

Dmk Charitable Trust vs The Principal Chief Commissioner on 9 May, 2025

Author: C.Saravanan

Bench: C.Saravanan

2025:MHC:1228

W.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On
Pronounced On

31.01
09.05

Coram:
THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.2089, 2102 & 6711 of 2021
and W.M.P.Nos.2371, 7271, 7273, 2368, 2369,
2382, 2384, 2386 & 7268 of 2021

W.P.No.2089 of 2021:

DMK Charitable Trust,
Rep. by its Trustee K.Ponmudi
“Anna Arivalayam”,
No.367 & 369, Anna Salai,
Teynampet, Chennai – 600 018.

Versus

- 1.The Principal Chief Commissioner
of Income Tax (Exemptions),
Pratyakshkar Bhawan, Block E-2, 25th Floor,
Civic Centre, J.L.Nehru Marg,
New Delhi.
- 2.The Director General of
Income Tax (Investigations) Tamilnadu
and Puducherry,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

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W.P.No.

3.The Commissioner of Income Tax (Exemptions),
Chennai,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

4.The Assistant Commissioner of Income Tax,
Central Circle – 1 (3),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

5.The Income Tax Officer (Exemption) Ward 1 Chennai,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

W.P.No.2102 of 2021:

Dravida Munnetra Kazahagam,
Rep. by its Organization Secretary R.S.Bharathi
“Anna Arivalayam”,
No.367 & 369, Anna Salai,
Teynampet, Chennai – 600 018.

Versus

1.The Principal Chief Commissioner
of Income Tax (Exemptions),
Pratyakshkar Bhawan, Block E-2, 25th Floor,
Civic Centre, J.L.Nehru Marg,
New Delhi – 110 002.

2.The Director General of

2/54

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W.P.No.

Income Tax (Investigations) Tamilnadu

Dmk Charitable Trust vs The Principal Chief Commissioner on 9 May, 2025

and Puducherry,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

- 3.The Commissioner of Income Tax (Exemptions),
Chennai,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.
- 4.The Assistant Commissioner of Income Tax,
Central Circle – 1 (3),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.
- 5.The Deputy Commissioner of Income Tax (Exemptions),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

W.P.No.6711 of 2021:

DMK Charitable Trust,
Rep. by its Trustee K.Ponmudi
“Anna Arivalayam”,
No.367 & 369, Anna Salai,
Teynampet, Chennai – 600 018.

Versus

- 1.The Principal Chief Commissioner
of Income Tax (Exemptions),
Pratyakshkar Bhawan, Block E-2, 25th Floor,
Civic Centre, J.L.Nehru Marg,
New Delhi.

3/54

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W.P

- 2.The Director General of
Income Tax (Investigations) Tamilnadu
and Puducherry,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

- 3.The Commissioner of Income Tax (Exemptions),

Chennai,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

4.The Assistant Commissioner of Income Tax,
Central Circle – 1 (3),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

5.The Income Tax Officer (Exemption) Ward 1 Chennai,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

6.Mr.Jayaraman Saravanan,
Assistant Commissioner of Income Tax,
Office of Deputy Commissioner,
Central Circle 1(3),
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

Prayer in W.P.No.2089 of 2021:

Writ Petition filed under Article 226 of the Constitution
praying for issuance of a writ of certiorari to call for the records
Respondent pertaining to Notification No.18/2020-21 dated 19.01.2021
arising out of F.No.CIT (E)/12/Centralization/2020-21 and quash the

4/54

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Prayer in W.P.No.2102 of 2021:

Writ Petition filed under Article 226 of the Constitution
praying for issuance of a writ of certiorari to call for the records
Respondent pertaining to Notification No.17/2020-21 dated 19.01.2021
arising out of F.No.CIT (E)/12/Centralization/2020-21 and quash the
Prayer in W.P.No.6711 of 2021:

Writ Petition filed under Article 226 of the Constitution
praying for issuance of a writ of certiorari to call for the records
Respondent pertaining to impugned notice dated 26.02.2021 bearing DI
Notice No.ITBA/AST/F/142(1)/2020-21/1031048197(1) and consequential
impugned notice dated 04.03.2021 bearing
No.ITBA/AST/F/17/2020-21/1031231163(1) and all other actions initiated
by 4th Respondent in this regard and to quash the same.

For Petitioner in all W.Ps

:

Mr.P.Wilson,
Senior Counsel
for M/s.P.Wilson Assoc

For Respondents in all W.Ps

: Mr.A.R.L.Sundaresan,
Addl. Solicitor Genera
Assisted by
Mr.A.P.Srinivas,
Senior Standing Counsel
and
Mr.A.N.R.Jayaprathap,
Junior Standing Counsel

5/54

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COMMON ORDER

Details of the Impugned Orders/Notice in these Writ Petitions are as follows:-

S.No. Writ Petition No. Date of the Rank/Designation impugned order/notice 1
W.P.No.2089 of 2021 19.01.2021 3rd respondent/Commissioner of Income Tax
(Exemptions).

2 W.P.No.2102 of 2021 19.01.2021 3rd respondent/Commissioner of Income Tax
(Exemptions).

3	W.P.No.6711 of 2021	26.02.2021 & 04.03.2021	4th respo of Income & 6th respo 2021/Assi Tax, Offi Central C
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[Note: The petitioner in S.Nos.1 & 3 is DMK Charitable Trust.

The petitioner in S.No.2 is Dravida Munnetra Kazhagam]

2. The respective petitioners have challenged the Impugned Orders/Notification both dated 19.01.2021. They were passed by the 3rd respondent viz., the Commissioner of Income Tax

(Exemptions) under Section 127 of the Income Tax Act, 1961 (hereinafter referred to as IT Act). Both the Impugned Orders dated 19.01.2021 are identical. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

3. The respective petitioners herein have challenged the Impugned Orders/Notification dated 19.01.2021 on the ground that they have been issued in gross violation of Section 127(2) of the IT Act by the 3rd Respondent.

4. By virtue of Impugned Orders/Notification both dated 19.01.2021 issued by the 3rd Respondent viz., the Commissioner of Income Tax (Exemptions), the Income Tax files of the respective petitioners have been transferred from the respective jurisdictional 5th Respondent in the respective writ petitions to the 4th Respondent.

