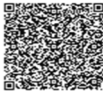




2025:PHHC:175423-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29843-2025

Bhupinder Singh

....Petitioner

versus

Principal Commissioner of Income Tax Chandigarh and others

...Respondents

1.	The date when the judgment is reserved	01.12.2025
2.	The date when the judgment is pronounced	17.12.2025
3.	The date when the judgment is uploaded on the website	19.12.2025
4.	Whether only operative part of the judgment is pronounced or whether the full judgment is pronounced	Full
5.	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MS. JUSTICE LAPITA BANERJI**

Present: Ms. Radhika Suri, Senior Advocate with
Mr. Abhinav Narang, Advocate and
Ms. Parnika Singla, Advocate, for the petitioner.

Ms. Urvashi Dhugga, Senior Standing Counsel,
Mr. Vidul Kapoor, Junior Standing Counsel and
Ms. Kavita, Advocate, for the Income Tax Department.

Ms. Ameera Abdul Razak, Standing Counsel,
for respondent No.2 (through Video Conferencing)

DEEPAK SIBAL, J.

1. Through the instant petition, the petitioner challenges order dated 08.09.2025, passed under Section 127(2) of the Income Tax Act, 1961 (for short – the 1961 Act) by the Principal Commissioner of Income

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Tax Chandigarh-I (for short – the PCIT, Chandigarh-I) transferring the jurisdiction of the petitioner to be assessed from DCIT Circle I (1), Chandigarh to ACIT/DCIT Central Circle, Panaji.

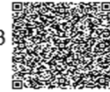
RELEVANT FACTS

2. On 08.01.2025 and other subsequent dates, search and survey proceedings under Sections 132 and 133A of the 1961 Act were conducted by the Income Tax authorities at various premises of M/s Blue Ocean Beverages Private Limited, Panaji, Goa (for short – M/s Blue Ocean). Since M/s Aarooha Alcobev Distribution Private Limited, New Delhi (for short – M/s Aarooha) was found to be one of the main distributors of M/s Blue Ocean, the search and survey proceedings of M/s Blue Ocean led to survey proceedings under Section 133A of the 1961 Act at the premises of M/s Aarooha. On the basis of evidence found against the petitioner during the afore search and survey proceedings, the petitioner was issued summons dated 26.03.2025 by DCIT/ADIT (Investigation), Panaji under Section 131(1A) of the 1961 Act as per which the petitioner was required to attend the office of the DDIT/ADIT(Investigation), Panaji on 31.03.2025 at 2.30 PM to produce either personally or through an authorized representative his books of accounts and other documents specified in such notice. In pursuance to the said summons the petitioner appeared before the concerned Revenue Officer at Panaji. Thereafter, through notice dated 08.07.2025, issued under Section 127(2) of the 1961 Act, by the PCIT, Chandigarh-I, the petitioner was granted an opportunity to show cause as to why his case for assessment be not centralized in Panaji. Through this notice the petitioner was informed that search and survey proceedings conducted under Section 132 and 133A

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of the 1961 Act at the business and residential premises of M/s Blue Ocean and its entire group had led to survey proceedings at the premises of M/s Aarooha wherein incriminating evidence had been found qua the petitioner of having received undisclosed cash amount of Rs.10 crores from Gaurav Sharma in connection with the sale of M/s Queen Distillers and Bottlers Private Limited, Chandigarh (for short- M/s Queen Distillers). Since the inquiry into organized/ systematic accounts/ fraud by M/s Blue Ocean was being conducted at Panaji and that evidence against the petitioner had also been found during the course of related survey proceedings which were all interlinked, an opportunity was granted to the petitioner to show cause as to why his case be not centralized to be considered alongwith other related cases at Panaji, Goa. Through his reply dated 09.07.2025 the petitioner objected to the transfer of his case from Chandigarh to Goa. He requested for being provided all documents/ material which formed the basis for transfer of his case and also sought personal hearing. Through notice dated 18.08.2025, issued by PCIT, Chandigarh-I, the petitioner was then granted an opportunity to attend the office of the said officer either personally or through an authorized representative on 26.08.2025 at 3.30 PM to show cause as to why his case be not transferred to be assessed at Panaji, Goa. On 26.08.2025, the petitioner, through his Chartered Accountant, filed a detailed response objecting to the transfer of his case from Chandigarh to Goa. His objections included lack of evidence with regard to him having received cash from Gaurav Sharma and absence of any link between the transaction of sale by him of M/s Queen Distillers to Gaurav Sharma and the proceedings against

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M/s Blue Ocean. It was further his case that the proposed transfer would result in avoidable hardship and inconvenience to him.

3. After considering the petitioner's objections, filed by him to the proposed transfer of jurisdiction to assess him at Panaji, the PCIT, Chandigarh-I, through order dated 08.09.2025, passed under Section 127(2) of the 1961 Act, was of the view that there was enough incriminating evidence found with regard to huge amounts of undisclosed cash received by the petitioner in the sale of M/s Queen Distillers to Gaurav Sharma which was interlinked with the inquiry being conducted against M/s Blue Ocean and its group companies with regard to manipulation of accounts/ fraud etc. Therefore, it was in public interest that all the matters, including that of the petitioner, be centralized at Panaji, Goa especially when both the revenue authorities at Goa and Chandigarh had also no objection to the same. On the issue of inconvenience and hardship it was observed that in these days of technological advancement the physical presence of the petitioner would not be normally required as these proceedings were mostly in digital form. The order dated 08.09.2025, passed by the PCIT, Chandigarh-I, is the subject matter of challenge through the instant petition at the petitioner's behest.

