(2010) 01 DEL CK 0246

In the Delhi High Court

Case No : Writ Petition (C) 305 of 2010

Ashok Arora APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Citation : (2010) 229 CTR 427 : (2010) 321 ITR 171

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Party-in-Person, for the Appellant; Suruchi Aggarwal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—This writ petition has been filed seeking the quashing of the assessment order dated 30th December, 2009.

2. The events leading to the passing of the assessment order dated 30th December, 2009 in respect of the assessment year 2002-03 are as follows. A notice u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as the said Act) was issued on 27th February, 2009. The said notice was sent by speed post as well as through a notice server. The said notice u/s 148 was hand delivered by the notice server on 16th March, 2009 at the chamber address of the petitioner at Tis Hazari Courts. However, said notice which was hand delivered on 16th March, 2009 is said to have been received by one Sandhya Mittal, whom the petitioner claims not to know. It is on this basis that the petitioner took the stand that the notice u/s 148 was not received by the petitioner.

3. Be that as it may, it is an admitted position that the petitioner went to inspect the files available with the concerned Assessing Officer on 23rd November, 2009. On that date, the reasons for reopening of the case along with the notice u/s 142(1) as also the letter dated 23rd October, 2009 were handed over to the petitioner by the Assessing Officer. The original file was shown to us by the learned Counsel for the Revenue. There is an endorsement in the said file

maintained by the Assessing Officer which reads as under:

Reasons for reopening of the case are recd. along with notice u/s 142(1), 143(3), letter dt. 23.10.2009

4. The said endorsement is signed by the petitioner and the date 23rd November, 2009 is written in the petitioner''s handwriting. The learned Counsel for the respondent states that the mention of Section 143(3) in the said endorsement is an inadvertent error and it should be read as 143(2).

5. The letter dated 23rd October, 2009 which was received by the petitioner on 23rd November, 2009 as per the aforesaid endorsement was as under:

Office of the Income Tax Officer, Ward 37(3),

Room No. 408, N-Block, Vikas Bhawan, I.P.

Estate, New Delhi

F. No. ITO/Ward/37(3)/08-09/ Dated 23/10/2009 To,

Sh. Ashok Arora

76, Sukhdham Apptts,

Plot No. 1, Sector-9, Rohini

New Delhi-110085.

Sir,

Sub: Assessment proceedings u/s 143(3) in your case for the A.Y. 2007-08- reg.?

In order to complete the assessment proceedings in your case for said year, you are requested to please furnish the following details/information/confirmations and documents etc. Personal attendance not required.

1. Return in response to notice u/s 148 dated 27.02.2009.

2. Note (with brief history)on the nature of business/profession carried on by you during the financial year 2001-02.

3. Details of bank accounts with statements for the period from 01.04.2001 to 31.03.2002.

4. Copy of Income & Expenditure statement for the years ending on 31.3.01 and 31.3.02.

5. Details of all movable/immovable assets purchased/ sold during the year.

6. Details of loans/ gifts received and given during the year.

7. Ledger accounts of Expenses claimed in Income & Exp and to produce books of accounts for verification. Please furnish the above details/information before the undersigned either personally or through authorized representative on

04/11/2009 at 11.00 AM.

Yours faithfully,

Sd/-

(Virender Singh Yadav)

Income Tax Officer

Ward 37(3), New Delhi

6. A plain reading of the letter clearly indicates that the petitioner was required to file a return in response to the notice u/s 148 dated 27th February, 2009 amongst other documents. Of course, even if we accept the contention of the petitioner that he had not received the said letter prior to 23rd November, 2009 and, as such, the date mentioned in the letter of 4th November, 2009 had gone by, it is clear that the petitioner was made aware of what he was required to do.

7. After receipt of the said reasons for reopening of the case, copies of the said notices and a copy of the said letter dated 23rd October, 2009, the petitioner sent a letter dated 2nd December, 2009 to the Assessing Officer, carrying the following subject:

Reply to the notice of the assessment proceeding initiated u/s 147/148 of the Income Tax Act for the assessment year 2002-03.

8. The said reply dated 2nd December, 2009 was an exhaustive one, running into 35 pages.

9. Thereafter on 4th December, 2009 the Assessing Officer, after going through the reply/objections received from the petitioner in respect of the reasons for reopening of the case, passed a speaking order.

10. The petitioner being aggrieved by the said proceedings and, particularly, the speaking order dated 4th December, 2009, filed a writ petition being W.P.(C) No. 13977/2009 on or about 16th December, 2009 wherein he inter alia sought quashing of the order dated 4th December, 2009 as well as the entire proceedings u/s 147/148 of the said Act. A Division Bench of this Court heard the said writ petition on 22nd December, 2009 and passed the following order:

22.12.2009

Present: Petitioner in-person.