5. The petitioner in W.P.No.2089 of 2021 viz., DMK Charitable Trust has also challenged the Impugned Notice dated 26.02.2021 issued by the 4th respondent viz., Assistant Commissioner of Income Tax, Central Circle – 1(3) under Section 142(1) of the IT Act and consequential Notice dated 04.03.2021 in W.P.No.6711 of 2021. They were issued after Notification dated 19.01.2021 impugned in W.P.No.2089 of 2021 was issued. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

6. The 4th respondent viz., Assistant Commissioner of Income Tax, Central Circle – 1(3) is the 6th respondent in W.P.No.6711 of 2021 viz., Mr.Jayaraman Saravanan, the then Assistant Commissioner of Income Tax, Office of Deputy Commissioner, Central Circle – 1(3).

7. Mr.Jayaraman Saravanan, the Assistant Commissioner of Income Tax, Office of Deputy Commissioner, Central Circle – 1(3) has been arrayed as the 6th respondent in W.P.No.6711 of 2021 as malafide has been alleged and imputed against the said Officer.

8. These notices were issued after the first two writ petitions had been filed and time was taken by the respondents to file their Counters.

9. Impugned Notices dated 26.02.2021 was issued to the DMK Charitable Trust (the petitioner in W.P.No.6711 of 2021/2089 of 2021) by the 4th respondent (the 6th respondent in W.P No.6711 of 2021) under Section 142(1) of the IT Act, 1961. By the aforesaid notice, the petitioner viz., DMK Charitable Trust (the petitioner in W.P.No.6711 of 2021/2089 of <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 2021) was called upon to furnish certain details to the 4th respondent (the 6th respondent in W.P No.6711 of 2021) under Section 142(1) of the IT Act, 1961.

10. Relevant portion of the Impugned Notice dated 26.02.2021 issued under Section 142(1) of the IT Act, 1961 reads as under:-

“In connection with the assessment for the assessment year 2018-19, you are required to:

(a) Furnish or cause to be furnished on or before 04/03/2021 at 11.00 AM the accounts and documents specified overleaf.

(b) Furnish and verified in the prescribed manner under Rule 14 of I.T.Rules 1962 the information called for as per annexure and on the points or matters specified therein, on or before 04/03/2021 at 11.00 AM.

(c) The above mentioned evidence/information is to be furnished online electronically in 'E-Proceeding' facility through your account in 'e-filing' website of Income Tax Department.

(d) Para(s) (a) to (c) are applicable if you have an account in e-filing website of Income Tax Department. Till such an account is created by you, assessment proceedings shall be carried out either through your e-mail account or <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 manually (if e-mail is not available).

(e) In cases where order has to be passed under section 153A/153C of the Income Tax Act, 1961 read with section 143(3), assessment proceedings would be conducted manually."

11. Since there was a failure to furnish the informations called for vide Impugned Notice dated 26.02.2021 due to pendency of W.P.No.2089 & 2102 of 2021, the 4th Respondent (the 6th respondent in W.P.No.6711 of 2021) issued Impugned Notice dated 04.03.2021. Thus, the Impugned Notices dated 26.02.2021 & 04.03.2021 have been challenged in W.P.No.6711 of 2021.

12. The 2nd respondent Director General of Income Tax (Investigation), Tamil Nadu & Puducherry, Chennai – 600 034 had earlier vide order dated 15.01.2021, directed the 3rd respondent Commissioner of Income Tax (Exemptions), Chennai – 600 034 to transfer the case files of the respective petitioners viz., DMK Charitable Trust & DMK Party from the 5th respondent, namely, the Jurisdictional Income Tax Officer (Exemptions) <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Ward – 1, Chennai/Jurisdictional Deputy Commissioner of Income Tax (Exemptions) in the respective Writ Petitions to 4th respondent/ the 6th respondent Assistant Commissioner of Income Tax, Central Circle – 1(3) in W.P.No.6711 of 2021.

13. Pursuant to the said Order dated 15.01.2021 of the 2nd respondent Director General of Income Tax (Investigation), Tamil Nadu & Puducherry, Chennai – 600 034, the order/notification dated 19.01.2021 was issued by the 3rd Respondent Commissioner of Income Tax (Exemptions), Chennai – 600 034 under Section 127 of the Income Tax Act, 1961.

14. When the case was earlier heard by my predecessor, the Income Tax Department was orally instructed to produce the internal files which proceeded the passing of Impugned Orders/Notifications both dated 19.01.2021 impugned in W.P.Nos.2089 & 2102 of 2021.

15. The aforesaid files were produced for my perusal on 23.01.2025, I have perused the same. There is nothing materially different from what has <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 been recorded earlier.

16. The facts on record reveal that the 4th respondent in W.P.No.2089 of 2021 & 2102 of 2021 who is incidentally 6th respondent in W.P.No.6711 of 2021 vide communication dated 13.01.2021 had earlier, sent a proposal to the 2nd respondent Director General of Income Tax (Investigations) Tamilnadu and Puducherry, Chennai for transferring the files of the respective writ petitioners under him in the light of the search operations at the premises of Mr.D.Duraimurugan and the Trust run by him on 30.03.2019 & 01.04.2019.

17. Acting on the aforesaid communication dated 13.01.2021 of the 4th respondent (the Assistant Commissioner of Income Tax, Central Circle – I (3)/the 6th respondent in W.P.No.6711 of 2021), the 2nd respondent viz., the Director General of Income Tax (Investigations) has issued a direction on 15.01.2014 to the 3rd respondent the Commissioner of Income Tax (Exemptions) to transfer the case files of the respective petitioners viz., DMK Charitable Trust and DMK Party for a coordinated investigation with the case <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 of Mr.D.Duraimurugan (General Secretary of petitioner in W.P.No.2102 of 2021 and Permanent Trustee of petitioner in W.P.Nos.2089 & 6711 of 2021).

18. Information shared indicates that the Assessment Orders have also been passed against Mr.D.Duraimurugan (General Secretary of petitioner in W.P.No.2102 of 2021 and Permanent Trustee of petitioner in W.P.Nos.2089 & 6711 of 2021) and his son and the Trust run by them.

19. During the course of hearing, it was informed that all the Office bearers and the Trustee of the DMK Charitable Trust (the petitioner in W.P.Nos.2089 & 6711 of 2021) are also members of the DMK Party (the petitioner in W.P.No.2102 of 2021).

