(2009) 02 CAL CK 0056

In the Calcutta High Court

Case No : Writ Petition No. 1865 of 2008

Gaurav Agarwal APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 05-02-2009

Acts Referred:
Income Tax Act, 1961 — Section 142(1), 143(2), 143(3), 147, 148

Citation : (2009) 227 CTR 408 : (2009) 314 ITR 123

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : S. Chakraborty and R. Bharadwaj, for the Appellant; D. Som and Md. Nizamuddin, for the Respondent

Judgement

Soumitra Pal, J.—The court : In this writ petition the petitioner has challenged the notice issued u/s 148 of the Income Tax Act, 1961 dated May 7, 2007, and the notices under Sections 143(2) and 142(1) dated May 23, 2008, for the assessment year 2005-06 issued by the Income Tax Officer, Ward 46(2), Kolkata, respondent No. 1 on several grounds including the point of jurisdiction.

2. During the pendency of the writ petition the petitioner filed a supplementary affidavit annexing the letter dated July 15, 2008, without enclosures which, according to the assessee, is a letter objecting to the action of Respondent No. 1 seeking to reopen the case u/s 148 and the assessment order dated December 31, 2008, passed under Sections 143(3)/147 of the Act. According to the petitioner the order under Sections 143(3)/147 could not have been passed by Respondent No. 1 without disposing of the application dated July 15, 2008, objecting to the notice u/s 148 of the Act.

3. The matter was taken up for hearing on January 29, 2009, when respondent No. 1 was directed to produce the records. Today records have been produced. Perused the letter dated July 15, 2008, and its enclosures. Though in the said letter it has been stated that the notice u/s 148 is a "pure guess, erroneous, misconceived, inadequate and bad in law", since objection is bald and not

specific, it cannot be treated to be an objection to the said notice. In fact a perusal of the penultimate paragraph of the letter shows that it is primarily a letter seeking adjournment which, according to the Revenue, was granted. Thereafter, the matter was taken up, the assessee was represented by the learned advocate and assessment order dated December 31, 2008 was passed which is annexure-R2 to the supplementary affidavit. Hence, as the petitioner has submitted before respondent No. 1, he cannot question the jurisdiction. Therefore, since the assessment order has been passed and communicated, the petitioner is at liberty to file an appeal before the appropriate forum, in accordance with law, if so advised. Since the time to file appeal has expired, as prayed for, if appeal is preferred within three weeks from date, the appellate authority shall condone the delay and hear the appeal on merits.

4. I make it clear that I have not gone into the merits of the matter.

5. Since the respondents were not called upon to file affidavits controverting the allegations in the petition, the allegations are deemed not to have been admitted by them.

6. Let the records produced in court today be returned to the learned advocate appearing on behalf of the respondents.

7. The writ petition is disposed of.

8. No order as to costs.

9. Urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.