IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2014

| *Date of Reserving the Orders* | *Date of Pronouncing the Orders* |
|---|---|
| **12.11.2014** | **27.11.2014** |

Coram

The Hon'ble Mr. Justice **T.S. SIVAGNANAM**

**W.P. Nos.5792 & 5793 of 2013**

C.Krishnan ... Petitioner

Vs

1.The Income Tax Officer,
Ward-I (4),
Erode,

2.The Assistant Commissioner of
Income Tax,
Circle -I, Erode,

3.The Commissioner of Income Tax-II,
Coimbatore. ... Respondents

**Prayer in W.P.No.5792 of 2013 :-**Petition filed under Article 226 of the Constitution of India praying to issue a writ of Prohibition, prohibiting the first respondent by proceeding to deal with the case of the petitioners as per his the communication in AEKPK0579C/2010-11, dated 27.02.2013, or take up the assessment for the assessment year 2010-11.

**Prayer in W.P.No.5793 of 2013 :-**Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records on the files of the third respondent herein in C.No.242/Centr./CIT-II/2012-13/CBE, dated 21.01.2013, and quash the proceedings of the third respondent while directing the said third respondent to re-transfer the case to the second respondent in line with the orders of the Central Board of Direct Taxes in 1/2011(F.No.187)/12/2010-ITA-I, dated 31.01.2011 as amended by instructions No.6/2011 (F.No.187)/12/2010 ITA-1, dated 08.04.2011.

For petitioner .. Mr.C.Natarajan Sr. Counsel for
Mr.N.Inbarajan

For Respondents .. Mr.T.Pramod Kumar Chopda
Sr. Standing Counsel

**C O M M O N O R D E R**

The petitioner in both the Writ Petitions is one Mr.Krishnan and the prayer sought for in the Writ Petition in W.P.No.5792 of 2012, is for issuance of a Writ of Prohibition, prohibiting the first respondent, Income Tax Officer, Ward I -(4), Erode, by proceeding to deal with the petitioner's case in term of his communication, dated 27.02.2013, or to take up the assessment for the assessment year 2010-11.

2. In W.P.No.5793 of 2013, the petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the

third respondent, Commissioner of Income Tax-II, Coimbatore, dated 21.01.2013 and to direct the third respondent to re-transfer the case of the petitioner to the file of the second respondent by taking note of the instructions given by the Central Board of Direct Taxes, (CBDT), dated 31.01.2011.

3. The petitioner an individual filed his returns on 03.06.2011, disclosing taxable income of Rs.42,87,244/- before the second respondent. It is stated that in terms of the instructions issued under Section 120 of the Income Tax Act (Act), with regard to the territorial area, persons or class of persons, income or classes of income, cases or class of cases, the second respondent is the proper Officer to scrutinize the returns filed by the petitioner. It is stated that the Central Board of Direct Taxes(CBDT) issued instructions dated 31.01.2011, under Section 119 of the Act and directed that income of non-corporate persons with declared income of above Rs.15,00,000/- shall be taken up and assessed only by an Officer of the rank of Assistant Commissioner or Deputy Commissioner. Income declared below Rs.15,00,000/- in mofussil area may be dealt by the Income Tax Officer like the first respondent. This instruction was modified by instruction dated 08.04.2011, which provide an upward revision of

another Rs.5,00,000/- for equitable distribution. The pecuniary limits have been revised from time to time and it is submitted that the instructions are to be strictly followed.

