

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 5173 of 2014 alongwith CWP Nos. 5452, 5453, 5454, 5455, 5456 and 5457 of 2014.

Judgement reserved on: 26.11.2014.

Date of decision: December 18th, 2014.

1. CWP No. 5173 of 2014.

Anand Chauhan Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

2. CWP No. 5452 of 2014.

Aprajita Kumari Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

3. CWP No. 5453 of 2014.

M/s Virbhadra Singh Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

4. CWP No. 5454 of 2014.

Chunni Lal Chauhan Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh & anr. Respondents.

5. CWP No. 5455 of 2014.

Pratibha Singh w/o Sh.Virbhadra Singh Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

6. CWP No. 5456 of 2014.

Vikramaditya Singh Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

7. CWP No. 5457 of 2014.

Virbhadra Singh Petitioner.

Vs.

The Commissioner of Income Tax,
Himachal Pradesh Respondent.

Coram

The Hon'ble Mr. Justice Mansoor Ahmad Mir, Chief Justice.

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? : Yes

For the petitioner(s) : Mr. N.K.Sood, Senior Advocate with M/s Yashwardhan Chauhan, C.S.Verma, Neeraj Sharma, Hemant Sharma & Pranay Pratap Singh, Advocates, (in all the petitions)

For the respondent(s) : Mr. Vinay Kuthiala, Senior Advocate with Ms. Vandana Kuthiala, Advocate, (in all the petitions).

Tarlok Singh Chauhan, Judge.

Since common question of law and fact arise for consideration, therefore, all these cases are taken up together for disposal.

2. All the petitioners are income tax assesseees and are aggrieved by the action of the respondents whereby their cases have been transferred to DCIT, Central Circle, Chandigarh.

3. Undisputed facts are that the petitioners prior to transfer of their cases were issued show-cause notices which were duly replied

Whether the reporters of the local papers may be allowed to see the Judgment?

to by the petitioners and thereafter the respondents have passed the order transferring the cases to DCIT, Central Circle, Chandigarh (for short the 'impugned order').

4. The petitioners have contended that before their cases could have been ordered to be transferred, they were entitled to fair and proper hearing and principles of natural justice were required to be complied with and the adjudicating authority was under an obligation to furnish the relevant material, which formed the basis of issuance of show-cause notices. This material, according to them, was never disclosed either in the show-cause notices or at the time of hearing and the same was disclosed only in the impugned order. Had the same been disclosed, the petitioners could have offered an appropriate explanation. The non-disclosure of the same has caused serious prejudice to them. The impugned order has been questioned on various other grounds as taken in the writ petitions.

5. The respondents filed their reply (s), wherein it was alleged that writ petitions are not maintainable since no legal right of the petitioners has been infringed and the respondents have acted only in exercise of their statutory duties in order to protect the interest of the department and for carrying out proper investigation of the case as well as assessment and collection of taxes. The order dated 14.7.2014 has been passed in order to ensure coordinated investigation and assessment of a number of assessees including 11 other persons who had been assessed at Delhi, whose financial dealings are interlinked with the petitioners. The cases of 11 other persons who have been assessed at Delhi and have financial

dealings with the petitioners are also in the process of transfer from Delhi to Chandigarh for coordinated investigation and assessment. There is yet another preliminary objection with regard to a public interest litigation pending at Delhi High Court.

6. In so far as the merits of the cases are concerned, it is contended that there is no fundamental right of an assessee to be assessed in a particular area or locality and that section 127 of Income Tax Act, 1961 (for short, the Act) is a machinery provision and it should be construed to effectuate a charging section so as to allow the authorities concerned to do so in the manner therefore the statute was enacted. It is further averred that the petitioners cannot take any exception to the case being transferred from one jurisdiction to other for coordinated investigation. It is then contended that relevant material was provided in the show cause notice and it was not necessary to provide materials gathered during the course of investigation and enquiries as it is not relevant at the stage of transfer of jurisdiction contemplated under section 127 of the Act.

We have heard the learned counsel for the parties and have also gone through the records of the case.

7. Shri Naresh Sood, learned Senior Advocate assisted by S/Sh.Yashwardhan Chauhan, C.S.Verma, Neeraj Sharma, Hemant Sharma and Pranay Pratap Singh, Advocates, for the petitioners has vehemently argued that assuming that the show-cause notices are valid, even then the petitioners were not provided the necessary material during the course of investigation and inquiry and the respondents while passing the impugned order have relied upon

extraneous material simply in order to justify the transfer of cases. This contention is without prejudice to the other contentions that the show-cause notices itself are not valid since the only reason given for transfer of the cases was that the same is being proposed for the effective and coordinated investigation of the assessment case which is vague and too general and the assessee could not have been expected to make an effective and purposeful representation against the proposed transfer while replying to the show-cause notices.

