
(1999) 02 AHC CK 0155

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petitions No's. 140, 141, 142 and 146 of 1999

Kundan Lal Ratan Lal Jain

APPELLANT

Vs

Assessing Officer

RESPONDENT

Date of Decision : 26-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 143(3), 147, 148

Citation : (2000) 245 ITR 434

Hon'ble Judges : R.K. Agarwal, J;M.C. Agarwal, J

Bench : Division Bench

Advocate : Vikram Gulati, for the Appellant; A.N. Mahajan, for the Respondent

Final Decision : Dismissed

Judgement

1. These four writ petitions by the same assessee are directed against the issue of notices u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the assessment years 1989-90, 1990-91, 1991-92 and 1992-93, respectively. The original assessments for all the years were duly completed u/s 143(3) of the Act in which the assessee had shown substantial amounts of income as agricultural income from land taken on lease. In addition, the assessee had shown a large number of loans from various persons. These were accepted in the assessments after some inquiry.

2. Further inquiries were pursued during which the land holders are said to have denied having leased out any land to the assessee. A large number of creditors were also examined who denied having lent any money to the petitioner. On the basis of these investigations, the Assessing Officer issued notices u/s 148 of the Act as he had reason to believe that the income chargeable to tax had escaped assessment. It is contended that the matter was investigated during the assessment proceedings and there was no cause for reopening the assessments. It is also contended that the Commissioner's sanction for the issue of notices after the expiry of four years was not taken and, therefore, the notices are

barred by time.

3. We have heard Sri Vikram Gulati, learned counsel for the petitioner, and Sri A. N. Mahajan, learned standing counsel for the respondent.

4. Reliance is placed on a judgment of the Patna High Court in *Dhanaraj Singh and Co. Vs. Commissioner of Income Tax and Another*, in which it was held that where loans were received by account payee cheques and have been accepted in the original assessment the case cannot be reopened u/s 148 of the Act on the basis of subsequent inquiries. The judgment shows that the loan creditors had given their Income Tax numbers, repayments were made by account payee drafts, interest was paid from time to time by account payee cheques/drafts and the principal amount was also repaid by account payee drafts. In the subsequent inquiries, it was found that the creditors were non-existent, meaning thereby that somebody was impersonating as the creditor. It was in these circumstances that it was held that the assessment could not be reopened u/s 148. There is nothing of that nature in the present case. In *M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another*, in the original assessment the Income Tax Officer had treated the loans as genuine. Subsequent fresh information specific in nature and reliable in character relating to the concluded assessment which goes to expose the falsity of the loan and the statement made by the assessee at the time of the original assessment is different from drawing a fresh inference. The Supreme Court held that on such facts the Income Tax Officer had jurisdiction to reopen the concluded assessment.

5. As regards the question of the sanction of the Commissioner and limitation, we find that this contention has no relevance for the assessment year 1992-93 and so far as the other years are concerned the notices issued to the petitioner mention that the notices have been issued after obtaining necessary satisfaction of the Commissioner of Income Tax. Therefore, prima facie, this plea has no substance.

6. In respect of a notice u/s 148 of the Act, the petitioner has the opportunity of contesting the validity of the same in the assessment proceedings and thereafter in the appellate proceedings where all questions of fact and law can be agitated. There is no such circumstance in this case that may induce this court to invoke the extraordinary jurisdiction under article 226 of the Constitution of India. The writ petitions, therefore, have no merit and are hereby dismissed with costs to the respondent.