Vs. Income Tax Officer, Ward1[4], Kolkata and ors.Responde

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SooperKanoon Citation : sooperkanoon.com/1164808

Court : Kolkata

Decided On : Sep-22-2014

Judge : I. P. Mukerji

Respondent : income Tax Officer, Ward1[4], Kolkata and ors.Responde

Judgement :

ORDER
SHEET W.P.No.1258 of 2013 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE AHINSA VINIMAY PVT.LTD.Versus INCOME TAX OFFICER, WARD-1[4]., KOLKATA & ORS.Petitioner Respondents BEFORE: The Hon'ble JUSTICE I.P.MUKERJ.Date : 22nd September, 2014.

For Petitioner : Mr.Ananda Sen with Mr.Dipak Dey, Adversus None appears for the respondents.

An affidavit of service is on record.

The facts of this case are similar to W.P.No.1280 of 2013 [Dewdrops Merchants PVT.LTD.versus Income Tax Officer, Ward -1(4).Kolkata & Ors.].in which an order was passed by this Court on 16th September, 2014.

An identical order is passed in this matter.

Orders passed in deserving cases often become flawed for lack of reasons.

We do not yet know whether this case is deserving or not, but the order under Section 127(2) of the Income Tax Act, 1961 dated 12th September, 2013 is flawed for lack of reasons.

From the submissions made, there is no doubt in my mind that the writ petitioner was heard.

It appears that this transfer order was passed for assessment of the writ petitioner in Bhubaneshwar because of the need for centralisation.

It is stated in the order that there was a search and seizure operation under Section 132 of the said Act against Ganesh Sponge PVT.LTD.and that was why the writ petitioners file was to be transferred to Bhubaneshwar where the assessment in respect of Ganesh was being made.

Section 127(2) makes it explicit that in case of inter-jurisdiction transfer, fiRs.there has to be an agreement regarding transfer of an assessment case between the Directors General or Chief Commissioners of two jurisdictions.

Thereafter the assessee has to be given hearing by the Director General or Chief Commissioner or Commissioner of the transferor jurisdiction.

If not actual hearing, an opportunity of hearing has to be given.

Then the file can be transferred, recording reasons for the transfer.

These stipulations are not empty formalities.

When the assessees case is transferred from Kolkata to Bhubaneshwar great inconvenience is caused to them.

Their officers have to go from Kolkata to Bhubaneshwar to attend to the officeRs.carry documents, to be produced before them, answer interrogatories etc.There must be compelling reasons before such a transfer is made.

For example, in this case if the department is referring to the assessment of Ganesh Sponge PVT.Ltd., at least the relationship of the petitioner with Ganesh has to be mentioned.

How the petitioner appears to be connected with the financial transactions of Ganesh has also to be mentioned.

Even a reasonable suspicion of connection is enough.

But, unfortunately, in this case there are no reasons.

In those circumstances, the order dated 12th September, 2013 is set aside with a direction upon the Chief Commissioner to pass a fresh order with reasons after giving an opportunity of hearing to the writ petitioner within three months from the date of communication of this order.

I make it clear that till this fresh order is passed by the Chief Commissioner, status quo regarding location of the file will have to be maintained.

Status quo regarding assessment is also required to be maintained.

This writ application could be disposed of on the available papeRs.No affidavits were invited.

This application is disposed of by this order.

Certified copy of this order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(I.P.MUKERJI, J.) K.

Banerjee A.R.[C.R.].