

(2009) 12 CAL CK 0032

Calcutta High Court

Case No: Writ Petition No. 1171 of 2009

Dhoot Developers (P) Ltd.

APPELLANT

Vs

Commissioner of Income Tax
and Others

RESPONDENT

Date of Decision: Dec. 18, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 127, 127(2)

Citation: (2010) 230 CTR 305 : (2010) 256 ELT 534 : (2011) 336 ITR 487

Hon'ble Judges: Soumitra Pal, J

Bench: Single Bench

Advocate: J.P. Khaitan, Dipak Dey and N. Banerjee, for the Appellant; R.N. Mitra and R.N. Sinha, for the Respondent

Final Decision: Allowed

Judgement

Soumitra Pal, J.

In the writ petition, M/s Dhoot Developers (P) Ltd., a company incorporated under the Companies Act, 1956, has challenged the proposal dt. 27th Oct., 2009 issued by the ITO, Technical-2, Kolkata on behalf of the CIT, Kolkata-II, respondent No. 1 proposing to transfer the jurisdiction of the case of the petitioner from Dy. CIT, Circle-6, Kolkata to Asstt. CIT, Central Circle-I, New Delhi, the communication dt. 30th Oct., 2009 directing the petitioner to file representation by 5th Nov., 2009 and the order dt. 6th Nov., 2009 passed u/s 127(2) of the IT Act, 1961 by the said respondent on several grounds.

2. The matter was moved upon notice on 25th Nov., 2009 when directions were issued for filing of affidavits. However, no affidavit has been filed on behalf of Revenue.

3. The facts in brief are that on 27th Oct., 2009 a notice was issued proposing to transfer the assessment records of the petitioner from Dy. CIT. Circle-6, Kolkata to

Asstt. CIT, Central Circle-I, New Delhi. Request was made to file the written submission by 29th Oct., 2009. By letter dt. 29th Oct., 2009 the petitioner prayed for extension of time by fifteen days to file objection. By letter dt. 30th Oct., 2009 time was granted till 5th Nov., 2009. On 5th Nov., 2009 the petitioner filed the objection. Matter was heard by the respondent No. 1 and on 6th Nov., 2009 order was passed directing the transfer of jurisdiction from Kolkata to New Delhi.

4. The grievance of the petitioner is that the assertion in the proposal that the main business of the assessee company is at New Delhi is wrong as it is evident from the written objection of the company that the principal place of business is at Kolkata. Since inception the petitioner has multiple business activities in the said city and all the shareholders are situated at Kolkata. Therefore, there is no case for transferring the records from Kolkata to New Delhi.

5. Mr. Khaitan, learned senior advocate appearing on behalf of the petitioner reiterating the statements in the writ petition has submitted that as evident from the order dt. 6th Nov., 2009 the Department has abandoned its case as mentioned in the letter dt. 27th Oct., 2009 inviting the views of the petitioner regarding transfer of jurisdiction from Kolkata to New Delhi and a new case has been made out as seen from the order under challenge. Therefore, the impugned order of transfer cannot be sustained.

6. Mr. R.N. Mitra, learned senior advocate appearing on behalf of the respondents has submitted that the order is just and proper as objections were invited, hearing was given and order was passed. Moreover, transfer for the purpose of co-ordinated investigation is a good ground for transfer u/s 127 of the Act.

7. Heard the learned advocates for the parties. In my view, in the absence of affidavits by the respondents, the assertions made in the writ petition are deemed to be correct.

8. So far as the order impugned is concerned, I find that the order of transfer has been passed for the purpose of "coordinated investigation and meaningful assessment" and not on the ground that the principal place of business of the petitioner is at New Delhi as mentioned in the letter dt. 27th Oct., 2009 proposing transfer. Thus, it is evident that the respondents have abandoned their case as made out in the notice proposing transfer and a new case has been made out in the order under challenge which the petitioner could not meet while furnishing reply. In my view, if it is the case of the respondents that a co-ordinated investigation is required for meaningful assessment, the Revenue should have apprised the petitioner determinatively in the proposal, which is absent. Moreover, though detailed written reply giving particulars regarding the place of business, business activities and list of shareholders was furnished, those were not considered and dealt with in the order impugned. That the objection was disposed of and order was passed perfunctorily is evident from the word "etc" appearing in the second para of

the order under challenge.

9. Therefore, for the reasons as indicated, the order dt. 6th Nov., 2009 passed u/s 127(2) of the IT Act, 1961 by the CIT, Kolkata II, respondent No. 1 cannot be sustained and is, thus, set aside and quashed.

10. As prayed for by the respondent, this order shall not prevent the Revenue to move afresh after giving proper opportunity to the petitioner to present its case.

11. The writ petition is, thus, allowed. No order as to costs.