20. On 30.03.2021, this Court granted an order of interim stay of further proceedings of assessment for the year 2018-2019 in W.P.No.2102 of 2021 and the said order of stay was extended till 22.11.2023. Thereafter, vide order dated 24.01.2025, the Court had directed the respondents herein to maintain status-quo as on date.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

21. As far as DMK Charitable Trust is concerned, this Court vide its order dated 30.03.2021 in W.P.Nos.2089 and 6711 of 2021 had stayed all further proceedings for assessment for the year 2018-2019.

22. All the writ petitions have been come up for hearing. In the background of the impugned proceedings are search conducted under Section 132 of the IT Act at the premises of Mr.D.Duraimurugan (the General Secretary of the petitioner in W.P.No.2102 of 2021 / the Permanent Trustee of the petitioner in W.P.Nos.2089 & 6711 of 2021) and at the premises of the

Trust run by him on 30.03.2019 & 01.04.2019. SUBMISSIONS ON BEHALF OF THE PETITIONER:

23. The learned Senior Counsel submitted that the aforesaid search ipso facto would not justify transfer of case files of the respective petitioners viz., Dravida Munnetra Kazhagam Charitable Trust (hereinafter referred to as DMK Charitable Trust) under Section 127 of the IT Act, 1961. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

24. The learned Senior Counsel submitted that the proceedings under Section 153A of the Income Tax Act, 1961 (hereinafter referred to as "IT Act") were also commenced against Mr.D.Duraimurugan and the Trust run by him pursuant to the aforesaid search conducted on 30.03.2019 & 01.04.2019 at his premises which also culminated in Assessment Orders under Section 153A of the IT Act against the aforesaid Mr.D.Duraimurugan and Trust run by him.

25. The learned Senior Counsel submitted that pursuant to the direction issued by the 2nd respondent Director General of Income Tax (Investigations) dated 15.01.2021, the 3rd respondent had passed the respective Impugned Orders dated 19.01.2021 under Section 127 of the Income Tax Act, 1961 and informed the respective petitioner that their case files were being transferred from the 5th respondent Jurisdictional Assessing Officer to the 4th respondent with a view to centralize the investigation.

26. It is submitted that prior to the passing of Impugned Orders both dated 19.01.2021, no Show Cause Notice was issued to the respective <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 petitioners. It is further submitted that these Impugned Orders are bereft of reasons. More importantly, it was submitted that there was no agreement between the heads of the respondents 4 & 5 in W.P.No.2089 of 2021 and W.P.No.2102 of 2021, for transferring the case files of the respective petitioners to the 4th respondent.

27. The learned Senior Counsel submitted that Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) who was presiding as the 4th respondent viz., Assistant Commissioner of Income Tax, Central Circle – I (3), Chennai – 600 034, had acted maliciously to please the party in power at the Centre during the period in dispute as also how to tarnish the image of the respective petitioners herein.

28. It is submitted that merely because a search was conducted at the premises of Mr.D.Duraimurugan and the Trust run by him on 30.03.2019 & 01.04.2019, ipso facto did not mean that the proceedings can be initiated under Section 127 of the IT Act to transfer the case of the respective petitioners viz., DMK Charitable Trust and DMK Party on the pretext of the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 coordinated investigation.

29. It is submitted that if Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) or any other Officer presides as the Assessing Officer, the petitioners cannot expect fairness under the

circumstances and would also loose the benefit of Faceless Assessment under the provisions of the IT Act since Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) has acted only with a view to please the political rivals of the petitioners.

30. That apart, it is submitted that Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) acted with a mala fide intention and had sent a proposal to the 2nd respondent, Director General of Income Tax (Investigations) on 13.01.2021 on the ground that Mr.D.Duraimurugan, the General Secretary of the petitioner in W.P.No.2102 of 2021 and the Permanent Trustee of the petitioner in W.P.Nos.2089 & 6711 of 2021 was having significant association with the respective petitioners and therefore, using this as a pretext, requested for centralizing the cases of the respective petitioners viz., DMK Charitable Trust & DMK Party to be taken up for <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 coordinated investigation under him pursuant to the search conducted at the premises of Mr.D.Duraimurugan and the Trust run by him on 30.03.2019 & 01.04.2019.

31. It is further submitted that the Impugned Orders dated 19.01.2021 were passed after Election for the Legislative Assembly was announced for the State of Tamil Nadu by the Election Commission for the Assembly Period between 2021-2026 and a similar situation prevails now as the State once again gears and braces for next round of Legislative Assembly Election in 2026.

32. It is submitted that the 2nd respondent Director General of Income Tax (Investigations) has mechanically ordered the 3rd respondent Commissioner of Income Tax (Exemptions) on 15.01.2021 to transfer the case files of DMK Charitable Trust & DMK Party from the files of the respective 5th respondents namely Jurisdictional Income Tax Officer (Exemptions) Ward-1, Chennai and Jurisdictional Deputy Commissioner of Income Tax (Exemptions) to 4th respondent presided over Mr.Jayaraman <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Saravanan, Assistant Commissioner of Income Tax (6th respondent in W.P.No.6711 of 2021).

33. It is submitted that the Impugned Orders dated 19.01.2021 passed under Section 127 of the IT Act by the 3rd respondent being quasi judicial in nature and since no reasons were given in the said orders, it is submitted that the Impugned Orders were arbitrary and were therefore liable to be quashed as violating Article 14 of the Constitution of India.

34. The learned Senior Counsel for the petitioners herein drew the attention of this Court to Paragraph No.7 of the affidavit filed in W.P.No.6711 of 2021.

35. It is stated that Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) who was presiding as the Assistant Commissioner of Income Tax, Central Circle – I (3), Chennai – 600 034 was merely a puppet in the political hands of Ruling establishment and since the said party ruling in the Centre was contesting the General Assembly Election 2021 in alliance <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 with a major Party in Tamil Nadu, the 6th respondent in W.P.No.6711 of 2021 wanted transfer of cases to please his master to transfer the cases of the respective petitioners.