SUBMISSIONS

4. Learned senior counsel appearing for the petitioner submitted that the search and seizure operations at the premises of M/s Blue Ocean at Goa had led to the survey operations at M/s Aarooha at New Delhi which had further led to the alleged discovery of evidence, through Lokesh Saran, Managing Director of M/s Aarooha, with regard to certain alleged cash transaction between the petitioner and one Gaurav Sharma in the sale of M/s



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Queen Distillers at Chandigarh by the petitioner; even if it is assumed that in the aforesaid sale transaction the petitioner received undisclosed cash, such transaction does not establish any nexus between the petitioner and M/s Blue Ocean at Goa; the petitioner's case for having allegedly received undisclosed cash in the sale of M/s Queen Distillers to Gaurav Sharma could easily be inquired into independently at Chandigarh without putting the petitioner to inconvenience and hardship; even after the afore transaction, M/s Aarooha was still being assessed at Mumbai and Gaurav Sharma/ Lokesh Saran are being assessed at Delhi but the petitioner's case has been dealt with in a highly discriminatory manner and that in the light of the afore facts, even if some incriminating material had been found against the petitioner in the search and survey proceedings in connection with the inquiry being conducted against M/s Blue Ocean such material, in terms of Section 158(BD) of the 1961, Act should have been forwarded to the petitioner's Assessing Officer at Chandigarh to be dealt with by such officer as per law rather than transfer the petitioner's case from Chandigarh to Panaji.

5. Learned senior counsel for the petitioner also drew our attention to 2 circulars dated 24.08.2009 and 11.02.2013, issued by the Central Board of Direct Taxes (for short – the CBDT) under Section 119 of the 1961 Act to contend that transfer of jurisdiction to assess cannot be centralized in a routine manner and without application of mind as also that before ordering such transfer relationship/ link of the case being transferred has to be established with the person searched.

6. In support of her submissions learned senior counsel for the petitioner relied on the following judgments:-

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1. M/s Ajantha Industries and others vs. Central Board of Direct Taxes, New Delhi 1976(1) SCC 1001
2. Anuben Lalabhai Bharwad vs. Principal Commissioner of Income Tax-3 & 1 –2016 SCC Online Guj 2426
3. M/s RSG Foods Pvt. Ltd. Vs. Commissioner of Income Tax, Bathinda and others – 2015(30) RCR (Civil) 327.

7. Per contra, learned counsel appearing for the revenue submitted that search and survey proceedings undertaken under Section 132 and 133A of the 1961 Act at various premises of the M/s Blue Ocean group had led to survey proceedings under Section 133A against M/s Aarooha which was one of the main distributors of M/s Blue Ocean; in the course of survey proceedings against M/s Aarooha incriminating evidence in the form of WhatsApp chats between Lokesh Saran, Managing Director of M/s Aarooha and one Gaurav Sharma revealed undisclosed cash transactions of over Rs.10 crores between the petitioner and the said Gaurav Sharma in the sale of rights by the petitioner in M/s Queen Distillers to Gaurav Sharma; on being questioned by the revenue officials Lokesh Saran explained that he was fully aware that during the transaction of sale by the petitioner of his share in M/s Queen Distillers to Gaurav Sharma Rs.10 crores in cash was received by the petitioner; Lokesh Saran further stated that he was responsible for overseeing the execution of the sale-purchase agreement between the petitioner and Gaurav Sharma; even before such transaction had actually taken place, it was Lokesh Saran who had reviewed all relevant aspects with regard to M/s Queen Distillers/ the petitioner including EVC (Electronic Verification Code), C Forms, creditors, debtors, suppliers and buyers of M/s Queen Distillers; Lokesh Saran further stated before the revenue authorities that he



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had a vested financial interest in the aforesaid sale transaction between Gaurav Sharma and the petitioner and after the said transaction it is he who acquired all distribution rights for selling of liquor being produced by M/s Queen Distillers; it was yet to be determined if Gaurav Sharma was only a front man for Lokesh Saran; jurisdiction to assess M/s Aarooha stands already transferred to Panaji, Goa; orders with regard to assess Lokesh Saran and Gaurav Sharma at Panaji, Goa are in the process of being passed; the transfer order impugned by the petitioner is in the nature of an administrative order which is reasoned and has been passed after following the principles of natural justice and therefore, in the absence of perversity is not open to judicial review and that in the light of the above to investigate deeper into the nefarious activities of M/s Blue Ocean and its group including its distributors, the entire matter was rightly and in public interest centralized at Panaji, Goa.

