(2004) 04 AHC CK 0141

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1148 of 2003

Girdhar Gopal Gulati APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(3), 147, 148, 151(2)

Citation : (2004) 188 CTR 532 : (2004) 269 ITR 45

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M. Katju, J.—This writ petition has been filed for a writ of certiorari to quash the reassessment proceedings against the petitioner for the asst. yrs. 1996-97, 1997-98 and 1999-2000 initiated vide notices dt. 3rd March, 2003 for asst. yrs. 1996-97 and 1997-98 (Annexs. 7 and 8, respectively) and notices dt. 27th June, 2002 and 5th Feb., 2003 for asst. yr. 1999-2000 (Annexs. 6 and 9).

2. Heard learned counsel for the parties.

3. The facts of the case are that Girdhar Gopal Gulati, Sat Pal Gulati and Jagdish Kumar Gulati are real brothers who derive income from property. The petitioner Girdhar Gopal Gulati has l/3rd share in the property at 199, Transport Nagar, Kanpur-24, Chak Road, Allahabad, and United Tower at 2/1/3, Minhazpur Garhi, Allahabad.

In asst. yr. 1994-95 the petitioner along with his two brothers started construction of the building at Minhazpur Garhi, Allahabad, and the construction was completed in asst. yr. 1998-99. The total required investment made in the construction of the building from asst. yr. 1994-95 to asst. yr. 1998-99 by the petitioner and his brothers allegedly totals Rs. 57,81,948. It has been shared by the petitioner and his brothers in equal proportion as disclosed by them in their IT returns. On 9th March, 2001, the assessing authority of the petitioner framed an assessment order in the case of the petitioner for asst. yr. 1998-99 u/s 143(3) of the IT Act. It is alleged in para 8 of the petition that during those proceedings the assessing authority had raised various queries requiring the petitioner and his brothers to give details of investment in the property at 2/1/3 Minhazpur Garhi, Allahabad. In reply thereto valuation report of an approved valuer was filed. The AO after necessary enquiry with regard to the income of properties as also with regard to investment in the construction and after considering the details of the cost of construction, passed the assessment orders. True copy of the assessment order for the asst. yr. 1998-99 is Annex. 1.

Thereafter on 20th March, 2002, the CIT, Allahabad, passed order u/s 263 for asst. yr. 1998-99. He set aside that order as, in his view, the assessing authority had not made a proper enquiry regarding rental income from properties let out by the petitioner and investment in construction of property at Minhazpur, Allahabad. He directed the assessing authority to make a fresh assessment for that year by determining the value of the investment in property No. 2/1/3 Minhazpur Garni, Allahabad, after calling for and in accordance with the report of the valuation cell vide Annex. 2.

Against the order of the CIT u/s 263, the petitioner and his two brothers filed appeal before the Tribunal, Allahabad, which was dismissed on 18th Oct., 2002. Against this order two appeals were filed in this Court which had been admitted and operation of the order of the CIT(A) have been stayed.

In the meantime in compliance of the order of the CIT u/s 263 the District Valuation Officer in the Department prepared a valuation report and determined the value of the investment made by the petitioner in the building at Minhazpur, Allahabad. It is alleged that he prepared an abstract of the cost of construction on the basis of guesswork unfounded on any cogent material or evidence. In the meantime assessments of the petitioner and his brothers for asst. yrs. 1996-97, 1997-98 and 1999-2000 had also been completed and in all these years the accounts of the petitioner and his brothers had been accepted by their assessing authorities under Sections 143(3) of the Act for 1996-97 and 143(1)(a) for asst. yrs. 1997-98 and 1999-2000. In these assessments, the value of the investment made by the petitioner and his brothers in the property 2/1/3, Minhazpur, Garhi, Allahabad, was examined and had been accepted. True copy of the assessment order in the case of the petitioner for asst. yrs. 1996-97, 1997-98 and 1999-2000 are Annexs. 3, 4 and 5.