Ms. Suruchi Aggarwal for the respondent.

W.P.(C) No. 13977/2009 and CM No. 15976/20009

Against the petitioner herein, re-assessment proceedings are sought to be initiated by issuing notice u/s 148 of the Income Tax Act, 1961 (for short, the "Act"). According to the respondent, notice dated 27.2.2009 was issued by the department to the petitioner. Case of the petitioner is that he was never served with any such notice and, in fact, only on 23.11.2009 when he received telephonic call from the Assessing Officer that he came to know about the aforesaid proceedings. It is not disputed by the petitioner that the petitioner was served with reasons for reopening the assessment. The petitioner even submitted his objections thereto and order dated 4.12.2009 has already been passed on those objections.

The only grievance made in this petition, as stated above, is that notice u/s 148 of the Act, which is a mandatory requirement for initiation of the proceedings, has not been served upon the petitioner. Though the respondent maintains that such a notice was served and learned Counsel for the respondent has produced photo copy of the Speed Post Booking List issued by the Post Office, the petitioner is denying the receipt. The case of the respondent also is that this notice was served to the petitioner in his chamber. However, submission of the petitioner is that it was given to some ''Sandhya Mittal'' and the petitioner does not know any such person. He further submits that the chamber number o the petitioner in Tis Hazari courts was wrongly mentioned, which has been changed subsequently after the AO came to know the correct chamber number of the petitioner.

Without going into all this controversy, we direct the respondent to serve the petitioner a copy of notice dated 27.2.2009 u/s 148 of the Act within two days.

The writ petition is disposed of in these terms.

A.K. Sikri, J.

J.R. Midha, J.

December 22, 2009

11. As was required by the said order dated 22nd December, 2009, the learned Counsel for the respondent served a copy of the notice dated 27th February, 2009 which was issued u/s 148 of the said Act. On 30th December, 2009 the Assessing Officer framed the assessment order. The present writ petition has been filed inter alia seeking quashing of the said assessment order dated 30th December, 2009.

12. We have heard the petitioner who has appeared in person as well as the learned Counsel for the respondent. We are of the view that the petitioner is trying to re-agitate matters and issues which were already considered and adjudicated upon by this Court in W.P.(C) No. 13977/2009 by virtue of its order dated 22nd December, 2009. The said course of action is not permissible. The petitioner submitted that the Court had directed issuance of notice u/s 148 and, therefore, he should have been given further opportunity to respond to the same and that the assessment order was passed in a hurry without affording him a reasonable opportunity. First of all, the petitioner is wrong in assuming that what was handed over by the learned Counsel for the respondent was a fresh notice u/

s 148. The Court had only directed the respondent to serve a ''copy'' of the notice dated 27th February, 2009 issued u/s 148, upon the petitioner within two days. That had been done. This did not mean that a fresh notice u/s 148 had been issued by the Assessing Officer to the petitioner. Only a copy of the notice which had already been issued to the petitioner had been ''once again'' served upon the petitioner.

13. Secondly, insofar as the plea of opportunity of hearing is concerned, we note that the petitioner had ample opportunities. This is clear from the fact that he inspected the file on 23rd November, 2009 when he was provided the reasons for reopening of the case as well as copies of notices u/s 142(1) and 143(2) [wrongly mentioned as Section 143(3) in the said endorsement]. The letter of 23rd October, 2009 was also available with him which inter alia required him to file the return. The petitioner also responded to the reasons for reopening of the case u/s 147/148 by filing a detailed reply/objections dated 2nd December, 2009. We have already mentioned that the said objections ran into 35 pages. Therefore, it cannot be said that the petitioner was denied any opportunity.

14. The Supreme Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, clarified that when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and, if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of reasons, the noticee is entitled to file objections to the issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order.

15. In the present case, we find that the reasons had been disclosed and furnished to the petitioner who had also filed his reply/objections which had been considered and disposed of by a speaking order dated 4th December, 2009. However, we note, the petitioner did not file any return despite the specific requirement under the law. Because the petitioner did not file a return, the assessment order dated 30th December, 2009 has been made u/s 144 of the said Act.

16. In any event, all the proceedings prior to the passing of the assessment order were the subject matter of the said writ petition [W.P.(C) 13977/2009]. The Division Bench hearing that matter did not find favour with the arguments of the petitioner and did not quash the proceedings u/s 147/148. The matter has proceeded further and has culminated in the assessment order dated 30th December, 2009. The petitioner cannot re-agitate all those issues which were already before the Division Bench which had passed order dated 22nd December, 2009. Insofar as the petitioner''s grievance with the assessment order is concerned, he has a remedy by way of appeal.

17. This writ petition has no merit. The same is dismissed.