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**(2014) 03 AHC CK 0035**

**In the Allahabad High Court**

**Case No : Writ Petition No. 1848 (M/B) of 2014**

Prashant Chandra

APPELLANT

Vs

Commissioner Of Income Tax-1

RESPONDENT

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**Date of Decision : 27-03-2014**

**Acts Referred:**

Income Tax Act, 1961 — Section 124(2), 127, 142, 142(1), 142(2)

**Citation : (2014) 4 ADJ 40**

**Hon'ble Judges : Vishnu Chandra Gupta, J; Narayan Shukla, J**

**Bench : Division Bench**

**Advocate : Jaideep Narain Mathur and Mudit Agarwal, Advocate for the Appellant; Ghanshyam Chaudhary, Advocate for the Respondent**

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## **Judgement**

1. Heard Shri Jaideep Narain Mathur, Senior Advocate assisted by Shri Mudit Agarwal, learned counsel for the petitioner and Shri Ghanshyam Chaudhary, learned counsel appearing for Income Tax Department. The petitioner has assailed the order dated 5th February, 2014, passed by the Deputy Commissioner of Income Tax, Range II, Lucknow, rejecting the petitioner's objection on the issue of jurisdiction of notice issued u/s 142(1) for the assessment year 2011-12 being without any substance.

2. Learned senior counsel Mr. Mathur submits that the petitioner is a Senior Advocate and is practising before the Supreme Court of India and Allahabad High Court, but since he is mainly practising before the Supreme Court of India, New Delhi, therefore, his principal place of profession would be at New Delhi, on account of which the petitioner is obliged to submit his return of income tax only at New Delhi.

3. On the basis of the aforesaid facts he submits that the notice issued u/s 142(1) for the assessment year 2011-12 could be issued only by the Officer placed at Delhi.

4. Through the supplementary-affidavit the petitioner has disclosed his address

i.e. the place of his profession as D-127, East of Kailash, New Delhi. Admittedly, the petitioner shifted there at on 1.4.2012.

5. Learned counsel for the petitioner further submits that the order impugned is based on misconception of the facts and law, that till date no order u/s 127 of the Income Tax Act has been passed by the competent authority to transfer the case from his jurisdiction. It is stated by him that Section 124(2) empowers the Assessing Officer to refer the disputes of jurisdiction to the Director General or the Chief Commissioner or the Commissioner of the Income Tax to determine the issue of jurisdiction instead rejecting the petitioner's objection on the ground that no order has been passed by the competent authority to transfer the case from his jurisdiction. Thus, it is stated that the authority concerned has wrongly determined the question of jurisdiction himself which is beyond his jurisdiction.

6. Per contra the learned counsel for the Income Tax Department raised objection against the question of jurisdiction being barred by limitation. He submits that the notice issued u/s 147(1) of the Act was served upon the petitioner/assessee on 18.9.2012 but he did not raise any objection within the time provided therefor. Time limit is provided as one month to file an objection, if any, against such notice. Thus, he submits that the objection raised by the petitioner against the notice impugned is barred by time and is unsustainable in the eye of law. Moreover, provisions of Section 127 relating to the power to transfer the case is ordinarily the power vested with the Director General or the Chief Commissioner or the Commissioner and so on and unless the said power is exercised by the competent authority, there was no occasion for the assessing officer to refrain himself to exercise the power provided u/s 142(1) of the Act. He further submits that it is admitted case of the petitioner that he filed his return of income tax for the assessment year 2011-12 at Lucknow. Therefore, shifting of his main place and profession to another place, i.e. Delhi has no bearing over the proceedings impugned for the assessment year 2011-12.

7. A bare perusal of the record shows that notice dated 24.12.2013 issued u/s 142 of the Act speaks that in connection with the assessment for the assessment year 2011-12 the petitioner was required to furnish in writing and verify in the prescribed manner information called for as per annexure and on the points or matters specified therein before the authority concerned at his office at Aayakar Bhavan, Lucknow on 6th January, 2014.

8. Through the annexure to notice dated 24.12.2013 the petitioner was required to explain/furnish/produce the several details/documents for correct assessment of his income. u/s 142(2), the Assessing Officer has been empowered to make such enquiry as he considers necessary for the purpose of obtaining full information in respect of the income or loss of any person. Admittedly, the petitioner furnished his return of income for the assessment year 2011-12 on 29.9.2011 in the office of the respondent at Lucknow and enquiry in question was initiated u/s 142 of the Act in connection therewith. Therefore, the main place of profession during the year of assessment in question shall be the place

for assessment. Accordingly, we are further of the view that in the instant case the petitioner's main place of profession shall be at Lucknow for the purpose of assessment year 2011-12. Accordingly the Assessing Officer has rightly exercised his power u/s 142 of the Act.

9. So far as reference of question of jurisdiction is concerned, we are of the view that once the Assessing Officer has arrived at conclusion that the jurisdiction is vested with him, which he has correctly arrived at, we are of the considered opinion that the provisions of Section 127 of the Act are not attracted in the matter, unless competent authority exercises his power u/s 127 of the Act. In the light of the aforesaid observations, the writ petition lacks merit. Therefore, it is dismissed being devoid of merit.