8. On the other hand, Shri Vinay Kuthiala, learned Senior Advocate assisted by Ms. Vandana Kuthiala, Advocate, for the respondents has vehemently argued that respondents have acted within the four corners of law and no exception of the same can be taken by the relevant.

9. We proceed to examine the first contention raised by the petitioners to the effect that even if the show cause notices are held to be valid even then the petitioners were not provided necessary material during the course of investigation and inquiry and the respondents have relied upon extraneous material in order to justify the transfer of the cases.

10. The relevant portion of the show cause notices in case of each of the petitioners reads thus:-

In CWP No. 5173 of 2014:

“On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadr Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadr Singh, R/O. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadr

Singh and R/O Holy Lodge, Jhaku, Shimla (AESPK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

The assessee has made huge cash deposits of more than Rs.6 crores in his bank accounts which have been used for purchase of insurance policies in the name of the Sh. Virbhadra Singh and his family members. The evidence on record suggests that money have been sourced in his bank accounts from undisclosed sources.”

In CWP No. 5452 of 2014:

“On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/O Holy Lodge, Jhaku, Shimla (AESPK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/O. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

The assessee has invested Rs.34 lacs in the purchase of shares of M/s . Tarini Infrastructures Ltd. but no such investment appears to be declared by the assessee in her return of income. Investment in purchase of LIC Policies to the tune of Rs.10 Lakh for the F.Y. 2009-10 were found to be made from the alleged agricultural income, shown in the revised income tax returns of Sh. Virbhadra Singh, HUF which was routed through the bank

account of Sh. Anand Chauhan. However, the investment made is not found to be reflected in the assessee's return of income.”

In CWP No. 5453 of 2014:

“On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/O Holy Lodge, Jhaku, Shimla (AESPCK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R), Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

1. Agricultural income of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N) was shown as follows in the original returns filed at the below given details:

A.Y.	Returned income/agricultural income		Date of filing
	Income	Agri.	
2009-10	Rs.16,38,438/-	Rs.7,35,000/-	24.07.2009
2010-11	Rs.44,67,584/-	Rs.15,00,000/-	29.07.2010
2011-12	Rs.15,13,712/-	Rs.25,00,000/-	11.07.2011

The agricultural income has dramatically increased as follows in the revised returns filed at the following details:

A.Y.	Income as per revised return		Date of filing
	Income	Agri.	
2009-10	Rs.16,38,938/-	Rs.2,21,35,000/-	02.03.2012
2010-11	Rs.44,67,584/-	Rs.2,80,92,500/-	02.03.2012
2011-12	Rs.15,13,710/-	Rs.1,55,00,000/-	02.03.2012

The revised agricultural income is an apparent attempt to justify the investments made in the purchase of insurance policies in the name of

Sh. Virbhadra Singh and his family. The insurance policies were noticed by the department while investigating large cash deposits in the bank accounts of Sh. Anand Chauhan. The investments in the insurance policies in the name of family members of Sh. Virbhadra Singh were made from the accounts of Sh. Anand Chauhan and the purported source of cash deposits in the bank account of Sh. Anand Chauhan is highly suspect.”

In CWP No. 5454 of 2014:

“On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/o Holy Lodge, Jhaku, Shimla (AESPK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

The assessee has allegedly purchased apples of Sh. Virbhadra Singh, HUF from Sh. Anand Chauhan (agent of Sh. Virbhadra Singh, HUF) in cash. No further evidence of sale of apples by him or arranging cash sale receipts to Sh. Anand Chauhan from other agents of apple buyers has been furnished.”

In CWP No. 5455 of 2014:

“On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla

(ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/o Holy Lodge, Jhaku, Shimla (AESPK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

The assessee has received unsecured loans of Rs.1.50 crores from Sh. Vakamulla Chandershekhar in FY 2011-12. Further on the basis of news item appearing in various national dailies shows that the assessee has invested Rs.34 lacs in the purchase of shares of M/s Tarini Infrastructures Ltd. but no such investment appears to be declared by the assessee in her return of income. Investment in purchase of LIC Policies to the tune of Rs.2.60 Crore for the F.Y. 2008-09, 2009-10 & 2010-11 were found to be made from the alleged agricultural income, shown in the revised income tax returns of Sh. Virbhadra Singh, HUF which was routed through the bank account of Sh. Anand Chauhan. However, the investment made is not found to be reflected in the assessee's return of income."

