

ITEM NO.1

COURT NO.5

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 13968/2015
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 20/03/2015
IN WAMD NO. 98/2010 PASSED BY THE HIGH COURT OF MADRAS AT MADURAI)

NOORUL ISLAM EDUCATIONAL TRUST

PETITIONER(S)

VERSUS

THE COMMISSIONER OF INCOME TAX-I & ORS. RESPONDENT(S)
[WITH APPLN.(S) FOR SEEKING PERMISSION TO RAISE ADDITIONAL GROUNDS]

Date : 21/10/2016 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. E. M. S. Anam, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG
Mr. A.C. Pradhan, Sr. Adv.
Ms. Niranjana Singh, Adv.
Mr. V. Balaji, Adv.
Mrs. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Permission to raise additional grounds is granted.

Leave granted.

The appeal is allowed in terms of the signed order.

[VINOD LAKHINA]
COURT MASTER

[ASHA SONI]
COURT MASTER

[SIGNED ORDER IS PLACED ON THE FILE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.10234 OF 2016
[Arising out of Special Leave Petition
(Civil) No.13968/2015]

NOORUL ISLAM EDUCATIONAL
TRUST . . . APPELLANT

VERSUS

THE COMMISSIONER OF INCOME TAX-I
& ORS. . . RESPONDENTS

ORDER

1. Leave granted.
2. The challenge in the present appeal is against the order of the High Court of Madras, Madurai Bench, dated 20th March, 2015 passed in W.A. No.98 of 2010 by which the transfer of the income-tax/assessment file of the appellant from Tamil Nadu to Kerala as made by the jurisdictional Commissioner of Income Tax (C.I.T.1, Madurai, Tamil Nadu) has been upheld.

3. For the purpose of the appeal, it will be necessary to note the provisions of Section 127(2)(a) of the Income Tax Act, 1961 (for short "the Act") which is in the following terms:

"Power to transfer cases.

127.(1)

(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 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."

4. As the Income-tax/assessment file of the appellant - assessee has been

transferred from one Assessing Officer in Tamil Nadu to another Assessing Officer in Kerala and the two Assessing Officers are not subordinate to the same Director General or Chief Commissioner or Commissioner of Income Tax, under 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.

5. The counter affidavit filed on behalf of the Revenue does not disclose that there was any such agreement. In fact, it has been consistently and repeatedly stated in the said counter affidavit that there is no disagreement between the two Commissioners. Absence of disagreement cannot tantamount to agreement as visualized under Section 127(2) (a) of the Act which contemplates a positive state of mind of the two jurisdictional

Commissioners of Income Tax which is conspicuously absent.

6. In the above circumstances, we will hold that the transfer of the Income-tax/assessment file of the appellant - assessee from Assessing Officer, Tamil Nadu to Assessing Officer, Kerala is not justified and/or authorized under Section 127(2) (a) of the Act. The order of the High Court is, therefore, interfered with and the transfer is accordingly set aside.

7. The appeal is allowed in the above terms.

.....,J.
(RANJAN GOGOI)

.....,J.
(ABHAY MANOHAR SAPRE)

NEW DELHI
OCTOBER 21, 2016