



## Transfer of Jurisdiction is not valid in absence of agreement of the jurisdictional authorities – Supreme Court

### Background

Recently, the Supreme Court in the case of Noorul Islam Educational Trust<sup>1</sup> (the taxpayer) held that in case of transfer of the taxpayer's case<sup>2</sup>, where the Assessing Officer (AO) from whom the case is to be transferred and the AO to whom the case is to be transferred are not subordinate to the same Director General of Income Tax, Chief Commissioner of Income Tax or Commissioner of Income Tax, agreement between the officers of two jurisdictions is necessary before transferring the taxpayer's case to another jurisdiction. Absence of disagreement cannot tantamount to an agreement as visualised under Section 127(2)(a) of the Income-tax Act, 1961 (the Act).

### Facts of the case

- The taxpayer runs many educational institutions in the state of Tamil Nadu and is being run by a committee of trustees.
- The Chairman of the trust was running several institutions in his personal capacity in the state of Kerala.
- While exercising powers under Section 127(2)(a) of the Act, the Commissioner of Income Tax (CIT) transferred the taxpayer's case from Tamil Nadu to Kerala.
- The taxpayer's writ petition against the transfer of jurisdiction was allowed by Single Bench of Madras High Court<sup>3</sup> and the order of CIT transferring the taxpayer's case was quashed.

- The Revenue Authorities challenged the order before the Division Bench of Bombay High Court<sup>4</sup>.
- The High Court observed that the only condition prescribed by Section 127(2)(a) of the Act for transfer of case is that such transfer should be effected after giving reasonable opportunity to the concerned taxpayer and the CIT has unfettered powers of transfer as the same does not provide for giving of reasons for such transfer.
- The High Court held that Section 127(2)(a) of the Act was merely a machinery provision and since no serious allegations have been levelled against the action of revenue authorities, the order of CIT transferring the case without assigning any reasons is valid in law.
- Aggrieved by the order of the High Court, the taxpayer filed an appeal before the Supreme Court.

### Supreme Court's ruling

- The Supreme Court observed that the taxpayer's case was transferred from one AO in Tamil Nadu to another AO in Kerala and the two AOs are not subordinate to the same Director General or Chief Commissioner or Commissioner of Income Tax.

<sup>1</sup> Noorul Islam Educational Trust v. CIT (Civil Appeal No 13968/2015)-taxsutra.com

<sup>2</sup> In accordance with the provisions of Section 127(2)(a) of the Income-tax Act

<sup>3</sup> Noorul Islam Educational Trust v. CIT [2011] 332 ITR 97 (Mad)

<sup>4</sup> CIT v. Noorul Islam Educational Trust [2015] 375 ITR 226 (Mad)

- As per provisions of Section 127(2)(a) of the Act, an agreement between the Director General, Chief Commissioner or Commissioner, as the case may be, of the two jurisdictions is necessary.
- The Supreme Court noted that the affidavit filed by the Revenue Authorities did not disclose any agreement between the authorities of the two jurisdictions. The affidavit consistently and repeatedly stated that there was no disagreement between the two CITs.
- Absence of disagreement cannot tantamount to agreement as visualised under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners which is conspicuously absent.

### Our comments

In the context of transfer of jurisdiction by virtue of provisions of Section 127 of the Act, it has been held in various decisions<sup>5</sup> that the power of transfer can be exercised only when the requirements of Section 127, namely, giving an opportunity of hearing to the taxpayer, recording of relevant and valid reasons for transfer and communication of the reasons to the taxpayer, are complied with.

Section 127(2)(a) of the Act also contemplates that the jurisdictional authorities should be in agreement with each other. Emphasizing the same, the Supreme Court observed that an agreement between the respective authorities of the two jurisdictions is an essential requirement to be complied with before and absence of disagreement cannot be construed as agreement as contemplated under the provisions of Section 127(2)(a) of the Act.



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<sup>5</sup> Genus Electrotech Ltd. UOI [2016] 73 taxmann.com 101 (Guj); Mul Chand Malu v. UOI [2016] 383 ITR 367 (Gauhati)

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