(2014) 11 CAL CK 0094

In the Calcutta High Court

Case No : W.P. 14272 (W) of 2014

Sk. Abdul Sabir APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 CAL CK 0094

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : S.C. Srivastava, Pradeep Kumar and Chandan Kumar Lal, Advocate for the Appellant; Asha G. Gutgutia, Advocate for the Respondent

Judgement

Harish Tandon, J.—Taking advantage of the change in the number of the appeals upon transfer of the matters to another jurisdictional Commissioner of Income Tax (Appeals), the petitioner tried to mislead the Court that the Commissioner has passed an order in an appeal, which was never filed by him.

2. At the time of moving the writ petition, the learned advocate appearing for the Department could not apprise the Court in absence of necessary instructions and this Court, therefore, passed a direction to produce the record in order to ascertain whether the statements made by the petitioner before this Court has any substance.

3. Subsequently the record was produced and this Court thought it fit to keep the same to be perused in Chamber after the judicial hour. From the record it appears that at the time of filing the appeal by the petitioner pertaining to the Assessment Year 2007-2008 before the Commissioner of Income Tax (Appeals), Assansol, it was registered as 36/CIT(A)/ASL/WD-2(3)/BWN/10-11. By order No. 948 dated 12/17-10-2011 the said appeal stood transferred to Commissioner of Income Tax (Appeals)-XXXII/Kolkata.

4. Because of the transfer of the proceeding from one jurisdictional

Commissioner of Income Tax (Appeals) to another, the number was changed to 68/CIT(A)-XXXII/11-12/W-2(3)(Asansol)/Kol. By a subsequent order of transfer the said appeal stood transferred to Commissioner of Income Tax (Appeals), Durgapur.

5. The transferred Commissioner of Income Tax (Appeals) issued notice sometimes under the original number and in a changed number as well.

6. From the sequel of events as recorded above, there is no ambiguity to hold that the impugned order is passed in an appeal filed by the petitioner. At this stage the learned advocate for the petitioner says that no opportunity of hearing was given to his client before passing the impugned order. The petitioner annexed the notice served by the transferred Commissioner of Income Tax (Appeals) bearing the original number when in fact the said number was changed because of the transfer of the matter to another jurisdictional Commissioner of Income Tax (Appeals).

7. My attention is further drawn to the order sheets containing several pages in the record produced before this Court, wherefrom it is apparent that the petitioner did participate in the proceeding and was all along aware that the hearing is being conducted and the carriage of the appeal is furthered. Mere mis-quoting or wrong-quoting of number of the appeal in the notice does not necessarily mean that no opportunity of hearing was given. As indicated above, the petitioner was quite aware of the change of numbers in the appeal because of the transfer of the appeals to another jurisdictional Commissioner of Income Tax (Appeals). There is no iota piece of paper produced before this Court evincing that the appeal filed by the petitioner and the appeal in which the impugned order is passed are different, separate and distinct.

8. It is a chanced litigation, which the petitioner took recourse to, in order to get rid of the impugned order on such flimsy and untrue grounds. The impugned order is amenable to be challenged before the Tribunal and the petitioner has an efficacious alternative remedy. The petitioner chose to assail the said order taking the aid of mis-quoting and/or wrong-quoting of the number of the appeal as well as on the ground that there was a violation of principles of natural justice.

9. This Court is conscious of the proposition of law that interference under Article 226 of the Constitution of India, when there exist an alternative remedy, is discretionary and limited on strict parameters laid down in catena of Judgements.

10. After recording of my findings on the facts that the contentions so raised in this writ petition have no foundation to stand upon, this Court hereby decline to interfere with the impugned order. An impression was given to this Court, as would be reflected in the orders passed in the writ petition, which ultimately found to be untrue and the petitioner has not approached the Court with clean hands.

11. This Court, therefore, dismiss the writ petition with costs assessed at 1,000

G.Ms. to be deposited with the State Legal Services Authority within two weeks from date, which shall be kept in an account earmarked for juvenile.

12. The record, which was handed over to this Court by the learned advocate representing the Department, is hereby returned to her.

13. After the order is dictated in open Court, the learned advocate appearing for the petitioner prays for stay of operation of the order, which after consideration does not appear to have any substance. The prayer is thus refused.