In CWP No. 5456 of 2014:

"On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/o Holy Lodge, Jhaku, Shimla (AESPK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan,

Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

The assessee has received unsecured loans of Rs.2 crores from Sh. Vakamulla Chandershekhar in FY 2011-12. Further on the basis of news item appearing in various national dailies shows that the assessee has invested Rs.30 lacs in the purchase of shares of M/s. Tarini Infrastructures Ltd. but no such investment appears to be declared by the assessee in his return of income. Investment in purchase of LIC Policies to the tune of Rs.1.64 Crore in the F.Y. 2009-10 & 2010-11 were found to be made from the alleged agricultural income, shown in the revised income tax returns of Sh. Virbhadra Singh, HUF which was routed through the bank account of Sh. Anand Chauhan. However, the investment made is not found to be reflected in the assessee's return of income."

In CWP No. 5457 of 2014:

"On the basis of enquires carried out, and also material gathered during the course of assessment proceedings, in the cases of Sh. Virbhadra Singh (HUF), R/o. Holy Lodge, Jhaku, Shimla (AACHV0223N), Sh. Virbhadra Singh, R/o. Holy Lodge, Jhaku, Shimla (ALRPS6513N), Smt. Pratibha Singh w/o Sh. Virbhadra Singh and R/o Holy Lodge, Jhaku, Shimla (AESPCK2933C), Sh. Vikramaditya Singh (CAXPS8819J), Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L), Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R) and Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L), reveal the following:-

"The assessee has received unsecured loans of Rs.2.4cr from Sh. Vakamulla Chandershekhar in FY 2011-12. However there is no such information available in the return filed by the assessee for the relevant Assessment year.

Further, investments in purchase of LIC Policies to the tune of Rs.2.25 Crore during the F.Y. 2008-09 & 2009-10 in the assessee's name were found to be made from the alleged agricultural income, shown in the revised income tax returns of Sh. Virbhadra Singh, HUF which was routed through the bank account of Sh. Anand Chauhan. However, the investment made is not found to be reflected in the assessee's return of income."

11. It was not in dispute that a detailed reply to the said notices was filed by each of the petitioners and they were also afforded an opportunity of hearing. But, the grievance made by the petitioners is that the reasons now spelt out in the impugned order are not the same to which they had been put to notice. Para-1 of the impugned order in all the cases sets out in verbatim the contents of the show-cause notices (supra), but thereafter the contents of Para-2 (Para-3 in CWP No.5453 of 2014, CWP No.5455 of 2014 and CWP No.5456 of 2014) in the impugned orders read as under:-

"2. The information and facts also show that above named persons mentioned in para-1 above have close relations/ nexus and business dealings amongst themselves and other persons namely Sh. Vakamulla Chandershekhar and M/s Tarini Infrastructure Limited. The details of the transactions entered with the above entities are as under:-

- i. Interest free unsecured loan of Rs.5.9 crores was advanced by Sh. Vakamulla Chandershekhar to Sh. Virbhadra Singh (Rs.2.4 Crore), Smt. Pratibha Singh (Rs.1.5 Crore) and Sh. Vikramaditya Singh (Rs.2 Crore). But no information is available in the income tax returns of these persons. The source

of loans given by Sh. Vakamulla Chandershekhar to Sh. Virbhadra Singh and family members is highly suspect. Information available so far shows that Sh. Vakamulla Chandershekhar has failed to show any disclosed source of income that could have been used by him to advance the above mentioned loans.

- ii. Investment of Rs.34 lacs, Rs.30 lacs and Rs.34 lacs were made in the shares of M/s. Tarini Infrastructure Limited (Director Sh. Vakamulla Chandershekhar) by Smt. Pratibha Singh, Sh. Vikarmaditya Singh and Ms. Aprajita Kumari respectively. The family of Sh. Virbhadra Singh have earned profit on the sale of the shares of M/s. Tarini Infrastructure Limited, which is yet to be offered for tax. Sources of acquisition of these shares are not found in the respective returns, nor the profit earned on sale of these shares are being shown in the return of income.”

12. The petitioners have contended that the aforesaid allegations for the very first time have appeared only in the impugned orders and these allegations had never been brought to the notice of the petitioners either in the show-cause notices or at the time of hearing so as to afford them a proper and effective opportunity to reply to these allegations.

13. Here it may be noticed that on 30.6.2014 i.e. after about five days of issuance of show cause notice, the respondent addressed a letter to the Chief Commissioner of Income Tax, H.P. Region Shimla, on the subject of centralization of cases, which reads:-

“To

The Chief Commissioner of Income Tax,
H.P. Region, Shimla.

