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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6071/2016, CM APPL. 24902/2016**

MEERA GUPTA ..... Petitioner

Through Mr. Amol Sinha with Mr. Rahul Kochar, Advocates

versus

PRINCIPAL COMMISSIONER OF INCOME TAX – 18 ..... Respondent

Through Mr. Rahul Kaushik, Senior Standing Counsel for Income Tax with Mr. Dhanesh Kumar, Advocate

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R

% **22.07.2016**

1. The challenge in this petition is to an order dated 2nd June, 2016 passed by Principal Commissioner of Income Tax-18, New Delhi-2 ('Principal CIT') under Section 127 (2) of the Income Tax Act, 1961 directing the transfer of the case of the Petitioner from ITO, Ward 52(1) to ACIT/Deputy Commissioner of IT (DCIT), Central Circle, NOIDA.

2. Notice. Mr. Rahul Kaushik, Senior Standing Counsel for Income Tax accepts notice.

3. A Show Cause Notice (SCN) was issued by the Principal CIT

to the Petitioner on 17th May, 2016 proposing the above transfer within 15 days from the date of receipt of the SCN. The Petitioner's reply to the SCN is dated 31st May, 2016 but it is not in dispute that it was actually filed on 2nd June, 2016 which is same date on which the impugned order was passed. About one week thereafter, on 10th June 2016, the Petitioner was issued a notice asking her to appear before the Principal CIT on 20th June 2016 in relation to the transfer of the case.

4. The short ground urged by Mr. Amol Sinha, learned counsel for the Petitioner, is that having already passed an order on 2nd June, 2016 transferring the case of the Petitioner to the Deputy CIT at NOIDA, a hearing on 20th June, 2016 before the Principal CIT was a pointless exercise. It would in any event not cure the illegality attached to the order dated 2nd June 2016 which was passed without hearing the Petitioner.

5. Mr Kaushik on the other hand submitted that the reply ought to have been filed on or before 1st June 2016 but was admittedly filed on 2nd June, 2016 and therefore the Principal CIT was justified in proceeding to pass the order dated 2nd June, 2016 transferring the case. However, even he is unable to explain as to what prompted the Principal CIT to fix a date of hearing of Petitioner after the passing of the impugned order. The only inference is that the Principal CIT thought it necessary to hear the Petitioner.

6. An order under Section 127 (2) of the Act transferring the case from one Assessing Officer to another in a different jurisdiction to another could not have been passed without affording an adequate opportunity to the affected party of being heard. While it is true that the Petitioner was late by one day in filing a reply to the SCN, the Principal CIT did not hold that against the Petitioner. He decided that she should in any event be heard. In the circumstances, his deciding to proceed to pass the transfer order on 2nd June 2016 itself is inexplicable. Even assuming that he had passed that order without looking at the reply submitted on that very date, then no purpose would be served in hearing the Petitioner on 20th June 2016 in relation to an issue that has already been decided by him. Incidentally the photocopy of the original order dated 2nd June 2016 served on the Petitioner, which is enclosed with the petition, shows that the typed of '12.05.2016' and has been corrected by hand to read '02.06.2016' without the Principal CIT bothering to initial the corrected date. This type of a casual approach could have serious consequences.

7. In any event, for the reasons aforementioned, the Court is of the view that the impugned order under Section 127 (2) of the Act could not have been passed without hearing the Petitioner. In that view of the mater, the impugned order dated 2nd June, 2016 is hereby set aside.

8. A fresh date for hearing of the Petitioner will now be fixed by the Principal CIT-18, New Delhi–2 within the next 20 days with at least one clear week's advance notice to the Petitioner. It is made clear that the Petitioner shall not seek any adjournment and shall fully cooperate with the Principal CIT.

9. After hearing the Petitioner, the Principal CIT-18, Delhi-2 will pass a fresh order under Section 127(2) uninfluenced by the previous order dated 2nd June 2016 which has been set aside by this order.

10. The writ petition and pending application are disposed of in the above terms.

11. Order *dasti.*

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 22, 2016
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