36. It is further stated that after having slept over for 2 years from the date of search and seizure which took place on 30.03.2019 & 01.04.2019 in the group case of Mr.D.Duraimurugan and his Trust (the General Secretary of petitioner in W.P.No.2102 of 2021 and Permanent Trustee of petitioner in W.P.Nos.2089 & 6711 of 2021), Mr.Jayaraman Saravanan (6th respondent in W.P.No.6711 of 2021) had initiated the proposal for transferring the cases of the respective petitioners viz., DMK Charitable Trust & DMK Party only on 13.01.2021, when the Legislative Assembly Election for Tamilnadu was conducted during April – May 2021 since the DMK Party (petitioner in W.P.No.2102 of 2021) had a bright prospects of winning in the Legislative Assembly Election 2021.

37. The learned Senior Counsel for the petitioner has placed reliance on the following decisions:-

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W.P.Nos.2089, 2102 & 6711 of 2021

- (i) Shivajirao Angre Vs. Commissioner of Income-Tax reported in (1986) 158 ITR 162
- (ii) Global Energy Private Limited Vs. Commissioner of Income Tax reported in (2013) SCC Online Bom 296
- (iii) Rajesh Mahajan & Ors. Vs. Commissioner of Income-Tax reported in (2002) 257 ITR 577
- (iv) Power Controls & Ors. Vs. Commissioner of Income-Tax & Ors. reported in (1999) SCC Online Del 1116
- (v) Union of India & Ors. Vs. E.G.Nambudiri reported in (1991) 3 SCC 38
- (vi) Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Ors. reported in (2010) 3 SCC 732
- (vii) Sagarmal Spinning & Weaving Mills Ltd. Vs. Central Board of Direct Taxes & Ors. reported in (1970) SCC Online MP 84
- (viii) Kranti Associates Private Ltd. & Anr. Vs. Masood Ahmed Khan & Ors. reported in (2010) 9 SCC 496
- (ix) Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income-Tax & Ors. reported in (1990) SCC Online AP 382
- (x) Noorul Islam Educational Trust Vs. Commissioner of Income Tax I & Ors. reported in (2017) 12 SCC 805

(xi) Noorul Islam Educational Trust Vs. The Commissioner of Income Tax – I & Ors.
reported in (2009) SCC Online Mad 2267

(xii) Manohar Sweets, Indore Vs. Commissioner of Income Tax-II,
<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm)
W.P.Nos.2089, 2102 & 6711 of 2021 Indore reported in (2009) 2 M.P.L.J

(xiii) M.J.Sivani & Ors. Vs. State of Karnataka & Ors. reported in (1995) 6 SCC 289

(xiv) M/s.Ajantha Industries & Ors. Vs. Central Board of Direct Taxes, New Delhi &
Ors. reported in (1976) 1 SCC 1001

(xv) Bidi Supply Co. Vs. Union of India & Ors. reported in (1956) SCR 267 (xvi)
Pannalal Binjraj & Anr. Vs. Union of India & Ors. reported in (1957) SCR 233 (xvii)
Bhagat Raja Vs. Union of India & Ors. reported in (1967) 3 SCR 302 (xviii) The
Siemens Engineering & Manufacturing Co. of India Ltd.

Vs. The Union of India & Anr. reported in (1976) 2 SCC 981 SUBMISSIONS ON BEHALF OF THE
RESPONDENTS:

38. The learned Senior Counsel for the petitioners submitted that in Power Controls & Ors. Vs. Commissioner of Income-Tax & Ors. reported in (1999) SCC Online Del 1116, the Delhi High Court held that administrative convenience and/or co-ordinated investigation alone cannot be reason for transferring a case and assessee must be apprised of the basic and broad facts which necessitated coordinated investigation. <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

39. Therefore, the agreement between the two jurisdictional Commissioners of Income Tax is conspicuously absent in the present case and cannot be equated that there is no disagreement. The file pertaining to the centralization has been produced before this Court by the learned counsel for the respondents. It can be seen that there is no recording of agreement between the two officers on the file.

40. It is submitted that the facts and legal precedents discussed above establishes that the impugned transfer order under Section 127 of the IT Act is legally untenable. The transfer was executed in blatant violation of the mandatory procedural safeguards, including the requirement to provide the petitioners with a reasonable opportunity of being heard and the necessity of recording specific, valid and legally justifiable reasons. The vague and unsubstantiated justification of “coordinated investigation” fails to meet the statutory and judicially established standards for a valid transfer of jurisdiction.

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41. Furthermore, the timing of the transfer, just before the Tamil Nadu State Elections coupled with transfer order issued in connection with search and seizure operation conducted nearly before 2 years and the repeated issuance of notices despite the pending judicial challenge, indicates a clear mala fide intent to cause undue hardship and tarnish the reputation of the petitioners. It is submitted that this Court has consistently held that administrative powers must be exercised in a fair, reasonable and non-arbitrary manner. Any deviation from this fundamental principle renders the action liable to be struck down.

42. It is submitted that in the case of any association, merely because the President of the Association is the subject matter of search and seizure proceedings in his individual capacity, the case of the Association cannot be centralized, unless there is cogent reasons to do so. Therefore, it is submitted that the Impugned Transfer Order must be quashed and set aside as being ultra vires Section 127 of the IT Act, arbitrary and violative of the principles of natural justice.

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43. Mr.A.R.L.Sundaresan, learned Additional Solicitor General for the respondents submitted that Mr.D.Duraimurugan is the General Secretary of petitioner in W.P.No.2102 of 2021 who is the Permanent Trustee of the petitioner in W.P.No.2089 of 2021 & W.P.No.6711 of 2021. Hence coordinated investigation of the DMK Party and DMK Charitable Trust, entities to which search persons are closely associated with was found necessary in order to investigate the source and application of such cash seized.

44. He would also submit that as coordinated investigation was found necessary, and therefore a proposal for centralization investigation of the DMK Party and the DMK Charitable Trust was sent from the Office of the 2nd Respondent DGIT Investigation, Chennai.

45. It is submitted that the jurisdiction of the DMK Party was transferred from 5th Respondent ACIT, (Exemptions) Circle, Chennai to 4th Respondent ACIT, Central Circle 1(3), Chennai vide order under Section 127 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 of the Income Tax Act, 1961 dated 19.01.2021. Similarly, the jurisdiction of the DMK Charitable Trust was transferred from 5th Respondent ITO (Exemptions), Ward 1, Chennai to 4th Respondent ACIT, Central Circle 1(3), Chennai vide order dated 19.01.2021 passed under Section 127 of the Income Tax Act, 1961.

46. It is submitted by him that at the time of centralisation, no assessment was pending in the case of DMK Party and after centralisation, no notice was issued to the DMK Party.

