

Power to transfer cases under Income-tax Act, 1961



This article discusses different aspects relating to power of transfer cases under the Income-tax Act, 1961 in the light of some important related case laws and historical legislation for introduction of transfer of cases under Indian Income-tax Act, 1922 (briefly, the old Act) with successor amended provisions till date. Further, this article seeks to analyse some relevant Indian case laws, highlighting key terms and noting some practical issues and guidance on areas lacking clarity, should help the cause of the taxpayers as well as tax professionals. Read on to know more.....



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Legislation history

The below table depicts the legal provisions pertaining to 'Power to transfer cases' as prescribed under the old Act with successor amendment by various Finance bills:

Act	Section	Particulars
Income-tax Act, 1922	5(7A)	(1) The CIT may transfer any case from one ITO subordinate to him to another, and the Central Board of Revenue may transfer any case from any one ITO 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 ITO from whom the case is transferred.
Income-tax Act, 1961	127	(1) The CIT 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 ITO subordinate to him to another also subordinate to him, and the Board may similarly transfer any case from one ITO to another; Provided that nothing in this sub-Section shall be deemed to require any such opportunity to be given where the transfer is from one ITO to another whose offices are situated in the same city, locality or place. (2) The transfer of a case under sub-Section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the ITO from whom the case is transferred.

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Act	Section	Particulars
Amended by Finance (No. 2) Act, 1967	127	<p>(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from any ITO or ITO's subordinate to him to any other ITO or ITO's also subordinate to him, and the Board may similarly transfer any case from any ITO or ITO's to any other ITO or ITO's;</p> <p>Provided that nothing in this sub-section shall be deemed to require any such opportunity to be given where the transfer is from any ITO or ITO's to any other ITO or ITO's and the offices of all such ITO's are situated in the same city, locality or place;</p> <p>Provided further that where any case has been transferred from any ITO or ITO's to two or more ITO's, the ITO's to whom the case is so transferred shall have concurrent jurisdiction over the case and shall perform such functions in relation to the said case as the Board or the Commissioner (or any Inspecting AC authorised by the Commissioner in this behalf) may, by general or special order in writing, specify, for the distribution and allocation of the work to be performed.</p> <p>(2) The transfer of a case under sub-Section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the ITO or ITO's from whom the case is transferred.</p>
Amended by the Taxation Laws (Amendment) Act, 1975	127	<p>(1) The Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more of the following officers subordinate to him, namely:-</p> <p>(a) any ITO or ITO's; (b) any ITO or ITO's having concurrent jurisdiction with the Inspecting AC, to any other ITO or ITO's (whether with or without concurrent jurisdiction with the Inspecting AC) also subordinate to him and the Board may similarly transfer any case from- (i) any ITO or ITO's, or (ii) any ITO or ITO's having concurrent jurisdiction with the Inspecting AC, to any other ITO or ITO's (whether with or without concurrent jurisdiction with the Inspecting AC);</p> <p>Provided that nothing in this sub-Section shall be deemed to require any such opportunity to be given where the transfer is from any ITO or ITO's (whether with or without concurrent jurisdiction with the Inspecting AC) to any other ITO or ITO's (whether with or without concurrent jurisdiction with the Inspecting AC) and the offices of all such officers are situated in the same city, locality or place;</p> <p>Provided further that- (a) where any case has been transferred from any ITO or ITO's to two or more ITO's, the ITO's to whom the case is so transferred shall have concurrent jurisdiction over such case and shall perform their functions in accordance with such general or special orders in writing as the Board or the Commissioner or the Inspecting AC authorised by the Commissioner in this behalf, may make for the purpose of facilitating the performance of such functions;</p> <p>(b) where any case has been transferred from any ITO or ITO's (whether with or without concurrent jurisdiction with the Inspecting AC) to two or more ITO's with concurrent jurisdiction with the Inspecting AC, the officers (including the Inspecting AC) to whom the case is so transferred shall have concurrent jurisdiction over such case and shall perform their functions in accordance with such general or special orders in writing as the Board or the Commissioner may make for the purpose of facilitating the performance of such functions, and the ITO's shall perform their functions also in accordance with such orders or directions as the Inspecting AC may make under sub-section (2) of Section 124 or, as the case may be, under sub-Section (2) of Section 125A.</p> <p>(2) The transfer of a case under sub-Section (1) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the ITO or ITO's from whom the case is transferred.</p>
Substituted by the Direct Tax Laws (Amendment) Act, 1987	127	<p>(1) The PDG/DG/PCC/CC/PC/C may, after giving the assessee 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 AO's subordinate to him (whether with or without concurrent jurisdiction) to any other AO or AO's (whether with or without concurrent jurisdiction) also subordinate to him.</p> <p>(2) Where the AO or AO's from whom the case is to be transferred and the AO or AO's to whom the case is to be transferred are not subordinate to the same PDG/DG/PCC/CC/PC/C, — (a) where the PDG/DG/PCC/CC/PC/C to whom such AO's are subordinate are in agreement, then the PDG/DG/PCC/CC/PC/C from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;</p> <p>(b) where the PDG/DG/PCC/CC/PC/C aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such PDG/DG/PCC/CC/PC/C as the Board may, by notification in the Official Gazette, authorise in this behalf.</p> <p>(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 AO or AO's (whether with or without concurrent jurisdiction) to any other AO or AO's (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.</p> <p>(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 AO or AO's from whom the case is transferred.</p>
		<p>The word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.</p>

