



% 16.12.2009

18,19,&20#

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Present: Mr. Raul Kumar, Adv. for the petitioner.  
Mr. Sanjay Sabharwal, Adv. for the respondent.

+ WP(C) No. 13721/2009

WP(C) No. 13724/2009

WP(C) No. 13730/2009

Rule D.B. We have heard the matters finally.

Vide orders dated 19.01.2009 passed by the Commissioner of Income Tax, Delhi-II, New Delhi under Section 127 of the Income Tax Act, the cases of as many as nine assesseees were transferred from New Delhi to Central Circle, Alwar. Two of these assesseees approached this Court and filed Writ Petition (C) Nos. 8730/2009 and 9400/2009 on 28.05.2009 respectively on the ground that before passing the impugned orders, a reasonable opportunity of hearing to the assessee is mandatory and the same was not offered to them. Thus, these three petitioners whose names also appear in the orders dated 19.01.2009 have challenged the said order on the identical ground making specific averments that they were also not given reasonable opportunity for hearing. It is also stated that orders dated 19.01.2009 were communicated to the petitioners only on 18<sup>th</sup> November, 2009.



Taking into consideration the aforesaid facts, time was given to Mr. Sabharwal to verify the position. Mr. Sabharwal fairly concedes that in these cases also no opportunity was given to the assessee before passing the order U/s. 127 of the Income Tax Act.

In these circumstances, we make the rule absolute and quash the transfer order dated 19.01.2009. At the same time, liberty is given to the Commissioner of Income Tax, Delhi-II, New Delhi to pass afresh order after giving opportunity of being heard to the petitioners. The petitioners shall appear before the Commissioner of Income Tax, Delhi-II, New Delhi on 18.12.2009 at 11.00 AM either themselves or through their representative.

The writ petitions are disposed of in these terms.

A.K. SIKRI, J.

SIDDHARTH MRIDUL, J.

**December 16, 2009**

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- Fresh em. 21/11/10 f. directed



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

W.P.(C) 13721/2009

KALI METALS PVT LTD.  
Through..... Petitioner  
Mr. Rahul Kumar, Advocate

versus

CIT DELHI

Through

..... Respondent  
Mr. Sanjeev Sabharwal, Senior  
Standing Counsel with Mr. Utpal  
Saha, Advocate**AND**

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W.P.(C) 13724/2009

KAMDHENU CEMENT LTD. .... Petitioner  
Through

Mr. Rahul Kumar, Advocate

versus

CIT DELHI AND ANR

Through

..... Respondents  
Mr. Sanjeev Sabharwal, Senior  
Standing Counsel with Mr. Utpal  
Saha, Advocate**AND**

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W.P.(C) 13730/2009

KAMDHENU  
INDUSTRIES LTD  
Through..... Petitioner  
Mr. Rahul Kumar, Advocate



versus

COMMISSIONER OF  
INCOME TAX AND ANR  
Through

..... Respondents  
Mr. Sanjeev Sabharwal, Senior  
Standing Counsel with Mr. Utpal  
Saha, Advocate

(B)

**CORAM:**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE MANMOHAN**

**ORDER**  
**20.10.2010**

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**CM 2140/2010 IN W.P. (C) 13721/2009**  
**CM 2139/2010 IN W.P.(C) 13724/2009**  
**CM 2141/2010 IN W.P.(C) 13730/2009**

These applications arise from the three writ petitions which were disposed of on 16<sup>th</sup> December, 2009 by a composite order. The said order reads as under :-

*“Rule D.B. We have heard the matters finally.*

*Vide orders dated 19.01.2009 passed by the Commissioner of Income Tax, Delhi-II, New Delhi under Section 127 of the Income Tax Act, the cases of as many as nine assesseees were transferred from New Delhi to Central Circle, Alwar. Two of these assesseees approached this Court and filed Writ Petition (C) Nos. 8730/2009 and 9400/2009 on 28.05.2009 respectively on the ground that before passing the impugned orders, a reasonable opportunity of hearing to the assessee is mandatory and the same was not offered to them. Thus, these three petitioners whose names also appear in the*



*orders dated 19.01.2009 have challenged the said order on the identical ground making specific averments that they were also not given reasonable opportunity for hearing. It is also stated that orders dated 19.01.2009 were communicated to the petitioners only on 18<sup>th</sup> November, 2009.*

*Taking into consideration the aforesaid facts, time was given to Mr. Sabharwal to verify the position. Mr. Sabharwal fairly concedes that in these cases also no opportunity was given to the assessee before passing the order U/s. 127 of the Income Tax Act.*

*In these circumstances, we make the rule absolute and quash the transfer order dated 19.01.2009. At the same time, liberty is given to the Commissioner of Income Tax, Delhi-II, New Delhi to pass afresh order after giving opportunity of being heard to the petitioners. The petitioners shall appear before the Commissioner of Income Tax, Delhi-II, New Delhi on 18.12.2009 at 11.00 AM either themselves or through their representative.*

*The writ petitions are disposed of in these terms."*

It is submitted by Mr. Rahul Kumar, learned counsel appearing for petitioners-applicants that their authorised representative appeared on 18<sup>th</sup> December, 2009 before Commissioner of Income Tax and prayed for time to file representation but ignoring the same, an order was passed under Section 127 of the Income Tax Act, 1961.

Be it noted, this Court on earlier occasion while entertaining these applications had directed stay of further proceedings pursuant to the order passed by the Commissioner of Income Tax, Delhi-II, New Delhi dated 21<sup>st</sup> December, 2009.



In the course of hearing, a suggestion was given to learned counsel for the parties that if a firm date is fixed for hearing for adjudication of the applications, whether they have objection to the same.

Mr. Ramesh Kumar, learned counsel for petitioners-applicants and Mr. Sanjeev Sabharwal, learned senior standing counsel for the Revenue fairly agreed to the same.

In view of the aforesaid, it is directed that the petitioners-applicants or their authorised representatives shall appear before the concerned Commissioner on 27<sup>th</sup> October, 2010 between 10.30 A.M. to 11.30 A.M. and file the documents. The said Authority shall proceed with the arguments and shall close the matter on that day itself and pass an appropriate order within a week therefrom.

It is added that the time spent before this Court shall be deducted while computing the period of limitation for the purpose of assessment. This position is also conceded to by the learned counsel for the parties very fairly.

In view of aforesaid, the order passed by the Commissioner of Income Tax on 21<sup>st</sup> December, 2009 stands quashed.



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The applications are, accordingly, disposed of.  
Order dasti under the signature of Court Master.

*Man Mohan*

**CHIEF JUSTICE**

*Man Mohan*

**MANMOHAN, J**

**OCTOBER 20, 2010**  
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