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(1985) 03 DEL CK 0015

In the Delhi High Court

Case No : Civil Write No. 540 of 1985

R.L. Traders APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 22-03-1985

Acts Referred:

Citation : (1986) 158 ITR 824

Hon'ble Judges : Mahinder Narain, J;D.K. Kapur, J

Bench : Division Bench

Judgement

D.K. Kapur, J.—This set of writ petitions is concerned with the validity of notices u/s 147(a) read with section 148 of the Income Tax Act, 1961, relating to several years. We had issued a show- cause notice. The case of the petitioner is that there was no material or reasons at all for reopening the assessment for those years. In reply, the case of the Department is that during some other proceedings in Bombay, it was discovered that hing was being sold through commission agents to havala agents at an under invoiced rate. It is alleged that the petitioner had also been selling to these commission agents at an under invoiced rate. This position emerges from the proposal to reopen the assessment. The petitioner submits that this material is too vague and uncertain to connect the petitioner with any under invoicing or alleged concealment of income and, Therefore, there was insufficient material for the Income Tax Officer to have "reason to believe" that income had escaped assessment u/s 147(a) of the Income Tax Act. A number of judgments have been cited at the Bar concerning the way in which the relevant material has to be referred to during these proceedings.

2. No doubt, the jurisdiction to reopen an assessment is circumscribed by the conditions laid down in Section 147(a). Certain facts have to exist to show that an assessment can be reopened. The existence of such reasons and a direct nexus between those reasons and the alleged evasion is a condition precedent for reopening the assessment. However, in a case like the present, where there

are disputed facts, it is not easy to ascertain what is the material and what is the nexus. Unless the material appearing against the assessed is examined by this court in detail, it would not be easy to ascertain whether the reasons actually existed for reopening the assessment.

3. In these circumstances, we think it more convenient that the Income Tax Officer decides the question as a preliminary issue during the proceedings for reopening the assessment. This will enable the Income Tax Officer to both exhibit the material and also show that there is a connection between the alleged concealment and the said material. If there is no connection and there is no ground for reopening the assessment, the proceedings must be dropped. We would accordingly direct the Income Tax Officer to decide this point as a preliminary issue. In case this question is decided against the assessed, it will always be open to the assessed to raise the point before the Appellate Assistant Commissioner and the Tribunal and possibly by a further reference to this court. This procedure is more satisfactory in the circumstances of this case. We would accordingly dispose of this petition and the connected writ petitions with this direction in liming.

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