(1994) 06 BOM CK 0044

In the Bombay High Court

Case No : Writ Petition No. 1448 of 1985

Devji Ravji Patel — APPELLANT

Vs

Balasubramaniam and others — RESPONDENT

Date of Decision : 09-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 143(1), 143(2), 143(3), 147, 148

Citation : (1994) 121 CTR 427 : (1994) 210 ITR 925

Hon'ble Judges : M.L. Dudhat, J;B.P. Saraf, J

Bench : Division Bench

Advocate : Vipul Joshi, for the Appellant; Dr. V. Balasubramanian, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this writ petition, the petitioner has challenged the notice dated March 6, 1985, issued by the second Income Tax Officer, C-V Ward, Bombay, u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), as being illegal and without jurisdiction.

2. The facts of the case may be stated as follows :

3. The assessee is an individual. The relevant assessment years are 1977-78 and 1978-79. The main source of income of the assessee during these two years was profit from the proprietary business in the name of Patel Brothers, share in the profit of the firm, Prince Stationers, and income from the property at 4th Marine Street, Bombay. For the assessment year 1977-78, the petitioner returned a net income of Rs. 14,330. For the assessment year 1978-79, the income returned was Rs. 22,113. All the requisite details including the profit and loss account and the balance-sheet were filed by the assessee along with the returns.

4. For the assessment year 1977-78, the Income Tax Officer, the first respondent, completed the assessment of the assessee u/s 143(1) of the Income Tax Act. However, for the assessment year 1978-79, a notice was issued u/s

143(2) of the Act. In compliance with the said notice, the assessee appeared before the Income Tax Officer and furnished all the requisite information in support of his return., On being satisfied with the particulars furnished by the assessee, the assessment for the said year was completed by the Income Tax Officer u/s 143(3) of the Act and the figure returned by the assessee was accepted as correct. After the expiry of more than four years from the end of the years 1977-78 and 1978-79, the Income Tax Officer issued the impugned notices dated March 6, 1985, in the purported exercise of power u/s 148 of the Act alleging escapement of income for the assessment years 1977-78 and 1978-79. In reply to the said notices, the assessee, by his letter dated April 18, 1985, asked the Income Tax Officer to let him know the reasons which made him exercise the power of reopening the assessments. It was also mentioned in the said letter that he had disclosed at the time of filing the returns all material particulars necessary for the purpose of assessment. A prayer was made for cancellation of the above notices. No reply was, however, received from the Income Tax Officer to the said letter. The petitioner thereafter filed the present writ petition before this court on July 25, 1985, on the ground, inter alia, that the conditions precedent for exercise of power u/s 147(a) of the Act were wholly absent and the notices were illegal and without jurisdiction.

5. The contention of the assessee is that he had disclosed all the material particulars of his income along with the returns and again in compliance with the notice u/s 143(2) of the Act for the assessment year 1978-79 and that there was no failure on his part to disclose fully and truly any material fact relevant for the purpose of assessment. It is also stated that the Income Tax Officer could not have any information in his possession to satisfy himself that any part of the income of the assessee had escaped assessment. The petitioner has categorically challenged the existence of the conditions precedent for the exercise of power u/s 147(a) of the Act.

6. Though this petition was filed in the year 1985 and rule was issued by this court on July 29, 1985, the respondents have not cared to file any affidavit or to produce the relevant records to counter the averments made on oath by the petitioner in his writ petition. The respondents have done nothing to satisfy this court about the existence of facts which invested him with jurisdiction to issue the impugned notices. There is also nothing before us to show whether sanction of the Commissioner was obtained by the Income Tax Officer. In such a situation, it is difficult to sustain the impugned notices issued by the Income Tax Officer in the purported exercise of power u/s 147(a) of the Act. It is well-settled that two conditions precedent are required to be fulfilled before the Income Tax Officer can exercise jurisdiction under clause (a) of section 147. These conditions are :

(1) that income, property or gains had been underassessed; and

(2) that such under assessment was due to the failure of the assessee to disclose fully and truly all material facts necessary for his assessment for that year.

7. If the existence of these facts is challenged by the assessee before the High Court, it is for the Income Tax Officer to satisfy the court about the existence of the same by filing affidavit and producing the relevant records. If on consideration of such material, the court is satisfied that the conditions precedent did exist, the court may turn down the challenge to the notices but in the absence of anything of the type, the averments of the petitioner supported by the facts set out in the petition are to be accepted and the court is left with no other option than to infer that the Income Tax Officer had no material with him to justify the exercise of power u/s 147(a) of the Act and to issue the impugned notices. In other words as observed by the Supreme Court in Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle ''B'', Nagpur, neither the contention whether the disclosure made by the assessee was full and true in respect of all material facts necessary for the assessment can be determined in the absence of an affidavit by the Income Tax Officer nor the plea that the impugned notice was issued with a collateral object rejected without an enquiry.

8. In the instant case, as earlier stated, no affidavit has been filed by the Income Tax Officer to meet the allegations made in the writ petition. Even the records have not been produced to show the existence of the conditions precedent for exercise of power u/s 147(a).

9. In the above premises, the impugned notices issued by the Income Tax Officer in the purported exercise of power u/s 147(a) of the Act cannot be sustained. We, therefore, quash the same.

10. In the result, the writ petition is allowed. Rule is made absolute in the above terms. No costs.