8. In support of their submissions learned counsel for the revenue relied on the following judgments:-

1. Panalal Binraj (Firm) and another vs. Union of India and others (1956) 2 SCC 865
2. Kashiram Agarwala vs. Union of India and others (1965) 56 ITR 14, 1964 SCC Online SC 26
3. *Kamlesh Rajnikant Shah vs. Principal Commissioner of Income Tax 3, Ahmedabad 2022(447) ITR 196, 2022 SCC Online Guj 2529*
4. *Sanjay Gandhi Memorial Trust vs. Commissioner of Income Tax (Exemption) and ors. – 2023(455) ITR, (2023) 3 HCC (Del) 396*
5. *M/s IDS Infotech Ltd. and another vs. The Principal Commissioner of Income Tax Central-1, New Delhi and another – 2020(423) ITR 82, 2019 SCC Online P&H 7885*

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6. *Kamal Nath vs. The Principal Commissioner of Income Tax, Kolkata-9 and others 2023(292) Taxman 295*

9. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

ANALYSIS AND CONCLUSION

10. Section 124 (1) of the 1961 Act which deals with jurisdiction of Assessing Officers reads as follows:-

"124(1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he 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."

11. Section 127 of the 1961 Act which grants the power to transfer cases from one assessing officer to another substituted Section 5(7A) of the Income Tax Act, 1922 (hereinafter referred to as the 1922 Act). Section 5(7A) of the 1922 Act reads as follows:-

"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."

12. As noticed earlier, the successor Section in the 1961 Act to Section 5(7A) of the 1922 Act is Section 127 and such Section, as it stands today reads as follows:-

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“127. (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

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

(a) where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

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

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether

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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."

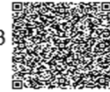
13. As per Section 124(1) of the 1961 Act, through passing of directions/orders, Assessing Officers are granted powers to assess assessee within the designated areas. However, under section 127(1), the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner (hereinafter cumulatively referred as the Commissioner) may, after granting the assessee a reasonable opportunity of being heard, wherever it is possible to do so and after recording reasons, transfer any case from one Assessing Officer subordinate to him to another Assessing Officer who is also subordinate to him. Under Section 127(2) if the Assessing Officer from whom the case is transferred and the Assessing Officer to whom the case is transferred are not subordinate to the same Commissioner then on the agreement of both the respective Commissioners the Commissioner from whose jurisdiction the case is to be transferred may after giving the assessee reasonable opportunity of being heard wherever it is possible and after recording reasons pass the transfer order and where both the respective

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Commissioners are not in agreement the order of transfer of assessment jurisdiction of an assessee can be passed by the CBDT or by a Commissioner as the Board may by notification in the official gazette authorize in this behalf. Section 127(3) provides that in case the transfer of assessment jurisdiction of an assessee is within the same city, locality or place then no opportunity of hearing is required to be granted to the assessee. Under Section 127(4) the transfer of assessment jurisdiction of an assessee under sub-sections (1) or (2) of Section 127 may be made at any stage of the proceedings.

14. The power to transfer assessment jurisdiction under the 1922 Act was under Section 5 (7-A) of such Act. In **Panalal Binraj's case** (supra) a Constitution Bench of the Supreme Court was called upon to adjudicate on the challenge to the vires of Section 5(7A) of the 1922 Act. The Constitution Bench while upholding the vires of Section 5(7A) of the 1922 Act observed that the infringement of a right by an order of transfer under Section 5(7A) of the 1922 Act was not material as it was only a deviation of a minor character from the general standard and did not necessarily involve denial of equal rights for the reason that even after transfer of the assessee's case it was being dealt with under the prescribed procedure; the power exercised under Section 5(7A) of the 1922 Act was for administrative convenience of the machinery set up for assessing incomes of the assessee which are chargeable to income tax; the power under Section 5(7A) was not to be exercised by the competent authority in a discriminatory manner; this power is exercised by higher officials and therefore, it cannot be easily assumed that the same has been exercised in a discriminatory fashion; the power to transfer

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the case of an assessee is guided and controlled by the purpose which is to be achieved by the Act itself i.e. the chargeable to income tax, assessment and collection thereof and is to be exercised for efficient collection of tax; wherever circumstances permitted, before any order of transfer under Section 5(7A) is made by the competent authority notice is required to be given to the affected party and thereafter reasons, however briefly, are to be supplied and that if there is any abuse of power by the competent authority in the transfer of the assessee's case it can always be remedied by appropriate action either under Article 226 or under Article 32 of the Indian Constitution and the same can be struck down if it violates Section 5(7A) of the 1922 Act and/ or such order lacks bona fide or is violative of the assessee's fundamental rights. Relevant portion of the judgment in **Panalal Binraj's case** (supra) is as follows:-

