IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3182 of 2024

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Mr. Dinesh Prasad Singh S/o Late Shri Rajendra Prasad Singh Resident of Patel Nagar, Ram Jaipal Nagar, P.S.-Danapur, Patna-801503.

... ... Petitioner/s

Versus

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

... ... Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-07-2024

The petitioner is aggrieved with the proceedings taken by the Income Tax Officer, Ward 6(3), Patna. Notice dated 11.10.2018 is issued under Section 148 of the Income Tax Act, 1961, as against the assessee, who is assigned to the Income Tax Officer, Ward 66(1), Delhi.

2. Admittedly, the assessee is assigned to Income Tax Officer, Ward 66(1), Delhi before which Officer, he also filed the Income Tax returns for the Assessment year 2015-16, as is evident from Annexure-P2. No further proceedings were taken by the Assessing Officer, but the petitioner was confronted with Annexure-P4 by Income Tax Officer, Ward 6(3) Patna. The petitioner questions the jurisdiction in the writ petition and also raised specific contentions of no service of notice under Section 148. The petitioner before urged that there could be no proceedings taken by the Income Tax Officer, Ward 6(3) 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. In C.W.J.C. No.4833 of 2020, we held so, on identical facts.

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.*

5. But for the different Assessing Officer, the facts are identical. 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 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)

(Partha Sarthy, J)

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CAV DATE	
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