4. It is submitted that the Section 127 of the Act empowers the Director General or Chief Commissioner to transfer any case from one or more Assessing Officer and on such transfer has to comply with rules of natural justice for transfer outside the same city or locality. The return filed by the petitioner with income above Rs.30,00,000/- has to be dealt with by the Assistant Commissioner or by Deputy Commissioner in the light of the directions issued under Section 119 read with Section 120 of the Act and therefore, the petitioner had filed his returns before the second respondent, who has pecuniary jurisdiction over the case. It is submitted that by letter dated 27.02.2013, the third respondent issued instructions for transfer of the petitioner's case to the file of the first respondent and no such order of transfer was served on the petitioner. For the assessment year 2009-10, the petitioner filed a return declaring a loss of Rs.2,00,00,000/- before the second respondent. The files were transferred by the third respondent to the first respondent, who completed the assessment determining a positive income and the petitioner has filed a petition

under Section 154 of the Act for rectification and the assessment is subject matter of appeal under the Act.

5. It is submitted that the power to transfer under Section 127 of the Act has to be subject to the allocation of jurisdiction under Section 119(1) read with Section 120 by the Board and it is only by virtue of the directions of the Board, jurisdiction is vested under Section 124(1) of the Act, to be exercised within an authority. While so, a notice was served on the petitioner dated 07.02.2013, referring to an earlier notice, dated 31.07.2012, issued by the second respondent, directing the petitioner to appear on 12.02.2013. The petitioner appeared and filed objections questioning the jurisdiction of the first respondent. Simultaneously, a representation was made to the second respondent to take up the assessment, which according to the petitioner was under process with the copy of the communication marked to the first respondent. However, the first respondent served a further notice, dated 13.12.2013, stating that the case was posted on 18.02.2013, and hardly two days time was granted, since the communication was received only on 16.02.2013. The petitioner submitted an application before the first respondent to resolve the jurisdiction issue and an application was submitted to the third respondent stating that the

summons issued by the first respondent is without jurisdiction and the case has to be dealt with by the second respondent and requested for transfer of the files to the second respondent. The third respondent on 04.03.2013, communicated the copy of the proceedings dated 21.01.2013, which is impugned in this Writ Petition. This was followed by a notice dated 27.02.2013, issued by the first respondent stating that if the petitioner does not submit himself to the jurisdiction of the first respondent in the case will be decided apart from invoking penal provisions. These proceedings namely 31.01.2013 and 27.02.13 are also impugned in these Writ Petitions.

6. Mr.C.Natarajan, learned Senior counsel appearing for the petitioner submitted that the petitioner filed returns before the second respondent and the returns were being processed at that stage by virtue of the impugned proceedings, the first respondent has been directed to take up the matter and aggrieved by the action, the petitioner has approached this Court. It is submitted that three factors are to be taken into consideration for deciding the jurisdiction of the officers and by reading of Sections 119 and 120 of the Act, the jurisdiction shall vest only with the second respondent and infact after the returns were filed before the second respondent, the second

respondent called for the books of accounts and commenced the assessment proceedings and it is at that stage, the third respondent transferred the file to the first respondent. It is submitted that the order dated 21.01.2013, impugned in W.P.No.5793 of 2013, is an order under Section 127 of the Act, which empowers transfer of cases to co-ordinate officers. By referring to the various provisions of the Act, namely, the definition of Assessing Officer as defined under Section 2(7a) and Section 116 of the Act, which deals with Income Tax Authorities have its special reference to clauses (c) (d) & (e), which deals with the Assistant Commissioners, Income Tax Officers and the Inspectors of Income Tax, which are among the class of the Income Tax Authorities for the purpose of the Act.

7. Further reference was made to Section 117 of the Act, which deals with the appointment of the Income Tax Officers and Section 119 of the Act regarding the power of the Board to issue instructions to subordinate authorities. Therefore, it is submitted that the instruction given by the Board, dated 31.01.2011 and the subsequent instruction dated 08.04.2011 is in exercise of the statutory power under Section 119 of the Act and the authorities shall observe the instruction scrupulously. It is further submitted that in terms of the explanation

contained under Section 120(1) of the Act, the superior Officer's work cannot be assigned to a lower authority. Further, in terms of Section 120(3), the petitioner would fall within the jurisdiction of both the respondents 1 and 2 with regard to the territorial area and with regard to income or classes of income as mentioned in clause (3), the petitioner's case would fall within the jurisdiction of second respondent in the light of the circular issued by the Board, dated 31.01.2011, conferring jurisdiction based on the pecuniary limit.

