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WPO / 102 / 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE
(VIA VIDEO CONFERENCE)

DINESH KUMAR GOYAL, HUF

Versus

INCOME TAX OFFICER, (INVESTIGATION)-2, KOLKATA, AND ANR.

BEFORE:

The Hon'ble JUSTICE SHEKHAR B.SARAF

Date : 16th March, 2021

Appearance:

Mr.R.N.Dutt, Adv.
Ms.Sutapa Roychoudhury, Adv.

Mr.P.K.Bhowmick, Adv.
Mr.radhamohan Ray, Adv.

The Court : This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by a notice under sub-Section 6 of Section 133 of the Income Tax Act, 1961 with reference to Assessment Years 2015-16 and 2016-17.

The case of the petitioner is that when no inquiry or proceedings under this Act are pending against the petitioner, proviso 2 of sub-Section 6 of Section 133 comes into play. Under the said proviso a prior approval is required from the

Principal Director or Director as the case may be or the Principal Commissioner or Commissioner.

The case of the petitioner is that such approval was never taken.

Mr. Bhowmick, counsel appearing on behalf of the Income Tax Department has relied on a approval issued for making enquiry as per first proviso of Section 133 (6) for the Financial Year 2015-16 (A.Y. 2016-17).

I have heard counsel appearing for the parties and perused the materials on record.

I am of the view that as no proceedings are pending against the petitioner company, approval should have been taken under the second proviso under sub-Section 6 of Section 133 of the Income Tax, 1961 for both the Assessment Years.

Since the same has not been done, the impugned notice dated February 20, 2021 is quashed and set aside.

The Department shall be at liberty to proceed in future in accordance with law.

Since no affidavits have been filed in this matter, the allegations made in the writ petition are deemed not to have been admitted by the respondents.

The writ petition being WPO No. 102 of 2021 stands disposed of.

(SHEKHAR B.SARAF, J.)

D.Ghosh