Now, let us clarify some critical issues relating to the aforesaid section along with some case laws in this regard.

Scope of exercise of powers:

- i. If both AOs are not subordinate to the same DGIT/CIT then the transfer can be made on the agreement of the respective DGIT/CIT, and in the event of disagreement, by the board or by the DGIT/CIT authorised by it.
- ii. Commissioner has jurisdiction to transfer cases only within its jurisdiction whereas power of CBDT is wider and it can transfer cases from one jurisdiction of one commissioner to another—*C. Krishnan vs. ITO*¹.
- iii. On such a transfer, it is not necessary to reissue any notice already issued by AO from whom the case is transferred and the AO to whom the case is transferred, is entitled to proceed from the stage at which he receives the case from his predecessor—*Kamakshya vs. CIT*².

Opportunity of hearing:

- i. Section 127(2) provides that when transfer of the file of an assessee from one AO to the other is contemplated, the step to be taken is after giving the assessee reasonable opportunity to be heard and after recording the reasons for doing so, pass the order—*Mukutla Lalita vs. Commissioner of Income Tax*.
- ii. In the view of provisions of Section 127(2), a reasonable opportunity of hearing is to be granted to assessee by DGIT/CCIT/CIT from whose jurisdiction assessee's case is to be transferred—*Madhu Khurana vs. CIT*³.
- iii. Interpreting the provisions of Section 127(2), the furnishing of a personal hearing was necessary and case of assessee cannot be transferred from one income-tax authority to another without giving opportunity of hearing to assessee—*Aamby Valley Ltd. vs. Commissioner of Income-tax*.
- iv. An opportunity of being heard must be given to the assessee, not only when the case is to

be transferred despite the objection of the assessee but also when the case is to be transferred despite his request—*Kapil Rollers vs. CBDT*⁴.

Recording and communication of reasons:

- i. The requirement of recording reasons is mandatory and in such a case, the assessee must be given a reasonable opportunity of being heard with a view to enable him to effectively show cause against the proposed transfer and it is also necessary to mention in the notice the reasons for the proposed transfer so that the assessee could make an effective representation with reference to the reasons set out—*Vijayasanthi Investments Pvt. Ltd. vs. Chief CIT*⁵.
- ii. Furnishing of specific and intelligible reasons for the transfer of a case is only a concomitant of the concept of reasonable opportunity enshrined in Section 127(1)/127(2) of the Act and unless the assessee knows the precise reasons for the transfer, he would be handicapped in putting forth his objections effectively—*Saptagiri Enterprises vs. CIT*.
- iii. The provisions for the recording of reasons were held to be mandatory and the order under Section 127 of the Act was held not to be an administrative order—*Ajanta Industries vs. CBDT*⁶.
- iv. The Commissioner will be at liberty to proceed against each of the assessee's afresh but only after indicating the grounds or reasons for transfer in the show-cause notice to enable the assessee to make an effective representation against the same and a final order shall be passed by Commissioner after hearing each of the assessee's and considering the representation and/or objection made to the show-cause notice and after recording reasons—*Chotanagpur Industrial Gases vs. Commissioner of Income-Tax*.
- v. While passing an order for transfer of case, no prejudice would be caused to department of precise reason is disclosed to show that authority

¹ [2014] 52 Taxmann 30 (Mad.)

