**S/L 01**
27.09.2021
Court. No. 2
*(p.b.)*

WPA 11901 of 2021
Kamal Nath
Vs.
The Principal Commissioner
of Income Tax II, Kolkata & Ors.
(Through Video Conference)

Mr. J.P. Khaitan, Sr. Adv.
Mr. Siddhartha Luthra, Sr. Adv.
Mr. Amit Agarwalla, Adv.
Mr. Sourabh Bagaria, Adv.
Mr. B N Joshi, Adv.
Ms. Subhangi Jain, Adv.
Mr. Pankaj Singhal, Adv.

.... For the petitioner

Mr. S. Roychowdhury
Mr. S. Bhattacharjee

.... For the Respondents.

Heard both the parties.

In this matter, petitioner has challenged the impugned action of transfer of his income tax case on coming to know for the first time from the official portal displaying such transfer on 17th July, 2021 from Principal Commissioner of Income Tax-II Kolkata to Deputy Commissioner of Income Tax, Central Circle 19, New Delhi under Section 127 of the Income Tax Act, 1961. It appears from record annexed to the writ petition that a show-cause notice was issued to the petitioner on 5th September, 2019 giving him an opportunity to show-cause as to why his income tax case will not be transferred to Deputy Commissioner of Income Tax, Central Circle, New Delhi, within 14 days from the receipt of the said notice. The said show-cause notice appears at Page 34 of the writ petition. It appears from Annexure P-3 to the writ petition that by letter dated 18th September, 2019 petitioner in response to the said show-cause notice has denied the allegations contained in the said show-cause notice and made prayer seeking three to four weeks time to submit his response/reply to the said show-cause notice, citing his difficulty of not being available in Kolkata for the reason that he was busy in managing and monitoring the flood situation in Bhopal and it is the case of the petitioner that after hearing nothing from respondent concerned in response to his aforesaid letter dated 18th September, 2019, he wrote another letter dated 3rd October, 2019, as appears at Page 37 being Annexure P-4 to the writ petition, asking the respondents concerned for two to three weeks time for submission of detail reply to the aforesaid show-cause notice and asking the respondents concerned for furnishing the materials relied upon by them for transferring the case of the petitioner from Kolkata to Delhi. It is the case of the petitioner that even after his second letter dated 3rd October, 2019, he got no response to either of his letter dated 8th September, 2019 or 3rd October, 2019 or letting him know the fate of his aforesaid those two letters and all of a sudden on 17th September, 2021 i.e. after about one year ten month petitioner found in the income tax official portal that his case has been transferred from Kolkata to Delhi and these facts have been specifically pleaded in his writ petition as appears at Page 6 Paragraph 9 of the instant writ petition which are as follows:

"Your petitioner states that the respondent No.1 never replied or furnished any statements, evidences, information and documents to your petitioner. There was no communication from the Respondent No.1 pursuant to the replies given by your petitioner. On or about 20th July, 2021, your petitioner's income tax consultant while browsing on to the Income Tax web portal was shocked to see that your petitioner's case and jurisdiction was transferred from Kolkata to New Delhi under the respondent No.2. Copy of the screenshot of the Income tax portal showing the current status and jurisdiction of your petitioner's case as transferred to New Delhi is annexed hereto and marked as Annexure "P-5".

Learned advocate appearing for the respondent Income tax authority when he was asked by me about the fate or decision of the respondents income tax authority on the petitioner's aforesaid letters/representations dated 18th September, 2019 and 3rd October, 2019 he could not provide any information in this regard and submitted that he is not in a position to make any submission in this regard and sought time to produce relevant record to show as to what was the fate of the aforesaid letters/representations dated 18th September, 2019 and 3rd October, 2019 and as to whether hearing was given to the petitioner on these letters/representations and whether those letters/representations were considered or rejected, if so, whether fate of those letters was communicated to the petitioner or not before passing the impugned order of transfer of the income tax case of the petitioner. Learned advocate appearing for the respondents also submits that in the show-cause notice dated 5th September, 2019 petitioner was asked to file a reply within 14 days from the date of receipt of the said notice but from his letter dated 18th September, 2019 itself it appears that it was sent beyond time given by the respondent income tax authority and he further submits that the petitioner has also not disclosed as to how the aforesaid letters dated 18th September, 2019 were sent to the respondent concerned and petitioner has not annexed to the writ petition any proof of service of the said letter but learned advocate for the respondents does not deny the receipt of the aforesaid second letter dated 3rd October, 2019.