Sir,

Sub:- Centralization of cases- regarding-

Kindly refer to your letter No. CCIT/SML/Tech/2014-15/Sr.PS 02 dated 12.6.2014 enclosing therein letter of member investigation CBDT, regarding centralization of cases related to Sh. Virbhadra Singh and connected cases, in view of the above a meeting was held with the DGIT (Inv.) Chandigarh, DIT (Inv.) at Chandigarh alongwith your goodself in which it was decided that the cases related to Sh. Virbhadra Singh are to be centralized with DCIT/ACIT (Central) Circle Chandigarh under the charge of CIT (Central) Gurgaon. The details of the cases which are to be centralized are as under:

Sr.No.	Name & Address	Presently Assessed with the AO	CCIT Charge	CIT Charge
1.	Sh.Virbhadra Singh (HUF), R/o.Holy Lodge, Jhaku, Shimla (AACHV0223N)	DCIT, Shimla Circle	Shimla	Shimla
2.	Sh. Virbhadra Singh, R/o.Holy Lodge, Jhaku, Shimla (ALRPS6513N)	DCIT, Shimla Circle	Shimla	Shimla
3.	Smt. Pratibha Singh w/o. Sh. Virbhadra Singh and R/o. Holy Lodge, Jhaku, Shimla (AESPK2933C)	DCIT, Shimla Circle	Shimla	Shimla
4.	Sh. Vikramaditya Singh s/o Sh. Virbhadra Singh, r/o Holy Lodge, Jhaku, Shimla (CAXPS8819J)	ITO, Ward-1, Shimla	Shimla	Shimla
5.	Ms. Aprajita Kumari D/o. Sh. Virbhadra Singh (AOUPK6157L,)	ITO, Ward-1 Shimla	Shimla	Shimla
6.	Sh. Anand Chauhan, R/o. Kailash Niwas, Inder Nagar, Dhali, Shimla (ADFPC3964R)	ITO, Ward-1, Shimla.	Shimla	Shimla
7.	Sh. Chunni Lal Chauhan, Prop. Universal Apple Associates, Parwanoo (AAHPC7645L)	DCIT,Parwanoo Circle	Shimla	Shimla.

Hence show cause notices u/s 127 of the I.T. Act, 1961 have been issued to the above persons on 25.6.2014 for furnishing their objections if any. For this purpose the cases are fixed for 4.7.2014. A letter dated 30.6.2014 has also been issued to the CIT (Central) Gurgaon to accord his concurrence and also to specify the names and designation of the officer of Central circle at Chandigarh with whom the above cases are to be centralized.

During the above meeting held with the DGIT (Inv.) it was informed by him that investigation wing Chandigarh has also conducted investigation in the various cases related to Sh. Virbhadra Singh including Sh. Vakamulla Chander Shekher. The result/outcome of investigations carried out by the Investigation Wing will help the undersigned to strengthen the order to be passed u/s 127 of the I.T. Act, 1961. Hence, you are requested to please take up the matter with the DGIT (Inv.) Chandigarh to share result/outcome of the investigation with this office so that the same may be utilized in passing the order u/s 127 of the I.T. Act, 1961.

You are also requested to take up the matter with the DGIT (Inv.) Chandigarh in respect of the centralization of other cases related to Sh. Virbhadra Singh and which are not assessed under the jurisdiction of the undersigned.”

It would be noticed from the underlined portion of the letter that the respondent was well aware of the investigation being carried out in various cases relating to the petitioners, particularly, petitioner in CWP No.5453 of 2014 and 5457 of 2014 and one Vakamulla Chander Shekhar, but despite this the respondents did not make a mention of the same in the show-cause notices issued to the petitioners.

14. Though, prima facie, it appeared that the reasons in the impugned order were totally different from what was spelt out in the show-cause notices. But, then to test the veracity of the contentions of petitioners that the reasons now assigned in the show-cause notices have never been confronted to the petitioners, this Court vide order dated 18.11.2014 summoned the original records of the cases. After going through the same meticulously, we find that there is no material available on record which may show even remotely that the reasons now spelt out in the impugned order were ever brought to the notice of the petitioners so as to afford them an adequate and effective opportunity to respond to the same.

15. It is trite that every person before an authority exercising the adjudicatory power has right to know the case he is required to meet. The fundamental principle remains that nothing should be used against the person, which has not been brought to his notice. If the relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing.

16. For reasons best known to the respondent, it has treated all the petitioners/assesseees as one person/assessee. We observe so because all the petitioners were admittedly issued individual show-cause notices where separate and distinct allegations against each one of them had been set out. But, now when the impugned order is seen, it is absolutely clear that after setting out the allegations as mentioned in Para-1 of the show-cause notice, an omnibus reason common to all the petitioners has been recorded for the transfer of the cases, which indisputably did not find mention in the show-cause notices.

