(1991) 08 AHC CK 0057

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1171 of 1991

Ashok Kumar Dixit APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 20-08-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 148

Citation : (1992) 198 ITR 669

Hon'ble Judges : R.R. Misra, J;A.P. Misra, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; Bharatji Agarwal, for the Respondent

Final Decision : Disposed Of

Judgement

A.P. Misra, J.—Heard learned counsel for the petitioner and also standing counsel for the Revenue.

2. In the present writ petition, the petitioner has sought for quashing the notice u/s 148 of the Income Tax Act, 1961, dated March 18, 1991, and restraining the Assessing Officer, Ward I(4), Kanpur, from proceeding against the petitioner in pursuance of the said notice. The petitioner had already filed an objection to the said notice which is annexure 7A to the present writ petition.

3. The ground of attack against the said notice by the petitioner is that since the proceedings in pursuance of the notice issued earlier against the petitioner u/s 148 were still continuing and the assessment order in question was set aside by the Commissioner of Income Tax and comments were sought for from the Income Tax Officer for ascertaining the fact as to whether the assessee had filed the return for the relevant assessment year or not, the second notice dated March 18, 1991, issued u/s 148 on the same material against the petitioner is void and illegal. It is not disputed that proceedings in pursuance of the first notice u/s 148 against the petitioner is pending before .the said authority and

the second notice has been issued again u/s 148 against the petitioner, which is the subject-matter of challenge in the present writ petition. It cannot be doubted that, if the assessing authority has come to know some facts which led him to believe that some part of the income of the assessee has been left to be assessed, he can always issue another notice u/s 148. Only because the earlier notice has been issued, that by itself in law cannot bar him from issuing the second notice under suction 148. This will depend on the facts of each case. So far as the present writ petition is concerned, the assessing authority has not disclosed the reasons to believe for issuance of a second notice against the petitioner. In this view of the matter, without going into the merits of the contention raised by learned counsel for the petitioner, we direct that the petitioner shall file his return in pursuance of the impugned notice dated March 18, 1991, issued u/s 148 and the Income Tax Officer concerned is directed not to proceed further against the petitioner in pursuance of the impugned notice without taking into consideration the return filed by the petitioner as aforesaid and further before confronting the assessee petitioner with the reasons to believe for issuance of the said notice by supplying him a copy of the same. However, this is without prejudice of the right of the petitioner, if not satisfied with the " reasons to believe", to challenge the same before the appropriate authority or court, if permissible under the law. The petitioner will file a certified copy of this order before the authority concerned within two weeks from today along with the return, in pursuance of the impugned notice as aforesaid.

4. With the aforesaid observations, the present writ petition is disposed of finally.

5. A certified copy of this order may be given to learned counsel for the petitioner on payment of usual charges within 24 hours.