47. It is further submitted by the learned Additional Solicitor General that at the time of centralisation for the DMK Charitable Trust, assessment for the Assessment Year 2018-2019 alone was pending. After Centralisation for the DMK Charitable Trust, one notice under Section 142(1) for the Assessment Year 2018-2019 was issued on 26.02.2021 with respect to basic details of the Trust for the Assessment Proceedings. A Reminder Notice was also issued on 04.03.2021.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

48. It is submitted by the learned Additional Solicitor General that the contention of the Petitioner that 2nd Respondent DGIT (Investigation) has jurisdiction only in carrying out search and seizure operations and monitoring assessments in Central Circles. It is highlighted that in consequence of search and seizure conducted if it is found necessary to investigate any associated entity of the search person as the entity may have a bearing on the details found in the search, the jurisdiction of such entity also can be centralised for coordinated investigation.

49. It is submitted by the learned Additional Solicitor General that the averment of the petitioner that rights and protection of the petitioner to be assessed by Faceless Assessment has been violated is not logical or factually correct. It is to be stressed that jurisdiction of PAN being transferred from Jurisdictional Assessing Officer to central circle does not in itself constitute any prejudice to any assessee. The jurisdiction being transferred to Central Circle means that assessment of the entity will be carried out by Authorised Officer in Central Circle, where in every right of the entity assessed with respect to opportunity of being heard, opportunity to file submissions, <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 opportunity for having adequate representation, opportunity for cross- examination is available. Transfer of Jurisdiction by itself does not cause any prejudice to any assessee.

50. It is submitted by the learned Additional Solicitor General that in all the cases relied on by the petitioner, the transfer is from one city to another city. In this case, the transfer is within Chennai and as per Section 127(3) of the Income Tax Act, 1961, no notice and hearing is required and consequentially the recording of reasons is also not required.

51. It is further submitted by the learned Additional Solicitor General that the Department is taking strong objection for arraigning the 6th respondent as a private party in W.P.No.6711 of 2021. The Assessing Officer 6th respondent in W.P.No.6711 of 2021, has been carrying out his duties in his official duty as Assistant Commissioner of Income-Tax, Central Circle-1(3), Chennai and he cannot be arraigned as a private party for functions carried out in the discharge of his official duties. The officials are doing their ardent duty and carrying out the various functions under the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Income Tax Act, 1961 and there cannot be personal allegations against any of the officials. The allegations are made without any substances and further they are not necessary for the purpose of deciding the issue. Thus, the 6th respondent has to be deleted as a party in W.P.No.6711 of 2021.

52. Mr.A.R.L.Sundaresan, learned Additional Solicitor General and Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the respondents have placed reliance on the following decisions:-

- (i) Kashiram Aggarwalla Vs. Union of India reported in (1965) 56 ITR 14 (SC)

(ii) Karandhai Tamil Sangam Vs. The Commissioner of Income Tax II
(W.P.(MD)No.8062 of 2011 dated 24.08.2011)

(iii) Advantage Strategic Consulting (P) Ltd. Vs. Principal Commissioner of Income Tax, Chennai reported in (2018) 400 ITR 405 (Madras)

(iv) Advantage Strategic Consulting (P) Ltd. Vs. Principal Commissioner of Income Tax, Chennai reported in (2021) 430 ITR 1 (Madras) DB

(v) J.R.Tantia Charitable Trust Vs. Deputy Commissioner of Income-tax, Central Circle Bikaner reported in (2013) 355 ITR 226 (Rajasthan)
<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm)
W.P.Nos.2089, 2102 & 6711 of 2021

(vi) MRL Posnet (P) Ltd. Vs. Principal Commissioner of Income- Tax, Chennai reported in (2019) 418 ITR 349 (Madras)

(vii) S.L.Singhania Vs. Assistant Commissioner of Income-Tax / Wealth-tax reported in (1992) 193 ITR 275 (Delhi)

(viii) Inlott E Gaming Services (P) Ltd. Vs. Principal Commissioner of Income-Tax reported in (2024) 168 taxmann.com 696 (Madras)

53. I have considered the arguments advanced by the learned Senior Counsel for the petitioners as well as the learned Additional Solicitor General and learned Senior Standing Counsel for the respondents.

54. In Vijayasanthi Investments Pvt. Ltd. Vs. Chief Commissioner of Income-Tax & Ors. reported in (1990) SCC Online AP 382, the Andhra Pradesh High Court held that the reasons cannot be vague and too general in nature but must be specific and based on material facts. Further, it is submitted that Section 127 of the IT Act postulates that reason has to be communicated to the affected party. It is also submitted that in the case of Union of India & Ors. Vs. E.G.Nambudiri reported in (1991) 3 SCC 38 and in the case of Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity and Ors. reported in (2010) 3 SCC 732, the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Hon'ble Supreme Court held that administrative authority is not at liberty to pass orders without any reasons and reason must be recorded in it. Further, reason has to be explicit and should articulate as to how the matter was properly considered by the administrative authority.

55. In Sagarmal Spinning & Weaving Mills Ltd. Vs. Central Board of Direct Taxes & Ors. reported in (1970) SCC Online MP 84, the Madhya Pradesh High Court held that Section 127 of the IT Act requires reason to be provided and merely giving some vague reason in show cause notice proposing a transfer of a case would not be in compliance of the Section 127 of the IT Act.

56. In Global Energy Private Limited Vs. Commissioner of Income Tax reported in (2013) SCC Online Bom 296, the Bombay High Court held as follows:-

“12. Again, there cannot be any dispute regarding some observation which has to be noticed that co-ordinating investigation can always be a good ground for transfer from one place to another. What the apex court has observed in Ajantha Industries (supra) is that while transferring the case <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 on the ground of co-ordinated investigation, some reason has to be given by the Commissioner which reveals why it is necessary to transfer the case for the purpose of co-ordinated investigation. In our view, unfortunately the Commissioner of Income-tax apart from stating that case has been transferred for co-ordinating investigation has not given any other reason. The impugned order is, therefore, quashed and set aside. Matter is, however, remanded back to the Commissioner of Income-tax who shall pass fresh order under section 127(1) of the Income-tax Act after giving an opportunity to the petitioner and pass an order in accordance with law after recording his reasons.”

