# Pannalal Binjraj vs Union Of India (Uoi) on 21 December, 1956

## Equivalent citations: AIR1957SC397, [1957]1SCR233

## Bench: B.P. Sinha, S.K. Das

JUDGMENT

Bhagwati, J.

1. These petitions under Art. 32 of the Constitution raise a common question of law whether s. 5(7A) of the Indian Income-tax Act, hereinafter called the Act, is ultra vires the Constitution as infringing the fundamental rights enshrined in Art. 14 and Art. 19(1)(g).

2. The facts which led to the filing of the petitions may be shortly stated.

3. Petitions Nos. 97 & 97-A of 1956 :

> The petitioners are M/s. Pannalal Binjraj, Oilmill owners, merchants and commission agents, carrying on business at Sahibganj in the district of Santhal Parganas, having their branch at 94, Lower Chitpur Road, Calcutta, petitioner No. 1, and R. B. Jamuna Das Chowdhury, resident of the same place and erstwhile karta of the Hindu undivided family, which carried on business in the name and style of M/s. Pannalal Binjraj, petitioner No. 2. Before September 28, 1954, they were being assessed by the Income-tax Officer, Special Circle, Patna. On September 28, 1954, the Central Board of Revenue made an order transferring their cases to the Income-tax Officer, Central Circle XI, Calcutta. On January 22, 1955, the Central Board of Revenue transferred the cases of petitioner No. 2 to the Income-tax Officer, Central Circle VI, Delhi, and on July 12, 1955, it similarly transferred the cases of petitioner No. 1 to the same officer. After the dates of such transfer to the Income-tax Officer, Central Circle VI, Delhi, the said officer instituted several proceedings against them and the petitioners challenged in these petitions the validity of the said orders of transfer and all the subsequent proceedings including the assessment orders as well as the order levying penalty for non-payment of the income-tax which had been already assessed prior thereto, on the ground that s. 5(7A) of the Act was ultra vires the Constitution and all the proceedings which were entertained against the petitioners by the Income-tax Officer, Central Circle XI, Calcutta, and by the Income-tax Officer, Central Circle VI, Delhi, were without jurisdiction and void.

4. Petitions Nos. 44 and 85 of 1956 :

> The petitioner in Petition No. 44/56 is Shri A. L. Sud, the sole proprietor of M/s. Amritlal Sud (Construction), who originally belonged to Hoshiarpur district in the State of Punjab but has since 1948 been residing and carrying on business in Calcutta. Prior to June 29, 1955, he had been assessed to income-tax by the Income-tax Officer, Special Survey Circle VII, Calcuttta. On June 29, 1955, the Central Board of Revenue transferred his case to the Income-tax Officer, Special Circle, Ambala, and the said officer continued the proceedings in the transferred case and also instituted further proceedings against the petitioner and assessed him under s. 23(4) of the Act for the assessment years 1946-47 and 1947-48. Demands were made upon the petitioner for payment of the amount of income-tax thus assessed whereupon he filed this petition impeaching the validity of the order of the Central Board of Revenue dated June 29, 1955, and the proceedings entertained by the Income-tax Officer, Special Circle, Ambala, on the ground that s. 5(7A) of the Act was ultra vires the Constitution.

5. Petition No. 85/56 was filed by M/s. Bhagwan Das Sud & Sons, Merchants, Hoshiarpur, carrying on business in rosin and turpentine there. Before October 20, 1953, they were being assessed by the Income-tax Officer, Hoshiarpur, but on that date their case was transferred under s. 5(7A) of the Act by the Commissioner of Income-tax to the Income-tax Officer, Special Circle, Ambala. The said officer continued the said case and reopened the assessment for the years 1944-45 to 1950-51 and completed the assessment for the assessment years 1947-48, 1950-51 and 1951-52. These petitioners also thereupon filed the petition challenging the validity of the order of transfer made by the Commissioner of Income-tax on October 20, 1953, and the proceedings entertained by the Income-tax Officer, Special Circle, Ambala, thereafter, on the same ground of the ultra vires character of s. 5(7A) of the Act.

6. Shri A. L. Sud, the petitioner in Petition No. 44/56 is a member of the Hindu undivided family carrying on business in the name and style of M/s. Bhagwan Das Sud & Sons and the cases of both these petitioners were transferred to the Income-tax Officer, Special Circle, Ambala, as above, by the said respective orders.

7. Petitions Nos. 86, 87, 88, 111, 112 and 158 of 1956 :

> These petitions may be compendiously described as the Amritsar group. The petitioner in Petition No. 86/56 is Sardar Gurdial Singh, son of S. Narain Singh. The petitioner in Petition No. 87/56 is Dr. Sarmukh Singh, son of S. Narain Singh. The petitioner in Petition No. 112/56 is S. Ram Singh, son of S. Narain Singh. These three are brothers and the petitioner in Petition No. 88/56 is the father, S. Narain Singh, son of S. Basdev Singh. The father and the three sons were the directors in the Hindustan Embroidery Mills (Private) Ltd., petitioner No. 1 in Petition No. 111/56, which is located at Chheharta near Amritsar. All these petitioners were, prior to the orders of transfer made by the Commissioner of Income-tax under s. 5(7A) of the Act, being assessed by the Income-tax Officer, 'A' Ward, Amritsar, but their cases were transferred on or about June 29, 1953, from the Income-tax Officer, 'A' Ward,

Amritsar, to the Income-tax Officer, Special Circle, Amritsar. These cases were continued by the latter officer and notices under s. 34 of the Act were also issued by him against them for the assessment years 1947-48 to 1951-52. Each one of them filed a separate petition challenging the said orders of transfer by the Commissioner of Income-tax and the proceedings entertained by the Income-tax Officer, Special Circle, Amritsar, against them on the score of the unconstitutionality of s. 5(7A) of the Act.

8. The petitioner in Petition No. 158/56 is one Shri Ram Saran Das Kapur, the head and Karta of the Hindu undivided family carrying on business outside Ghee Mandi Gate, Amritsar. His case also which, prior to the order complained against, was being entertained by the Income-tax Officer, 'F' Ward, Amritsar, was transferred on some date in 1954 by an order of the Commissioner of Income-tax under s. 5(7A) of the Act to the Income-tax Officer, Special Circle, Amritsar. No objection was taken by the petitioner to this order of transfer until after the assessment order was passed against him but he also challenged the validity of the said order of transfer and the proceedings entertained by the Income-tax Officer, Special Circle, Amritsar, thereafter, on the same grounds as the other petitioners.