² 244 ITR 32

³ [2011] 200 Taxmann 297

⁴ 234 ITR 824

⁵ [1991] 187 ITR 405 (AP)

⁶ [1976] 102 ITR 281 (SC)

did apply his mind to material on record or information available on basis of search and seizure operations, giving link to the fact that assessee has some connection or association with party with whose case assessee's case is preferred to be centralised and if the said fact is mentioned in transfer case—*R. K. Agarwal vs. CIT*⁷.

All files and returns should be transferred:

- i. There is no provision in the Act where under two assessing officers retain concurrent jurisdiction over the same assessee. Therefore, when transfer of a case u/s 127 is effected, the entire files, old, pending and the returns to be filed, will get transferred to the officer to whom the file is transferred by the Chief Commissioner—*P. A. Ahammed vs. Chief CIT*⁸.

Transfers within same city/locality/place:

- i. The Calcutta High Court in the case of *Vyapar Mandal Ltd. vs. Commissioner of Income-Tax, 1965* held that transfer of the assessee case was made from one Income-tax Officer to another Income-tax Officer, having their offices in the same city, it was not necessary for the Commissioner to give to the assessee an opportunity of being heard against the proposal of transfer of the case.

It was nevertheless incumbent upon the Commissioner to record his reasons for the said transfer of case from one Income-tax Officer to another Income-tax Officer, having their offices in the same city. Further, the assessee is not entitled to have a copy of the reasons recorded and the same is held by the Supreme Court in the case of *K. S. Rashid & Sons vs. Income-tax Officer*, dealing with reasons to be recorded, that an assessee is not entitled to have a copy of the reasons.

- ii. When a file is transferred from one Assessing Officer to another whose offices are located in the same city, locality or place, although the

opportunity of hearing as postulated in Section 127(1) and (2) has been dispensed with, other statutory formalities which includes issuing an order are required to be complied with—*Kusum Goyal vs. ITO*⁹.

Assessee cannot choose place of assessment:

- i. The choice of place where the cases are to be transferred is fully within the domain of the transferring authority. The assessee can have no choice to ask for a particular officer/a particular place for the assessment to be made when power u/s. 127(2) is to be exercised—*Sahara Airlines Ltd. vs. Director General of Income tax(Inv.)*¹⁰.

Whether 'coordinated investigation' is a valid reason:

- i. The reasons recorded in the order must have a direct nexus to the object sought to be achieved, the mere intension of a vague ground for transfer, such as 'for detailed and coordinated investigation', may not satisfy the requirement of the section, but where the facts justify the transfer, such a ground may be valid ground such as :

- Purpose of transfer to centralise cases relating to stock brokers—*Madhav Sharan vs. CIT*¹¹.
- Assessee belongs to group company—*Redwood Hotel vs. CCIT*¹².
- Convenience and efficient assessment—*Shibhu Soren vs. CIT*¹³.
- Connected business groups or families—*Bhatia Minerals vs. CIT*¹⁴.

Transfer should not be exercised for extraneous consideration:

- i. In the case of *Mohandas vs. CIT*¹⁵, it was held that this power should not be exercised for extraneous or irrelevant considerations.
- ii. *CIT vs. Bidhu*¹⁶, it has been held that the power of transfer is quasi-judicial and must be

⁷ [2006] 154 Taxmann 200 (All.)

⁸ [2006] 151 Taxmann 223(Ker.)

⁹ [2011] 198 Taxmann 61 (Cal.)

¹⁰ [2006] 152 Taxmann 522(All.)

¹¹ 221 ITR 809

¹² 259 ITR 191

¹³ 255 ITR 298

¹⁴ 200 ITR 591

¹⁵ 244 ITR 32

¹⁶ 63 ITR 278 (SC)

exercised in a fair and reasonable manner and not in an arbitrary or mechanical way.

