(2010) 01 AHC CK 0211

In the Allahabad High Court

Case No : Writ Tax. No. 1733 of 2009

Manoj Kumar Sharma APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 25-01-2010

Acts Referred:

Citation : (2010) 01 AHC CK 0211

Hon'ble Judges : Rajes Kumar, J and S.C.Nigam, J

Final Decision : Dismissed

Judgement

Rajes Kumar, and Subhash Chandra Nigam, JJ.—Heard Sri Manish Goyal, learned counsel for the petitioner and Sri S.P. Shukla, learned appearing on behalf of respondent no.2.

2. Learned counsel for the petitioner submitted that for the year 200809, respondent no. 2 has made a provisional demand towards house tax at Rs.6293/. Thereafter, the notice has been issued, which is Annexure2 to the writ petition, for filing the objection against the proposed assessment of the premises in dispute which was assessed at Rs.5,75,49,716/. The petitioner filed the detailed replies, which are Annexures10 & 11 to the writ petition, stating therein that the bungalow in dispute is being used by his family members for the residential purposes and further stating that there are 24 tenants in the outhouses giving the details of rent which is being paid by them.

3. By means of present petition, the petitioner has challenged the demand notice dated 25.7.2009, which is Annexure1 to the writ petition, by which for the period 200809, a sum of Rs.14,72,366/ is being demanded. The contention of the petitioner was that without passing any order, the demand was patently illegal.

4. Counter affidavit was called. Today, counter affidavit has been filed annexing a copy of the assessment order as AnnexureC.A.I and learned counsel for the respondent submitted that against the said order appeal lies under the Act.

5. Sri Manish Goyal, learned counsel for the petitioner submitted that in the alleged order no date has been given. There appears to be no signature of the authority concerned who has passed the order. Even in the affidavit the date of the order has not been mentioned. He submitted that the perusal of the order reveals that the reply given by the petitioner has not been considered. He submitted that the premises in dispute is being used as a residential house by the family members and there are 24 tenants but the same have not been considered in the said order. He submitted that no basis has been given to arrive at a conclusion that the bungalow has been used for commercial activities. In the show cause notice, it has not been alleged that the bungalow has been used for commercial purposes. Therefore, the order is patently illegal and liable to be set aside.

6. We have given our anxious consideration to the rival submissions made by the learned counsel for the parties.

7. We are of the view that the impugned assessment order which is annexed as C.A.I is not sustainable and the demand of Rs14,72,366/ by demand notice dated 25.7.2009 is also not sustainable. Perusal of the alleged assessment order reveals that the submission of the petitioner has not been considered at all. In the reply the petitioner has categorically stated that the bungalow is being used for residential purposes and there are 24 tenants. The details of the tenants have also been given. In the notice dated 27.1.2009 in which value has been proposed at Rs.5,75,49,716/ there is no allegation that the property is being used for commercial purposes. In this view of the matter, we are of the view that the order has been passed without considering the reply of the petitioner and the grounds taken in the order have not been confronted to the petitioner at any stage, therefore, liable to be set aside.

8. The writ petition is allowed. The impugned assessment order, AnnexureC.A.I and the demand notice dated 25.7.2009 which is Annexures1 to the writ petition, are set aside. We direct the petitioner to file certified copy of this order within two weeks before the concerned officer. Thereafter officer concerned is directed to issue show cause notice giving reasons for the proposed assessment within another two weeks seeking reply from the petitioner and thereafter he may pass appropriate order within another six weeks after giving opportunity of hearing considering the reply in accordance to law. However, on the facts and circumstances of the case we direct the petitioner to pay a sum of rupees two lacs within a period of one month, which shall be subject to the fresh order which will be passed.