9. Petitions Nos. 211 to 215 of 1956 :

These petitions may be described as the Sriram Jhabarmull group. Though separately filed, the petitioner in each of them is the same individual, Nandram Agarwalla, who is the sole proprietor of a business which he carries on under the name and style of 'Sriram Jhabarmull'. It is a business inter alia, of import and export of piece-goods, as commission agents, and dealers in raw wool and other materials. The principal place of business is at Kalimpong, in the district of Darjeeling, though there is also a branch at Calcutta. These petitions concern the assessment of the petitioner to income-tax for the respective years 1944-45, 1945-46, 1946-47, 1947-48 and 1948-49. Prior to the orders of the Commissioner of Income-tax under s. 5(7A) of the Act complained against, the petitioner was being assessed by the Income-tax Officer, Jalpaiguri, Darjeeling. On March 5, 1946, the cases of the petitioner were transferred from the Income-tax Officer, Jalpaiguri, Darjeeling, to the Income-tax Officer, Central Circle I, Calcutta, and a couple of months thereafter they were again transferred to the Income-tax Officer, Central Circle IV, Calcutta, On June 8, 1946, there was a further transfer assigning the cases to the Income-tax Officer, Central Circle I, Calcutta, and on July 27, 1946, orders were passed by the Commissioner of Income-tax Central, Calcutta, under s. 5(7A) transferring the cases of the petitioner to the Income-tax Officer, Central Circle IV, Calcutta. These are the orders which are complained against as unconstitutional and void invalidating the proceedings which were continued and subsequently instituted by the Income-tax Officer, Central Circle IV, Calcutta, against the petitioner on the score of the unconstitutionality of s. 5(7A) of the Act. It may be noted, however, that these order were all prior to the Constitution and having been made on July 27, 1946, as aforesaid were followed up by completed assessment proceedings in respect of the said respective years and also certificate

proceedings under s. 46(2) of the Act. There were further orders dated December 15, 1947, and sometime in September, 1948, transferring the cases of the petitioner from the Income-tax Officer, Central Circle IV, Calcutta, to the Income-tax Officer, Central Circle I, Calcutta and back from him to the Income-tax Officer, Central Circle IV, Calcutta. These, however, are not material for our purposes, the only order challenged being the order of the Commissioner of Income-tax Central, Calcutta, dated July 27, 1946, which was passed under s. 5(7A) of the Act.

10. Petitions Nos. 225 to 229 of 1956 :

These petitions may be classed as the Raichur group. They concern the assessment for the respective assessment years 1950-51, 1951-52, 1952-53, 1953-53 and 1954-55. The petitioner in each of them is the same individual, one Kalloor Siddanna, who resides and carries on business in Raichur in the State of Hyderabad as commission agent and distributor of agricultural products. Income-tax was first imposed in the Hyderabad State in 1946 by a special Act of the Legislature and the petitioner was assessed under the Hyderabad Income-tax Act by the Additional Income-tax Officer, Raichur, for the assessment years 1948-49 and 1949-50. As from April 1, 1950, the Indian Income-tax Act was applied to Hyderabad but the Additional Income-tax Officer, Raichur, continued to assess the petitioner. The cases in respect of the assessment years 1950-51, 1951-52 and 1952-53 were pending before that officer and proceedings were taken in connection with the assessment for those years. On December 21, 1953, however, the Commissioner of Income-tax Hyderabad, issued a notification under s. 5(7A) ordering that the case of the petitioner should be transferred from the Additional Income-tax Officer, Raichur, to the Income-tax Officer, Special Circle, Hyderabad. The latter officer continued the assessment proceedings and issued notices under s. 22(4) of the Act on July 1, 1954, November 2, 1954, November 30, 1954, December 19, 1954, and March 11, 1955, in respect of the said years of assessment. Assessments for the said years were made on March 21, 1955, and on April 24, 1955, the petitioner made an application under s. 27 of the Act to reopen the assessment for the year 1950-51 as on default under s. 23(4) of the Act. It appears, however, that shortly before May 19, 1955, the Commissioner of Income-tax, Hyderabad, made another order under s. 5(7A) and s. 64(5)(b) of the Act transferring all the cases of the petitioner to the main Income-tax Officer, Raichur. Curiously enough, the petitioner challenged both the orders one dated December 21, 1953, and the other made sometime in May 1955, under s. 5(7A) of the Act and the proceedings continued and instituted by the respective officers thereunder as unconstitutional and void on the ground that s. 5(7A) was ultra vires the Constitution even though ultimately he was being assessed by the main Income-tax Officer, Raichur, under the latter order.

11. This is the common question in regard to the ultra vires character of s. 5(7A) of the Act which is raised in all these petitions, though in regard to each group there are several questions of fact involving the consideration of the discriminatory character of the specific orders passed therein

which we shall deal with hereafter in their appropriate places.

12. Section 5(7A) of the Act runs as under :

> "5(7A) : The Commissioner of Income-tax may transfer any case from one Income-tax Officer subordinate to him to another, and the Central Board of Revenue may transfer any case from any one Income-tax Officer to another. Such transfer may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Income-tax Officer from whom the case is transferred."

13. This sub-section was inserted by s. 3 of the Indian Income-tax Amendment Act, 1940 (XL of 1940) which was passed as a result of the decision of the Bombay High Court in Dayaldas Kushiram v. Commissioner of Income-tax, (Central) [I.L.R. 1940 Bom. 650.].

14. By the Indian Income-tax Amendment Act, 1956 (XXVI of 1956) an explanation was added to s. 5(7A) in the terms following as a result of the decision of this Court in Bidi Supply Co. v. The Union of India [[1956] S.C.R. 267.] :

> "Explanation :- In this sub-section, 'case' in relation to any person whose name is specified in the order of transfer means all proceedings under this Act in respect of any year which may be pending on the date of the transfer, and includes all proceedings under this Act which may be commenced after the date of the transfer in respect of any year."

15. Section 5(7A) together with the explanation thus falls to be considered by us in these petitions.

16. The argument on behalf of the petitioners is that s. 64, sub-ss. (1) and (2) of the Act confer upon the assessee a valuable right and he is entitled to tell the taxing authorities that he shall not be called upon to attend at different places and thus upset his business Section 5(7A) invests the Commissioner of Income-tax and the Central Board of Revenue with naked and arbitrary power to transfer any case from any one Income-tax Officer to another without any limitation in point of time, a power which is unguided and uncontrolled and is discriminatory in its nature and it is open to the Commissioner of Income-tax or the Central Board of Revenue to pick out the case of one assessee from those of others in a like situation and transfer the same from one State to another or from one end of India to the other without specifying any object and without giving any reason, thus subjecting the particular assessee to discriminatory treatment whereas the other assessees similarly situated with him would continue to be assessed at the places where they reside or carry on business under s. 64(1) and (2) of the Act. Section 64(5) which provides with retrospective effect that the provisions of s. 64(1) and (2) shall not apply, inter alia, where an order has been made under s. 5(7A) was inserted simultaneously with s. 5(7A) and would not have the effect of depriving the assessee of the valuable right conferred upon him under s. 64(1) and (2) unless and until s. 5(7A) was intra vires but s. 5(7A), as stated above, being discriminatory in its nature is ultra vires the Constitution and cannot save s. 64(5) which is merely consequential. The discrimination involved in

s. 5(7A) is substantial in character and, therefore, infringes the fundamental right enshrined in Art. 14 of the Constitution. It also infringes Art. 19(1)(g) in so far as it imposes an unreasonable restriction on the fundamental right to carry on trade or business (Vide Himmatlal Harilal Mehta v. The State of Madhya Pradesh [[1954] S.C.R. 1122.]).

17. The very same question as regards the unconstitutionality of s. 5(7A) of the Act had come up for decision before this Court in Bidi Supply Co. v. The Union of India (supra). The case of the assessee there had been transferred by the Central Board of Revenue under s. 5(7A) of the Act from the Income-tax Officer, District III, Calcutta, to the Income-tax Officer, Special Circle, Ranchi. The order was an omnibus wholesale order of transfer expressed in general terms without any reference to any particular case and without any limitation as to time and was challenged as void on the ground that s. 5(7A) under which it had been passed was unconstitutional. This Court, by a majority judgment, after discussing the general principles underlying Art. 14, did not adjudicate upon that question, observing at p. 276 :

> "We do not consider it necessary, for the purpose of this case, to pause to consider whether the constitutionality of sub-section (7A) of section 5 can be supported on the principle of any reasonable classification laid down by this Court or whether the Act lays down any principle for guiding or regulating the exercise of discretion by the Commissioner or Board of Revenue or whether the sub-section confers an unguided and arbitrary power on those authorities to pick and choose individual assessee and place that assessee at a disadvantage in comparison with other assessees. It is enough for the purpose of this case to say that the omnibus order made in this case is not contemplated or sanctioned by sub-section (7A) and that, therefore, the petitioner is still entitled to the benefit of the provisions of sub-sections (1) and (2) of section 64. All assessees are entitled to the benefit of those provisions except where a particular case or cases of a particular assessee for a particular year or years is or are transferred under sub-section (7A) of section 5, assuming that section to be valid and if a particular case or cases is or are transferred his right under section 64 still remains as regards his other case or cases."