57. In Manohar Sweets, Indore Vs. Commissioner of Income Tax-II, Indore reported in (2009) 2 M.P.L.J, the Madhya Pradesh High Court held that when a transfer order is passed for transferring the case files from one Assessing Officer to another who are not subordinate to same commissioner, the commissioner from whose jurisdiction the case is being transferred has to record reasons and give reasonable opportunity. However, in the present case neither such reasonable opportunity was provided nor reason were recorded despite the assessing office are not subordinate to same commissioner.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

58. In M/s.Ajantha Industries & Ors. Vs. Central Board of Direct Taxes, New Delhi & Ors. reported in (1976) 1 SCC 1001, the Hon'ble Supreme Court held as follows:-

“10. The reason for recording of reasons in the order and making these reasons known to the assessee is to enable an opportunity to the assessee to approach the High Court under its writ jurisdiction under Article 226 of the Constitution or even this Court under Article 136 of the Constitution in an appropriate case for challenging the order, inter alia, either on the ground that it is mala fide or arbitrary or that it is based on irrelevant and extraneous considerations. Whether such a writ or special leave application ultimately fails is not relevant for a decision of the question.

11. We are clearly of opinion that the requirement of recording reasons under Section 127(1) is a mandatory direction under the law and non-communication thereof is not saved by showing that the reasons exist in the file although not communicated to the assessee.

15. When law requires reasons to be recorded in a particular order affecting prejudicially the interests of any person, who can challenge the order in court, it ceases to be a mere administrative order and the vice of violation of the principles of natural justice on account of omission to communicate the reasons is not expiated.”

59. In V.V. Minerals (No.1) Vs. Principal Commissioner of Income Tax (Mad-Madurai) reported in 2020 SCC Online Mad 666, this Court held as follows:-

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 “28. The aforementioned decisions of the hon'ble apex court and various High Courts make it clear that providing a reasonable opportunity of being heard and the reasons for transfer are necessary before effecting the transfer. As per the said decisions, proper reasons have to be adduced for the purpose of centralisation of the cases. But, in the impugned order no such reasons have been given by the first respondent, and it has been simply stated that centralisation of group of cases is essential, which cannot be the sole ground for transferring the cases.”

60. In Kranti Associates Private Ltd. & Anr. Vs. Masood Ahmed Khan & Ors. reported in (2010) 9 SCC 496, the Hon'ble Supreme Court held that authority passing quasi-judicial order msut record reasons in it. It is also submitted that in the case of Dilip Kumar Agarwal & Anr. Vs. Commissioner of Income Tax reported in 2009 SCC Online Cal 702, the Calcutta High Court held that transfer order passed for co-ordinated investigation without establishing the nexus is not valid before law.

61. In Noorul Islam Educational Trust Vs. Commissioner of Income Tax I & Ors. reported in (2017) 12 SCC 805, the Hon'ble Supreme Court held as follows:-

“4. In fact, it has been consistently and repeatedly stated in the said counter-affidavit that there is no disagreement between the two <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Commissioners. Absence of disagreement cannot tantamount to agreement as visualised under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income Tax which is conspicuously absent.”

62. As per Section 139A of the IT Act, a person having income has to obtain a Permanent Account Number (PAN). The expression “person” has been defined in Section 2(31) of the IT Act. Section 2(31) of the IT Act defines the term “person” to include:

- (i) An Individual
- (ii) A Hindu Undivided Family (HUF)

(iii) A Company

(iv) A Firm

(v) An Association of Persons (AOP) or a Body of individuals (BOI), whether incorporated or not.

(vi) A Local Authority

(vii) Every Artificial Juridical Person (AJP) not falling under any of the above categories.

63. Though, really not relevant, it will be still useful to refer to the manner in which the 10 Digit PAN numbers are allocated. Permanent Account Number (PAN) is a 10 Alphanumeric identifier.
<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

64. Each character in PAN has its own meaning. The first five characters are alphabets. Next four characters are numbers and the last character is again an alphabet. They are as follows:

(i) First 3 characters: Alphabetic series (random)

(ii) 4th character : Type of PAN holder (as above)

(iii) 5th character : First letter of surname (for individuals) or name of entity

(iv) Next 4 characters : Numeric (0001 to 9999)

(v) Last character : Alphabetic check digit.

65. Alphabetic check digit is added to help detect error that might occur during transcription or data entry. The next four characters are again the normal sequential numbers from 0001 and running upto 9999.

66. As mentioned above, the fourth character in PAN which represents the status of the PAN Card Holder is the most important character in PAN Card number.

67. A look at this character identify the status of the PAN Card <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 Holder. The following alphabets represent the status:-

(i) C - represents a Company

(ii) P - represents a Person

(iii) H- stands for Hindu Undivided Family

(iv) F - represents a Firm

(v) A – stands for Association of Persons

(vi) T - represents a Trust

(vii) B - represents Body of Individuals

(viii) L – stands for Local Authority

(ix) J – stands for Artificial Juridical Person

(x) G – stands for Government

68. A Body of Individuals (BOI) refers to a group of individuals only who receive income together but do not necessarily have a common business purpose. Key features of Body of Individuals (BOI) are as follows:-

(a) It consists only of individuals (companies, firms, and other legal entities cannot be part of a BOI).

(b) The members may or may not have actively joined together for a common purpose.

69. The purpose may not be commercial, income may be received passively. Typically income may arise in cases of joint inheritances, family settlements, or pooled resources. A group of family members jointly <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 inheriting property and receiving rental income can be Body of Individuals (BOI). A group of lottery winners sharing prize money. An Association of Persons (AOP) or a Body of individuals (BOI) may be incorporated or not.

70. The DMK Charitable Trust (petitioner in W.P.Nos.2089 & 6711 of 2021) was registered independently for educational purposes as a Public Charitable Trust. On the other hand, the DMK Party (petitioner in W.P.No.2102 of 2021) has registered itself as a Body of Individuals (BOI). The Permanent Account Number (PAN) of the respective petitioners are as under:-

S.No. Writ Petition Name of the Petitioner / PAN Number No(s). Party Name

1. 2089 & 6711 of Dravida Munnetra AAABD0007A 2021 Kazhagam Charitable Trust

2. 2102 of 2021 Dravida Munnetra AAATD0567F Kazhagam

71. The status of the respective petitioners as a “Trust” and “Body of Persons” can be discerned from the alphabets ‘T’ and ‘B’ in the above mentioned PAN Numbers.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

72. There was however no clear explanation as to why the DMK Charitable Trust which is registered as a “Trust” would also get itself separately registered as a “Body of Person” and have a dual identity for the purpose of IT Act.

