

\$~S-3

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 12111/2021**

**AVIJAI CHARITABLE TRUST**

..... Petitioner

Through **Ms.Kavita Jha, Advocate.**

versus

**COMMISSIONER OF INCOME TAX (EXEMPTIONS) & ORS.**

..... Respondents

Through **Mr.Shailendra Singh, Advocate.**

%

Date of Decision: 06<sup>th</sup> December, 2021.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MR. JUSTICE NAVIN CHAWLA**

**MANMOHAN, J: (Oral)**

**C.M.No.37828/2021**

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

**W.P.(C) No.12111/2021 & C.M.No.37827/2021**

1. Present writ petition has been filed challenging the order dated 05<sup>th</sup> January, 2021 passed under Section 127 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') and all consequent actions initiated pursuant to the said order. Petitioner also seeks directions to the Respondents to judiciously consider the objections filed by the Petitioner objecting to the transfer of jurisdiction under Section 127 of the Act.

2. Learned counsel for the Petitioner states that the impugned order is illegal since neither Petitioner's reply was considered nor any opportunity of hearing was given to the Petitioner before transferring the jurisdiction from Respondent No.3 to Respondent No.4. She states that Petitioner's case was transferred along with the PMC Group despite there being no linkage of the Petitioner-Trust with the said Group. She emphasises that the Petitioner-Trust has not received any donation from PMC Fincorp Group and/or has never entered into any financial transaction with the said Group.

3. Today Mr.Shailendra Singh, learned counsel for the Respondents fairly states that the Petitioner's reply was not considered before passing the impugned order dated 05<sup>th</sup> January, 2021 as it was not reflecting on the ITBA Portal. He, however, admits that the said reply had been filed prior to passing of the impugned order dated 05<sup>th</sup> January, 2021.

4. This Court is of the view that recording justifiable and cogent reasons for transferring a case from one city to another is a mandatory precondition for effecting transfer under Section 127 of the Act and the same can be done only after the Petitioner's reply has been considered and dealt with.

5. Since in the present case, the Petitioner's reply to the notice under Section 127 of the Act had been filed within time and yet the same had not been considered while passing the impugned order dated 05<sup>th</sup> January, 2021, this Court is of the view that principle of natural justice have been violated.

6. Accordingly, the impugned order dated 05<sup>th</sup> January, 2021 and all consequent actions initiated pursuant to the said order are set aside and the matter is remanded back to the Commissioner of Income Tax (E) to reconsider the Petitioner's objection/reply dated 03<sup>rd</sup> December, 2020 in response to the show-cause dated 01<sup>st</sup> December, 2020. The Commissioner,

Income Tax (E) shall pass a fresh reasoned order under Section 127 of the Act, after giving an opportunity of hearing to the Petitioner and after considering the petitioner's reply.

7. In view of the aforesaid direction, the present writ petition along with pending application stands disposed of.

**MANMOHAN, J**

**NAVIN CHAWLA, J**

**DECEMBER 06, 2021**  
**KA**