18. The majority judgment then proceeded to consider the effect of such an omnibus order unlimited in point of time on the rights of the assessee and further P2 observed in that context at p. 277 :

> "This order is calculated to inflict considerable inconvenience and harassment on the petitioner. Its books of account will have to be produced before the Income-tax Officer, Special Circle, Ranchi - a place hundreds of miles from Calcutta, which is its place of business. Its partners or principal officers will have to be away from the head office for a considerable period neglecting the main business of the firm. There may be no suitable place where they can put up during that period. There will certainly be extra expenditure to be incurred by it by way of railway fare, freight and hotel expenses. Therefore the reality of the discrimination cannot be gainsaid. In the circumstances this substantial discrimination has been inflicted on the petitioner by an executive flat which is not founded on any law and no question of reasonable

> classification for purposes of legislation can arise. Here "the State" which includes its Income-tax department has by an illegal order denied to the petitioner, as compared with other Bidi merchants who are similarly situate, equality before the law or the equal protection of the laws and the petitioner can legitimately complain of an infraction of his fundamental right under Article 14 of the Constitution."

19. The question as to the constitutionality of s. 5(7A) of the Act was thus left open and the decision turned merely on the construction of the impugned order.

20. Learned counsel for the petitioners, however, lays particular stress on the observations of Bose, J., in the minority judgment which he delivered in that case whereby he held that ss. 5(7A) and 64(5)(b) of the Act were themselves ultra vires Art. 14 of the Constitution and not merely the order of the Central Board of Revenue. The learned Judge referred to a passage from the judgment of Fazl Ali, J., in The State of West Bengal v. Anwar Ali Sarkar [[1952] S.C.R. 284, 309-310.] and also pointed out the decision of this Court in M/s. Dwarka Prasad Laxmi Narain v. The State of Uttar Pradesh and Two Others [[1954] S.C.R. 803.] and observed :

> "What is the position here ? There is no hearing, no reasons are recorded : just peremptory orders transferring the case from one place to another without any warning; and the power given by the Act is to transfer from one end of India to the other; nor is that power unused. We have before us in this Court a case pending in which a transfer has been ordered from Calcutta in West Bengal to Ambala in the Punjab." (p. 283) "If the Legislature itself had done here what the Central Board of Revenue has done and had passed an Act in the bald terms of the order made here transferring the case of this petitioner, picked out from others in a like situation, from one State to another, or from one end of India to the other, without specifying any object and without giving any reason, it would, in my judgment, have been bad. I am unable to see how the position is bettered because the Central Board of Revenue has done this and not Parliament." (p. 284-5) "In my opinion, the power of transfer can only be conferred if it is hedged round with reasonable restrictions, the absence or existence of which can in the last instance be determined by the courts; and the exercise of the power must be in conformity with the rules of natural justice, that is to say, the parties affected must be heard when that is reasonably possible, and the reasons for the order must be reduced, however briefly, to writing so that men may know that the powers conferred on these quasi-judicial bodies are being justly and properly exercised." (p. 287)

21. The answer furnished on behalf of the State to this argument is fourfold :

> (i) that the provision contained in s. 5(7A) of the Act is a measure of administrative convenience enacted with a view to more conveniently and effectively deal with the cases of the assessees where the Commissioner of Income-tax considers it necessary or desirable to transfer any case from one Income-tax Officer subordinate to him to another or the Central Board of Revenue similarly considers it necessary or desirable

to transfer any case from any one Income-tax Officer to another. The real object with which s. 5(7A) was inserted by the Indian Income-tax Amendment Act, 1940 (XL of 1940), has been thus set out in the affidavit of Shri V. Gouri Shankar, Under Secretary, Central Board of Revenue, dated November 19, 1956, which is the pattern of all the affidavits filed on behalf of the State in these petitions :

"4. ..... I say that the provisions of s. 5(7A) were inserted by the Income-tax Amendment Act, XL of 1940, with the object of minimising certain procedural difficulties. Before this amendment was passed there was no specific provision in the Act for transferring a case from one Income-tax Officer to another except by a long and circuitous course even at the request of the assessees. In order therefore to be able to transfer the case from one I.T.O. to another either because of the request of the assessee or for dealing with cases involving special features such as cases of assessees involving widespread activities and large ramifications or inter-related transactions, power to transfer cases was conferred upon the Central Board of Revenue and the Commissioner of Income-tax as the case may be. I say that the provisions of s. 5(7A) are thus administrative in character....."

(ii) that the assessee whose case is thus transferred is not subjected to any discriminatory procedure in the matter of his assessment. The Income-tax Officer to whom his case is transferred deals with it under the same procedure which is laid down in the relevant provisions of the Act. The decision of the Income-tax Officer is subject to appeal before the Appellate Assistant Commissioner and the assessee has the further right to appeal to the Income-tax Appellate Tribunal and to approach the High Court and ultimately the Supreme Court, as provided in the Act. All assessees, whether they are assessed by the Income-tax Officer of the area where they reside or carry on business or their cases are transferred from one Income-tax Officer to another, are subject to the same procedure and are entitled to the same rights and privileges in the matter of redress of their grievances, if any, and there is no discrimination whatever between assessees and assessees;

(iii) that the right, if any, conferred upon the assessee under s. 64(1) and (2) of the Act is not an absolute right but is circumscribed by the exigencies of tax collection and can be negatived as it has been in cases where the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, think it necessary or desirable to transfer his case from one Income-tax Officer to another under s. 5(7A) of the Act having regard to all the circumstances of the case. The argument of inconvenience is thus sought to be met in the same affidavit :

"5. I further say that as a result of any transfer that may be made under the provisions of s. 5(7A) there is no discriminatory treatment with regard to the procedure and that no privileges and rights which are given to the assessees by the Income-tax Act are taken away, nor is the assessee exposed to any increased prejudice, punitary consequences or differential treatment. I say that in cases where transfers under this section are made otherwise than on request from assessees, the convenience of the assessees is taken into consideration by placing the case in the hands of an Income-tax Officer who is nearest to the area where it will be convenient

> for the assessee to attend. If on account of administrative exigencies this is not possible and the assessee requests that the examination of accounts or evidence to be taken should be in a place convenient to him, the I.T.O. complies with the request of the assessee and holds the hearing at the place requested."

Even if there be a difference between assessees who reside or carry on business in a particular area by reason of such transfers the difference is not material. It is only a minor deviation from a general standard and does not amount to a denial of equal rights;

(iv) that the power which is thus vested is a discretionary power and is not necessarily discriminatory in its nature and that abuse of power is not to be easily assumed where discretion is vested in such high officials of the State. Even if abuse of power may sometimes occur, the validity of the provision cannot be contested because of such apprehension. What may be struck down in such cases is not the provision itself but the discriminatory application thereof.