8. Further, it is submitted that while exercising power under Section 127 of the Act, the assessee should be put on notice and the reasons have to be recorded and the respondent cannot raise the issue whether the circular issued under Section 119 of the Act has to be given weightage or not, since the instruction issued to subordinate authorities and all other persons employed in the execution of the Act, shall observe and follow such orders and instructions. It was argued that the first respondent does not have territorial jurisdiction because of allocation of work/ward as per the annexure in the official website of the department and this has been pointed out in paragraph 13 of the rejoinder affidavit filed by the petitioner to the counter affidavit of the respondent. It is submitted that the first respondent is Income Tax

Officer Ward No.1(4) whereas the location of the properties, residence and source of income of the petitioner are situated in Income Tax Officer Ward No.1(3), Erode outside the jurisdiction of the first respondent. Therefore, it is stated that the transfer of the case to the first respondent is contrary to law. In the light of the above submissions, prayer has been made to set aside the impugned orders and restore the petitioner's files to the second respondent for assessment.

9. Mr.T.Pramod Kumar Chopda, learned Standing counsel appearing for the Department submitted that two issues arise in the instant Writ Petition, namely, whether the order of transfer of the file from the second respondent to the third respondent, by order dated 21.01.2013, is valid and proper and whether within the jurisdiction of the third respondent. Second issue would be whether the circular issued by the Board fixing pecuniary jurisdiction is so sacrosanct that it will override the statute. It is submitted that both the respondents 1 and 2 are Assessing Officers and there is no dispute to the said position and merely because the pecuniary jurisdiction has been stated in the circular, cannot be stated to be a ground to deny the jurisdiction of the first respondent. By referring to the explanation under Section

120(1) of the Act, it is submitted that this power is to be exercised by higher authority as directed by the Board in respect of the powers and functions performed by the Income Tax Authority lower in rank. In case of reverse circumstances, sub-section (5) of Section 120 of the Act clarifies the position and such power is for proper management. It is submitted that there is no dispute that the first respondent is lower in rank than the second respondent and he has been directed to consider the petitioner's file by exercise of power under Section 120(5) read with Section 127 of the Act. As regards the factual justification, reference has been made to the averments in paragraph 12 of the counter affidavit. Further, it is submitted that board's circular is only for administrative convenience and for guidance and no malafides have been alleged and the assessee does not have a prerogative to choose who should be the Assessing Officer and the file is to be assessed by the first respondent, who is also within the same circle.

10. In reply, the learned Senior counsel laid emphasis on the language employed in Section 119 and the power conferred on the Board under Section 120(5) of the Act and reiterated his contentions. Further, it is submitted that the petitioner has filed a rejoinder affidavit to the counter affidavit questioning the submission that the

respondents 1 and 2 have concurrent jurisdiction and power. By referring to the annexure appended to the rejoinder affidavit, it is submitted that the jurisdictional Assessing Officer for the petitioner's accounts, namely, income from house property, business and other source are all in Erode Ward No.1(3), whereas the first respondent is the Income Tax Officer Ward No.1(4) and by referring to the information available in the official website of the department, it is submitted that the first respondent has no territorial jurisdiction over the petitioner/assessee.

11. By way of reply to this submission, the learned Standing counsel submitted that the jurisdiction of the Deputy Commissioner of Income Tax, Circle-I, Erode, the territorial areas assigned are ITO Ward No.1(1) to (4) and the range code is 65. The first respondent is the ITO Ward No.1(4) and the range code for his jurisdiction is 65. Therefore, the assessment is within the same Ward and there is no prejudice caused to the petitioner.

