutions and individuals are the assesseees and have common directors and partners and where there are inter-corporate transactions and borrowings and where inter-corporate loans are provided and where there is an element of inter-lacing of funds and intermixing of activities with other entities, it is necessary for the correct, proper and just assessment of tax and for collection thereof, to get the assessment made under one single officer. This would not only be convenient to the Department in making assessment of tax but would also be beneficial to the assesseees while participating in the assessment proceedings."

25. It has also been held in the above judgment as follows: "Section 127 of the Income-tax Act, 1961, confers power to transfer the case of an assessee on the discretion of the authority competent when it is felt necessary to do so in the interests of the Revenue and for proper assessment of tax and collection thereof. The discretion is not guided or controlled by the provisions of section 124. Section 124 is a provision defining the jurisdiction in normal circumstances, whereas section 127 can be attracted only when it is felt by the Commissioner or the Central Board of Direct Taxes or the authority competent that it is proper or appropriate to exercise power under the provision in the interests of the Revenue and for proper adjudication of the tax liability or collection thereof. Thus, as a sequel to the principle, it follows that the transfer of cases can be ordered for facilitating the task of effective investigation and for best and co-ordinated assessment. The discretion to pass such an order has to be exercised keeping in mind the inbuilt restraint that such an action should not be taken arbitrarily or for any extraneous reason or with an ulterior motive but only with a view to get the correct assessment of tax done, wherein by and large, the factors which may be taken in account, are that the business of the assessee group is scattered and its activities are not confined at one particular place and it is necessary to have the assessment under one single authority, who may require access to all the records, which if seen together and cross-checked, may become clear and give the correct picture of the Income, on which, the assessment of tax is to be made or the accounts are maintained by different assesseees of a group where there are inter-transactions of money, inter lacing of funds and of business activities with sister concerns, which would also require the consolidation of all such cases and the records in all the cases to be available to the Assessing Officer or in a given case, the conduct of the assesseees would not permit the assessment to be carried on at a particular place where normally it is to be made.'

Therefore, for coordinating investigation, there must be some materials before the authorities and based on that materials, the authority must have come to the conclusion that it would be beneficial to the assessee and convenient to the department for having the assessment of all the assesses by one officer. As held by the Honourable High Court of Allahabad in the above reported judgment, this would not only be convenient to the department in making assessment of tax, but also beneficial to the assessee, while participating in the assessment proceedings. As stated supra, nothing has been stated by the Commissioner of Income Tax, Ward No.1 Madurai, by stating that incriminating materials were obtained in the search conducted in the case of A.P.Majeed Khan, and the assessee trust or any materials were made available in the search, conducted in respect of assessee trust relating to A.P.Majeed Khan and therefore, for coordinating investigation, both the assessment must be heard by single Officer.

26.The learned counsel appearing for the respondents, submitted that as per principles laid down in the following judgments reported in 1977(106) ITR (AP) 638 in the case of Autofin Ltd vs.CIT & another, (2006) 203 LTR [All] 470 in the case of Trimurti Fragrances (P) Ltd. vs. CIT and [2008]305 ITR 4531 (Bom) Kesar Enterprises Ltd., Vs. K.C.Sarangi, CIT & Others and [1956] 31 ITR 565 (SC) Pannalal Binjraj & Another vs/. The Union of India and others, the action of the 1st respondent cannot be challenged.

27.In the first case, it has been held that "the question whether the case is a fit one for transfer or not is a matter for consideration and decision by the Commissioner of Income-Tax. Unless the order of the Commissioner is ex-facie perverse or is vitiated by patent error on the face of the record, the court should not interfere under article 226 of the Constitution of India."

28.In the 2nd case, it has been held " wherein assessment is to take place with respect to the group of persons, common family members, business concerns having closed interaction and above all one of them resides at Delhi one of the directors/partners himself admits that heavy "cash amount" recovered from his premises at Delhi, belongs to his father at Kanpur and that out of 26 cases of the same group in question. 16 cases were assessed at Delhi. Otherwise also the distance between Kanpur and Delhi can be covered within a few hours and that the persons involved are already having their business transactions and activities between Kanpur and Delhi."

29.In the 3rd case, it has been held "there was sufficient material with the respondents to prima facie show in admissible expenditure by various distilleries in U.P. to various public servants. The petitioner's distillery prima facie was also shown as a unit, which had made payments between the yeas 2002-03 to 2005-06. The mere fact that the petitioner subsequently resigned from membership of the UPDA by itself was no answer. The respondents proposed to transfer the case after complying with the procedural requirements.' Therefore, in the above said three cases, there were materials available and spelt out in the order justifying the transfer . But in this case, according to me, nothing has been stated in the order of transfer, justifying the transfer.

