IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4732 OF 2018

Nitesh Pune Mall Pvt. Ltd. ....Petitioner
V/s.
The Principal Commissioner of
Income-Tax-2, Pune and Ors. ....Respondents

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Mr. Rohan Deshpande, Advocate for the petitioner.

Mr. Suresh Kumar, Advocate for the respondent.

CORAM :- **M.S. SANKLECHA, &**

SANDEEP K. SHINDE, JJ.

DATE :- **6TH JULY, 2018.**

P.C. :-

1. This petition under Article 226 of the Constitution of India challenges the order dated 20th February, 2018 and notice dated 29th November, 2017 passed/notice issued under Section 127 of the Income-Tax Act, 1961 (the Act). By the impugned order dated 20th

February, 2018 the petitioner's pending assessment proceedings were transferred from the Assistant Commissioner of Income Tax, Pune to the Deputy Commissioner of Income-Tax, Mumbai.

2. It is the petitioner's contention that the impugned order and the notice are in defiance of the decisions of the Apex Court in the cases of **Noorul Islam Education Trust v. Commissioner of Income-Tax-1 reported in 388 ITR 489** and of this Court in **Rentworks India Private Limited v. PCIT, Mumbai and Anr**. (Writ Petition (L) No. 1944 of 2017) decided on October 11, 2017. In the above cases, it has been held that the condition precedent for exercising powers to transfer under Section 127 of the Act requires that there must be agreement between the officers of equal rank in the two jurisdictions i.e. the existing jurisdiction and the new jurisdiction before proceedings to transfer the case of the petitioner can be initiated by the Commissioner.

3. On earlier occasions, this petition was adjourned and the parties were put to notice that the petition would be disposed of finally at the stage of admission.

4. Today, Mr. Suresh Kumar, Learned Counsel appearing for the respondent-Revenue, on instructions, seeks to withdraw the impugned notice dated 29th November, 2017 and impugned order dated 20th February, 2018 passed under Section 127 of the Act. However, he seeks liberty to proceed afresh in the matter in accordance with law.

5. In view of the withdrawal of the impugned notices and the impugned order passed under Section 127 of the Act, nothing survives in this petition. However, this withdrawal will not prohibit the Revenue from proceeding afresh in accordance with law. In view of the above, Mr. Deshpande, Learned Counsel appearing for the petitioner, seeks to withdraw the petition.

6. In view of the statement made on behalf of the Revenue, the petition is disposed of as withdrawn with liberty to the respondent to proceed afresh in accordance with law.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**