22. The petitioners rejoin by relying upon the following passage from the judgment of Fazl Ali, J., in The State of West Bengal v. Anwar Ali Sarkar, (supra), which was referred to by Bose, J., in his minority judgment in Bidi Supply Co. v. The Union of India, (supra), at page 281 :

> "It was suggested that the reply to this query is that the Act itself being general and applicable to all persons and to all offences, cannot be said to discriminate in favour of or against any particular case or classes of persons or cases, and if any charge of discrimination can be leveled at all, it can be leveled only against the act of the executive authority if the Act is misused. This kind of argument however does not appear to me to solve the difficulty. The result of accepting it would be that even where discrimination is quite evident one cannot challenge the Act simply because it is couched in general terms; and one cannot also challenge the act of the executive authority whose duty it is to administer the Act, because that authority will say :- I am not to blame as I am acting under the Act. It is clear that if the argument were to be accepted, article 14 could be easily defeated. I think the fallacy of the argument lies in overlooking the fact that the 'insidious discrimination complained of is incorporated in the Act itself', it being so drafted that whenever any discrimination is made such discrimination would be ultimately traceable to it."

23. The pivot of the whole argument of the petitioners is the provisions contained in s. 64(1) and (2) of the Act which prescribe the place of assessment. They are :-

> "64. (1) Where an assessee carried on a business, profession or vocation at any place, he shall be assessed by the Income-tax Officer of the area in which that place is situate or, where the business, profession or vocation is carried on in more places than one, by the Income-tax Officer of the area in which the principal place of his business, profession or vocation is situate.

> (2) In all other cases, an assessee shall be assessed by the Income-tax Officer of the area in which he resides."

24. These provisions were construed by the Bombay High Court in Dayaldas Kushiram v. Commissioner Income-tax, (Central), (supra), and Beaumont, C.J., observed at p. 657 :

> "In my opinion section 64 was intended to ensure that as far as practicable an assessee should be assessed locally, and the area to which an Income-tax Officer is appointed must, so far as the exigencies of tax collection allow, bear some reasonable relation to the place where the assessee carries on business or resides."

25. Kania, J., as he then was, went a step further and stated at p. 660 :

> "A plain reading of the section shows that the same is imperative in terms. It also gives to the assessee a valuable right. He is entitled to tell the taxing authorities that he shall not be called upon to attend at different places and thus upset his business."

26. The learned Judges there appear to have treated the provisions of s. 64(1) and (2) more as a question of right than as a matter of convenience only. If there were thus a right conferred upon the assessee by the provisions of s. 64(1) and (2) of the Act and that right continues to be enjoyed by all the assessees except the assessee whose case is transferred under s. 5(7A) of the Act to another Income-tax Officer outside the area where he resides or carries on business, the assessee can urge that, as compared with those other assessees, he is discriminated against and is subjected to inconvenience and harassment. It is, therefore, necessary to consider whether any such right is conferred upon the assessee by s. 64(1) and (2) of the Act.

27. Prima facie it would appear that an assessee is entitled under those provisions to be assessed by the Income-tax Officer of the particular area where he resides or carries on business. Even where a question arises as to the place of assessment such question is under s. 64(3) to be determined by the Commissioner or the Commissioners concerned if the question is between places in more States than one or by the Central Board of Revenue if the latter are not in agreement and the assessee is given an opportunity of representing his views before any such question is determined. The provision also goes to show that the convenience of the assessee is the main consideration in determining the place of assessment. Even so the exigencies of tax collection have got to be considered and the primary object of the Act, viz., the assessment of income-tax, has got to be achieved. The hierarchy of income-tax authorities which is set up under Chapter II of the Act has been so set up with a view to assess the proper income-tax payable by the assessee and whether the one or the other of the authorities will proceed to assess a particular assessee has got to be determined not only having regard to the convenience of the assessee but also the exigencies of tax collection. In order to assess the tax payable by an assessee more conveniently and efficiently it may be necessary to have him assessed by an Income-tax Officer of an area other than the one in which he resides or carries on business. It may be that the nature and volume of his business operations are such as require investigation into his affairs in a place other than the one where he resides or carries on business or that he is so connected with various other individuals or organizations in the

way of his earning his income as to render such extra-territorial investigation necessary before he may be properly assessed. These are but instances of the various situations which may arise wherein it may be thought necessary by the Income-tax authorities to transfer his case from the Income-tax Officer of the area in which he resides or carries on business to another Income-tax Officer whether functioning in the same State or beyond it. This aspect of the question was emphasized by Beaumont, C.J., in Dayaldas Kushiram v. Commissioner of Income-tax, (Central), (supra), at page 146, when he used the expression "as far as practicable" in connection with the assessee's right to be assessed locally and the expression "so far as exigencies of tax collection allow" in connection with the appointment of the Income-tax Officer to assess the tax payable by the particular assessee. In the later case of Dayaldas Kushiram v. Commissioner of Income-tax, (Central) , Beaumont, C.J., expressed himself as follows :

> "The Income-tax Act does not determine the place of assessment. What it does is to determine the Officer who is to have power to assess and in some cases it does so by reference to locality but I apprehend that an appeal would be not against an order of the Commissioner as to the place of assessment, but against the order of assessment of the Income-tax Officer,"

thus stating in effect that this section does not give a right to the assessee to have his assessment at a particular place but determines the Income-tax Officer who is to have power to assess him.

28. This aspect was further emphasized by the Federal Court in Wallace Brothers & Co. v. Commissioner of Income-tax, Bombay, Sind & Baluchistan , where Spens, C.J., observed :

> "Clause (3) of s. 64 provides that any question as to the place of assessment shall be determined by the Commissioner or by the Central Board of Revenue. Proviso 3 to the clause enacts that if the place of assessment is called in question by the assessee, the Income-tax Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination under this sub-section before assessment is made. These provisions clearly indicate that the matter is more one of administrative convenience than of jurisdiction and that in any event it is not one for adjudication by the Court."

29. It may be noted, however, that in the passage at page 276 of the majority judgment in Bidi Supply Co. v. The Union of India (supra), this court regarded the benefit conferred on the assessee by these provisions of s. 64(1) and (2) of the Act as a right and it is too late in the day for us to say that no such right to be assessed by the Income-tax Officer of the particular area where he resides or carries on his business is conferred on the assessee. This right, however, according to the authorities above referred to, is hedged in with the limitation that it has to yield to the exigencies of tax collection.

30. The position, therefore, is that the determination of the question whether a particular Income-tax Officer should assess the case of the assessee depends on (1) the convenience of the assessee as posited in s. 64(1) and (2) of the Act, and (2) the exigencies of tax collection and it would

be open to the Commissioner of Income-tax and the Central Board of Revenue who are the highest amongst the Income-tax Authorities under the Act to transfer the case of a particular assessee from the Income-tax Officer of the area within which he resides or carries on business to any other Income-tax Officer if the exigencies of tax collection warrant the same.

