
(2008) 03 RAJ CK 0129
In the Rajasthan High Court

Rakesh Kumar Gangwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 139, 143, 147, 148, 153

Citation : (2008) 4 RLW 3568

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Judgement

Mohammad Rafiq, J.—Heard learned Counsel for the parties.

2. These writ petitions have been filed at the instance of one assessee Rakesh Kumar Goyal in respect of assessment years 1990-91 to 1994-95. These petitions are being decided by this common judgment on the basis of the facts of SBCWP No. 4866/2000 which pertains to assessment year 1988-89. The assessee has challenged the notices/letters dated 20/9/2000, 17/10/2000, 17/10/2000 and 17/10/2000, Annexures 5, 7, 8 and 9 respectively, whereby certain additional information has been asked for by the assessing authority from the petitioner-assessee in reassessment proceedings initiated u/s 148 of the Income Tax Act, 1961 (for short the "Act").

3. Learned Counsel for the petitioners has argued that such information could not be called for by the assessing authority because Section 148 itself provides that the provision of the Income Tax Act shall, so far as may be, applied accordingly to the proceedings u/s 148 as if the return filed with the assessee pursuant to such notice was a return required to be furnished u/s 139. It is argued that proviso to Section 139(2) categorically states that no notice in Clause (11) of Section 139(2) shall be served on the assessee after expiry of 12 months from the end of the month from the date return is furnished.

4. It was argued that petitioner, upon receipt of notice u/s 148 for re-assessment, had informed the assessing authority that his original return may be

treated as return also for the purpose of proceedings u/s 148 and the additional information having been called for much after expiry of one year, would be void by the period of limitation and hit by second proviso to Sub-section (2) of Section 143 of the Act. It is argued that the assessing authority however in communication dated 17/10/2000 addressed to the petitioner has rejected objection of the petitioner.

5. Learned Counsel for the respondent however cited amendment in Section 148 of Finance Act, 2006 w.e.f. 1/10/1991 and argued that in such a case where a notice furnishing additional information was served after the expiry of 12 months in proviso second to Section 143, Parliament by amendment in Section 148 itself has provided that every such notice shall be deemed to be a valid notice.

6. Section 148, as it now stands with amended Sub-section thereof reads as under:

148.[(1)]. Before making the assessment or recomputation u/s 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [***] as maybe specified in the notice, a return of his income or. the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139:]

[Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Sub-section (2) of Section 143, as it stood immediately before the amendment of said Sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, reassessment or re-computation as specified in Sub-section (2) of Section 153, every such notice referred to in this Clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and endkig on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under Clause (ii) of Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Clause (ii) of Sub-section (2) of Section 143, but before the expiry of the time limit for

making the assessment, reassessment or re-computation as specified in Sub-section (2) of Section 154, every such notice referred to in this Clause shall be deemed to be a valid notice.)

[Explanation].- For the removal of doubts, it is hereby declared that working contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[(2)] The Assessing Officer shall before issuing any notice under this section, record his reasons for doing so.]

7. First proviso makes it abundantly clear that when return has been furnished u/s 148 during period of commencement from the first date of 1/10/1997 and 30th of September, 2001 in response to notice issued under that provision and subsequent notice has been issued under Sub-section (2) of Section 143 after the expiry of twelve months specified in the proviso to Sub-section (2) of Section 143, as it stood immediately before the amendment of said Sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or re-computation as specified in Sub-section (2) of Section 153, every such notice referred to in this Clause shall be deemed to be a valid notice.

8. In view of above, provision which has been made applicable even for return furnished during the period from 1/10/1991 to 30/9/2005, no relief can possibly be granted to the petitioner. Therefore, no interference can be made with the impugned order Annexure-7. Learned Counsel for the petitioner however at this stage argued that for other objection, he may be permitted to approach the assessing officer. In this connection, he has relied on the judgment of the Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, It was argued that Supreme Court in that case held that even if objection is filed by the assessee on receipt of notice for reassessment proceedings u/s 148 demanding reasons for issuance of such notice, the assessing authority is bound to give reasons on receipt of notice. The learned Counsel for the revenue does not have any objection to such a course being adopted by the petitioner.

9. In the circumstances, therefore, petitioner is set at liberty to approach the assessing authority except on the question of limitation and for the reasons he may like to obtain for issuance of notice and any such representation is made, the same shall be decided by the assessing authority in accordance with law in the terms indicated by the Supreme Court in GKN Driveshafts (India) Ltd. supra.

10. The writ petitions are accordingly, disposed of.