It appears that subsequently on 27th June, 2003, the AO issued a notice to the petitioner u/s 148 seeking to reassess the petitioner for the asst. yr. 1999-2000 vide Annex. 6. Similarly, two notices were issued by the assessing authority seeking to reassess the petitioner for the asst. yrs. 1996-97 and 1997-98 vide Annexs. 7 and 8. Another notice dt. 5th Feb., 2003, was issued u/s 148 for asst. yr. 1999-2000 vide Annex. 9. The petitioner filed reply to the notice dt. on 27th July, 2002 and demanded a copy of the reasons to believe recorded by the AO. Thereafter the AO in August and September, 2003, supplied to the petitioner a copy of the reasons to believe vide Annexs. 10, 11 and 12.

4. A perusal of copy of the reasons to believe u/s 147 for asst. yr. 1996-97 (Annex. 10) to the petition shows that valuation report was obtained by the AO and on this basis he has issued notice u/s 148.

5. In para 9 of the counter-affidavit it is stated that the District Valuation Officer of the IT Department determined the value of the investment made by the petitioner and his brothers in the building 2/1/3 Minhazpur Garhi, Allahabad. In paras 11 and 19 of the counter-affidavit it is stated that the respondent No. 2 reopened the assessment on the basis of that valuation report.

6. It may be noted that assessment of the petitioner for asst. yr. 1996-97 had been done u/s 143(3) and not u/s 143(1). This means that the assessment was done after making the requisite enquiries about the income disclosed by the petitioner.

7. In our opinion, once an assessment is proposed to be made u/s 143(3), it is expected that the AO will make all the relevant and detailed enquiries before passing the assessment order. He can make all enquiries to obtain the material he deems fit for finding out the correct income of the assessee. The AO cannot issue notice u/s 148 after the assessment has been made unless there is deliberate concealment by the petitioner or there is information that income has escaped assessment. In fact, from the record it appears that for asst. yr. 1996-97 a detailed enquiry had been held by the assessing authority before making the assessment of the petitioner. In our opinion, the impugned notice u/s 148 was passed only on change of opinion and hence it was invalid in view of the judgment of this Court in Civil Misc. Writ Petn. No. 387 of 1990 J.P. Bajpai HUF v. CIT and Anr. decided on 22nd April, 2004.

The aforesaid judgment has referred to the relevant Supreme Court decisions on the point which need not be repeated.

8. Moreover in Amiya Bala Paul Vs. Commissioner of Income Tax, Shillong, , it has been held by the Supreme Court that in assessment proceeding the AO cannot refer to the Valuation Officer the question of the cost of construction of the property built by the assessee. Hence, in view of this decision of the Supreme Court, the impugned notices and assessment proceedings are illegal.

9. We may also mention that so far as the decision of the Supreme Court in Amiya Bala Paul''s case (supra) is concerned, this would invalidate the notices for all three assessment years which are concerned, i.e., 1996-97; 1997-98 and 1999-2000. However, we may also mention that with regard asst. yrs. 1997-98 and 1999-2000, the assessments were not completed u/s 143(3) but u/s 143(1). In this connection it was necessary to take sanction of the Dy. CIT u/s 151(2) of the IT Act for issuing notices u/s 148, but such sanction has not been obtained as stated in para 24 of the petition. It has no doubt been stated in para 18 of the counter-affidavit that sanction of the CIT has been obtained but this averment is

wholly vague as no details have been given as to when the aforesaid sanction was granted and a copy of the sanction order has not been annexed to the counter-affidavit. Hence, we cannot believe the averments in para 19 of the counter-affidavit.

10. It may be mentioned that Section 151(2) of the IT Act states :

"(2) In a case other than a case falling under Sub-section (1), no notice shall be issued u/s 148 by an AO, who is below the rank of Dy. CIT, after the expiry of four years from the end of the relevant assessment year, unless the Dy. CIT is satisfied, on the reasons recorded by such AO, that it is a fit case for the issue of such notice."

11. In the present case, notice dt. 3rd March, 2003 u/s 148 for asst. yr. 1997-98 in respect of the petitioner was issued beyond four years of the expiry of the assessment year. Hence, the said notice copy of which is Annex. 8 to the petition is also illegal on this ground.

For the reasons given above, the impugned notices and assessment proceedings are quashed. The writ petition is allowed.

