(2000) 07 RAJ CK 0042

In the Rajasthan High Court

Case No : Special Appeal No''s. 692, 694 and 695 of 2000

Rajan Products APPELLANT

Vs

Union of India and Another RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148, 149, 150, 151

Citation : (2001) 165 CTR 735 : (2001) 247 ITR 101 : (2000) 3 RLW 1473 : (2002) 120 TAXMAN 322 : (2000) 3 WLC 11 : (2001) 1 WLN 684

Hon'ble Judges : A.R. Lakshmanan, C.J;Arun Madan, J

Bench : Division Bench

Advocate : P.K. Kasliwal, for the Appellant; R.K. Agrawal, for the Respondent

Judgement

A.R. Lakshmanan, C. J.

1. The parties to the three appeals are one and the same and, therefore, by consent of both parties all the three appeals were taken up together for disposal.

2. The writ petition was filed by the appellant to quash the notice issued u/s 148 of the Income Tax Act, 1961, dated December 7, 1998, (exhibit 4), and for a mandamus commanding respondent No. 2 to cancel or withdraw the notice issued u/s 148 of the Act and for other incidental reliefs. The writ petition was dismissed by the learned single judge on two grounds : (i) the learned judge has said that there is no infirmity in the assessment order passed by the Tribunal, and that (ii) there is an alternative remedy available for the appellant to approach the authorities under the Income Tax Act. Aggrieved by the above ruling, the writ petitioners have come up in appeal.

3. An objection was raised by the Income Tax Department on the maintainability of the writ petition which has been filed against the notice dated December 7, 1997 (exhibit 4) issued by the Assistant Commissioner of Income Tax , Investigation Circle, Ajmer, u/s 148 of the Act. In the said notice, the Assistant

Commissioner of Income Tax has proposed to assess the income for the assessment year 1995-96 which according to him has escaped assessment within Section 147 of the Act. The appellant was prepared to deliver to the officer concerned, the returns in respect of which, he is assessable for the assessment years 1993-94, 1994-95 and 1995-96. The appellant, by his letter dated December 18, 1998 (exhibit 5), requested the Assistant Commissioner of Income Tax to provide them the copy of reasons recorded by the officer for the purpose of proceedings under Sections 147 and 148 of the Act. Another communication was also sent on January 16, 1999 (exhibit 8), requesting the Assistant Commissioner of Income Tax to provide them copy of reasons for reopening the assessment for the years 1993-94, 1994-95 and 1995-96. Learned counsel for the Department filed the reply and advanced arguments on the question of jurisdiction under Sections 147 and 148 of the Act.

4. We have perused the reply filed in the main writ petition. As already noticed, Section 147 of the Act deals with income escaping assessment. The Section says that the Assessing Officer may subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance, etc., etc.

5. Section 148 of the Act deals with issue of notice where income has escaped assessment. Section 151 of the Act deals with sanction for issue of notice under Sections 147 and 148 of the Act.

6. It is not the case of the appellant herein that no sanction has been obtained as contemplated u/s 151 of the Act. The Income Tax Officer has reason to believe that there is escaped assessment and we have reason to believe that he could exercise his jurisdiction u/s 147 of the Act. We are unable to accept the arguments advanced by learned counsel for the appellant on Sections 147 and 148 of the Act. If such contention is accepted, then reopening of the assessment will be impossible and the income which has escaped assessment cannot be taxed in any eventuality. In regard to the request made by the assessee asking for reasons for issuance of notice u/s 147, we are of the opinion that the appellant has no legal right to ask for reasons and the same in our opinion need not be communicated. The notice was issued u/s 148 of the Act and, therefore, the appellant ought to have filed the reply immediately. In our opinion, the appellant has wrongly invoked the jurisdiction of this court. As already noticed, the writ petition is directed against the notice u/s 147 of the Income Tax Act. This apart, the appellant has an alternative remedy of filing appropriate appeal before the appropriate authority provided under the Income Tax Act, 1961. In our view, there is no cause of action which has arisen for the appellant-petitioner for filing a writ petition and further appeal.

7. Since the writ petition has been filed against the notice of reassessment, we have no other option except to dismiss the appeal as not maintainable. However,

the dismissal of the writ appeal will not stand in the way of the appellant''s raising of legal contention by way of reply to the notice u/s 147 of the Act along with the return if the return has not already been filed. On receipt of reply to the show-cause notice issued u/s 147, the Income Tax Officer shall decide the objections filed legally and factually and then pass final orders in accordance with law after affording an opportunity of hearing either to the appellant or to their authorised representative within three months from the date of filing objections regarding reassessment proceedings.

