(2014) 09 SIK CK 0004

In the Sikkim High Court

Case No : D.B. W.P.(C) No. 02 of 2011

Teesta Rangit Private Limited — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 2

Citation : (2014) 09 SIK CK 0004

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

Bench : Division Bench

Advocate : Pradeep Aggarwal, Jorgay Namka, Zola Magi, Pema Bhutia, Jigdal G. Chankapa, Panila Theengh and Naresh Subba, Advocate for the Appellant; A. Moulik, Sr. Advocate, Manish Kr. Jain, Advocate, L.D. Lepcha Dy. Commissioner of Income Tax, 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 petitioners have preferred this writ petition with the following prayers:

(a) to hold that the provisions of the Central Act are not applicable to the petitioner No. 1 as it is a company registered under the Registration of Company Act, Sikkim, 1961 and not under the Indian Company Act, 1956, which is not implemented in the State and consequently the notice dated 02.12.2010, the survey proceedings conducted by respondent No. 3 to 5 within the premises of petitioners on 23.12.2010 and 24.12.2010, the notice issued on the spot and all other acts and deeds of the respondent are illegal, bad and without jurisdiction;

(b) to issue an appropriate writ in the nature of mandamus or any other writ, order or direction holding and directing the respondents to uniformly apply the provisions of the Central Act to all corporate, companies, hotels, etc. who are registered under the Registration of Companies Act, Sikkim, 1961 and not to single out the petitioners, when the same are not applied to other corporate assessees in the State of Sikkim;

(c) to issue an appropriate writ in the nature of mandamus or any other writ, order or direction holding that the survey proceedings conducted by respondents No. 3 to 5 within the premises of the petitioners is without jurisdiction, bad and illegal;

(d) to issue an appropriate writ in the nature of mandamus or certiorari or any other writ, order or direction quashing the impugned notice dated 02.12.2010 and 24.12.2010 issued by the respondents;

(e) to issue an appropriate writ in the nature of mandamus or any other writ, order or direction directing the respondents to return the books/documents in question along with two cheques dated 24.12.2010 amounting to Rs. 50 lacs of the petitioners in possession of the respondents No. 3 to 5, which were, seized during the impugned survey operations as per Panchnama;

(f) pass any other direction/s, relief/s, order/s that may be deemed fit and proper in the circumstances of this case;

(g) allow the costs of writ petition.

3. A notice to show cause was issued to the respondents and in response thereto, counter affidavits were filed by respondent No. 2 and respondents No. 1, 3 to 6. The rejoinder was also filed by the petitioners.

4. Mr. Pradeep Aggarwal, learned counsel appearing on behalf of petitioners submitted that the petitioner-company, registered under the provision of Registration of Companies Act, Sikkim, 1961, does not fall within the definition of "Indian Companies", defined under sub-section 26 of Section 2 of the Income Tax Act, 1961. Therefore, issuance of impugned notice by respondents-Income Tax Authority to petitioners, is illegal and without jurisdiction. He further submitted that the notice issued by respondent-Assessing Officer is illegal on other various grounds, which have been taken in the writ petition.

5. The case was argued at length by learned counsel for the parties. During the course of arguments, one of the submissions was that this writ petition is directed against notice only, therefore, petitioner should approach the concerned authority first, who has issued the impugned notice, with objection petition/reply to notice and raise all the submissions/points which have been raised/taken in the present writ petition.

6. Learned counsel for the petitioner, on instructions, fairly agreed and submitted that petitioner will file a reply/representation/objection petition before the respondent No. 6, Assistant Commissioner of Income Tax, Circle Gangtok, and will raise all the objections, which have been raised in the present writ petition including the question of jurisdiction. He, however, submitted that the Assessing Officer be directed to decide the question of jurisdiction first and in case question of jurisdiction is decided against petitioner, then only to insist upon the

petitioners for filing of return, etc. He also submitted that in case return is required to be filed, then respondent-investigating officer be directed to return the original seized documents from the premises of the petitioner or copy thereof to enable the petitioner to file the returns etc.

7. Learned Advocate General appearing on behalf of respondent-State submitted that he has no objection in case, petitioner approaches the respondent-Assessing Officer and raises all objections against issuance of notice.

8. Mr. A. Moulik, learned Senior Counsel assisted by Mr. Manish Jain, Advocate, appearing on behalf of respondents No. 1 and 3 to 6, on instructions, submitted that he has no objection in case the petitioners raise all the objections, which have been raised in the writ petition, before the respondent Assessing Officer. He further submitted that in case the question of jurisdiction is decided against the petitioners, then the petitioners be directed to file return and to co-operate with the investigating officer. He further stated that if the petitioners are required to file the returns etc., then respondent-Investigating Authority will return the seized documents in original or supply the photo copy thereof.

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

i) The petitioners will file reply/objection petition/representation against impugned notices, before the respondent-Assessing Officer within a period of 30 (thirty) days from today raising all the objections available to them, as per law and which have been taken in the present writ petition including the question of jurisdiction to issue the impugned notice.

ii) In case the question of jurisdiction is raised by petitioners, then respondent-Assessing Officer shall consider and decide the said question first, before insisting upon the petitioners to comply with other requirements mentioned in the impugned notices including filing of return etc., after affording an opportunity of hearing to petitioners or their counsel.

iii) In case the question of jurisdiction is decided against the petitioners, then respondent-Investigating Authority shall return the original seized documents or photo copy thereof to the petitioners to enable them to file the return.

iv) It is needless to mention that in case any adverse order is passed by respondent-Assessing Officer, then the petitioners will be at liberty to challenge the same before the appropriate forum, in accordance with law.

v) The interim stay order passed by this Court stands vacated.

vi) Parties are directed to bear their own costs.