17. The show-cause notices issued to the petitioners in CWP No.5173 of 2014, CWP No.5452 of 2014 and CWP No.5453 of 2014 did not even make a reference of Shri Vakamulla Chandershekhar. Similarly, the petitioners in CWP No.5455 of 2014 and CWP No. 5456 of 2014 were though put to notice that they had received unsecured loans of `1.50 crores and `2 crores respectively from said Shri Vakamulla Chandershekhar which were invested in M/s Tarini Infrastructure Ltd., but then nowhere it was brought to the notice that such information was not available in the income tax

returns of these persons (Vakamulla Chandershekhar etc.). Similarly, there was no allegation in the show-cause notices issued to the petitioners in CWP Nos.5452, 5455, 5456 and 5257 of 2014 that by investing in M/s Tarini Infrastructure Ltd., these persons had earned profit on the sale of shares of M/s Tarini Infrastructure Ltd., which was yet to be offered for tax.

18. The aforesaid reasons and allegations contained in the show-cause notices vis-à-vis the impugned order are only illustrative and not exhaustive and have been taken note of in order to satisfy ourselves that the reasons now reflected in the impugned order have never been made known to the petitioners individually in the show-cause notices issued to them. Therefore, it is apparent that the impugned order is founded on grounds at variance from the one in the show-cause notices and consequently the same being based on extraneous consideration is bad in law.

19. In this background, the question which would require our consideration, therefore, is as to whether at the time of issuance of show-cause notices and passing of impugned order, the requirements of natural justice have been complied with because non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It is here then that the action of the respondent is required to be tested on the touchstone of justice, equity, fair play and in case its decision is not based on justice, equity and fair play and has been taken after taking into consideration other material, then even though on the face of it, the decision may look to the legitimate, but as a matter of fact

the reasons are not based on values but on extraneous consideration that decision cannot be allowed to stand.

20. In this connection, the decision in **S. L. Kapoor vs. Jagmohan**, AIR 1981 SC 136 is relevant for our purpose. In paragraph 16 of the judgment, their Lordships have held as follows:-

".....In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based if it is furnished in a casual way or for some other purpose. We do not suggest the opportunity need be a 'double opportunity' that is one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met. ..."

(Emphasis added)

.....In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced. As we said earlier where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible, the court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because courts do not issue futile writs. We do not agree

with the contrary view taken by the Delhi High Court in the judgment under appeal."

(Emphasis supplied)

21. In *Wade & Forsyth* -- 'Administrative law', the learned Authors have said thus :-

"A proper hearing must always include a 'fair opportunity to those who are parties in the controversy for correcting or contradicting anything prejudicial to their view'. Lord Denning has added :

'If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: and then he must be given a fair opportunity to correct or contradict them.'"

(Emphasis supplied)

22. In *De Smith, Woolf and Jowell's* --Judicial Review of Administrative Action, under the caption 'Duty of adequate disclosure', it is said thus :-

"If prejudicial allegations are to be made against a person, he must normally, as we have seen, be given particulars of them before the hearing so that he can prepare his answers. In order to protect his interests he must also be enabled to controvert, correct or comment on other evidence or information that may be relevant to the decision; indeed, at least in some circumstances [here will be a duty on the decision maker to disclose information favourable to the applicant, as well as information prejudicial to his case. If material is available before the hearing, the right course will usually be to give him advance notification;

If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it, there is prima

facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. „”

23. In our considered opinion, once show cause notice has been sought to be issued, then it was incumbent upon the respondent to have set out in detail and with precision the various acts of commission and omission to the notice of the petitioner so as to afford him an effective opportunity to meet the case of the department. In taking this view, we are fortified by the following observations of Hon'ble Supreme Court in **Collector of Central Excise vs. H.M.M. Limited 1995 Supp (3) Supreme Court cases 322:-**

“..... If the department proposes to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions or omissions stated in the proviso is committed to extend the period from six months to 5 years. Unless the assessee is put to notice the assessee would have no opportunity to meet the case of the department. The defaults enumerated in the proviso to the said subsection are more than one and if the Excise Department places reliance on the proviso it must be specifically stated in the show-cause notice which is the allegation against the assessee falling within the four corners of the said proviso.....”

24. The party to whom the show cause notice has been issued must be made aware of the exact allegations, he is required to meet. This was so held by Hon'ble Supreme Court in **Raj Bahadur Narain Singh Sugar M. Ltd. vs. Union of India and others (1997) 6 SCC 81** wherein after placing reliance upon **Collector of Central Excise vs. H.M.M** case (supra), it was held as follows:-

“9.....The party to whom a show-cause notice under Rule 10 is issued must be made aware that the allegation

against him is of collusion or wilful misstatement or suppression of fact. This is a requirement of natural justice. It is also the law, laid down by this court in CCE v. H.M.M. Ltd. It has been said there with reference to Section 11-A of the central Excises and Salt Act, 1944, which replaced Rule 10, that if the authorities propose to invoke the proviso to Section 11-A(1), the show-cause notice must put the assessee to notice which of the various commissions and omissions stated in the proviso is committed to extend the period from six months to five years. Unless the assessee is put to notice, the assessee would have no opportunity to meet the case of the authorities. The defaults enumerated in the proviso were more than one and if the authorities placed reliance on the proviso, it had to be specifically stated in the show-cause notice which was the allegation against the assessee falling within the four corners of the said proviso."

