(2004) 08 AHC CK 0147

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1646 of 2002

Dharam Pal Singh Rao APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:
Income Tax Act, 1961 — Section 117(1), 143(3), 147, 148, 151

Citation : (2004) 191 CTR 158 : (2004) 271 ITR 223

Hon'ble Judges : R.K. Agrawal, J;K.N. Ojha, J

Bench : Division Bench

Advocate : M. Manglik, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

1. By means of the present writ petition filed under Article 226/227 of the Constitution of India, petitioner, Dharam Pal Singh, seeks a writ, order or direction in the nature of certiorari quashing the notice u/s 148 of the IT Act, 1961, hereinafter referred to as the Act, for the asst. yrs. 1995-96 and 1996-97 filed as Annex. 2 to the writ petition and other consequential relief.

2. Briefly stated the facts giving rise to the present writ petition are as follows :

The petitioner is an individual. He claims to be a senior citizen. He is drawing pension. He voluntarily filed the return for the asst. yr. 1997-98. The ITO, Ward-2, Hapur, issued notices dt. 26th March, 2002, u/s 148 of the Act seeking to reassess the petitioner for the asst. yrs. 1995-96 and 1996-97. According to the respondents, the notice was served personally on the petitioner on 28th March, 2002, which is being strongly denied by the petitioner. By way of abundant caution the ITO, Ward-2, Hapur, respondent No, 1, had also sent notices dt. 26th March, 2002, under certificate of posting, which is admitted to have been served upon the petitioner on 2nd April, 2002.

3. We have heard Sri M. Manglik, learned counsel for the petitioner, and Sri A.N. Mahajan, learned standing counsel for the respondents.

4. Sri Manglik submitted that the notice under s. 148 for the asst. yr. 1995-96 has not been issued within the extended period of six years as provided u/s 149(1)(b) of the Act as it was served upon the petitioner on 2nd April, 2002, and period of six years had expired on 31st March, 2002. The submission is misconceived. The Hon''ble Supreme Court in the cases of R.K. Upadhyaya Vs. Shanabhai P. Patel, and Commissioner of Income Tax and Another Vs. Major Tikka Khushwant Singh, has held that from the 1922 Act position regarding service of notice u/s 148 has undergone a sea change in the 1961 Act and the only requirement for taking action for issuance of notice under s. 148 is that the notice should be issued within the period of limitation. Thus, the plea advanced by the learned counsel for the petitioner is misconceived and is rejected.

5. Sri Manglik, learned counsel for the petitioner, then submitted that in the present case, the proceeding u/s 148 initiated earlier were subsequently dropped, therefore, for initiating the proceedings u/s 147, the requirement of the proviso to Sub-section (1) of Section 151 for issuance of notice ought to have been fulfilled. Here, the approval has been granted by Addl. CIT whereas, under the proviso to Sub-section (1) of Section 151, the requirement is that the approval ought to have been given by the CIT or Chief CIT as the case may be.

6. The submission is misconceived. In the present case, the proceeding u/s 147 of the Act has been dropped on account of the objection raised to the territorial jurisdiction of the officer who had issued the notice. It was issued by the Dy. CIT, Circle Bulandshahr, whereas the jurisdiction was vested with the ITO, Ward-2, Hapur. Thus, the assessment proceedings for the asst. yr. 1996-97 cannot be treated to be an assessment order u/s 147 as contemplated u/s 151 of the Act. Since, in the present case, there is neither any assessment order under Sub-section (3) of Section 143 or 147 of the Act, proviso to Sub-section (1) to Section 151 would not be applicable and the case shall be covered by Sub-section (2) which requires the satisfaction/approval of the Jt. CIT. It may be mentioned here that Section 2(28C) provides that "Jt. CIT" means a person appointed to be a Jt. CIT or an Addl. CIT under Sub-section (1) of Section 117 of the Act. The Addl CIT would thus be a Jt. CIT within the meaning of the word ''Jt. CIT'' under Sub-section (2) of Section 151 of the Act. There is an order of the Addl. CIT recording his satisfaction and granting approval to the issuance of the notice.

7. In view of the foregoing discussion, we find no merit in the writ petition. It is dismissed in limine.