“26. It has to be remembered that the purpose of the Act is to levy income tax, assess and collect the same. The Preamble of the Act does not say so in terms it being an Act to consolidate and amend the law relating to income tax and super tax but that is the purpose of the Act as disclosed in the Preamble of the First Indian Income Tax Act of 1886 (2 of 1886). It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose. There is in the first instance, the charge of income tax. Then we find set up the various authorities in the hierarchy who are entrusted with the function of assessing the income tax, the Central Board of Revenue being at the apex. There is also an Appellate Tribunal which is established for hearing appeals against the decisions of the Appellate Assistant Commissioners. Then follow the provisions in regard to taxable income, mode of assessment and cognate provisions. The Income Tax Officers are invested with the duty of assessing the income tax of the assessee in the first instance. The Assistant Commissioners of Income Tax are the appellate authorities over the decisions of the Income Tax Officers and the Income Tax Appellate Tribunal is the final appellate authority barring of course



references under Section 66(1) of the Act to the High Court on questions of law. The Commissioners of Income Tax and the Central Board of Revenue are mainly administrative authorities over the Income Tax Officers and the Assistant Commissioners of Income Tax and they are to distribute and control the work to be done by these authorities. All officers and persons employed in the execution of the Act are to observe and follow the orders, instructions and directions of the Central Board of Revenue which is the highest authority in the hierarchy and, even though normally in accordance with the provisions of Sections 64(1) and (2) the work of assessment is to be done by the Income Tax Officers of the area within which the assessee resides or carry on business, power is given by Section 5(7-A) to the Commissioner of Income Tax to transfer any case from one Income Tax Officer subordinate to him to another and to the Central Board of Revenue to transfer any case from any one Income Tax Officer to another. This is the administrative machinery which is set up for assessing the incomes of the assessee which are chargeable to income tax. There is, therefore, considerable force in the contention which has been urged on behalf of the State that Section 5(7-A) is a provision for administrative convenience.

*28. It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income Tax and the Central Board of Revenue who act on the information supplied to them by the Income Tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. (Vide *Matajog Dobey v. H.C. Bhari* [*Matajog Dobey v. H.C. Bhari*, (1955) 2 SCC 388 : (1955) 2 SCR 925] .) There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide *People of the State of New York v. John E. Van De Carr* [*People of the State of New York v. John E. Van De Carr*, 1905 SCC OnLine US SC 188 : 50 L Ed 305 : 199 US 552 (1905)] .) It has also been observed by this Court in *A. Thangal Kunju Musaliar v. M. Venkatachalam Potti* [*A. Thangal Kunju Musaliar v. M. Venkatachalam Potti*, (1955) 2 SCC 660 : (1955) 2 SCR 1196] with reference to the possibility of discrimination between assessee in the matter of the reference of their cases to the Income Tax Investigation Commission that: (*Thangal Kunju Musaliar case* [*A. Thangal Kunju Musaliar v. M.**

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Venkatachalam Potti, (1955) 2 SCC 660 : (1955) 2 SCR 1196] , SCC p. 699, para 70)

“70. ... It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done ‘not with an evil eye and unequal band’ and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory.”

29. This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment (vide Gulf, Colorado & Santa Fe Railway Co. v. W.H. Ellis [Gulf, Colorado & Santa Fe Railway Co. v. W.H. Ellis, 1897 SCC OnLine US SC 20 : 41 L Ed 666 : 165 US 150 (1897)]). There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law (vide Dinabandhu Sahu v. Jadumoni Mangaraj [Dinabandhu Sahu v. Jadumoni Mangaraj, (1954) 1 SCC 800 at pp. 805-806 : (1955) 1 SCR 140 at p. 146]). What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

30. It is pointed that it will be next to impossible for the assessee to challenge a particular order made by the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, as discriminatory because the reasons which actuated the authority in making the order will be known to itself not being recorded in the body of the order itself or communicated to the assessee. The burden moreover will be on the assessee to demonstrate that the order of transfer is an abuse of power vested in the authority concerned. This apprehension is, however, ill-founded. Though the burden of proving that there is an abuse of power lies on the assessee who challenges the order as discriminatory, such burden is not by way of proof to the hilt. There are instances where in the case of an accused person rebutting a presumption or proving an exception which will exonerate him from the liability for the offence with which he has been charged, the burden is held to be discharged by evidence satisfying the



jury of the probability of that which the accused is called upon to establish (vide R. v. Carr-Briant [R. v. Carr-Briant, (1943) 1 KB 607 (CCA)]), or in the case of a detenue under the Preventive Detention Act seeking to make out a case of want of bona fides in the detaining authority, the burden of proof is held not to be one which requires proof to the hilt but such as will render the absence of bona fides reasonably probable (vide Ratanlal Gupta v. District Magistrate [Ratanlal Gupta v. District Magistrate, ILR 1951 Cut 441 at p. 459] ; also Brundaban Chandra Dhir Narendra v. State of Orissa [Brundaban Chandra Dhir Narendra v. State of Orissa, ILR 1952 Cut 529 at p. 573]). If, in a particular case, the assessee seeks to impeach the order of transfer as an abuse of power pointing out circumstances which prima facie and without anything more would make out the exercise of the power discriminatory qua him, it will be incumbent on the authority to explain the circumstances under which the order has been made. The court will, in that event, scrutinise these circumstances having particular regard to the object sought to be achieved by the enactment of Section 5(7-A) of the Act as set out in Para 4 of the affidavit of Shri V. Gouri Shankar, Under-Secretary, Central Board of Revenue, quoted above, and come to its own conclusion as to the bona fides of the order and if it is not satisfied that the order was made by the authorities in bona fide exercise of the power vested in them under Section 5(7-A) of the Act, it will certainly quash the same. The standard of satisfaction which would have to be attained will necessarily depend on the circumstances of each case and the court will arrive at the conclusion one way or the other having regard to all the circumstances of the case disclosed in the record. The court will certainly not be powerless to strike down the abuse of power in appropriate cases and the assessee will not be without redress. The observations of Fazl Ali, J., in State of W.B. v. Anwar Ali Sarkar [State of W.B. v. Anwar Ali Sarkar, (1952) 1 SCC 1 : 1952 SCR 284] , at SCC p. 59, para 75 that the authority will say “I am not to blame as I am acting under the Act” will not necessarily save the order from being challenged because even though the authority purported to act under the Act its action will be subject to scrutiny in the manner indicated above and will be liable to be set aside if it was found to be mala fide or discriminatory qua the assessee.