31. It is further to be noted that the infringement of such a right by the order of transfer under s. 5(7A) of the Act is not a material infringement. It is only a deviation of a minor character from the general standard and does not necessarily involve a denial of equal rights for the simple reason that even after such transfer the case is dealt with under the normal procedure which is prescribed in the Act. The production and investigation of the books of account, the enquiries to be made by the Income-tax Officer and the whole of the procedure as to assessment including the further appeals after the assessment is made by the Income-tax Officer are the same in a transferred case as in others which remain with the Income-tax Officer of the area in which the other assessees reside or carry on business. There is thus no differential treatment and no scope for the argument that the particular assessee is discriminated against with reference to others similarly situated. It was observed by this Court in M. K. Gopalan v. The State of Madhya Pradesh :

> "In support of the objection raised under article 14 of the Constitution, reliance is placed on the decision of this Court in Anwar Ali Sarkar's case. That decision, however, applies only to a case where on the allotment of an individual case to a special Court authorised to conduct the trial by a procedure substantially different from the normal procedure, discrimination arises as between persons who have committed similar offences, by one or more out of them being subjected to a procedure, which is materially different from the normal procedure and prejudicing them thereby. In the present case, the Special Magistrate under s. 14 of the Criminal Procedure Code has to try the case entirely under the normal procedure, and no discrimination of the kind contemplated by the decision in Anwar Ali Sarkar's case and the other cases following it arises here. A law vesting discretion in an authority under such circumstances cannot be said to be discriminatory as such, and is therefore not hit by article 14 of the Constitution. There is, therefore, no substance in this contention."

32. To a similar effect were the observations of Mukherjea, J., as he then was, in The State of West Bengal v. Anwar Ali Sarkar, (supra), at p. 325 :

> "I agree with the Attorney-General that if the differences are not material, there may not be any discrimination in the proper sense of the word and minor deviations from the general standard might not amount to denial of equal rights."

33. It is pointed out that as s. 64(5) stands at present, the provisions of s. 64(1) and (2) do not apply and are deemed never at any time to have applied to an assessee where, in consequence of any transfer made under s. 5(7A), a particular Income-tax Officer has been charged with the function of assessing that assessee. Section 64(5) was incorporated by the Income-tax Law Amendment Act, 1940 (XL of 1940) simultaneously with s. 5(7A). It is, therefore, urged that an assessee whose case

has been thus transferred has no right under s. 64(1) and (2) and those assessees alone who do not come within the purview of s. 64(5) can have the benefit of s. 64(1) and (2). This argument, however, ignores the fact that s. 5(7A) is the very basis of the enactment of the relevant provision in s. 64(5) and if s. 5(7A) cannot stand by virtue of its being discriminatory in character, the relevant portion of s. 64(5) also must fall with it.

34. It is then contended that s. 5(7A) is in itself discriminatory and violative of the fundamental right enshrined in Art. 14. The power which is vested in the Commissioner of Income-tax and the Central Board of Revenue is a naked and arbitrary power unguided and uncontrolled by any rules. No rules have been framed and no directions given which would regulate or guide their discretion or on the basis of which such transfers can be made and the whole matter is left to the unrestrained will of the Commissioner of Income-tax or the Central Board of Revenue without there being anything which could ensure a proper execution of the power or operate as a check upon the injustice that might result from the improper execution of the same. To use the words of Mr. Justice Matthews in the case of Yick Wo v. Hopkins [118 U.S. 356, 373; 30 L.Ed. 220, 227.] :

> "..... when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favouritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration."

35. In other words, "it is not a question of an unconstitutional administration of a statute otherwise valid on its face but here the unconstitutionality is writ large on the face of the statute itself" (Per Das, J., as he then was, in The State of West Bengal v. Anwar Ali Sarkar, (supra) at p. 346).

36. It has to be remembered that the purpose of the Act is to levy income-tax, assess and collect the same. The preamble of the Act does not say so in terms it being an Act to consolidate and amend the law relating to income-tax and super-tax but that is the purpose of the Act as disclosed in the preamble of the First Indian Income-tax Act of 1886 (Act II of 1886). It follows, therefore, that all the provisions contained in the Act have been designed with the object of achieving that purpose. There is in the first instance, the charge of income-tax. Then we find set up the various authorities in the hierarchy who are entrusted with the function of assessing the income-tax, the Central Board of Revenue being at the apex. There is also an Appellate Tribunal which is established for hearing appeals against the decisions of the Appellate Assistant Commissioners. Then follow the provisions in regard to taxable income, mode of assessment and cognate provisions. The Income-tax Officers are invested with the duty of assessing the income-tax of the assessees in the first instance. The Assistant Commissioners of Income-tax are the appellate authorities over the decisions of the Income-tax Officers and the Income-tax Appellate Tribunal is the final appellate authority barring of course references under s. 66(1) of the Act to the High Court on questions of law. The Commissioners of Income-tax and the Central Board of Revenue are mainly administrative authorities over the Income-tax Officers and the Assistant Commissioners of Income-tax and they are to distribute and control the work to be done by these authorities. All officers and persons

employed in the execution of the Act are to observe and follow the orders, instructions and directions of the Central Board of Revenue which is the highest authority in the hierarchy and, even though normally in accordance with the provisions of s. 64(1) and (2) the work of assessment is to be done by the Income-tax Officers of the area within which the assessees reside or carry on business, power is given by s. 5(7A) to the Commissioner of Income-tax to transfer any case from one Income-tax Officer subordinate to him to another and to the Central Board of Revenue to transfer any case from any one Income-tax Officer to another. This is the administrative machinery which is set up for assessing the incomes of the assessees which are chargeable to income-tax. There is, therefore, considerable force in the contention which has been urged on behalf of the State that s. 5(7A) is a provision for administrative convenience.

37. Nevertheless this power which is given to the Commissioner of Income-tax and the Central Board of Revenue has to be exercised in a manner which is not discriminatory. No rules or directions having been laid down in regard to the exercise of that power in particular cases, the appropriate authority has to determine what are the proper cases in which such power should be exercised having regard to the object of the Act and the ends to be achieved. The cases of the assessees which come for assessment before the income-tax authorities are of various types and no one case in similar to another. There are complications introduced by the very nature of the business which is carried on by the assessees and there may be, in particular cases, such widespread activities and large ramifications or inter-related transactions as might require for the convenient and efficient assessment of income-tax the transfer of such cases from one Income-tax Officer to another. In such cases the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, has to exercise its discretion with due regard to the exigencies of tax collection. Even though there may be a common attribute between the assessee whose case is thus transferred and the assessees who continue to be assessed by the Income-tax Officer of the area within which they reside or carry on business, the other attributes would not be common. One assessee may have such widespread activities and ramifications as would require his case to be transferred from the Income-tax Officer of the particular area to an Income-tax Officer of another area in the same State or in another State, which may be called "X". Another assessee, though belonging to a similar category may be more conveniently and efficiently assessed in another area whether situated within the State or without it, called "Y". The considerations which will weigh with the Commissioner of Income-tax or the Central Board of Revenue in transferring the cases of such assessees either to the area "X" or the area "Y" will depend upon the particular circumstances of each case and no hard and fast rule can be laid down for determining whether the particular case should be transferred at all or to an Income-tax Officer of a particular area. Such discretion would necessarily have to be vested in the authority concerned and merely because the case of a particular assessee is transferred from the Income-tax Officer of an area within which he resides or carries on business to another Income-tax Officer whether within or without the State will not by itself be sufficient to characterize the exercise of the discretion as discriminatory. Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the piece of legislation.

38. It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of Income-tax and the Central Board of Revenue who act on the

information supplied to them by the Income-tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. (Vide Matajog Dobey v. H. S. Bhari ). There is moreover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide People of the State of New York v. John E. Van De Carr, etc. [(1905) 310 - 199 U.S. 552; 50 L.Ed. 305.]). It has also been observed by this Court in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti with reference to the possibility of discrimination between assessees in the matter of the reference of their cases to the Income-tax Investigation Commission that "It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done 'not with an evil eye and unequal hand' and the selection made by the Government of the cases of persons to be referred for investigation by the Commission would not be discriminatory."