12. Heard the learned counsels appearing on either side and perused the materials placed on record.

Two questions fall for consideration:-

(i) whether by virtue of the circular issued by the Board, dated 31.01.2011, fixing monetary limit for the officers to deal with the cases would oust the jurisdiction of the third respondent from exercising his power to transfer the assessment file of the petitioner from the second respondent to the first respondent in exercise of his power under Section 127 of the Act.

(ii) whether the first respondent has jurisdiction to deal with the petitioner's assessment files and whether he has concurrent jurisdiction with that of the second respondent.

13. The circular dated 31.01.2011, has been issued by the Board in exercise of its power under Section 119 of the Act, which gives instruction regarding income limits for assigning cases to the Deputy Commissioners/Assistant Commissioners/ITOs. It was pointed out by the Board that references have been received from large number of the tax payers especially from mofussil areas that the existing monetary limits for assigning cases to ITOs and DCs/ACs is causing hardship to the taxpayers, as it results in transfer of their cases to DC/AC who is located in different station, which increases their cost of

compliance. The Board therefore considered the matter and opined that the existing limit needs to be revised to remove the hardship referred to therein. Further, the Board opined that increase in their monetary limit is also considered desirable in view of the increase in the scale of trade and industry since 2001, when the earlier income limits were introduced. Therefore, for non-corporate returns in mofussil area, the ITOs were assigned cases upto Rs.15,00,000/- and the Assistant Commissioners and Deputy Commissioners above Rs.15,00,000/-. Subsequently, by another instruction dated 08.04.2011, the earlier instruction was reconsidered and it was decided that if the application of the limits mentioned in the instruction dated 31.01.2011, leads to substantially uneven distribution of workload between DCs/ACs and ITOs, the CCIT/DGIT may adjust the limits by an amount upto Rs.5,00,000/- to ensure that the workload is equitably distributed amongst the Assessing Officers after recording reasons in this regard.

14. The Hon'ble Supreme Court in the case of ***Kerala Financial Corporation vs. CIT,*** reported in ***[1994] 210 ITR 129 (SC),*** and in ***UCO Bank vs. CIT*** reported in ***[1999] 237 ITR 889 (SC),*** pointed out that the Board cannot issue circulars overriding, modifying or in

effect amending the provisions of the Act. The circular issued by the Central Board though binding on the Assessing Officer in matters relating to general interpretation, the circular cannot deal with specific cases or override the judicial decisions.

15. On a reading of the Section 119 of the Act, it is seen that the said provision empowers the Board to issue orders, instructions and directions to other Income Tax Authorities for the proper administration of the Act and such authorities shall observe and follow such orders, instructions and directions of the Board. Proviso under Section 119(1) states that no such orders, instructions or directions shall be issued to direct the Income Tax Officer to make a particular assessment or to dispose of a particular case in a particular manner or to interfere with the discretion of the Commissioner (Appeals) in exercise of his appellate functions. Therefore, there is a distinction between an order issued by the Board, an instruction given by the Board and a direction issued by the Board to the Income Tax Authorities and none of this can interfere with the right of the Income Tax Authority, while making an assessment proceedings or by the Commissioner (Appeals) while exercising appellate functions.

16. Admittedly, the proceedings dated 31.01.2011/08.04.2011

are instructions and are not orders or circulars. An instruction issued, cannot obliterate or deny the powers of the Director General or the Chief Commissioner or the Commissioner to exercise power of transfer under Section 127 of the Act. The object of Section 127 of the Act is to empower the officers at the level of Director General or Chief Commissioner or Commissioner with the power to transfer the Assessee's files from one or more Assessing Officers to any other Assessing Officers or Assessing Officers both being subordinate to him. This power of transfer is given by the statute for the administrative convenience and the power is one which is exercisable quite apart from and independent of the requirements under Section 124 of the Act, which deals with jurisdiction of the Assessing Officers [see ***Ramasamy Asari vs. ITO, [1964]51 ITR 57 Madras***]. The Commissioner has jurisdiction to transfer cases only within his jurisdiction whereas the power of the board is wider and it can transfer the cases from one jurisdiction of one Commissioner to another. The exercise of the power by the Commissioner does not exhaust the power of the transfer by the Board and the Board has independent power under Section 127 of the Act to transfer cases. Therefore, as long as the conditions which are required to be fulfilled for exercising jurisdiction under Section 127 of the Act are available and made out an

