

NitIn Developers and Const Vs. Cit

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Court : Delhi

Decided On : May-18-2006

Reported in : (2006)204CTR(Del)497; [2006]284ITR605(Delhi)

Appeal No. : W. P. (C) No. 20459 of 2005 18 May 2006.

Appellant : NitIn Developers and Const

Respondent : Cit

Advocate for Def. : Mr. Sabharwal

Advocate for Pet/Ap. : Dr. Rakesh Gupta and;Tarun Kumar;for the assessed;Sanjeev Sabharwal;for the Revenue

Judgement :

In this petition for a writ of certiorari, the petitioner has assailed the correctness of an order dated 5-8-2005, as amended by a corrigendum dated 17-8-2005, passed by the respondent in terms of section 127(2) of the Income Tax Act, 1961, transferring the income-tax assessment proceedings from Delhi to Meerut. It is not in dispute that no notice of the proposed transfer order was ever issued to the petitioner nor any objections invited from it. The order does not even enumerate the reasons which made it necessary to transfer the assessment proceedings from Delhi to Meerut. That a notice ought to go to the assessed and the order of transfer ought to disclose proper application of mind to the objections which the assessed may have raised is fairly well-settled. Inasmuch as both these

requirements have failed in the instant case, the transfer of proceedings from Delhi to Meerut is rendered unsustainable.

Mr. Sabharwal, learned counsel for the respondent submitted that while the order may not be strictly speaking in conformity with the requirements of law, yet the respondent should not be prevented from making a fresh order after hearing the objections of the petitioner. He urged that the petitioner could be directed to appear before the Commissioner on a date fixed by this court to receive a show-cause notice to which the petitioner can file a reply. This would avoid waste of time implicit in the issue and service of a notice to the petitioner. The Commissioner could then be permitted to pass a fresh order in accordance with law after considering the said reply. We see no reason to decline that prayer. In the result, we allow this writ petition, quash the order passed by the respondent and direct that the petitioner shall appear before the Commissioner on 3-7-2006, to receive a show-cause notice from the Commissioner to which the petitioner shall be free to file his reply. The Commissioner shall thereafter be free to pass a fresh order in accordance with law after considering the objections, if any, filed by the petitioner.

The parties are left to bear their own costs.

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