73. Therefore, while hearing the case, I did quiz the respective Senior Counsels as to why a Trust which runs a Political Party would obtain separate PAN for its Political party.

74. I could only surmise this position from a reading of the scheme of the IT Act. The only explanation that is plausible for the dual PAN and dual identity is the presence of Section 13A of the IT Act. As a political party, DMK Party (the petitioner in W.P.No.2102 of 2021) enjoys certain privilege under the IT Act.

75. Section 13A of the IT Act has given 100% exemption to political parties on their income from house property, income from other sources, <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 capital gains and voluntary contributions received from any person subject to conditions.

76. Under Section 13A of the IT Act, Political Parties are required to furnish Return of Income under Section 139(4B) of the IT Act, if its income exceeds the maximum tax limit after taking into consideration of exemption. Tax slab applicable for Political Parties is the same slab which is applicable to a normal resident individual.

77. It appears to the main sources of income of political parties are from the donations and Electoral Bonds. Apart from the contributions, the other sources of income include sources of income of political parties are from the sale of coupons and interest earned from savings.

78. This explains why DMK Party (the petitioner in W.P.No.2102 of 2021) was registered as Body of Individuals (BOI). Thus, DMK Party (the petitioner in W.P.No.2102 of 2021) is assessed separately as Body of Individuals (BOI).

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

79. It has to be assumed that as a Body of Individuals, DMK Party (the petitioner in W.P.No.2102 of 2021) is a group of individuals who joined together to receive income and they have a common business purpose.

80. However, it need to be assumed that there is a nexus between the persons who were searched and the respective petitioners for the purpose of assessment under the IT Act.

81. Many of the decisions cited by the learned Senior Counsel for the respective petitioners were rendered in the context of un-amended Section 127 of the IT Act as it stood prior to 01.04.1988. Therefore, those decisions which were cited cannot be come to the rescue of the respective Writ Petitioners.

81A. A comparison of the provision that read before the amendment vide Direct Tax Laws (Amendment) Act, 1987 with effect from 01.04.1988 and the provision as it stood prior to the said date vide Taxation Laws <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 (Amendment) Act, 1975 with effect from 01.10.1975 indicates that reasonable opportunity of being heard in the matter before the transfer made, is to be extended wherever it is possible as the expression used is “wherever it is possible to do so”.

82. Under those circumstances, as specified in sub-section 2 to Section 127 of the IT Act, there has to be an Agreement between the heads of the Transferor or Transferee, Assessing Officers. Where there is no consensus or Agreement between the heads of the Transferor or Transferee Assessing Officers, the decisions of the Board has to be obtained or any such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

83. At the same time, the arguments of the learned Senior Counsel for petitioners that General Secretary of petitioner in W.P.No.2102 of 2021 and Permanent Trustee of petitioner in W.P.Nos.2089 & 6711 of 2021 are <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 independent, merits consideration since the individuals who have joined together to run the DMK Party and DMK Charitable Trust have obtained separate PAN numbers under the IT Act as Body of Person in terms of Section 13A of the IT Act.

84. The reasons given in the Impugned Orders passed under Section 127 of the IT Act that under the guise of coordinated investigation pursuant to the search and seizure operations conducted at the premises of Mr.D.Duraimuguran (General Secretary of petitioner in W.P.No.2102 of 2021 and Permanent Trustee of petitioner in W.P.Nos.2089 & 6711 of 2021) on 30.03.2019 & 01.04.2019 have to be revisited afresh in the light of the fact that the members of the petitioner Trust in W.P.Nos.2089 & 6711 of 2021 are the members of the petitioner in W.P.No.2102 of 2021 is not sufficient.

85. Section 127 of the IT Act as it stands today was incorporated in the IT Act vide Direct Tax Laws (Amendment) Act, 1987. Prior to the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 above, Section 127 of the IT Act was substituted by Finance (No.2) Act, 1967 with effect from 01.04.1967 and was later amended by the Taxation Laws (Amendment) Act, 1975 with effect from 01.10.1975.

86. For the sake of clarity, sub-section (1) and sub-section (2) to Section 127 of the IT Act are reproduced below:-

127. Power to transfer cases (1) The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him whether with or without concurrent jurisdiction to any other Assessing Officer or Assessing Officers whether with or without concurrent jurisdiction also subordinate to him.

(2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,-

(a) where the Principal Directors (b) where the Principal Directors General or Directors General or General or Directors General or Principal Chief Commissioners or Principal Chief Commissioners or Chief Commissioners or Principal Chief Commissioners or Principal Commissioners or Commissioners to Commissioners or Commissioners whom such Assessing Officers are aforesaid are not in agreement, the subordinate are in agreement, then the order transferring the case may, Principal Director General or Director similarly, be passed by the Board or <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

127. Power to transfer cases General or Principal Chief any such Principal Director General Commissioner or Chief Commissioner General or Director General or or Principal Commissioner or Principal Chief Commissioner or Chief Commissioner from whose jurisdiction Commissioner or Principal the case is to be transferred may, after Commissioner or Commissioner as the giving the assessee a reasonable Board may, by notification in the opportunity of being heard in the Official Gazette, authorise in this matter, wherever it is possible to do so, behalf.

and after recording his reasons for doing so, pass the order.

87. Sub-section (1) and sub-section (2) to Section 127 of the IT Act are the substantive provisions. They also contemplate the procedures to be followed by the Officers named therein namely Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

88. Therefore, the requirements of sub-section (1) to Section 127 of the IT Act to that extent has applied to the facts of the case. Technically, the respective petitioners are not entitled to any opportunity of being heard as is contemplated either under sub-section (1) or sub-section (2) to Section 127 of the IT Act as the transfer is within the city.

<https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021

89. Sub-section (1) to Section 127 of the IT Act applies to a situation where transfer is to be made from one or more Assessing Officers subordinate to the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or transfer to any Assessing Officer or Assessing Officers subordinate to such office whether with or without concurrent jurisdiction.