25. The requirement of making a person aware of the exact allegations he is required to meet is a requirement of natural justice as held by the Hon'ble Supreme Court in **Kaur & Singh vs. Collector of Central Excise, New Delhi 1997 (94) E.L.T. 289 (S.C.)** where the Hon'ble Supreme Court after placing reliance upon **Collector of Central Excise vs. H.M.M and Raj Bahadur Narain Singh Sugar M. Ltd. vs. Union of India and others** cases held that:-

"3. This court has held that the party to whom a show cause notice of this kind is issued must be made aware of the allegation against it. This is a requirement of natural justice. Unless the assessee is put to such notice, he has no opportunity to meet the case against him. This is all the more so when a larger period of limitation can be invoked on a variety of grounds. Which ground is alleged against the assessee must be made known to

him, and there is no scope for assuming that the ground is implicit in the issuance of the show cause notice. [See: Collector of Central Excise vs. H.M.M. Limited, 1995 (76) E.L.T. 497 and Raj Bahadur Narain Singh Sugar M. Ltd. vs. Union of India and others, 1996 (88) E.L.T.24]."

26. In the decision **M. A. Jackson v. Collector of Customs**, reported in (1998) 1 SCC 198 which relates to a case under the Customs Act, the Department proceeded under Section 28(1) of the Customs Act alleging short levy of duty. The Department computed the duty on the basis of certain documents, for which no notice was given to the appellant. The question was whether the Department was justified in relying on the documents, copies of which were not furnished to the appellant. It was held thus:-

"In our view, once it is admitted that the price mentioned in the magazine was not mentioned in the show-cause notice issued to the petitioner, any reliance on the said price mentioned in the magazine by the Customs authorities must be held to be illegal. Further, it is clear that though this point was taken in the grounds of the appeal before the appellate authorities a copy of the magazine was never made available to the petitioner,"

(Emphasis added)

For the above reason, the Orders of the Authorities were set aside by the Honourable Supreme Court.

27. Similarly in **K. Vijayalakshmi v. Union of India**, (1998) 4SCC 37: (AIR 1998 SC 2961), it was held thus:-

"We are of the view that without going into the factual aspect of the case, the order of the Tribunal as well as

the order of the General Manager confirmed by the appellate authority are liable to be set aside on the sole ground that the document based on which the conclusion came to be reached having not been supplied to the appellant, the decision cannot be sustained. The respondent ought to have given to the appellant a copy of the opinion of the Forensic Department based on which the impugned order came to be passed."

(Emphasis supplied)

28. In **Tarlochan Dev Sharma vs. State of Punjab and others (2001) 6 SCC 260**, the impugned order was founded on grounds at variance from the one in show cause notice, consequently the same was held to be bad in law. The Hon'ble Supreme Court observed as under:-

".....There is nothing in the show cause notice or the ultimate order to hold how the act of appellant had 'obstructed the working of Municipal Council' or was 'against the interest of council.' We are, therefore, clearly of the opinion that not only the principles of natural justice were violated by the factum of the impugned order having been founded on grounds at variance from the one in the show cause notice, of which appellant was not even made aware of let alone provided an opportunity to offer his explanation, the allegations made against the appellant did not even prima facie make out a case of abuse of powers of President....."

29. It cannot be disputed that the show cause notice is the foundation on which the department has to build up its case, therefore, if the allegations in the show cause notice are not specific and are on the contrary vague, lack details and/ or unintelligible or do not disclose the real material upon which a proposed action is

contemplated to be drawn, then it is sufficient to hold that the noticee was not given proper opportunity to meet the allegations indicated in the show cause notice. **(Ref: Commissioner of Central Excise Bangalore vs. Brindavan Beverages (P) Ltd. & ors. (2007) 5 SCC 388.**

30. In view of the aforesaid exposition of law it can therefore safely be concluded that the fundamental principle of law is that adjudication has to be within the four corners of the allegations set out in the show cause notice. Any finding given beyond the terms of show cause notice will be hit by violation of principles of natural justice.

31. It is in terms of Section 127 of the Act that the respondent has ordered the transfer of the cases of the petitioners. This provision was subject-matter of consideration before the Hon'ble Supreme Court in **M/s Ajantha Industries and others v. Central Board of Direct Taxes, New Delhi and others AIR 1976 SC 437** and relevant observations are as follows:-

"5.....The successor section under the Income-tax Act, 1961 is Section 127 and the same may be set out:

"Transfer of cases from one Income-tax Officer to another:-

(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 situated in the same city, locality or place.