39. This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals or corporations to hostile and discriminatory treatment (Vide Gulf, Colorado, etc. v. W. H. Ellis [(1897) 165 U.S. 150; 41 L.Ed. 666.]). There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law (Vide Dinabandu Sahu v. Jadumony Mangaraj ). What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

40. It is pointed that it will be next to impossible for the assessee to challenge a particular order made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, as discriminatory because the reasons which actuated the authority in making the order will be known to itself not being recorded in the body of the order itself or communicated to the assessee. The burden moreover will be on the assessee to demonstrate that the order of transfer is an abuse of power vested in the authority concerned. This apprehension, is however, ill-founded. Though the burden of proving that there is an abuse of power lies on the assessee who challenges the order as discriminatory, such burden is not by way of proof to the hilt. There are instances where in the case of an accused person rebutting a presumption or proving an exception which will exonerate him from the liability for the offence with which he has been charged, the burden is held to be discharged by evidence satisfying the jury of the probability of that which the accused is called upon to establish (Vide Rex v. Carr-Briant [[1943] 1 K.B. 607.]), or in the case of a detenue under the Preventive Detention Act seeking to make out a case of want of bona fides in the detaining authority, the burden of proof is held not to be one which requires proof to the hilt but such as will render the absence of bona fides reasonably probably (Vide Ratanlal Gupta v. The District Magistrate of Ganjam [I.L.R. 1951 Cuttack 441, 459.]; also Brundaban Chandra Dhir Narendra v. The State of Orissa (Revenue Department) [I.L.R. 1952 Cuttack 529, 573.]). If, in a particular case, the assessee seeks to impeach the order of transfer as an abuse of power pointing out circumstances which prima facie and without anything more would make out the exercise of the power discriminatory qua him, it will be incumbent on the authority to explain the circumstances under which the order has been made. The court will, in that event, scrutinize these circumstances having particular regard to the object sought to be achieved by the enactment of s. 5(7A) of the Act as set out in para 4 of the

affidavit of Shri V. Gouri Shankar, Under Secretary, Central Board of Revenue, quoted above, and come to its own conclusion as to the bona fides of the order and if it is not satisfied that the order was made by the authorities in bona fide exercise of the power vested in them under s. 5(7A) of the Act, it will certainly quash the same. The standard of satisfaction which would have to be attained will necessarily depend on the circumstances of each case and the court will arrive at the conclusion one way or the other having regard to all the circumstances of the case disclosed in the record. The court will certainly not be powerless to strike down the abuse of power in appropriate cases and the assessee will not be without redress. The observations of Fazl Ali, J., in The State of West Bengal v. Anwar Ali Sarkar, (supra), at pages 309-310 that the authority will say "I am not to blame as I am acting under the Act" will not necessarily save the order from being challenged because even though the authority purported to act under the Act its action will be subject to scrutiny in the manner indicated above and will be liable to be set aside if it was found to be mala fide or discriminatory qua the assessee.

41. Particular stress is laid on behalf of the petitioners on the observations at page 277 of the majority judgment in Bidi Supply Co. v. The Union of India, (supra), which in the context of the omnibus wholesale order in question emphasized the substantial discrimination to which the assessee there had been subjected as compared with other bidi merchants who were similarly situated. The inconvenience and harassment to which the assessee was thus put were considered to be violative of Art. 14 of the Constitution and it is urged that s. 5(7A) is unconstitutional in so far as it is open to the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, to make an order of transfer subjecting the assessee to such inconvenience and harassment at their sweet will and pleasure. This argument of inconvenience, however, is not conclusive. There is no fundamental right in an assessee to be assessed in a particular area or locality. Even considered in the context of s. 64(1) and (2) of the Act this right which is conferred upon the assessee to be assessed in a particular area or locality is not an absolute right but is subject to the exigencies of tax collection. The difference, if any, created in the position of the assessee qua others who continue to be assessed by the Income-tax Officer of the area in which they reside or carry on business is not a material difference but a minor deviation from the general standard and would, therefore, not amount to the denial of equal rights (per Mukherjea, J., as he then was, in The State of West Bengal v. Anwar Ali Sarkar, (supra), at p. 325)). There is also the further fact to be borne in mind that this inconvenience to the assessee is sought to be minimised by the authority concerned transferring the case of such assessee to the Income-tax Officer who is nearest to the area where it would be convenient for the assessee to attend and if, on account of administrative exigencies, this is not possible and the assessee requests that the examination of accounts or evidence to be taken should be in a place convenient to him, by the Income-tax Officer complying with the request of the assessee and holding the hearing at the place requested. We are bound to take this statement contained in para 5 of the affidavit of Shri V. Gouri Shankar at its face value and if this is done as it should be, the assessee will not be put to any inconvenience or harassment and the proper balance between the rights of the subject and public interest will be preserved.

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

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

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

44. It follows, therefore, that s. 5(7A) of the Act is not violative of Art. 14 of the Constitution and also does not impose any unreasonable restriction on the fundamental right to carry on trade or business enshrined in Art. 19(1)(g) of the Constitution. If there is any abuse of power it can be remedied by appropriate action either under Art. 226 or under Art. 32 of the Constitution and what can be struck down is not the provision contained in s. 5(7A) of the Act but the order passed thereunder which may be mala fide or violative of these fundamental rights. This challenge of the vires of s. 5(7A) of the Act, therefore, fails.

45. We may, however, before we leave this topic observe that it would be prudent if the principles of natural justice are followed, where circumstances permit, before any order of transfer under s. 5(7A) of the Act is made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, and notice is given to the party affected and he is afforded a reasonable opportunity of representing his views on the question and the reasons of the order are reduced however briefly to writing. It is significant that when any question arises under s. 64 as to the place of assessment and is determined by the Commissioner or Commissioners or by the Central Board of Revenue, as the case may be, the assessee is given an opportunity under s. 64(3) of representing his views before any such question is determined. If an opportunity is given to the assessee in such case, it is all the more surprising to find that, when an order of transfer under s. 5(7A) is made transferring the case of the assessee from one Income-tax Officer to another irrespective of the area or locality where he resides

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

46. The next point of attack is that the orders which were made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, in these petitions are omnibus wholesale orders of transfer coming within the mischief of Bidi Supply Co. v. The Union of India, (supra), and are, therefore, hit by the majority judgment in that case. The answer of the State is that the orders are valid by virtue of the explanation to s. 5(7A) which was added by the Indian Income-tax Amendment Act, 1956 (26 of 1956).

47. It will be remembered that the explanation was added to s. 5(7A) in order to get over the situation which was created by the majority judgment in that case and all the proceedings against a particular assessee whether they were in respect of the same year or the previous years which were pending before the Income-tax Officer were sought to be comprised in the order of transfer as also all proceedings under the Act which may be commenced after the date of transfer in respect of any year whether it be the year of transfer or any year previous or subsequent thereto. The main structure of s. 5(7A) was, however, maintained and the explanation was added thereto in order to expand the connotation of the word "case" which was used in s. 5(7A). The manner in which this result was brought about is subject to criticism that the word "case" was thus really equated with the word "file" and when a case of a particular assessee was transferred under s. 5(7A) it was meant that his whole file would be transferred from one Income-tax Officer to another. This inartistic mode appears, however, to be adopted by the supposed necessity of maintaining s. 5(7A) in the form in which it stood but what we have got to see is whether the desired result has been achieved by adding the explanation in the manner in which it was done. Reading s. 5(7A) and the explanation thereto, it is clear that when any case of a particular assessee which is pending before an Income-tax Officer is transferred from that officer to another Income-tax Officer whether within the State or without it, all proceedings which are pending against him under the Act in respect of the same year as also previous years are meant to be transferred simultaneously and all proceedings under the Act which may be commenced after the date of such transfer in respect of any year whatever are also included therein so that the Income-tax Officer to whom such case is transferred would be in a position to continue the pending proceedings and also institute further proceedings against the assessee in respect of any year. The proceedings pending at the date of transfer can be thus continued but in the case of such proceedings the provision in regard to the issue of notices contained in the main body

of s. 5(7A) would apply and it would not be necessary to re-issue any notice already issued by the Income-tax Officer from whom the case is transferred. This provision applies to pending proceedings which have been transferred leaving unaffected the further proceedings which may be commenced against the assessee after the date of the transfer where fresh notices would have to be issued.