30.As a matter of fact, in the judgment reported in [2007]290 ITR 316 (Cal) in the case of P.S. Housing Finance P. Ltd and others vs. Union of India and others, it has been held that "In the absence of any business connection between the petitioner-company and P and in the absence of any finding that the valuables or documents seized from the residence of petitioner No.2 has any relationship with P or any of its sister concerns, there could be no question of transferring the case of the petitioners to Mumbai.

Therefore, in the absence of any reasons stated by the Commissioner of Income Tax No.1, Madurai, stating the materials, which were made available in pursuance to the search conducted, in the case of A.P.Majeed Khan, and they are interconnected with the assessee trust, the order of transfer cannot be made.

31.In the impugned order, it was stated in ground (vii) as follows: "The Assistant Commissioner of Income-Tax, Central Circle, Thiruvananthapuram has already dealt with and passed a 'block assessment order' in the other connected search case of the 'Noorul Islam Group" of search cases and therefore, he was posted with enough information on the inter-lacing and inter-locking of funds as between the parties inter se.

32.According to me, this cannot be a ground for transfer, as per judgment relied upon by the learned Senior Counsel appearing for the petitioner, in [2007]293 ITR 399 ((Gauhati) in the case of Smt.Aviyeetha Mohanty Casshyap vs.Commissioner of Income-Tax and others. In that it was held that in terms of the orders passed by the Settlement Commissioner, the cases attained finality in law by virtue of the provisions contained in section 245-1 of the Income-tax Act,1961, and could not be reopened. Therefore, no practical or useful purpose would be served by the transfer of the case of the petitioner to Cuttack in a situation where the main cases with which the case of the petitioner was alleged to be connected, could not be reopened.

33.In the above reported case, the case of the petitioner was transferred from Nagaon to Cuttak in order to facilitate coordinated and centralize investigation of the 'Block assessment' case of the relatives of the petitioner. The order of transfer was on the ground that a portion of the undisclosed income of the relatives of the petitioner had fund its way to the petitioner. While dealing with that contention the High Court has held as stated above. In this case, admittedly, the 'Block assessment' order in respect of A.P.Majeed Khan, in respect of the undisclosed income has become final and therefore, there is no use in transferring the assessment of the assessee-trust to Thiruvananthapuram. The other reason stated in impugned order is that the assessee trust has also submitted 'Block return' in response to the notice, before the Assistant Commissioner Income Tax, Central Circle, Thiruvananthapuram and therefore, it was contended by the learned counsel appearing for the respondents that by submitting the Block assessment to the Assistant Commissioner of Income Tax Office, Central Circle, Thiruvananthapuram, the petitioner's trust acquiesced itself to the jurisdiction of the Assistant Commissioner, Central Circle, Thiruvananthapuram. In support of his said contention, the learned counsel appearing for the respondents, also relied upon the judgment reported in [1956]31 ITR 565 (SC) Pannalal Binjraj & Another vs The Union of India and others. In that judgment, the Honourable Supreme Court held that if an assessee has acquiesced in

the jurisdiction of the Income-tax Officer to whom a case has been transferred under section 5(7A), he cannot subsequently object to the jurisdiction of the Officer and seeks to get the order of transfer quashed by invoking the jurisdiction of the court under article 32 or 226 of the Constitution.

34. In that reported case, the petitioner did not raise any objection before transfer and in fact, submitted to the jurisdiction of the Income Tax Officers to whom their cases had been transferred. But the fact of the case is different. The act of acquiescence by the petitioner, according to the respondents, is by filing Block assessment return in response to the notice under Section 158BC, by the Assistant Commissioner of Income Tax Central Circle, Thiruvananthapuram.

35. As stated supra, on 1.4.2002, a transfer order was made by the Commissioner of Income Tax Ward No.1, Madurai, to Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram, transferring the assessee trust to that of Assistant Commissioner of Thiruvananthapuram and notice under section 158 BC was issued on the assessee trust on 14.02.2003 and the assessee trust preferred a petition, dated 1.8.2003, before the Chairman Central Board of Directors, New Delhi objecting to the transfer order and also filed 'Block return' for the Block assessment period disclosing the undisclosed income of Rs. Nil, before the Assistant Commissioner of Central Circle, Thiruvananthapuram. Hence, it cannot be stated that the petitioner acquiesced to the jurisdiction of Thiruvananthapuram office.