(2) The transfer of a case under sub-s. (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer from whom the case is transferred.

Explanation:- In this section and in Sections 121 and 125, 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 commences after the date of such order or direction in respect of any year."

The section was amended by Section 27 of Finance (No. 2) Act, 1967, and Section 127 since then stands as under:-

(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 any Income-tax Officer or Officers subordinate to him to any other Income-tax Officer or Income-tax Officers also subordinate to him and the Board may similarly transfer any case from any Income-tax Officer or Income-tax Officers to any other Income-tax Officer or Income-tax Officers.

Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any Income-tax Officer or Income-tax Officer or Income-tax Officers to any other Income-tax Officer and the offices of all such Income-tax Officers are situated in the same city, locality or place:

Provided further that where any case has been transferred from any Income-tax Officer or Income-tax Officers to two or more Income-tax Officers, the Income-tax Officers to whom the case is so transferred shall have concurrent jurisdiction over the case and shall perform such functions in relation to the said case as the Board or the Commissioner (or any Inspecting Assistant Commissioner authorised by the Commissioner in this behalf) may, by general or special order in writing, specify for the distribution and allocation of the work to be performed.

(2) The transfer of a case under sub-section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Income-tax Officer or Income-tax Officers from whom the case is transferred.

Explanation:- In this section and in Sections 121, 123, 124 and 125, 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."

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.

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."

32. A perusal of the aforesaid observations makes it clear that the requirement 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 so as to enable him to challenge 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 as would be clear from the perusal of para-10 thereof.

33. Furnishing of specific and intelligible reasons for the proposed transfer of the case is only a concomitant of the concept of reasonable opportunity enshrined in section 127 (1) and (2). Unless the assessee knows the precise reasons for the transfer, he would be handicapped in putting forth his objections effectively and in case the transfer of case is based on extraneous considerations then issuance of show cause notice becomes meaningless and is reduced to an idle formality.

34. The law is, therefore, fairly well settled that if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing, so that he can prepare his defence. The fair procedure and principle of natural justice are inbuilt into the rules. It is also well settled that show cause proceeding is meant to give a person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice. Therefore, at that stage the person proceeded against must be told the charges against him so that he can give an effective and proper reply to the same. Reply to show cause notice is not an empty

formality because after all justice must not only be done but it must manifestly appear to be done which principle is equally applicable to quasi-judicial proceedings.

35. It is also equally settled that statutory authority must exercise its jurisdiction within the four corners of the law. Therefore, in case the respondent wanted to rely upon any material which subsequently came to its notice, then fairness demanded that petitioner ought to have been put to notice before acting upon the same especially when it not only forms the foundation but even the basis of the transfer of cases. The giving of notice containing reasons for the proposed action is after all a basic postulate for compliance of the principles of natural justice. It is axiomatic that unless a party is informed of the reasons for the proposed action, it would be impossible for the noticee to put-forth its point of view with regard to reasons for the proposed action of show-cause notice. It must be adequate so as to enable a party to effectively object/respond to the same.

36. In view of aforesaid discussion, we have no hesitation in holding that the show cause notices issued to the petitioners were only an empty formality as the basis and foundation of the transfer of the cases is not the one for which the petitioners infact had been asked to show-cause. The impugned order has been passed after taking into consideration the extraneous material which had never been brought to the notice of the petitioners prior to passing of the impugned order. Therefore, the action of the respondents is violative

of principles of natural justice and fair play and therefore not sustainable in the eyes of law.

In view of the aforesaid findings, the other contentions as raised by the respective parties need not to be gone into.

37. However, it only needs to be clarified that there is a difference between lack of jurisdiction and irregular exercise of authority/jurisdiction. Proceedings will be a nullity when the authority assuming it has no power to have seisin over the case. An irregularity in procedure need not result in annulment unless the statute specifically stipulates to the contrary.

38. In **Budhia Swain and others versus Gopinath Deb and others (1999) 4 SCC 396**, the Hon'ble Supreme Court highlighted that distinction exists and was well recognized between lack of jurisdiction and mere error of jurisdiction in the following terms:-

“9. A distinction has to be drawn between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein a nullity. A mere error in exercise of jurisdiction does not vitiate the legality and validity of the proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge subject to the law of limitation. In Hira Lal Patni v. Kali Nath AIR 1962 SC 199 it was held:

“The validity of a decree can be challenged in execution proceedings only on the ground that the court which passed the decree was lacking in inherent jurisdiction in the sense that it could not have seisin of the case because the subject-matter was wholly foreign to its jurisdiction or that the

defendant was dead at the time the suit had been instituted or decree passed or some such other ground which could have the effect of rendering the court entirely lacking in jurisdiction in respect of the subject-matter of the suit or over the parties to it.”