instruction given by the Board under Section 119 of the Act, cannot mitigate against the power of the Commissioner to exercise power under Section 127 of the Act to transfer the case from one Income Tax Officer to another.

17. The learned Senior counsel appearing for the petitioner placed reliance on the decisions of the Hon'ble Supreme Court in the case of ***State of Kerala vs. Kurian Abraham*** reported in ***(2008) 3 SCC 582***, ***State of Tamil Nadu vs. India Cements Limited*** reported in ***(2011) 13 SCC 247; Catholic Syrian Bank Limited vs. Commissioner of Income Tax*** reported in ***(2012) 343 ITR 270***; and the decision of the Hon'ble Division Bench of this Court in the case of ***CIT vs. G.Chandra*** reported in ***[2010] 326 ITR 336***. ***UCO Bank vs. CIT.***

18. In the case of ***Kurian Abraham*** (referred supra), the Hon'ble Supreme Court considered the question as to whether in exercise of the power under Section 3(1-A) of the Kerala General Sales Tax Act confers power on the Board to issue orders or notifications, which may partake the character of legislative exercise. While considering the said question, the Hon'ble Supreme Court observed

that the provision of the Section 31(3)(1A) of the Kerala Act is similar to the provision of Section 119(1) of the Income Tax Act, inasmuch as both the Sections have used the expression for the proper administration of the Act. After taking note of the decision in the case of ***Union of India vs. Azadi Bachao Andolan*** reported in ***(2004) 10 SCC 1***, held that these circular is binding on the officers administrating in the law working under the Board of Revenue and it is not open for them to say that the circular is not binding on them. Firstly, it has to be pointed out that the decision refers to a circular under the Kerala Sales Tax Act and the decision has been rendered by drawing an analogy with Section 119 of the Income Tax Act owing to its similarity. However, the decision does not refer to Section 127 of the Act, which provision was invoked while passing the impugned order of transfer of the file. Further, as pointed out that the proceedings dated 31.01.2011, appears to be an instruction and not in the nature of the circular or order. Hence, the decision is distinguishable on facts.

19. As regards the decision in the case of ***State of Tamil Nadu vs. India Cements Limited*** (supra), the question which arose for consideration with regard to the grant of interest free sales tax loan etc., to promote industrialisation in the State in 105 Taluks of the

State, which were industrially backward Taluks and the Hon'ble Supreme Court took into consideration the effect of the circular which contemplates liability to pay tax with reference to Base Production Volume or Base Sales Volume whichever is reached earlier and the liability for deferral is only with reference to volume of Sales and not with reference to taxes paid on sales for the base year. While considering the effect of such circular, it was pointed out that the circular is binding in law on the Adjudicating Authority, as the circular is not in conflict with any of the statutory provision. In my view, the decision was rendered on wholly a different set of facts and cannot be applied to the facts of the present case, in which the file stood transferred to the first respondent in exercise under statutory power conferred on the third respondent under Section 127 of the Act, which confers power on the Commissioner.

