

Transfer of case u/s 127 - proposal to transfer the assessment jurisdiction of the petitioner from Kanpur to Mumbai - whether Principal Chief Commissioner of Income Tax, U.P. (West) and Uttrakhand appear to have given his consent?

ALLAHABAD HIGH COURT

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.- Writ Tax No. - 215 of 2024

Dated.- March 5, 2024

Observation :-

The language of Section 127 (2) (a) of the Act is pretty much clear in that regard. The consent has to emerge amongst two superior officers heading two different Commissionerate etc. with respect to the transfer sought. It is in that context that the designations have been expressed in the plural in the first part of Section 127 (2) (a) and in the singular in the later part. Thus, for the purpose of obtaining the views of the assessee, notice is required to be issued by the appropriate authority i.e. the officer who may express his consent to his counterpart being the officer under whose jurisdiction the case may eventually be transferred. At the same time, by virtue of first part of the Section 127 (2) (a) the consent must emerge amongst officers of equal rank.

8. That appears to be the plain meaning that must be given. In the hierarchy of officers provided under Section 116 of the Income Tax Act, once the request is

received from the higher ranked officer even if outside the jurisdiction (of the officer from whom the case is to be transferred) indifference to that higher authority (making the request), the officer placed lower in rank may feel compelled to express his consent. Similarly, within the jurisdiction if the consent is accorded by the higher rank officer and the function of obtaining the assessee's objection is delegated to a subordinate officer, that opportunity to the assessee may remain an illusory remedy, of no avail. Once the consent may have been expressed by the higher ranked officer within the jurisdiction, his subordinate may not look to take a different view and render infructuous the consent given by his superior.

9. Thus both on the plain language used by the statute as also for functional test, noted above, it commends acceptance that the consent sought by the Chief Commissioner of Income Tax Mumbai ought to have been considered and if necessary granted by an officer of equal rank, here the Principal Chief Commissioner of Uttar Pradesh (West) and Uttrakhand. For that reasons it is that authority that may have issued the show cause notice to the petitioner and considered its reply before granting consent.

Held

Since the facts are undisputed and the stand of the revenue is disclosed on the strength of oral instructions, in the interest of justice, the writ petition is disposed of at this stage with the following directions :-

(i) The order dated 10.01.2024 and 11.01.2024 is set aside.

(ii) The petitioner may treat the impugned order to be the final show cause notice issued to it by the Principal Chief Commissioner of Income Tax Uttar Pradesh (West) and Uttrakhand.

(iii) The petitioner may file its final reply to the said show cause notice within a period of ten days from today.

(iv) On such compliance shown, the Principal Chief Commissioner Income Tax Uttar Pradesh (West) and Uttrakhand may fix a short date for hearing within one week therefrom.

(v) The petitioner undertakes to appear before the said authority on the date fixed.

(vi) Appropriate order may be passed in accordance with law by the Principal Chief Commissioner Income Tax Uttar Pradesh (West) and Uttrakhand and further proceedings may arise accordingly.