(2010) 05 DEL CK 0158

In the Delhi High Court

Case No : Writ Petition (C) 8404 of 2009 & Writ Petition (C) No''s. 8404 and 8505 of 2009

Raj Kumar Mangla — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:
Income Tax Act, 1961 — Section 127(2), 154

Citation : (2011) 10 TAXMAN 13

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Rashmi Chopra, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—In these petitions, there are essentially two grievances raised by the petitioner who appeared before us in person. The first grievance is with regard to the order made u/s 127(2) of the income tax Act, 1961 (hereinafter referred to as ''the said Act), whereby the petitioner''s case was transferred from the Office of the Assistant Commissioner of income tax (Investigation) Circle, Gurgaon to the Office of ITO, Ward No. 10(1), Delhi which falls under the administrative control of the Commissioner of income tax-VII, Delhi. The said transfer order was dated 14.10.1998 and was to take effect from 30.10.1998. The petitioner is aggrieved by this transfer order because, according to him, his application for rectification u/s 154 of the said Act, which was filed before the Commissioner of income tax (Appeals), Faridabad, could not have been transferred u/s 127(2) of the said Act inasmuch as only the assessment proceedings could, in his view, be transferred under that provision.

2. The second grievance of the petitioner is that the application moved by him u/s 154 of the said Act in respect of appeal Nos. 144, 145 and 146/95-96 was disposed of by the Commissioner of income tax (Appeals), New Delhi without giving him an opportunity of hearing. The said order disposing of the application

u/s 154 was dated 26.04.2005. Incidentally, this was the third application u/s 154 of the said Act filed by the assessee / petitioner seeking rectification of the very same order. The first two applications u/s 154 were dismissed by the Commissioner of income tax (Appeals), Faridabad. Thereafter, because the case stood transferred u/s 127(2) of the said Act, the third application of the petitioner u/s 154 was rejected by the Commissioner of income tax (Appeals), New Delhi by virtue of the said order dated 26.04.2005. Thereafter, the petitioner moved a fourth application u/s 154 requesting for rectification of the alleged mistakes in the impugned order dated 26.04.2005.

3. Insofar as the first grievance of the petitioner is concerned, with regard to transfer of the case from Gurgaon to Delhi, the petitioner has agreed before us that he shall not press this point and as such no grievance subsists insofar as the transfer of the entire case is concerned.

4. With regard to the second issue, we find that the petitioner has been filing repeated applications u/s 154 and that this practice is not to be encouraged. The petitioner has agreed that if he is given an opportunity of hearing in respect of his application u/s 154, which was dismissed on 26.04.2005, no further applications u/s 154 would be filed in respect of the very same order. He also undertook that the fourth application, which has purportedly been filed u/s 154 of the said Act, could also be deemed to have been withdrawn.

5. Considering the chequered history of this case and the somewhat convoluted facts, we are of the view that it would serve the ends of justice if the entire proceedings are cut short and the petitioner is given a final opportunity to present his case with regard to his application u/s 154, which had been dismissed by the impugned order dated 26.04.2005. We note from the impugned order itself that the petitioner was not given a personal hearing before disposing of the said application. Consequently, we set aside the impugned order dated 26.04.2005 and direct the Commissioner of income tax (Appeals), New Delhi to grant the opportunity of hearing to the petitioner and thereafter pass an order on the said application in accordance with law.

6. We make it clear that the fourth application filed by the petitioner would be deemed to have been withdrawn. We also make it clear that this order has been passed under the clear understanding that the petitioner shall not agitate the question of transfer of the case from Gurgaon to New Delhi any further nor would he file any further application / applications u/s 154 of the said Act in respect of the very same appellate orders, which were passed in appeal Nos. 144, 145 and 146/95-96.

7. The petitioner also submits that a date may be fixed for his appearance before the Commissioner of income tax (Appeals). We direct that the petitioner shall appear before the Commissioner of income tax (Appeals)-XXV, New Delhi on 24.05.2010 in the first instance. The said Commissioner of income tax (Appeals) would give the petitioner an opportunity of hearing and then pass the order in

accordance with law. In case the petitioner has any grievance against the said order, it would be open for him to take recourse to the remedies as available to him under law.

The writ petitions stand disposed of with these directions.

Dasti.