32. *It is, therefore, clear that the power which is vested in the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, under Section 5(7-A) of the Act is not a naked and arbitrary power, unfettered, unguided or uncontrolled so as to enable the authority to pick*



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and choose one assessee out of those similarly circumstanced thus subjecting him to discriminatory treatment as compared with others who fall within the same category. The power is guided and controlled by the purpose which is to be achieved by the Act itself viz. the charge of income tax, the assessment and collection thereof, and is to be exercised for the more convenient and efficient collection of the tax. A wide discretion is given to the authorities concerned, for the achievement of that purpose, in the matter of the transfer of the cases of the assessee from one Income Tax Officer to another and it cannot be urged that such power which is vested in the authorities is discriminatory in its nature.

33. There is a broad distinction between discretion which has to be exercised with regard to a fundamental right guaranteed by the Constitution and some other right which is given by the statute. If the statute deals with a right which is not fundamental in character the statute can take it away but a fundamental right the statute cannot take away. Where, for example, a discretion is given in the matter of issuing licences for carrying on trade, profession or business or where restrictions are imposed on freedom of speech, etc. by the imposition of censorship, the discretion must be controlled by clear rules so as to come within the category of reasonable restrictions. Discretion of that nature must be differentiated from discretion in respect of matters not involving fundamental rights such as transfers of cases. An inconvenience resulting from a change of place or venue occurs when any case is transferred from one place to another but it is not open to a party to say that a fundamental right has been infringed by such transfer. In other words, the discretion vested has to be looked at from two points of view viz. (1) does it admit of the possibility of any real and substantial discrimination, and (2) does it impinge on a fundamental right guaranteed by the Constitution? Article 14 can be invoked only when both these conditions are satisfied. Applying this test, it is clear that the discretion which is vested in the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, under Section 5(7-A) is not at all discriminatory.

34. It follows, therefore, that Section 5(7-A) of the Act is not violative of Article 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental right to carry on trade or business enshrined in Article 19(1)(g) of the Constitution. If there is any abuse of power it can be remedied by appropriate action either under Article 226 or under Article 32 of the Constitution and what can be struck down is not

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the provision contained in Section 5(7-A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights. This challenge of the vires of Section 5(7-A) of the Act, therefore, fails.

35. We may, however, before we leave this topic observe that it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under Section 5(7-A) of the Act is made by the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing. It is significant that when any question arises under Section 64 as to the place of assessment and is determined by the Commissioner or Commissioners or by the Central Board of Revenue, as the case may be, the assessee is given an opportunity under Section 64(3) of representing his views before any such question is determined. If an opportunity is given to the assessee in such case, it is all the more surprising to find that, when an order of transfer under Section 5(7-A) is made transferring the case of the assessee from one Income Tax Officer to another irrespective of the area or locality where he resides or carries on business, he should not be given such an opportunity. There is no presumption against the bona fides or the honesty of an assessee and normally the Income Tax Authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Sections 64(1) and (2) of the Act is sought to be made against him, be it a transfer from one Income Tax Officer to another within the State or from an Income Tax Officer within the State to an Income Tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the order are reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the Commissioner of Income Tax or the Central Board of Revenue, as the case may be, to transfer his case under Section 5(7-A) of the Act and it will also help the court in determining the bona fides of the order as passed if and when the same is challenged in court as mala fide or discriminatory. It is to be hoped that the Income Tax Authorities will observe the above procedure wherever feasible.”



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15. In **Kashiram Agarwala's case** (supra) the Supreme Court was called upon to decide the challenge by the petitioner therein to the transfer of his case from one ward in Calcutta to another ward in the same city. Before further reference to the judgment of the Supreme Court in **Kashiram Agarwala's case** (supra) it would be appropriate to reproduce herein under Section 127(1) of the 1961 Act as it stood then :-

"127(1) The 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 Income Tax Officer subordinate to him, to another also subordinate to him and the Board may similarly transfer any case from one Income Tax Officer to another:

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from one Income Tax Officer to another whose offices are situate in the same city, locality or place."

Sub-section (2) lays down that the transfer which is authorised to be made by sub-section (1), can 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. There is an explanation to Section 127 which it is unnecessary to mention."

