(2003) 03 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1140 of 2003 20 March 2003

Ram Niwas Choudhary APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 148, 151

Citation : (2003) 132 TAXMAN 594

Hon'ble Judges : Prakash Tatia, J

Bench : Division Bench

Advocate : Anjay Kothari, for the Petitioner, for the Appellant;

Judgement

Heard learned counsel for the petitioner.

2. Brief facts of the case are that the petitioner was served with a notice u/s 148 of the Income Tax Act on 31-5-2001. According to petitioner, as per section 151 of the Act it is obligatory upon the assessing officer to record reason to the effect that it is a fit case for the issue of such notice u/s 148. As per sub-section (2) of section 151 unless a satisfaction is recorded over reasons recorded by the assessing officer by the Joint Commissioner, a higher authority, the notice u/s 148 cannot be issued. Learned counsel for the petitioner submits that the recording of reason by the assessing officer and sanction by the higher authority are not the empty formality. It is also submitted that as per the language of section 151 it is clear that even issuance of notice requires satisfaction of certain pre-conditions and unless and until the full compliance is given to the provision of section 151 and in particular sub-section (2) of section 151 even notice cannot be issued. Therefore, the notice Annex. 1 dated 31-5-2001 is without jurisdiction. Learned counsel for the petitioner relied upon the judgment of the Honble Supreme Court delivered in the case of Chhugamal Rajpal Vs. S.P. Chaliha and Others,

3. So far as legal position with respect to the recording of reason by the

concerned authority before issuance of notice and recording of satisfaction by the higher authority under sub-section (2) of section 151 of the Income Tax Act are concerned, there is no quarrel. The facts of this case reveal that the notice was issued as back as on 31-5-2001, the petitioner for the first time raised the preliminary objection after almost two years on 13-3-2003 vide Annex. 3. The conduct of the petitioner of causing delay in the proceedings before the concerned authority itself is sufficient to dismiss the writ petition, which is against only show-cause notice apart from the delay in challenging the show-cause notice after more than about 22 months.

4. It is submitted by learned counsel for the petitioner that the reasons for issuing notice u/s 148 of the Income Tax Act were supplied to the petitioner on 31-3-2001, copy of which is placed on record as Annex. 4, and therefore, now the petitioner has come to know the reason for issuing notice itself contains that the approval of Additional Commissioner of Income Tax, Range-2 has been accorded, which shows that the higher authority, who has passed the sanction under sub-section (2) of section 151 had passed the sanction without looking into the reasons given in notice u/s 148 recorded by the Income Tax Officer (Assessing Authority).

5. In a matter which was initiated by issuance of notice on 31-5-2001 was pending before the competent authority and the preliminary objection itself was submitted after inordinate delay on 13-3-2003 and now the petitioner is asking for determination of his preliminary objection as a condition precedent for proceeding further by the assessing officer. Not only this, but petitioner, who has placed on record the certified copy of the reason for issuance of notice u/s 148, failed to point out whether he earlier applied for the certified copy of the reason for issuing notice u/s 148 or not. It appears that the Annex. 4 is a certified copy issued to the petitioner, which petitioner could have obtained earlier also, but for the reasons best known to the petitioner, he obtained the certified copy on 13-3-2003.

6. It is also relevant to mention here that the petitioner has submitted that the reason itself contains that approval has been granted by the Additional Commissioner, Income Tax Department, but the petitioner did not choose to place on record the approval order passed by the Additional Commissioner Range-2, Jodhpur vide his letter No. Addl. CIT/JU/R-2/151/2001-02/340 dated 31-5-2001. Learned counsel for the petitioner tried to explain that this order of Additional Commissioner has not been supplied to the petitioner, but, at the same time, admitted that he never applied for the said order because he was not aware of any order passed by the Additional Commissioner under sub-section (2) of section 151 of the Income Tax Act. He only came to know when he received the copy of the reasons dated 31-5-2001, which was received by the petitioner on 13-5-2003.

7. in view of the above fact that the petitioner himself did not diligently conducted his case before the appropriate authority and there is a gross delay

and laches on the part of the petitioner and the petitioner has alternate remedy to raise his grievance before the concerned authority. This is not the fit case nor this court should entertain the writ petition against a show-cause notice issued on 31-5-2001 in the year 2003.

8. Learned counsel for the petitioner submits that at least direction may be issued that the respondents may supply the copy of the approval order passed by the Additional Commissioner. Since the petitioner himself did not request for that to the concerned authority, therefore, this court is not required to issue even this direction. The petitioner can certainly obtained the necessary documents as per the rules and they can be given to the petitioner and there is no reason to believe that the respondents will not supply the copies of the relevant documents, which they are required to supply under law and in accordance with rules.

9. Therefore, there is no force in this writ petition and the same is hereby dismissed.

