
(1996) 09 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 8216 of 1996

Banchhanidhi Das

APPELLANT

Vs

Income Tax Officer and Others

RESPONDENT

Date of Decision : 25-09-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 154

Citation : (1998) 229 ITR 166

Hon'ble Judges : Susanta Chatterji, J;Dipak Misra, J

Bench : Division Bench

Advocate : B.K. Mohanti, for the Appellant; P.K. Misra, for the Respondent

Judgement

Susanta Chatterji, J.—As suggested and agreed by Mr. B.K. Mohanti, learned counsel appearing for the petitioner, and Chowdhury P.K. Misra, appearing for the Income Tax Department, we take up this matter for final disposal.

2. The petitioner, a retired Development Officer of the Life Insurance Corporation of India, Bhadrak, has filed the present writ petition challenging, inter alia, the notice, vide annexure-1 to the writ petition issued u/s 148 of the Income Tax Act. The points of challenge are that the Assessing Officer completed the assessment on October 17, 1988, u/s 143(1) of the Act after accepting the return. On November 25, 1988, however, a notice was issued u/s 154 of the Act and an order was made on January 27, 1989. Being aggrieved by the said order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) who after considering the matter on the merits quashed the order of the assessing authority, vide annexure-4. The Department then went in appeal before the Income Tax Appellate Tribunal who decided the matter in favour of the petitioner. As quoted in the writ petition, the learned Tribunal held :

"In view of the circumstances of the case, it cannot be said that there was apparent and patent mistake from record which could be rectified u/s 154."

3. In this background, the impugned notice u/s 148 to reopen the matter is alleged to be wholly unwarranted and uncalled for and the petitioner in order to obtain efficacious remedy has visited the writ court, inasmuch as his grievance is that without satisfaction of the pre-conditions and for non-application of mind, the issuance of the notice in question is not permissible under law.

4. Mr. Mohanti has strongly highlighted that the entire facts are to be viewed and issuance of the notice u/s 148 is bad in law.

5. By order dated August 26, 1996, we directed the Income Tax authorities to produce the relevant records to satisfy us whether the reasons have been recorded for issuance of notice as envisaged u/s 148 of the Income Tax Act. Pursuant to such order, the records have been produced before us and we have perused the recorded reasons in the presence of Mr. Mohanti.

6. Mr. Mohanti has also drawn our attention to Section 147, in particular to the Explanation thereto, regarding the scope of issuance of such notice u/s 148. In support of his contention, he has referred to a decision in P. Palaniswami Vs. Commissioner of Income Tax, . There, a Division Bench of the Madras High Court held that the finding of the Appellate Assistant Commissioner was that there was no mistake on the part of the officer in allowing depreciation and hence there was no escapement of taxable income and this order had become final as the Department not only did not file any appeal against the said order but actually took a decision to accept it. Secondly, the finality that attached to the said order of the Appellate Assistant Commissioner extends also to the conclusion of the Appellate Assistant Commissioner in the said order that there was no escapement of tax and hence this is also final and once it has become final, it was not open to the officer subsequently to destroy the finality by purporting to take action u/s 147(b). It was concluded that the Tribunal was, therefore, not right in holding that the reassessment proceedings u/s 147(b) were valid notwithstanding the order of the Appellate Assistant Commissioner.

7. Regard being had to the materials on record, we are of the view that since a proceeding u/s 154 of the Income Tax Act could not be sustained, that itself would not mean that no proceeding can be initiated u/s 148. Certainly we are not going to consider the merits of the case as it is still premature. It is open to the petitioner assessee to appear pursuant to the notice u/s 148 and raise all objections either on the point of limitation, if any, which is strongly opposed by Mr. Misra controverting the submission of Mr. Mohanti, or any other point including res judicata. But in our limited writ jurisdiction where issuance of notice u/s 148 is challenged, we refrain ourselves from making any observation on the merits lest it may prejudice either party. In view of the recorded reasons, issuance of notice u/s 148 is itself not bad in law and we are not inclined to interfere in the matter. With such observation we dispose of the writ application.

8. We make it clear that the Income Tax authority will give all reasonable opportunities to the petitioner assessee to raise all his objections and the

assessee, without asking for unnecessary adjournments, will co-operate with the Department to proceed with the assessment.

Dipak Misra, J.

9. I agree.