16. In the light of above, the Constitution Bench of the Supreme Court in **Kashiram Agarwala's case** (supra) was of the view that transfer made under the proviso under Section 127(1) from one Income Tax Officer to another in the same locality merely meant that instead of one officer, another officer would be dealing with the assessee's assessment. Therefore,

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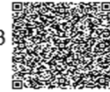
such an order was purely in the nature of an administrative order passed for the convenience of the department and caused no prejudice to the assessee. Relevant observations made by the Supreme Court in this regard are as follows:-

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

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

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

This provision clearly indicates that where a transfer is made under the proviso to Section 127(1) from one Income Tax Officer to another in the same locality, it merely means that instead of one Income Tax Officer who is competent to deal with the case, another Income Tax Officer has been asked to deal with it. Such an order is purely in the nature of an administrative order passed for considerations of convenience of the department and no possible prejudice can be involved in such a transfer. Where, as in the present proceedings, assessment cases pending against the appellant before an officer in one ward are transferred to an officer in another ward in the same place, there is hardly any occasion for mentioning any reasons as such, because such transfers are invariably made on grounds of administrative convenience, and that shows that on principle in such cases neither can the notice be said to be necessary, nor would it be necessary to record any reasons for the transfer. The provisions contained in Section 124(3) of the Act deal with the same topic which was the subject-matter of Section 64(1) and (2) of the earlier Income Tax Act, 1922 (11 of 1922). There is, however this difference between these two provisions that whereas Section 124 fixes jurisdiction, territorial or otherwise, of the Income Tax Officers, Section 64 fixed the place where an assessee was to be assessed.

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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.

8. Even so, this Court observed in the case of *Pannalal Binjraj* [(1957) SCR 233] that it would be better if an opportunity is given to the assessee in cases where the powers conferred by Section 5(7-A) were intended to

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be exercised, because he would then be able to mention his objections to the intended transfer. It is in that connection that this Court further expressed its opinion that if the reasons for making the transfer “are reduced, however briefly, to writing, it will help the assessee in appreciating the circumstances which make it necessary or desirable to order such a transfer”. It is obviously in pursuance of these observations that the legislature has made the relevant provisions in Section 127(1) of the Act. If this background is borne in mind, it would be clear that the propriety of giving an opportunity to an assessee and the desirability of recording reasons which this Court emphasised, had reference to cases where transfers were intended to be made from an Income Tax Officer in one place to the Income Tax Officer in another place; and they obviously had no reference to transfers like the present where instead of one officer dealing with the case, another officer in the same place is asked to deal with it.”

17. In **M/s Ajantha Industries’s case** (supra) the appellant therein had challenged the transfer of the jurisdiction of his assessment from Nellore to Hyderabad as prior to such transfer no reasons had been communicated. After considering the law laid down in **Panalal Binraj’s case** (supra) the Supreme Court was of the view that when the assessee’s case was transferred to be assessed in another area an opportunity of hearing was required to be granted and reasons for such transfer were also to be communicated so that the assessee, if aggrieved, could take recourse to his legal remedies on the grounds available in law. The observations made by the Supreme Court in this regard are as follows:-

“8. We are unable to accede to this submission. It appears Section 5(7-A) of the old Act came for consideration in Pannalal Binraj v. Union of India [AIR 1957 SC 397 : (1957) 31 ITR 565 : 1957 SCR 233] and this Court observed at p. 589 as follows:

“... it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer



under Section 5(7-A) of the Act is made by the CIT or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing There is no presumption against the bona fide or the honesty of an assessee and normally the Income Tax authorities would not be justified in refusing to an assessee a reasonable opportunity of representing his views when any order to the prejudice of the normal procedure laid down in Section 64(1) and (2) of the Act is sought to be made against him, be it a transfer from one Income Tax Officer to another within the State or from an Income Tax Officer within the State to an Income Tax Officer without it, except of course where the very object of the transfer would be frustrated if notice was given to the party affected. If the reasons for making the order are reduced however briefly to writing it will also help the assessee in appreciating the circumstances which make it necessary or desirable for the CIT or the Central Board of Revenue, as the case may be, to transfer his case under Section 5(7-A) of the Act and it will also help the court in determining the bona fides of the order as passed if and when the same is challenged in court as mala fide or discriminatory. It is to be hoped that the Income Tax authorities will observe the above procedure wherever feasible.”

9. This judgment was rendered by this Court on 21-12-1956, and we find that in the 1961 Act Section 127 replaced Section 5(7-A) where the legislature has introduced, inter alia, the requirement of recording reasons in making the order of transfer. It is manifest that once an order is passed transferring the case file of an assessee to another area the order has to be communicated. Communication of the order is an absolutely essential requirement since the assessee is then immediately made aware of the reasons which impelled the authorities to pass the order of transfer. It is apparent that if a case file is transferred from the usual place of residence or office where ordinarily assessments are made to a distant area, a great deal of inconvenience and even monetary loss is involved. That is the reason why before making an order of transfer the legislature has ordinarily imposed the requirement of a show-cause notice and also recording of reasons. The question then arises whether the reasons are at all required to be communicated to the assessee. It is submitted, on behalf

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of the Revenue, that the very fact that reasons are recorded in the file, although these are not communicated to the assessee, fully meets the requirement of Section 127 (1). We are unable to accept this submission.

