(1991) 01 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 260 of 1980

Baldeo Ram Salig Ram Ltd. APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 07-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147

Citation : (1991) 189 ITR 554 : (1991) 55 TAXMAN 410

Hon'ble Judges : B.P. Jeevan Reddy, C.J;V.N. Mehrotra, J

Bench : Division Bench

Judgement

B.P. Jeevan Reddy, C.J.—This writ petition is directed against a notice issued by the Income Tax Officer, u/s 148 read with Section 147(b) of the Income Tax Act, 1961, relating to the assessment year 1975-76.

2. The petitioner had submitted his return for the said assessment year on the basis of which assessment was made on April 28, 1976. The impugned notice had been issued on March 28, 1980. The notice, of course, does not disclose the information on the basis of which it was issued. Be that as it may, soon after receiving the said notice, the petitioner approached this court by way of this writ petition which was entertained and admitted on July 31, 1980, and the respondent was called upon to file a counter. The respondent has filed a counter stating that the impugned notice was issued after considering the reply of the petitioner in response to a letter from the Income Tax Officer. It is further stated in para 10 :

"The deponent Income Tax Officer had received information subsequent to the initial assessment which was put across to the assessee and, after considering the information received and the petitioner''s reply, the deponent had reasons to believe that income liable to assessment had escaped assessment within the meaning of Section 147 of the Act and after recording proper reasons as required by Section 148(2) of the Act, had issued the impugned notice to the petitioner."

3. With a view to satisfy ourselves as to the validity of the impugned notice, we called upon learned counsel to produce the relevant record before us including the reasons recorded by the Income Tax Officer as contemplated by Sub-section (2) of Section 147. We have perused the same. We are of the opinion that it is not possible to sustain the impugned notice in this case. It is evident that the Income Tax Officer is merely trying to rectify the mistakes committed by him in granting higher depreciation on lifts and in the matter of calculating the amount allowable as repairs from the income derived from the house property. Indeed, he could have rectified the mistakes u/s 154 of the Act but he did not choose to do so and chose to issue the impugned notice u/s 147(b) of the Act. So far as the valuation of the closing stock is concerned, it appears to be merely a change of opinion. Suffice it to say that there was no information received by the Income Tax Officer on the basis of which he could have reopened the assessment. What the Income Tax Officer is trying to do is to rectify his order.

4. We do not wish to go into the question, whether it is not permissible for this court to sustain the notice u/s 154 of the Act to the extent it can be done. That question can be examined in an appropriate case.

5. Indeed, the mistakes committed by the Income Tax Officer in this case could also have been rectified by the Commissioner u/s 263 of the Act.

6. For the above reasons, the writ petition is allowed and the impugned notice is quashed. No order as to costs.