36. The word 'Acquiescence' has been defined in the Mitra's Legal and Commercial Dictionary as "Acquiescence is used in two senses. Sometimes it is used to denote conduct which is evidence of an intention by a party, conducting himself, to abandon an equitable right; sometimes it denotes conduct from which another party would be justified in inferring such an intention. [Krishan Dev Ram Pari, AIR 1964 Him Pra 34].

There can be no acquiescence where both parties are unaware of their rights in the disputed property and both are labouring under some mistake about their respective rights. *Abdul Khair v. S.M. James*, AIR 1957 Pat 308; 36 Pat 362 If a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain. That is the proper sense of the work acquiescence. *Duke of Leeds v. Amherst*, 2 p. 124. Delay and acquiescence do not bar a party's right to equitable relief on the ground of undue influence, unless he knew that he had a right or, being a free agent at the time, deliberately determined not to inquire what his rights were or to act upon them *Jugal Kishore v. Charoo Chandra*, AIR 1939 pc 159."

"As per concise Oxford English Dictionary the word "Acquiesce" means accept or consent to some thing without protest. In P. Ramanatha Aiyar Concise Law Dictionary, Acquiescence, is defined as "The action or condition of acquiescing, the assent to an infringement of rights, either express or implied from conduct, by which the rights to equitable or discretionary relief may be lost [S.39, Indian Contract Act (9 of 1872)]: a consent inferred from silence; a tacit encouragement. Acquiescence imports full

knowledge. Acquiescence is the common element is a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it is said, "spelt upon his rights," and by his conduct at the time of a breach of them, or subsequently thereto, has, with full knowledge, both of his own rights and of the acts which infringe them, infringement to believe that he has waived or abandoned his rights (Ency. of the Laws of England).

37. Therefore, having regard to the fact that the petitioner has objected to the transfer order, by sending petition to the Chairman, Central Board of Direct Taxes, New Dehli. praying for re-transfer, it cannot be stated that by filing a Block return, the petitioner has acquiesced to the jurisdiction of the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram, Kerala State.

38. Further, the order, dated 01.04.2002 was quashed and therefore, there was no acquiescence by the petitioner and the filing of Block return before the Assistant Commissioner of Income Tax, Central Circle, Thiruvannandapuram, Kerala State, before the passing of the impugned order will not also amount to submitting to the jurisdiction of the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram.

39. The impugned order is vitiated for the following reasons.

a. As per provision of 127(2)a), the pre-requisite of agreement between the two Commissioners Viz., Income Tax Office, Madurai and Income Tax office, Thiruvananthapuram, is necessary.

b. The Block assessment in the case of A.P.Majeed Khan was made on 30.09.2003, on a total undisclosed income of Rs.70,17,400/- and that has become final and therefore, there is no reason to transfer the case of assessee trust to Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram because the Block assessment of A.P.Majeed Khan has already become final.

40. The general principles with regard to the application of Section 127 of the Act, has been stated in the judgment reported in [2002] 257 I.T.R. page 577, in the case of Rajesh Mahajan and others vs. Commissioner of Income Tax, as follows: "Firstly, it is essential that the show-cause notice issued under section 127 of the Act, disclose to the assessee the reason/basis for the contemplated action in terms of the mandate of the rules of natural justice.

Exceptions to this essential ingredient would be the same as exceptions to the rules of natural justice. Secondly, an assessee has the right to file objections on the receipt of a show-cause notice issued under section 127 of the Act. In the absence of such liberty, the assessee cannot be stated to have been afforded a "reasonable opportunity" as is contemplated by the aforesaid provision. Thirdly, the reasons recorded in the final order passed under section 127 of the Act (by which the concerned/competent authority decides to execute the proposed action contemplated in the show-cause notice), must not only take into consideration the objections raised by the assessee, but the reasons recorded in the order must also have a direct nexus/bearing to the object sought to be achieved. Fourthly, belief/suspension even though bona-fide cannot be sufficient justification for

recourse to any of the actions contemplated under section 127 of the Act. For a valid order under section 127 of the Act, the reasons expressed must disclose an actual financial nexus justifying the action.'

Therefore, as per the above judgment, even in the show cause notice the respondent should disclose the reasons/basis for the contemplated action and in this case, it has been stated. Further, the reasons recorded in the final order must not only take into consideration the objections raised by the assessee, but the reasons recorded in the order must also have a direct nexus/bearing to the object sought to be achieved. It is further stated that for a valid order under section 127 of the Act, the reasons expressed must disclose an actual financial nexus justifying the action. In my opinion, in this case, all the ingredients stated in the judgement are absent and therefore the impugned order is liable to be quashed.

