



THE HIGH COURT OF SIKKIM AT GANGTOK

J U D G M E N T

D.B. W.P.(C) No. 28 of 2011

M/s. Everest Industries Private Limited,
P.S. Road, Gangtok,
Sikkim.

Represented by its Managing Director,
Shri Rishi Kumar Agarwal (Mittal).

... **Petitioner.**

- versus -

1. Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. State of Sikkim,
Represented by the Secretary,
Finance Department,
Income and Commercial Tax Division,
Gangtok-737 101.
3. The Commissioner of Income Tax, Siliguri,
Aaykar Bhawan Annexe,
Paribahan Nagar, Matigara,
Siliguri, West Bengal.
4. The Assistant Commissioner of Income Tax,
Circle-Gangtok,
Bhanupath, Gangtok-737 101,
Sikkim.

... **Respondents.**

**CORAM**

**HON'BLE THE CHIEF JUSTICE
MR. JUSTICE N. K. JAIN
HON'BLE MR. JUSTICE S.K. SINHA, JUDGE**

Date of Judgment : 18.09.2014

For Petitioners : M/s. Anand Sen, Zulfiqar Ali,
Jorgay Namka, Zola Magi,
Pema Bhutia, Jigdal G.
Chankapa and Panila
Theengh, Advocates.

For Respondents No. : M/s. A. Moulik, Sr. Advocate
1, 3 and 4 with Manish Kr. Jain,
Advocate.

Mr. L.D. Lepcha, Dy.
Commissioner of Income Tax,
Circle Gangtok, Sikkim, in
person.

For Respondent No. 2 : M/s. A. Mariarputham,
Advocate General, Karma
Thinlay, Sr. Govt. Advocate
with S.K. Chettri and Pollin
Rai, Asstt. Govt. Advocates.

Jain, CJ (Oral) .

Heard learned counsel for the parties.

2. The petitioner has preferred this writ petition
challenging the impugned order dated 18.05.2011 passed
by the Commissioner of Income Tax, Siliguri, under



Section 127 of the Income Tax Act, 1961, whereby 10 cases, the details of which have been given in the impugned order, have been transferred from Assessing Officer mentioned in column No. 4 to Assessing Officer mentioned in column No. 5, in the impugned order dated 18.05.2011.

3. Learned counsel for petitioner argued the case at length, challenging the impugned order as well as the action of the respondents in initiating the action, against the petitioner, under the provision of Income Tax Act, 1961 being illegal and without jurisdiction. He submitted that petitioner-Company is a company registered under the provisions of Registration of Companies Act, Sikkim 1961, therefore, is not an “Indian Company”, as defined under sub-section 26 of Section 2 of the Income Tax Act, 1961.

4. During the course of arguments, one of the submissions raised on behalf of respondents is that petitioner should first approach the authority concerned and raise all objections before it. Agreeing with the submission of learned counsel for respondents, the learned



counsel for the petitioner submitted that petitioner may be permitted to approach the Assessing Officer to whom the case has been transferred by impugned order dated 18.05.2011 and to raise all the objections, which have been raised in the present writ petition and the Assessing Officer be directed to decide the question of jurisdiction first, after affording an opportunity of hearing to the petitioner.

5. Learned Advocate General as well as Mr. A. Moulik, learned Senior Counsel assisted by Mr. Manish Jain, Advocate, on instructions, agreed to the submission made by the learned counsel for the petitioner.

6. After considering submissions and as agreed by the learned counsel for the parties, the writ petition is disposed off as under:

- i) The petitioners will file reply/objection petition/representation before the Assessing Officer, to whom the case has been transferred vide order dated 18.05.2011, within a period of 30 days from today, challenging the jurisdiction to initiate the action under the provisions of Income Tax Act, 1961 and raising all



the submissions available to him, as per law and which have been taken in the present writ petition.

- ii) In case a question of jurisdiction is raised by petitioners, then the Assessing Officer, to whom the case has been transferred, shall consider and decide the same first, before proceeding further in the matter, after affording an opportunity of hearing to the petitioner.
- iii) It is needless to mention that in case any adverse order is passed by the Assessing Officer, then the petitioners will be at liberty to challenge the same before the appropriate forum, in accordance with law.
- iv) The interim stay order passed by this Court stands vacated.
- v) Parties are directed to bear their own costs.

Sd/-
(S.K. Sinha)
Judge
18.09.2014

Sd/-
(N.K. Jain)
Chief Justice
18.09.2014

Index : Yes / No
pm/ jk Internet : Yes / No