90. Sub-section (2) to Section 127 applies to a situation where transfer is to be made to the Assessing Officer or Assessing Officers from who are not subordinate to the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

91. Thus, reasonable opportunity of being heard is not mandatory. Only “wherever it is possible to do so”, opportunity of being heard can be extended. However, recording of reason is mandatory both under the <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 provision as it stood with effect from 01.10.1975 and after 01.04.1988 till date. Even otherwise the requirements of being heard are only directory and not mandatory. Therefore, the requirements can be dispensed with.

92. However, sub-section (3) is an exception to sub-section (1) and sub-section (2) to Section 127 of the IT Act. As per sub-section (3) to Section 127 of the IT Act, the requirements of reasonable opportunity of being heard if the Offices of all such Officers are situated in the same city, locality or place. Sub-section (3) to Section 127 of the IT Act is reproduced below:-

“(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such offices of all such officers are situated in the same city, locality or place.”

93. Transfer may be made at any stage of proceeding and does not warrant re-issue of any notice already issued by the Jurisdictional Assessing Officer or Assessing Officer from whom the case is transferred. Sub-section <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 (4) to Section 127 of the IT Act is reproduced below:-

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

94. Prima facie, there are indications to show that the 4th respondent the Assistant Commissioner of Income Tax, Central Circle – 1 (3), Chennai is subordinate to the second respondent the Director General of Income Tax (Investigations).

95. The 5th respondent namely the Income Tax Officer (Exemptions) in W.P.Nos.2089 & 6711 of 2021 (DMK Charitable Trust) and the 5th respondent namely the Deputy Commissioner of Income Tax (Exemptions) in W.P.No.2102 of 2021 (DMK Party) are subordinate to the 3rd respondent namely the Commissioner of Income Tax (Exemptions) in all the Writ Petitions.

96. There are also indications that pursuant to Representation dated <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 13.01.2021 of the Assistant Commissioner of Income Tax, Central Circle – 1 (3), Chennai 4th respondent in W.P.Nos.2089 and 2102 of 2021/6th respondent in W.P.No.6711 of 2021 is subordinate to the 2nd respondent Director General of Income Tax (Investigations) in all the Writ Petitions.

97. It was he who made a request for transferring of cases. Pursuant to the aforesaid representation dated 13.01.2021, the Director General of Income Tax (Investigations) the 2nd respondent in all the Writ Petitions has requested the 3rd respondent Commissioner of Income Tax (Exemptions), Chennai in all the Writ Petitions for transferring the cases of the respective petitioners to the Assistant Commissioner of Income Tax, Central Circle – 1 (3), Chennai 4th respondent in W.P.Nos.2089 and 2102 of 2021/6th respondent in W.P.No.6711 of 2021.

98. Thus, the cumulative reading of Section 127(1) and Section 127(2) of the IT Act and Section 127(3) of the IT Act indicates that there ought to have been an Agreement since the 4th Respondent in these Writ Petitions <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 namely the Assistant Commissioner of Income Tax, Central Circle – 1 (3), Chennai and the 5th respondent the Income Tax Officer (Exemption), Ward 1 Chennai in W.P.Nos.2089 and 6711 of 2021 (DMK Charitable Trust) and the Deputy Commissioner of Income Tax (Exemptions), Chennai in W.P.No.2102 of 2021 (DMK Party) are not subordinate to the 3rd respondent Commissioner of Income Tax (Exemptions) in all the Writ Petitions.

99. Further, the aforesaid search operations would have thrown informations, and have also initiating proceedings under Section 153C of the Income Tax Act on the respective petitioners as the other persons. Whether the above exercise was made or not is not discernible from the records that were produced for my perusal before this Court.

100. If indeed the search operations had revealed that incomes amounts were being intermingled and there were compelling reasons, transfer can be justified for the purpose of Section 153C of the IT Act.

101. Considering the fact that the search operations were conducted at <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm) W.P.Nos.2089, 2102 & 6711 of 2021 the premises of Mr.D.Duraimurugan (the General Secretary of the petitioner in

W.P.No.2102 of 2021 who is the Permanent Trustee of the petitioner in W.P.Nos.2089 & 6711 of 2021 and at the premises of the Trust run by him on 30.03.2019 & 01.04.2019 and considering the fact that more than five years have lapsed and considering the fact that separate Assessment Orders have also been passed pursuant to the aforesaid search operations against Mr.D.Duraimurugan and the Trust run by him, the necessity for transfer may be revisited.

102. In view of the above discussion, the Orders dated 19.01.2021 impugned in W.P.Nos.2089 & 2102 of 2021 as well as the Notifications dated 26.02.2021 & 04.03.2021 impugned in W.P.No.6711 of 2021 are hereby quashed and these cases are remitted back to the 3rd respondent viz., the Commissioner of Income Tax (Exemptions), Chennai for passing fresh orders on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

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103. It is needless to state that the respective petitioners may be given an opportunity of being heard to explain the case as the respective petitioners are likely to loose out the benefit of faceless assessment under Section 144B of the IT Act.

104. These Writ Petitions are disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

mrr/msm/arb

Index: Yes

Neutral Citation : Yes

Speaking Order

<https://www.mhc.tn.gov.in/judis>

(Uploaded on: 02/06/2025 02:32:02 pm
W.P.No.

To

1.The Principal Chief Commissioner
of Income Tax (Exemptions),
Pratyakshkar Bhawan, Block E-2, 25th Floor,
Civic Centre, J.L.Nehru Marg,
New Delhi.

2.The Director General of
Income Tax (Investigations) Tamilnadu
and Puducherry,
121, M.G.Road, Nungambakkam,
Chennai – 600 034.

3.The Commissioner of Income Tax (Exemptions), Chennai, 121, M.G.Road, Nungambakkam, Chennai – 600 034.

4.The Assistant Commissioner of Income Tax, Central Circle – 1 (3), 121, M.G.Road, Nungambakkam, Chennai – 600 034.

5.The Income Tax Officer (Exemption) Ward 1 Chennai, 121, M.G.Road, Nungambakkam, Chennai – 600 034.

6.The Deputy Commissioner of Income Tax (Exemptions), 121, M.G.Road, Nungambakkam, Chennai – 600 034.

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mrr/msm/arb W.P.Nos.2089, 2102 & 6711 of 2021 09.05.2025 <https://www.mhc.tn.gov.in/judis> (Uploaded on: 02/06/2025 02:32:02 pm)