41. Further, as per Section 158BD, "where the Assessing Officer is satisfied that any undisclosed Income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person."

Therefore, it has also been made clear from Section 158BD only in case of satisfaction on the part of the Assessing Officer that the undisclosed income of one person belongs to any other person, then those accounts shall be handed over to the Assessing Officer within whose jurisdiction, the undisclosed income was submitted to one Assessee. To apply the said provision to this case, if the undisclosed income found on the basis of the Block return filed by A.P.Majeed Khan, discloses any transaction or dealings with the assessee trust, then the assessment of assessee trust can be handed over to the Assessing Officer of the A.P.Majeed Khan. In my opinion, these sections also provides a reason for handing over all the books of accounts and other documents, from one Assessing Officer .

42. As stated supra, in this case, it is not disclosed in the impugned order that the undisclosed income submitted by the A.P.Majeed Khan, in the Block assessment discloses any transaction with the assessee trust. Therefore, there is no need for transfer the assessment from Nagercoil to Thiruvananthapuram.

43. In the impugned order, 10 reasons were stated for justifying the transfer and the reasons are not legally sustainable for the reasons stated below.

a. The first reason was that the search was conducted under Section 132. That cannot be a reason for transfer, unless incriminating materials are found showing the inter-lacing and interconnecting transactions.

b.The 2nd reason that the authorities competent to make Block assessment should be, an Assessing Officer not below the rank of an Assistant Commissioner and therefore, it has to be transferred to Thiruvananthapuram. Admittedly, in this case the Block assessment in respect of A.P.Majeed Khan was already over and the Assessee trust also filed Block assessment before the Thiruvananthapuram office by submitting a 'Nil' income and there is no finding that in the Block assessment filed by both the assesseees, there are materials to show that interlacing of funds or inter-connected transactions. Hence, this reason also cannot be accepted.

c.The 3rd reason that the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram, has issued notice to the Assessee trust is not also a valid ground.

d.The 4th reason that the assessee has filed a Block return in response to the notice u/s.158BC before the Assistant Commissioner of Income Tax, Central Circle, Thiruvananthapuram, cannot also be accepted. As stated supra, it will not amount to acquiescence, as at the earliest point of time, the assessee trust has objected to the same and therefore, in obedience of the direction, filed 'Block return' and when such act of submitting a 'Block return' is made after making objections, it cannot be amount to acquiescence.

e.The 5th and 6th reasons have no relevance for justifying the transfer.

f.In respect of 7th reason, it has been held in the [2007]293 ITR 399 (Gauhathi), in the case of Smt.Aviyeetha Mohanty Casshyap vs. Commissioner of Income Tax and others, and it has been dealt with by me, in the earlier part of this order in para 32.

g.In so far as the reason No.8 is concerned, merely because Nagercoil is nearer to Thiruvananthapuram, that will not justify a transfer unless the transfer is otherwise valid in accordance with law.

h.The grounds stated in clause No.9 cannot be a valid ground justifying the transfer. The fact that the office of assessee trust is having assessment in one area, cannot be a ground for justifying the transfer, unless other materials viz., interlacing of accounts and inter-connected transactions are available.

i.Further, as rightly pointed out in the ground No.10 of the impugned order, when the Block return in respect of APM Abdul Majeed Khan has become final, there is no reason to transfer the assessment of the assessee trust to the Assistant Commissioner of Income Tax, Thiruvananthapuram, in the absence of any such interconnected dealings. Therefore, according to me, none of the grounds stated in the impugned order would justify the transfer.

44.Further, the reasons stated in the impugned order, must be valid reasons justifying the transfer. According to me, though 10 reasons have been stated in the order for transfer, none of them justify the transfer as per the criteria laid down by the various High Courts as stated above. Therefore, it has made clear from the various judgments, there must be a specific finding that there are interlacing and interconnection of funds and in the absence of such prima facie finding, the transfer cannot be justified.

44. Therefore, I am of the opinion that the impugned order of transfer passed in this case is not justifiable and it is quashed. Hence, the writ petition is allowed. Consequently, connected Miscellaneous Petition is closed.

No costs.

Sd/-

To

1. The Commissioner of Income Tax-I,
Office of the Commissioner of Income Tax,
No.2, V.P.Rathinasamy Nadar Road,
Bibi Kulam, Madurai-2.
2. Income Tax Officer-Ward-I(I),
Nagercoil, Tamil Nadu.
3. Deputy Commissioner of Income Tax,
Central Circle, Trivandram