20. In the case of ***Catholic Syrian Bank Limited vs. Commissioner of Income Tax*** (supra), while dealing with the effect of circulars, the Hon'ble Supreme Court pointed out that under Section 119 of the Act, circulars can be issued by the Board to explain or tone down the rigours of law and to ensure fair enforcement of its provision and the circulars have force of law and are binding on the Income Tax

Authorities, though they cannot be enforced adversely against the assessee and normally, the circulars cannot be ignored. It was further pointed out that circular may not override or detract from the provisions of the Act, but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. Further, so long as the circular is in force, it aids the uniform and proper administration and application of the provisions of the Act. As pointed out by the Hon'ble Supreme Court, a circular may not override or detract from the provisions of the Act, but it can seek to mitigate the rigour of a particular provision for the benefit of the assessee in certain specified circumstances. If the interpretation putforth by the petitioner is to be acceded, then the resultant position would be power of the Commissioner under Section 127 of the Act by virtue of the instruction issued under Section 119 of the Act, would virtually stand negatived. This is not the intention of the legislation nor the scope of the instruction issued and infact, the view taken by this Court is in consonance with the observations made by the Hon'ble Supreme Court in the case of ***Catholic Syrian Bank Limited vs. Commissioner of Income Tax*** (supra).

21. The Hon'ble Division Bench of this Court in the case of ***CIT***

***vs. G.Chandra*** (supra) was considering the effect of circular dated 27.03.2000, issued by the CBDT, prescribing monetary limit for filing appeals before the High Court. On facts, the Revenue was unable to point out to the Court that the case of the assessee falls within the exception provided in the circular. In any event, in the said decision, the power exercisable by the Commissioner under Section 127 of the Act, vis-a-vis, the instruction issued by the Board under Section 119 of the Act. did not arise for consideration and therefore, the decision does not render support to the facts of the present case.

22. In decision in the case of ***Kiran Singh vs. Chaman, Paswan & Ors.,*** reported in ***AIR 1954 SC 340***, has been relied on for the proposition that a decree passed by the Court without jurisdiction is a nullity and its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. In my view, the decision relied on is wholly in applicable to the facts of the present case, as it arose out

of a proceedings under the Suit Valuation Act and the question was with regard to the construction of the Section 11 of the Act. In the light of the above discussion, the first question is answered against the assessee.

23. Further, the case of the petitioner is that the income of the petitioner has been assessed under three heads namely, income from house property, business income and other sources. It was pointed out that the properties are owned by the petitioner are situated in Erode and the jurisdictional Assessing Officer is Erode Ward No.1(3). This is stated based on the particulars of income of the petitioner, which appears to be from the return of income filed. The tax information network of the Income Tax Department, has published a tabulated statement mentioning the Ward/Circle/Range/Commissioner, description, area code, AO type, Range Code and AO number. The petitioner's contention is that the first respondent is the Income Tax Officer of Ward No.1(4) and the properties of the petitioner are situated within the jurisdiction of the Assessing Officer, Erode, Ward No.1(3). However, on a perusal of the information published in the Tax information tabulated the circle is Deputy Commissioner of Income Tax Circle No.1, Erode and the territorial areas have been assigned to

Income Tax Officers Ward No.1(1) to (4). The Range code for the said circle is 65 and the A.O. Number is 1. Therefore, it is seen that four wards, which are within the territorial area namely, Ward No.1(1) to 1(4) fall within the same circle namely, DCIT Circle No.1, Erode. Therefore, it is incorrect on the part of the petitioner to state that the first respondent has no territorial jurisdiction. Furthermore, the range code which has been allotted to all the four wards in DCIT circle No.1 is 65. Hence, this contention raised by the petitioner does not merit acceptance.

24. In the case of ***UCO Bank vs. CIT***, (supra), the Hon'ble Supreme Court pointed out that CBDT under Section 119 of the Act has power, inter alia, to tone down the rigour of the law and ensure a fair enforcement of its provisions, by issuing circulars in exercise of its statutory powers under Section 119 of the Act, which are binding on the authorities in the administration of the Act. Further, it was pointed out that under Section 119(2)(a), the circulars as contemplated therein cannot be adverse to the assessee. The power is given for the purpose of just, proper and efficient management of the work of assessment and in public interest. It is a beneficial power given to the Board for proper administration of fiscal law so that undue hardship

may not be caused to the assessee and the fiscal laws may be correctly applied. Further, it was pointed out that such circulars are not meant for contradicting or nullifying any provision of the statute and they are meant for ensuring proper administration of the statute.