10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

11. We are clearly of opinion that the requirement of recording reasons under Section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

14. Mr Sharma drew our attention to a decision of this Court in Kashiram Aggarwala v. Union of India [AIR 1965 SC 1028 : (1965) 1 SCR 671 : (1965) 56 ITR 14] . It is submitted that this Court took the view that orders under Section 127(1) are held in that decision to be “purely administrative in nature” passed for consideration of convenience and no possible prejudice could be involved in the transfer. It was also held therein that under the proviso to Section 127(1) it was not necessary to give the appellant an opportunity to be heard and there was consequently no need to record reasons for the transfer. This decision is not of any assistance to the Revenue in the present case since that was a transfer from one Income Tax Officer to another Income Tax Officer in the same city, or, as stated in the judgment itself, “in the same locality” and the proviso to Section 127(1), therefore, applied.

15. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.

17. We are, therefore, clearly of opinion that non-communication of the reasons in the order passed under Section 127 (1) is a serious infirmity in the order for which the same is invalid. The judgment of the High Court is

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*set aside. The appeal is allowed and the orders of transfer are quashed.
No costs.”*

18. In **K.P. Mohammed Salim vs. Commissioner of Income Tax, Cochin (2008) 11 SCC 573**, the issue with regard to application of Section 127 of the 1961 Act on block assessments came up for consideration before the Supreme Court. The Supreme Court observed that power of transfer under Section 127 was a machinery provision and was required to be given full effect as also that it must be construed in a manner so as to make it workable to effectuate the charging section so as to allow the authorities concerned to do in a manner wherefor the statute was enacted. Paragraph 15 of the said judgment is reproduced below for ready reference:-

“15. 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 wherefor the statute was enacted.”

19. From a harmonious reading of Section 127 of the 1961 Act and the afore referred judgments of the Supreme Court it can safely be culled out that the power of transfer of jurisdiction to assess an assessee under sub-sections (1) and (2) of Section 127 of the 1961 Act is a machinery provision which is exercised by the revenue for its administrative convenience. Such power is to be guided only by public interest and to facilitate effective investigation and coordinated assessment for efficient collection of income tax. Prior to the exercise thereof, circumstances permitting, a reasonable opportunity is required to be granted to the affected party. Reasons are also

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required to be stated for transferring the assessee's case to another assessing officer. Since this power under sub-sections (1) and (2) of Section 127 is vested in Senior Officers/ Central Board of Direct Taxes, it is not to be easily assumed that its exercise lacks bona fide but at the same time, whenever the assessee challenges the transfer of his assessment jurisdiction through a petition filed under Article 226 or Article 32 of the Indian Constitution on the ground that such transfer is beyond the provisions of sub-sections (1) and (2) of Section 127 of the 1961 Act or is mala fide or violates his fundamental rights, the Revenue could be called upon to justify its action and if such action is found to be mala fide or violating the assessee's fundamental rights or beyond the provision under which such power has been exercised, the same would be struck down.

20. The position would be different if the assessment jurisdiction of an assessee is transferred by the revenue authorities in the exercise of powers under Section 127(3) of the 1961 Act within the same city, locality or place. In such a situation, in terms of the law laid down by the Constitution Bench of the Supreme Court in **Kashiram Agarwala's case** (supra) such order of transfer would be only for convenience of the department with no possible prejudice to the assessee. Therefore, in such situation, neither any prior notice to the assessee would be necessary nor the requirement to record reasons for such transfer.

21. In the case in hand, which pertains to the transfer of the assessment jurisdiction of the petitioner from Chandigarh to Goa, no mala fides on the respondent's part have even been alleged. It further remains undisputed that before transferring the petitioner's assessment jurisdiction he



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was granted adequate opportunity to explain his position. The order impugned by the petitioner is also found to be a speaking order.

22. A careful scrutiny of the record further shows that search and seizure proceedings by the revenue authorities at the premises of M/s Blue Ocean, Goa and its group companies revealed that one of its main distributors was M/s Aarooha, New Delhi. This led to survey proceedings at the premises of M/s Aarooha during the course of which evidence was found through WhatsApp chats between Lokesh Saran-Managing Director of M/s Aarooha and one Gaurav Sharma with regard to the said Gaurav Sharma having purchased M/s Queen Distillers at Chandigarh from the petitioner. Incriminating evidence was further found that during the course of the afore transaction, Gaurav Sharma had paid to the petitioner an undisclosed amount of about Rs.10 crores in cash. On being questioned by the revenue officials, Lokesh Saran stated that it was he who was overseeing the entire transaction between Gaurav Sharma and the petitioner and that he had a vested interest in such transaction as also that before the transaction it is he who had done due diligence in the form of verification of EVC (Electronic Verification Code), C Forms, creditors, debtors, suppliers and buyers of M/s Queen Distillers. Lokesh Saran had still further stated before the revenue authorities that after the aforesaid transaction has been completed, it was M/s Aarooha which was the sole distributor of liquor manufactured by M/s Queen Distillers at Chandigarh.

23. Jurisdiction to assess M/s Aarooha stands already transferred to Goa and learned counsel appearing for the revenue categorically stated

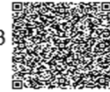
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before us that the cases of Lokesh Saran and Gaurav Sharma are in the process of being centralized at Panaji, Goa.