- iii. In *Sameer vs. Chairman, CBDT¹⁷ & Jharkhand Mukti Morcha vs. CIT¹⁸*, it was held that paramount consideration for transfer should be in public interest.

Temporary withdrawal of transfer order:

- i. There is no provision under the Act which empowers Commissioner to temporarily withdraw order passed by him u/s. 127(2) for sake of administrative convenience—*Fiat India Automobiles Ltd. vs. Virendra Singh¹⁹*.

Concurrence of both Commissioners is necessary:

- i. In case of transfer of case of an assessee from one assessing officer to another assessing officer, who were under control of different commissioners, both transferring Commissioner and Commissioner within whose jurisdiction case is to be transferred must agree for such transfer, in absence of such agreement, transfer cannot be made—*Noorul Islam Educational Trust vs. CIT²⁰*.

All objections should be dealt:

- i. Needless to say, the objections raised by the assessee must be appropriately dealt with by the CIT and an order that does not consider the objections is liable to be quashed—*Benz vs. ITO²¹*.
- ii. While passing the final order, the competent authority must deal with all the objections raised by the assessee; otherwise the mandate requiring the authority to record reasons would be reduced to an empty formality—*Rajesh Mahajan vs. CIT²²*.

Chapter XIV-B and XXI are consistent with the provisions of Section 127:

- i. It has also held that the provisions of Section 127 and Chapter XIV-B are not inconsistent but supplemental to each other—*Mukatalal vs. CIT²³*.

- ii. Penalty proceedings may be continued by the officer to whom the case is transferred—*CIT vs. Jaswantiraj²⁴*.

Conclusion:

The power of transfer is quasi-judicial and must be exercised in a fair and reasonable manner. The laid down propositions summarises the position of transfer of cases as per the Income Tax law:

- i) The section does not violate any of the fundamental rights guaranteed by the Constitution.
- ii) If the power under the section is exercised in a discriminatory manner or for an extraneous consideration, the assessee may challenge it in the court.
- iii) It would be prudent if, before the order of the transfer is made, the principles of natural justice are followed and it is further mandatory to record the reasons for the transfer in every case and the reasons must be set out in the order of transfer and communicated to assessee, and non-communication of the reasons would invalidate the order.
- iv) In a case falling within Section 127(3), transfer to another AO in the same city, locality or place, it is not necessary to hear the assessee or to record reasons for the transfer.
- v) The effect of the Explanation is that once an order of transfer is made under the section, all proceedings for different years are transferred and the AO to whom the transfer is made would be in a position to continue all the pending proceedings and to institute further proceedings against the assessee in respect of any year, past or future even reopen assessment u/s 147 for an earlier year which had been completed at the date of transfer.

The following flow chart depict the legal framework of provision of transfer of cases under the Income-tax Act:

¹⁷ 185 ITR 129

¹⁸ 225 ITR 284

¹⁹ [2012] 211 Taxmann 570(Bom.)

²⁰ [2011] 201 Taxmann 203(Mag.)

²¹ 232 ITR 807

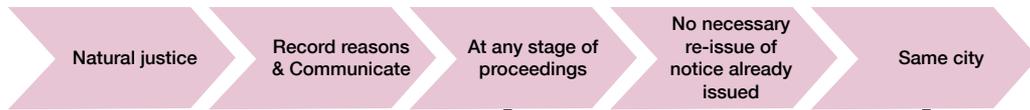
²² [2002] 257 ITR 557

²³ 226 ITR 23

²⁴ 182 ITR 151

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Figure: Power to transfer cases under IT Act, 1961



Glossary			
AC	Assistant Commissioner	DG	Director General
AO	Assessing officer	ITO	Income-tax officer
Board/CBDT	Central Board of Direct Taxes	IT Act	Income-tax Act, 1961
C	Commissioner	Old Act	Income-tax Act, 1922
CC	Chief Commissioner	PC	Principal Commissioner
Chapter XIV-B	Special procedure for assessment of search cases	PCC	Principal Chief Commissioner
Chapter XXI	Penalties imposable	PDG	Principal Director General