25. Having seen the effect of a circular or a direction or an order issued under Section 119 of the Act, it necessarily follows that such circular cannot mitigate against the power under Section 127 of the Act. In the counter affidavit, it has been stated that the transfer is done as provided under Section 127 of the Act with sole intention of maintaining equitable distribution of workload among available Assessing Officer and at the same time causing minimal hardship to the petitioner. It is pointed out that for the financial year 2012-13, workload among various Assessing Officer were undue and as per the CAP-II reports for the month of February, 2013, the workload for the second respondent was 168 time baring cases of which, 112 were disposed of and the balance upto February 2013 was 56, whereas for the first respondent, the total time baring cases pending on the beginning of the year was 28, of which 11 were disposed of and 17 were pending. Further, it is submitted that the Assistant Commissioner of Income Tax, Circle-II is vacant and only one Officer is

holding both the authorities of the Assistant Commissioner of Circle I and Circle II, Erode. Therefore on the basis of request received from the range head namely, Joint Commissioner Income Tax Circle-II, three cases including the petitioner's case, were transferred for effective and timely completion of scrutiny assessment proceedings, to make equitable distribution of workload. Further, it is submitted that the first respondent has completed earlier assessment proceedings of the petitioner for the assessment year 2009-10, in which certain directions has been given by the Commissioner of Income Tax Officer (Appeals)-I regarding recomputing derivative laws. Therefore, it is clear that there is no inconvenience caused to the assessee.

26. Further, it is to be seen as to whether the instruction issued with regard to the pecuniary jurisdiction issued by the Board from time to time is as sacrosanct and cannot be amended.

27. It is seen that after the issuance of the instruction dated 31.01.2011, a subsequent instruction was given on 08.04.2011. The said instruction modifies the earlier instruction dated 31.01.2011 and vests a discretion to the Chief Commissioner of Income Tax and the Director General of Income Tax to adjust the monetary limits by an

amount upto Rs.5,00,000/-, and the purpose for giving such discretion is to ensure that the workload is equitably distributed amongs the Assessing Officer. Therefore, the monetary limit fixed in the instruction dated 31.01.2011, was not a rigid limit. This is manifest from the subsequent instruction dated 08.04.2011, which has given discretion to the Chief Commissioner and Director General to adjust the limits. The underlining object of the instructions is equitable distribution of work. It is seen that the amended instruction dated 08.04.2011 itself, came to be issued, as Chief Commissioners have expressed the view that the limits fixed in the instruction dated 31.01.2011, if strictly enforced would lead to unequal distribution of workload between Assistant Commissioner and Income Tax Officers. Therefore, the Board re-considered the matter. The impugned order of transfer of the file of the petitioner to the first respondent states that the impugned proceedings has been passed for administrative convenience and apart from the petitioner's case, two other cases have also been transferred. The purpose for such transfer has been elucidated in the counter affidavit. Furthermore, there is no malafide alleged as against the first respondent, though a faint plea was raised at the time of arguments, but nevertheless not pursued, since there was no such averments in the affidavit nor the concerned officer was

impleaded in his personal capacity.

In the result, these Writ Petitions fail and the same are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**27.11.2014**

pbn
Index :Yes/No
Internet:Yes/No

To

1.The Income Tax Officer,
Ward-I (4),
Erode,

2.The Assistant Commissioner of
Income Tax,
Circle -I, Erode,

3.The Commissioner of Income Tax-II,
Coimbatore.

**T.S. SIVAGNANAM, J.**
pbn

Pre-delivery O r d e r in
**W.P. Nos.5792 & 5793 of 2013**

27.11.2014