48. It is, however, contended that the cases of the assessee which have been already closed in the previous years cannot be re-opened by the Income-tax Officer to whom the case of the assessee is thus transferred and the words "after the date of transfer in respect of any year" occurring at the end of the explanation are sought to be construed to mean "after the date of the transfer in respect of the year of transfer" thus rendering in incompetent to the Income-tax Officer to whom the case is transferred to institute further proceedings in respect of cases of the assessee which have been already closed before the date of transfer. This contention is, in our opinion, unsound. The words used are "in respect of any year" and not "in respect of the year". Moreover they are to be read with the preceding words "may be commenced" and not with the words "after the date of transfer". A proper reading of the explanation will be that the inclusive part thereof refers to all proceedings under the Act which may be commenced in respect of any year after the date of the transfer. The date of the transfer has relation only to the particular year in which the case of the assessee is thus transferred and to attach the words "in respect of any year" to the words "after the date of transfer" do not make any sense. The words "in respect of any year" appropriately go with the words "which may commenced" and read in this juxtaposition render the inclusive part of the explanation susceptible of a proper meaning. The language of the explanation read in the manner suggested above is thus sufficient to dispel this contention of the petitioners.

49. It follows, therefore, that the omnibus wholesale orders of transfer made against the petitioners by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, are saved by the explanation to s. 5(7A) and are not unconstitutional and void.

50. It remains now to consider whether the individual orders against the petitioners are discriminatory in fact or are mala fide and in abuse of the power vested in the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, under s. 5(7A) of the Act.

51. Petitions Nos. 211 to 215 of 1956, i.e., the Sriram Jhabarmull group, may be dealt with in the first instance as they have a peculiar characteristic of their own. The orders complained against in these petitions were all made by the Commissioner of Income-tax Central, Calcutta, on July 27, 1946, and further proceedings were entertained against the petitioners by the Income-tax Officer, Central Circle IV, Calcutta, immediately thereafter. All these proceedings culminated in assessment orders and certificate proceedings under s. 46(2) of the Act were also taken by the authorities against the petitioners for recovery of the tax so assessed before the advent of the Constitution. The question, therefore, arises whether these orders of transfer can be challenged by the petitioners as unconstitutional and void.

52. It is settled that Art. 13 of the Constitution has no retrospective effect and if, therefore, any action was taken before the commencement of the Constitution in pursuance of the provisions of

any law which was a valid law at the time when such action was taken, such action cannot be challenged and the law under which such action was taken cannot be questioned as unconstitutional and void on the score of its infringing the fundamental rights enshrined in Part III of the Constitution (See Keshavan Madhava Menon v. The State of Bombay [[1951] S.C.R. 228, 235.]). The following observations of Das, J., as he then was, at p. 235 of that case, may be appropriately referred to in this context :

> "As already explained, article 13(1) only has the effect of nullifying or rendering all inconsistent existing laws ineffectual or nugatory and devoid of any legal force or binding effect only with respect to the exercise of fundamental rights on and after the date of the commencement of the Constitution. It has no retrospective effect and if, therefore, an act was done before the commencement of the Constitution in contravention of any law which, after the Constitution, becomes void with respect to the exercise of any of the fundamental rights, the inconsistent law is not wiped out so far as the past act is concerned, for, to say that it is, will be to give the law retrospective effect..... So far as the past acts are concerned the law exists, notwithstanding that it does not exist with respect to the future exercise of fundamental rights."

(See also Syed Qasim Razvi v. The State of Hyderabad [[1953] S.C.R. 589.] and Laxmanappa Hanumanthappa Jamkhandi v. Union of India ). It is clear, therefore, that the petitioners are not entitled to complain against the said orders of transfer dated July 27, 1946.

53. Petitions Nos. 225 to 229 of 1956, i.e., the Raichur group, and Petitions Nos. 86, 87, 88, 111, 112 and 158 of 1956, i.e., the Amritsar group, all belong to the same category. In the first group, there was an order of transfer on December 21, 1953, passed by the Commissioner of Income-tax, Hyderabad, transferring the cases of the petitioner from the Additional Income-tax Officer, Raichur, to the Income-tax, Officer, Special Circle, Hyderabad. There was, however, an order passed by the Commissioner shortly before May 19, 1955, transferring the cases of the petitioner from the Income-tax Officer, Special Circle, Hyderabad, to the main Income-tax Officer, Raichur. The petitioner thus reverted to the Income-tax Officer, Raichur, and it passes one's imagination what possible argument he can urge on the score of inconvenience and harassment. The whole attitude of the petitioner is motivated by an intention to delay the payment of income-tax legitimately due by him to the Revenue trying to take advantage of a mere technicality. In the second group, there were orders passed by the Commissioner of Income-tax transferring the cases of the petitioners from the Income-tax Officer, 'A' Ward, Amritsar, or the Income-tax Officer, 'F' Ward, Amritsar, to the Income-tax Officer, Special Circle, Amritsar. Both these offices were situated in the same building and under the same roof. The argument of inconvenience and harassment can, under these circumstances, be hardly advanced by them.

54. There is moreover another feature which is common to both these groups and it is that none of the petitioners raised any objection to their cases being transferred in the manner stated above and in fact submitted to the jurisdiction of the Income-tax Officers to whom their cases had been transferred. It was only after our decision in Bidi Supply Co. v. The Union of India, (supra), was

pronounced on March 20, 1956, that these petitioners woke up and asserted their alleged rights, the Amritsar group on April 20, 1956, and the Raichur group on November 5, 1956. If they acquiesced in the jurisdiction of the Income-tax Officers to whom their cases were transferred, they were certainly not entitled to invoke the jurisdiction of this Court under Art. 32. It is well settled that such conduct of the petitioners would disentitle them to any relief at the hands of this Court (Vide Halsbury's 'Laws of England', Vol. II, 3rd Ed., p. 140, para 265; Rex v. Tabrum, Ex Parte Dash [[1907] 97 L.T. 551.]; O. A. O. K. Lakshmanan Chettiar v. Commissioner, Corporation of Madras and Chief Judge, Court of Small Causes, Madras [[1927] I.L.R. 50 Mad. 130.]).

55. The orders of transfer made by the Commissioner of Income-tax or the Central Board of Revenue, as the case may be, against the three groups of petitioners, viz., Sriram Jhabarmull group, the Raichur group and the Amritsar group, cannot, therefore, be challenged by them as unconstitutional and void.

56. This leaves two sets of petitioners, the petitioners in Petitions Nos. 97 & 97-A of 1956 and the petitioners in Petitions Nos. 44/56 and 85/56.