24. Thus, it needs to be investigated if Gaurav Sharma was acting as a front man for M/s Aarooha and/ or Lokesh Saran. There is enough evidence on record linking M/s Aarooha/Lokesh Saran with M/s Blue Ocean, Goa. Therefore, it cannot be said that there is no link between the transaction of sale by the petitioner with other related entities whose assessment has been/ is being centralized at Goa.

25. In the light of the above facts, we are of the view that in the absence of allegations of mala fide on the respondent's part the transfer of the petitioner's assessment jurisdiction from Chandigarh to Goa has been exercised by the revenue for its administrative convenience; to facilitate effective investigation and coordinated assessment; for efficient collection of tax and in public interest. Prior thereto, principles of natural justice were duly followed and that the transfer order also contains adequate and acceptable reasons. Therefore, in the exercise of our discretionary jurisdiction under Article 226 of the Indian Constitution, we are not inclined to interfere with the impugned order especially at the petitioner's behest who is suspected to be involved in dubious transactions and more so when it is the un rebutted case of the respondent revenue that in the present era of technological advancement, where the proceedings against the petitioner at Goa are normally going to take place digitally, he shall also not be put to much inconvenience and hardship. In any case, the petitioner's interest would be subservient to public interest.



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26. Before we part with the judgment, it would be only be fair to deal with the two circulars of the CBDT dated 24.08.2009 and 11.02.2013 as also the judgments cited on the petitioner's behalf.

27. As per the two cited circulars of the CBDT dated 24.08.2009 and 11.02.2013 transfer of jurisdiction of assessment cannot take place in a routine manner and without application of mind as also without establishing a link between the person searched. In the light of the afore discussion, it is clear that centralization of the assessment of the petitioner at Panaji, Goa is in terms of both the said circulars.

28. In **Anuben Lalabhai Bharwad's case** (supra), a Division Bench of the Gujarat High Court set aside the transfer of assessment jurisdiction of the petitioner therein from Ahmedabad to Surat as it found no specific or independent material on record which would have linked the petitioner therein with M/s HVK International Group at Surat and in **M/s RSG Foods Pvt. Ltd.'s case** (supra) a Division Bench of this Court, on facts, found that the transfer of assessment jurisdiction of the petitioner therein from Ferozepur to Amritsar was not based on any established link between the petitioner therein to events at Amritsar. However, in the light of the discussion, as above, it cannot be said that there is no link established between the undisclosed cash transaction entered into by the petitioner with Gaurav Sharma and the related entities whose assessment has been/ is being centralized at Goa. Thus, on facts, **Anuben Lalabhai Bharwad's case** (supra) and **M/s RSG Foods Pvt. Ltd.'s case** (supra) are distinguishable from the petitioner's case.

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29. There is also no legal weight in the argument raised on behalf of the petitioner that if during the course of survey proceedings conducted at the premises of M/s Aarooha at New Delhi, even if any incriminating material with regard to any evasion of Income Tax had been found against the petitioner, such incriminating material should have been forwarded, in terms of Section 158BD of the 1961 Act to Chandigarh and it is there that the inquiry/ investigation could and should have taken place with regard to any illegality/ irregularity on the petitioner's part rather than resort to transfer of the petitioner's case from Chandigarh to Panaji, Goa.

30. Section 158BD of the Act reads as follows:-

"158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to or pertains to or relates to any person (herein referred to as the "other person"), other than the person (herein referred to as the "specified person" for the purposes of this section) with respect to whom search was initiated under section 132 or requisition was made under section 132A, then any money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents seized or requisitioned or any other material or information relating to the aforesaid undisclosed income shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of this Chapter shall apply accordingly:

Provided that,—

(a) where there is one specified person relevant to such other person, the block period for such other person shall be the same as that for the specified person; and

(b) where there is more than one specified persons relevant to such other person, the block period for such other persons shall be the same as that for the specified person in whose case the block period ends on a later date:

Provided further that in case of such other person, for the purposes of abatement under sub-sections (2) and (3) of section 158BA, the



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reference to the date of initiation of the search under section 132 or making of requisition under section 132A shall be construed as reference to the date on which such money, bullion, jewellery, virtual digital asset or other valuable article or thing or any books of account or other documents seized or requisitioned or any other material or information relating to the aforesaid undisclosed income were received by the Assessing Officer having jurisdiction over such other person."

31. As per the afore quoted provision, if during the course of search/survey, any incriminating material is found against an assessee who is being assessed by a different Assessing Officer then such material is to be forwarded to that Assessing Officer who would then deal with such information and on the basis thereof assess the assessee. However, that would be so only if the incriminating material so discovered has no link with any other related entity. If the discovered incriminating material is linked to another related entity or entities who are being assessed at a different place(s) and if the revenue bona fide believes that it would be administratively convenient and in public interest as also in furtherance with the objects of the 1961 Act, then, after following the procedure prescribed under Section 127 of the 1961 Act, centralize the assessment of all the connected or linked persons at one place.

32. In the light of the above discussion, the present petition sans merit.

33. Dismissed.

(DEEPAK SIBAL)
JUDGE

17.12.2025
gk

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No