

(2014) 09 AHC CK 0261

In the Allahabad High Court

Case No : Civil Misc. Writ (Tax) Petition No. 498 of 2014

Reliable Finhold Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Income Tax Act, 1961 — Section 143, 143(3), 147, 148, 151

Citation : (2014) 10 ADJ 92 : (2014) 369 ITR 419

Hon'ble Judges : Dr. Dhananjaya Yeshwant Chandrachud, C.J.; Dilip Gupta, J

Bench : Division Bench

Advocate : Shubham Agrawal and S.D. Singh, Advocate for the Appellant

Judgement

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1. The petitioner has called into question a notice for re-assessment issued for Assessment Year 1998-99 by the Assessing Officer, the second respondent, on 29 March 2005. The petitioner has also called into question an order passed by the Assessing Officer on 10 June 2014 disposing of the objections to re-opening of the assessment. The petitioner filed its return of income for A.Y. 1998-99 on 30 November 1998. The petitioner was assessed on 22 March 2000 under Section 143(3) of the Income Tax Act, 1961 (the Act) by the Assessing Officer. The petitioner received a notice dated 29 March 2005 under Section 148. The petitioner filed writ proceedings (Writ Tax No. 492 of 2006) before this Court challenging the re-assessment notice which petition was finally disposed of on 23 April 2014 by remanding the proceedings back to the Assessing Officer to dispose of the objections of the petitioner to re-opening of the assessment. The Assessing Officer disposed of the objections, rejecting them, by an order dated 10 June 2014.

2. The submission which has been urged on behalf of the petitioner is that in the present case, the assessment was sought to be re-opened beyond the period of four years of the end of the relevant assessment year and since the original

order of assessment was made under Section 143(3), no notice could have been issued without the sanction of the Chief Commissioner or the Commissioner. It has been urged that as a matter of fact, no sanction had been issued.

3. While disposing of the objections of the petitioner, the Assessing Officer dealt with the objection to the effect that no sanction was obtained of the Commissioner under Section 151 in the following observations:

".....In certain cases the AO has to be of a particular rank and satisfaction or approval of the higher authority is required. It needs to be emphasized that as per the Act satisfaction required before issuance of notice for reassessment/assessment of the AO and not of any higher authority whose approval may be required. Such approval is an internal administrative process for better regulation of the Machinery of the tax collection. The manner in which the assessee has set out the objection. This means that an assessee can conceal income give inaccurate particulars but not proceeded against if some approval or time limit is not obtained or has gone by. In any case their objection will be again examined during the assessment proceedings if required by the Hon'ble appellate authority. This objection is accordingly not acceptable."

4. Subsequently, the petitioner filed a supplementary-affidavit disclosing the information received on 12 June 2014 from the Assessing Officer, Income Tax Officer-6(2), Kanpur. In response to a query under the Right to Information Act, 2005 as to whether permission was obtained from the Commissioner/Chief Commissioner in compliance with the provisions of Section 151 before the notice under Section 148 dated 29 March 2005 had been issued for A.Y. 1998-99, the answer was in the negative.

5. In order to enable the Revenue to clarify the matter, by an order dated 8 September 2014, the learned Standing Counsel was directed to take instructions and file a counter-affidavit. In the counter-affidavit which has been filed on behalf of the Revenue, the following statement has been made:-

"..... The assessee filed its return of income on 30.11.1998 in the office of ITO, Ward 2(1), Kanpur, who was under administrative control of CIT-I, Kanpur. Thereafter, the ITO-2(1) completed the assessment under Section 143(3), After restructuring of the Department, the jurisdiction over the corporate cases was transferred to CIT-II, Kanpur Charge. A perusal of the proforma submitted by the then A.O. for obtaining approval for issue of notice shows that the then A.O. was not aware about the fact that the said case had already been completed under Section 143(3) otherwise he would have sought approval of the CIT, as required for the purpose well within the stipulated limitation of six years." Section 151(1) provides as follows:

"151(1) In a case where an assessment under sub-section (3) of Section 143 or Section 147 has been made for the relevant assessment year, no notice shall be issued under Section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner unless the Joint Commissioner

is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice:

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice."

Sub-section (1) of Section 151 provides inter alia that where an assessment has been made under Section 143(3), a notice under Section 148 cannot be issued by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner unless the Joint Commissioner is satisfied on the reasons recorded by the Assessing Officer that there is a fit case for the issuance of a notice. The proviso to sub-section (1), however, requires the satisfaction of the Chief Commissioner/Commissioner after the expiry of a period of four years from the end of the relevant assessment year, failing which, no notice can be issued.

6. In the present case, admittedly the original assessment was under Section 143(3). The notice under Section 148 was sought to be issued more than four years after the end of the relevant assessment year. The assessment year is A.Y. 1998-99. Notice under Section 148 was issued on 29 March 2005.

7. In the circumstance, clearly the proviso to sub-section (1) of Section 151 was attracted. Admittedly, as the counter-affidavit which has been filed by the Revenue indicates, no sanction or permission of the Commissioner was obtained. In this view of the matter, the entire exercise of re-opening of the assessment under Section 148 fails to meet the basic jurisdictional requirement under the proviso to sub-section (1) of Section 151 since under the proviso no notice can be issued except on the satisfaction of the Commissioner or, as the case may be, the Chief Commissioner and admittedly there was no such satisfaction in the present case. The re-assessment notice dated 29 March 2005 would have to be quashed and set aside.

The re-assessment notice dated 29 March 2005 is, accordingly, quashed and set aside having been issued without the satisfaction of the Chief Commissioner or the Commissioner as required by the proviso to sub-section (1) of Section 151.

The writ petition is, accordingly, allowed. There shall be no order as to costs.