57. Petitions Nos. 97 & 97-A of 1956 :- The petitioners are oilmill owners, merchants and commission agents, carrying on business at Sahibganj in the district of Santhal Parganas and have a branch at 97, Lower Chitpur Road, Calcutta. Their cases were referred to the Income-tax Investigation Commission as they were believed to have evaded payment of tax on a substantial amount. They were alleged to have concealed income exceeding Rs. 8 lakhs and indulged in business activities spread over a wide area resulting in large profits not disclosed in the books of account or in the various returns filed by them. After the judgment of this Court in Surajmull Mohta & Co. v. A. V. Viswanatha Sastri , about 320 cases referred to the Income-tax Investigation Commission under s. 5(4) of Taxation on Income Investigation Commission Act (XXX of 1947) were affected and had to be reopened under s. 34(1A) of the Income-tax Act. To dispose of these cases, "since they involved many back years' cases" quickly and promptly, special circles without reference to area were created at Bombay and Calcutta, because the existing circles, whose hands were full, could not take up this extra work. These 320 cases were distributed between these circles on the basis of the geographical area to which these assessees belonged. The petitioners belonged to Bihar and had a branch at Calcutta and their cases were, therefore, allotted to one of the Central Circles at Calcutta.

58. Later on in October 1954, this Court struck down s. 5(1) of the Taxation on Income Investigation Commission Act (XXX of 1947) in Meenakshi Mills Ltd. v. Viswanatha Sastri and as a result thereof cases referred under that section and pending with the Income-tax Invesigation Commission on July 17, 1954, could not be proceeded with under the provisions of that Act. These cases numbering about 470 had to be reopened under s. 34(1A) of the Income-tax Act. The Government thought that as in the earlier lot of cases, it would help speedier disposal of the cases, if they were allotted to Income-tax Officers appointed without reference to area to deal with the same. In addition to the circles already created in Bombay and Calcutta, five more circles at Calcutta and 4 more circles at Bombay and 9 more circles at important centers such as Kanpur, Ahmedabad, Madras and Delhi were set up to deal with all these cases. As a result of the influx of these cases, it was found that the 9 circles at Calcutta had about 280 cases of assesse belonging to Calcutta itself to dispose of and

therefore cases not belonging to that area had to be taken out and assigned to one of the newly created circles, where the work load was low. It was found then that Central Circle VI had a lower work load compared to other circles and, therefore, the cases of the petitioners were transferred to the Income-tax Officer, Central Circle VI, Delhi.

59. Having regard to these circumstances which are disclosed in the affidavits of Shri V. Gouri Shankar, Under Secretary, Central Board of Revenue, dated November 19, 1956, and December 3, 1956, it is clear that the transfer of the cases of the petitioners, firstly, from the Income-tax Officer, Special Circle, Patna, to the Income-tax Officer, Central Circle XI, Calcutta and next, from the latter officer to the Income-tax Officer, Central Circle VI, Delhi, were made as a matter of administrative convenience only.

60. It further appears from the said affidavits that the examination of accounts and the evidence was done at the places desired by the assessees in order to suit their convenience and the Income-tax Officers were instructed accordingly. As a matter of fact the Income-tax Officer, Central Circle VI, Delhi, went to Sahibganj and examined the accounts there in the case of the petitioner No. 1 and when the assessee voluntarily requested the Income-tax Officer to have the examination done at Delhi (the assessee had then come to Delhi for some other work of his) the Income-tax Officer promptly posted the case and examined the accounts.

61. If these were the circumstances under which the cases of the petitioners were transferred from Patna to Calcutta and from Calcutta to Delhi and the petitioners were afforded all conveniences in the matter of the examination of their accounts and evidence, there is no basis for the charge that the orders of transfer made against these petitioners were in any manner whatever discriminatory.

62. Petitions Nos. 44 and 85 of 1956 :

> The petitioner in Petition No. 44/56 is Shri A. L. Sud who originally belonged to Hoshiarpur district in Punjab and since 1948 resides and has his office in Calcutta. He is the son of one Shri Bhagwan Das Sud and is a member of the Hindu undivided family styled M/S. Bhagwan Das Sud & Sons with Shri Bhagwan Das Sud as the karta thereof. This Hindu undivided family has been carrying on business at Hoshiarpur and at various other places like Bareilly, Calcutta and Bombay. The petitioner has been carrying on business both as the member of the Hindu undivided family and also in his individual capacity since 1946. The said joint family of Bhagwan Das Sud & Sons was alleged to have evaded income-tax to a large extent and had inter-related transactions in respect of their dealings, the petitioner being a coparcener of the said joint family. It was, therefore, considered necessary in order to have a proper assessment of the petitioner's income that his case also should be dealt with by the Income-tax Officer assessing the joint family and the petitioner was informed that, in the matter of hearing, he would be put to least inconvenience. These were the circumstances under which his case was transferred from the Income-tax Officer, Survey Circle, Calcutta, to the Income-tax Officer, Special Circle, Ambala, by an order of the Central Board of Revenue dated June 29, 1955.

63. The case of M/S. Bhagwan Das Sud & Sons, petitioners in Petition No. 85/56, had already been transferred by the Commissioner of Income-tax from the Income-tax Officer, Hoshiarpur, to the Income-tax Officer, Special Circle, Ambala by an order under s. 5(7A) of the Act dated October 20, 1953. The petitioners had their office at Hoshiarpur in Punjab but their activities were scattered in various parts of India some of them being in Assam, Bombay, Bareilly, Calcutta and Kanpur in respect of the contracts they undertook with the Government and other parties. They were alleged to have concealed income assessable to income-tax exceeding Rs. 30 lakhs and it was thought necessary to make proper investigation of their widespread activities resulting in extensive evasion of income-tax. These were the circumstances under which their case was transferred to the Income-tax Officer, Special Circle, Ambala, as above. That officer, however, agreed to examine the accounts and evidence at Hoshiarpur itself to suit the convenience of the petitioners but the petitioners did not agree on the ground that their Advocate was to come from Delhi and therefore Ambala would suit them as well.

64. The cases of both the petitioners thus came to be transferred from the respective Income-tax Officers who used to assess them at Calcutta and Hoshiarpur respectively to the Income-tax Officer, Special Circle, Ambala, and all conveniences were afforded to them in the matter of the examination of their accounts and evidence. The argument of discrimination and inconvenience and harassment thus loses all its force and the orders of transfer made against them cannot be challenged as in any way discriminatory.

65. It may be noted that in the last mentioned four petitions, viz., Petitions Nos. 97 & 97-A of 1956 and Petitions Nos. 44/56 and 85/56, the Central Board of Revenue or the Commissioner of Income-tax, as the case may be, instructed the Income-tax Officers concerned to minimise the inconvenience caused to the assessees and even proceed to their respective residences or places of business in order to examine the accounts and evidence. Inspite of the denials of the assessees in the affidavits which they filed in rejoinder, we presume that such facilities will continue to be afforded to them in the future and the inconvenience and harassment which would otherwise be caused to them will be avoided. A humane and considerate administration of the relevant provisions of the Income-tax Act would go a long way in allaying the apprehensions of the assessees and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with "an evil eye and unequal hand".

66. We have, therefore, come to the conclusion that there is no substance in these petitions and they should be dismissed with costs. There will be, however, one set of costs between respondents in each of the petitions and one set of costs in each group of these petitions, viz., (1) Petitions Nos. 97 & 97-A of 1956, (2) Petitions Nos. 44/56 and 85/56, (3) Petitions Nos. 86/56, 87/56, 88/56, 111/56, 112/56 and 158/56, (4) Petitions Nos. 211 to 215 of 1956, and (5) Petitions Nos. 225 to 229 of 1956.

67. Petitions dismissed.