Petitioner submits that without considering and disposing the aforesaid letters/representations and giving any opportunities of hearing and without communication of the formal order of disposal and/or rejection of the petitioner's prayer made in the aforesaid letters such decision of transfer of the case of the petitioner under Section 127 (2) of the Income Tax Act, 1961, was passed and even such order of transfer has not been communicated to the petitioner and after about eighteen months from his second letter dated 3rd October, 2019, petitioner came to know from the official portal of income tax on 17th July, 2021 that his case has been transferred from Kolkata to Delhi.

I had directed Mr. Chowdhury, Learned Advocate appearing for the respondents/income tax authority by my order dated 6th September, 2021 to produce the record particularly with regard to the receipt of the objections/representations dated 18th September, 2019 and 3rd October, 2019 written on behalf of the petitioner as to whether against the show-cause notice/proposal for transferring the case of the petitioner under Section 127 (2) of the Income Tax Act, 1961 from Kolkata to Delhi were received or not and whether those were considered and disposed of by giving opportunity of hearing to the petitioner before passing the impugned order of transfer and also whether the order for transfer of the Income Tax case of the petitioner under Section 127 (2) of the Income Tax Act, 1961 was served upon the petitioner or not?

Pursuant to the aforesaid direction of this Court Mr. Chowdhury, Learned Advocate appearing for the respondents/Income Tax Authority has placed the record as well as written instruction dated 17th September, 2021 in the aforesaid regard issued by one Barun Krishna Roy, ACIT (Hqrs)- 9, Kolkata for PCIT – 9, Kolkata from which it appears to me that it is an admitted position that the aforesaid objections/representations of the petitioner were received by the office of the respondents concerned and it also appears from the aforesaid instruction and record that the aforesaid objections/representations of the petitioner against the proposed transfer of the file of the petitioner was not considered and not disposed of and without disposal of the same and without giving opportunity of hearing to the petitioner on the aforesaid representations/objections, the impugned order of transfer of the file of the petitioner under Section 127 (2) of the Income Tax Act, 1961 was passed and the impugned order of transfer was not even communicated to the petitioner. This is the admitted position as appears from the instruction and records produced before the Court by Mr. Chowdhury, Learned Advocate for the respondents and who could not improve his case in this regard.

Mr. Khaitan, Learned Senior Counsel appearing for the petitioner has filed a supplementary affidavit challenging the impugned order of transfer of the case of the petitioner order dated 18th February, 2021 along with intimation letter dated 16th September, 2021, under Section 127 (2) of the Income Tax Act by annexing the hard copy of the same being Annexure P-5 to the said supplementary affidavit which according to him was served on the petitioiner after filing of this Writ Petition and after passing of the interim order dated 6th September, 2021 and which the petitioner has challenged on the ground that the same is illegal, invalid and without jurisdiction and in gross violation of principle of natural justice and in violation of statutory provisions since the same was passed by not considering and disposing the aforesaid representations/objections dated 18th September, 2019 and 3rd October, 2019 of the petitioner and without affording any opportunity of hearing to the petitioner before passing the aforesaid impugned order of transfer of the case of the petitioner under Section 127 (2) of the Act and which was passed almost after 18 months from the date of making such representations/objections.

Considering the submission of the parties and relevant records and in view of the factual and legal position that the impugned order of transfer under Section 127 (2) of the Income Tax Act dated 18th February, 2021 transferring the case of the petitioner was passed without giving opportunity of hearing to the petitioner and without recording the reason for not giving opportunity of hearing to the petitioner before passing such order of transfer of the case of the petitioner under Section 127 (2) of the Income Tax Act, 1961, from Kolkata to Delhi and without considering and disposing the reply/objection to the show-cause notice by the petitioner against the proposed action of transfer of case of the petitioner by the respondent is illegal, invalid and not sustainable in law and the said impugned order of transfer dated 18th July, 2019 under Section 127 (2) of the Income Tax Act, 1961 is accordingly quashed and the respondents concerned are directed to send back the case of the petitioner from Delhi to Kolkata immediately after receipt of communication of this order.

Quashing of the impugned order of transfer of the case of the petitioner will not prevent the respondent/Income Tax Authority concerned from taking action of transfer in future if it is found by the respondent concerned that there is a cogent material for doing so and by observing the statutory requirements under Section 127 (2) of the Income Tax Act, 1961.

This Writ Petition being WPA No. 11901 of 2021 is disposed of by allowing the same without calling for counter-affidavits in view of the submission of the parties and admitted facts appear from records available with the Writ Petition as well as records submitted by the respondent/Income Tax Authorities and in view of the submission on behalf of the respondents that he could not improve the case beyond record.

**(Md. Nizamuddin, J.)**