

(2012) 12 DEL CK 0317
In the Delhi High Court
Case No : Writ Petition (C) 793 of 2007

Rajan Nanda

APPELLANT

Vs

Asstt. Commissioner of Income

RESPONDENT

Date of Decision : 10-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148

Citation : (2012) 12 DEL CK 0317

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : R.M. Mehta and Mr. Simran Mehta, for the Appellant; Sanjeev Rajpal, Senior Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—The writ petitioner challenges the notice dated 31.3.2006 whereby the revenue sought to reopen the assessment in respect of the assessment year 1999-2000. The grievance in this proceeding under Article 226 is that (a) the assessing officer did not furnish "reasons to believe" u/s 148 of the Income Tax Act, 1961 ("Act" for short) within reasonable time and did so only on 5.12.2006 and (b) the assessing officer did not afford any opportunity to the writ petitioner while framing the reassessment through the order dated 26.12.2006 on the same day on which he passed the order disposing of the objections. Ld. counsel for the writ petitioner at the outset mentioned that even though the reassessment order has not been challenged in appeal, this Court is not deprived of its jurisdiction under Article 226 to set aside the impugned order including the notice dated 31.3.2006 as well as the order disposing of the objections (26.12.2006); and the reassessment order dated 29.12.2006. It is submitted that this is because the present writ petition was filed earlier and the appeal was preferred during the pendency - a fact brought to the notice of this Court. The appeal was filed without prejudice to the writ petitioner's rights. Ld.

counsel for the parties relied upon the basic ruling of the Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, where the Supreme Court held as under :

However, we clarify that when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years.

It was contended that the procedure mandated by GKN Driveshafts (supra) was a clue as to what prevailed with the assessing officer while recording his "reasons to believe u/s 148" and also by way of granting a fair opportunity to the assessee to indicate to the tax authorities and explain, if necessary, the real facts. So viewed, it is imperative for the assessing officer to deal with the objections expeditiously and thereafter proceed to pass orders in the reassessment proceedings, if maintainable, after giving a fair opportunity to the assessee. Ld. counsel relied upon certain decisions such as Techspan India Private Limited and Another Vs. Income Tax Officer, as well as the judgment of the Supreme Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, to state that the amplitude of this Court's powers under Article 226 cannot be cut down to drive the assessee to statutory appellate remedy. A Division Bench in Techspan India (P) Ltd. (supra) held as under :

Having considered the arguments of the counsel and the aforesaid decisions, I am of the opinion that the Supreme Court in the case of Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, had clearly indicated that a Writ petition would be maintainable to challenge invocation of proceedings for re-assessment even though it was also open to the assessed to challenge the same before the Assessing Officer during assessment as also challenge the same before the appellate authorities after the re-assessment proceedings were completed. This well settled position of law has held the field since 1961 and, as indicated by the Supreme Court itself in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , although much water has flown under the bridge, there has been no corrosive effect on this position of law. The decision in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, also gives an indication that the requirement of passing the speaking order would provide an opportunity to the assessed to challenge the same by way of a writ petition under Article 226 This interpretation finds favor with Division Benches of other High Courts including the Gujarat High Court and the Allahabad High Court, as indicated above, and, in my view, is the correct position in law. As indicated in Whirlpool Corporation Vs. Registrar of

Trade Marks, Mumbai and Others, , the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution would not be effected although there exist alternative statutory remedies particularly in cases where the authority against whom the writ has been filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. It, however, remains a matter of discretion with the Court as to whether in a particular case, it ought to interfere or not. But, a writ petition such as the one with which we are dealing, cannot be thrown out at the threshold on the ground that it is not maintainable.

2. Ld. counsel for the petitioner also relied upon other decisions such as Sita World Travels (India) Ltd. Vs. Commissioner of Income Tax and Another, , Janki Exports International Vs. Union of India (UOI) and Others, , S. Ujjal Singh Vs. ITO WP(C) 549/1986, Smt. Kamlesh Sharma Vs. B.L. Meena, Income Tax Officer and Others, .

3. It was lastly contended that the recent decision of this Court in Commissioner of Income Tax Vs. Rajan Nanda in ITA No. 400/2008 and connected cases delivered on 16th December, 2011 in any event favours the assessee on the merits of the reassessment proceedings and that the court would be engaged in the futile exercise of driving him to the appellate remedy. This Court has considered the contention. As far as the decision in Techspan India (P) Ltd. (supra) is concerned this Court notices that the extract relied upon by the assessee in this case is in no way exclusive because it is a separate order. In his separate order, even while concurring with the decision, Justice Thakur sounded a note of caution and relied upon several other decisions. He observed:-

The power of the High Court to issue prerogative writs under Article 226, is untrammelled by any ordinary piece of legislation, whether enacted by the Parliament or a State Legislature. Income Tax Act, 1961, is one such piece of legislation which does not and cannot in the constitutional scheme of things affect the power of the superior courts in the country to issue appropriate writs in appropriate cases. Having said that, we need to remember that the writ jurisdiction is not only discretionary but equitable in nature. A court need not interfere, just because it is lawful to do so. The courts have, therefore, evolved certain self-imposed restrictions for the exercise of their power under Article 226. A writ court would not interfere where the petitioner is not acting bona fide or where he has not come with clean hands. So also a court would not interfere where the grant of relief would involve investigation into disputed questions of fact. Availability of an equally efficacious alternative remedy is yet another situation where the court may refuse to step in, unless, the case involves violation of the principles of natural justice or a palpable lack of jurisdiction on the part of the authority passing the order, or a challenge to the provisions of the statute under which the impugned order has been passed. Suffice it to say that while the jurisdiction of the court is discretionary, the exercise of discretion is not uncanalised or arbitrary. The discretion has to be exercised along judicial lines.

Whether or not a case for interference has been made out, would, therefore, depend upon the facts and circumstances of each case. And since facts of a case are rarely if ever similar to that of another case, the court will have to examine the matter each time its jurisdiction is invoked by a litigant. This is particularly so in cases where the assessee challenges, notices issued u/s 148 of the income tax Act, proposing to reopen concluded assessments, on the ground that income that was taxable has escaped assessment for a given year or years. Just because the court has interfered in one case may not in such cases, be a reason enough to interfere in every case; nor can the colour of facts be matched between two cases to show that interference in one must necessarily justify interference in the other.

This Court is conscious of the fact that the Supreme Court's ruling in GKN Driveshafts (supra) was designed with the view to afford the assessee an opportunity to put before the tax authorities his point of view, before the reassessment proceedings are completed. However, it would be too wide a proposition to contend that the objections per se would be reviewable in every other case and afford another opportunity for questioning the "reasons to believe" with which the assessee can be aggrieved. The basic requirement of the statute is the recording of the "reasons to believe" u/s 147. That done, all the Supreme Court opined was about the necessity of providing reasons for issuance of notice u/s 147, if the same are sought; to afford a reasonable and fair opportunity to the assessee to file his objections; and dispose of the same by a speaking order. The rest has been left to the Court's concern to be dealt within individual cases. It would be sufficient to notice that the Court did not lay down a blanket proposition that even the order of the assessing officer dealing with the objections has to be reviewed in every case where Section 147 notice is sought to be impugned. Having regard to the facts and circumstances, this Court is of the opinion that even the question whether the petitioner was afforded a reasonable opportunity could be gone into by the CIT(Appeals) before whom the appeal is pending. It is open to the assessee to urge the question of denial of opportunity along with the other issues on merits. All rights and contentions are expressly reserved.

Writ petition is disposed of in the above terms.