IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4833 of 2020

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Smt. Priyanka Sinha, W/o Shri Rajesh Kumar, C/o Smt. Gyanshila Kumari, Flat No. 503, Maharaja Kameshwar Complex, Frazer Road, Patna - 800001.

... ... Petitioner/s

Versus

1. Principal Chief Commissioner of Income Tax, Patna.
2. Principal Commissioner of Income Tax- 2, Patna.
3. Joint Commissioner of Income Tax, Patna.
4. Income Tax Officer, Ward- 6 (4), Patna.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Jha, Advocate Mr. Sanjeev Kumar, Advocate Mr. Aman Raja, Advocate
For the Respondent/s	:	Mrs. Archana Sinha @ Archana Shahi, Sr. SC, Income Tax

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-10-2023

The petitioner is aggrieved with the proceedings taken by the Income Tax Officer, Ward 6(4), Patna. Notice dated 24.09.2018 is issued under Section 148 of the Income Tax Act, 1961, as against the assessee, who is assigned to the Income Tax Officer, Ward 2(3), Jamshedpur.

2. Admittedly, the assessee is assigned to Income Tax Officer, Ward 2(3), Jamshedpur before which Officer, she also filed the Income Tax returns for the Assessment year 2016-17, as is evident from Annexure-2. No further proceedings were taken by the Assessing Officer, who was the Income Tax Officer, Ward 2(3), Jamshedpur. The petitioner was then issued with Annexure-3 notice dated 24.09.2018, in reply to which the petitioner specifically filed response dated 01.03.2019, which is produced as Annexure-14 along with supplementary counter affidavit. The petitioner questioned the jurisdiction and raised specific contentions against the allegations in the notice under Section 148. The petitioner before us also, specifically pointed out that there could be no proceedings taken by the Income Tax Officer, Ward 6(4) Patna.

3. The learned Standing Counsel for the Income Tax Department referred to Section 124(3) and also the consolidation of matters done by the Joint Commissioner of Income Tax, Range – 6, Patna, who has overall jurisdiction of State of Bihar and the State of Jharkhand. It is also specifically pointed out that the land, subject to a development agreement, based on which the notice was issued under Section 148 was located within the State of Bihar. Learned Standing Counsel also referred to Section 127 for the purpose of maintaining the assessment order which according to her, has to be challenged in a proper appeal instituted and not in an application under Article 226.

4. We are convinced that such a consolidation could not have been done by the Joint Commissioner of Income Tax, Range – 6, Patna, *dehors* the statutory provisions. We, hence, directed the learned Standing Counsel to place a further affidavit as to the power to carry out the transfer of a case, only with reference to the capital gains, which is alleged to have been done by the Joint Commissioner. A supplementary counter affidavit dated 19.09.2023 has been filed from which we extract paragraph 4.

> *4. That the Ld. CIT-2, Patna vide notification dated 26th July, 2018 passed concurrent jurisdiction order among all assessing officer under the Joint Commissioner of Income Tax, Range-6, Patna in respect of assessee who derived income by way of entering into land development agreement within the revenue district of Patna. Subsequently, the Joint Commissioner of Income Tax, Range-6 Patna issued an office order allotting cases of Land Development Agreement among the A.Os under his charge. Accordingly, the case of the assessee was allotted to the Income Tax officer, Ward 6(4), Patna for completing assessment proceeding in her case.*

5. Obviously, the Joint Commissioner seems to have transferred the file of the Assessee to the Income Tax Officer Ward 6(4) Patna, on the ground that the property in relation to which the addition is threatened, was located within the State of Bihar, that too inside the boundaries of Patna. We, specifically notice Section 127 which clothes the Principal Director General, Director General, the Principal Chief Commissioner, Chief Commissioner or Commissioner to transfer any case from one or more Assessing Officers sub-ordinate to him, whether with or without concurrent jurisdiction to any other Assessing Officer or Assessing Officers also sub-ordinate to him. However, the specific mandate in Section 127 is that the Assessee should be given a reasonable opportunity of being heard in the matter wherever it is possible to do so. There is no circumstance brought on record which made the extension of such an opportunity, which is also the statutory mandate, to be impossible in the facts of the present case. Obviously, the transfer was done behind the back of the petitioner. We find no reason to uphold the order of assessment, which was passed pursuant to a notice issued on the wrong premise of a transfer made by the Commissioner without following the principles of natural justice, which is specifically made a mandate in the provision enabling such transfer.

6. We, hence, set aside the assessment order passed and find the notice to be wrongly issued. The

Appropriate Authority would be entitled to take further proceedings, if it is permissible under the Act also subject to the laws of limitation, as has been laid down in the various provisions under the Income Tax Act.

7. The writ petition stands allowed.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

sharun/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.10.2023
Transmission Date	