

**(2014) 09 SIK CK 0002**  
**In the Sikkim High Court**  
**Case No : D.B. W.P.(C) No. 28 of 2011**

Everest Industries Private Limited

APPELLANT

Vs

Union of India

RESPONDENT

**Date of Decision :** 18-09-2014

**Acts Referred:**

Income Tax Act, 1961 — Section 127, 2

**Citation :** (2014) 09 SIK CK 0002

**Hon'ble Judges :** Narendra Kumar Jain, C.J.;Sunil Kumar Sinha, J

**Bench :** Division Bench

**Advocate :** Anand Sen, Zulfiqar Ali, Jorgay Namka, Zola Magi, Pema Bhutia, Jigdal G. Chankapa and Panila Theengh, Advocate for the Appellant; A. Moulik, Sr. Advocate, Manish Kr. Jain, Advocate, Party-in-Person, A. Mariarputham, Advocate General, Karma Thinlay, Sr. Govt. Advocate, S.K. Chettri and Pollin Rai, Asstt. Govt. Advocates, Advocate for the Respondent

## Judgement

Narendra Kumar Jain, C.J.—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, u/s 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.