39. In **Grindlays Bank Ltd. versus Income-tax Officer, Calcutta and others AIR 1980 SC 656**, the Hon'ble Supreme Court quashed the assessment order but then issued directions to make fresh assessment in the circumstances of the case. It was held as under:-

“7. The next point is whether the High Court possessed any power to make the order directing a fresh assessment. The principle relief sought in the writ petition was the quashing of the notice under Section 142(1) of the Income-tax Act and inasmuch as the assessment order dated March 31, 1977 was made during the pendency of the proceedings consequent upon a purported non-compliance with that notice, it became necessary to obtain the quashing of the assessment order also. The character of an assessment proceeding, of which the impugned notice and the assessment order formed part, being quasi-judicial the “certiorari” jurisdiction of the High Court under Article 226 was attracted. Ordinarily, where the High Court exercises such jurisdiction it merely quashes the offending order and the consequential legal effect is that but for the offending order the remaining part of the proceeding stands automatically revived before the inferior court or tribunal with the need for fresh consideration and disposal by a fresh order. Ordinarily, the High Court does not substitute its own order for the order quashed by it. It is, of course, a different case where the adjudication by the High Court establishes a complete want of jurisdiction in the inferior court or tribunal to

entertain or to take the proceeding at all. In that event on the quashing of the proceeding by the High Court there is no revival at all. But although in the former kind of case the High Court, after quashing the offender order, does not substitute its own order it has power nonetheless to pass such further orders as the justice of the case requires. When passing such orders the High Court draws on its inherent power to make all such orders as are necessary for doing complete justice between the parties. The interest of justice require that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court, by the mere circumstance that it has initiated a proceeding in the court, must be neutralized. The simple fact of the institution of litigation by itself should not be permitted to confer an advantage on the party responsible for it. The present case goes further....”

40. Similarly, in **Kapoor Chand Shrimal versus Commissioner of Income Tax, Andhra Pradesh, Hyderabad (1981) 4 SCC 317**, it was held that the duty of the appellate authority does not end with making a declaration that the assessments are illegal. It has also to issue further directions which include remanding the matter afresh unless forbidden from doing so by the statute. It was held as under:-

“17....It is, however, difficult to agree with the submission made on behalf of the assessee that the duty of the Tribunal ends with making a declaration that the assessments are illegal and it has no duty to issue any further direction. It is well known that an appellate authority has the jurisdiction as well as the duty to correct all errors in the proceedings under appeal and to issue, if necessary, appropriate directions to the authority against whose decision

the appeal is preferred to dispose of the whole or any part of the matter afresh unless forbidden from doing so by the statute.....”

41. A Division Bench of Bombay High Court in **Commissioner of Income Tax versus Bharat Kumar Modi 2000 (246 ITR) 693**, after taking note of the aforesaid well settled principles of law held that an order is not a nullity or in exercise of void *ab-initio* jurisdiction, when the Assessing Officer does not confront the assessee with the material in his possession. The said error is in irregularity which could be corrected by remitting the matter. Therefore, power of annulment and power to set aside and remit the case, have to be exercised keeping in mind the distinction between lack of jurisdiction and irregularity in exercise of authority/jurisdiction, while the former cannot be rectified, the latter can always be rectified.

42. In the present case, it cannot be disputed that respondent had the jurisdiction to decide the case, but omitted to confront the assessee with the material in his possession and proceeded to pass impugned order which was founded on grounds at variance from the one in the show-cause notices which however, does not affect the *ab-initio*, jurisdiction enjoyed by the respondent in respect of the proceedings.

43. Therefore, bearing in mind the aforesaid exposition of law, the impugned order passed by the respondent though is not sustainable, however, it will be open for the respondent to commence the proceedings afresh which needless to say shall be strictly in accordance with the law. It also needs to be clarified that since we have not made any observation on the relative merits of the case(s),

therefore, in the event of fresh show-cause notice(s) being issued, it shall be open to the petitioner(s) to raise all questions of fact and law including those raised before this Court.

44. In view of the aforesaid discussion, the impugned order(s) dated 14.07.2014 is quashed and set aside and the petitions are disposed of as aforesaid, leaving the parties to bear their own costs. Pending application(s), if any, also stands disposed of. The Registry is directed to place a copy of this judgment on the files of connected matters.

**(Mansoor Ahmad Mir),
Chief Justice.**

**(Tarlok Singh Chauhan),
Judge.**

**December 18th, 2014.
(krt)**