(1999) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 187 of 1983 20th/22nd April, 1999

SARAF TEXTILE MILLS (P) LTD. APPELLANT

Vs

UNION OF INDIA and Others RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Income Tax Act, 1961 — Section 148

Citation : (1999) 155 CTR 310

Hon'ble Judges : Ashok Parihar, J

Bench : Division Bench

Judgement

ASHOK PARMAR, J.

The petitioner has challenged the notice dt. 3rd Dec., 1982, issued by the respondent No. 2 under s. 148 of the IT Act, 1961 (hereinafter to be referred to as ''the Act''), for escaped assessment for the asst, yr. 1978-79 under s. 147 of the Act. -

2. Instead of filing reply to the show-cause notice before the competent authority, the petitioner has filed this writ petition. This Court, while admitting the writ petition, directed the respondent No. 2 not to pass any final orders on reassessment proceedings for the asst. yr. 1978-79 vide interim order dt. 27th Jan., 1983.

3. The notice has been challenged mainly on two grounds; firstly that the notice was issued without jurisdiction to the extent that since the earlier assessing authority had already made assessment on the basis of returns filed by the petitioner, another officer of the same rank subsequently could not have issued notice for escaped assessment under s. 148 of the Act. The notice has further been challenged on the ground that no reasons have been recorded for such escape notice and also even if the reasons been recorded, the same are not tenable.

4. The respondents, in their reply, have submitted that before issuing notice

under s. 148 of the Act detailed reasons have been recorded by the concerned officer and only after that, a notice under s. 148 has been issued to the petitioner. The copy of the reasons recorded by the concerned officer has also been annexed with the reply.

5. While assailing the impugned notice on the grounds mentioned above, learned counsel for the petitioner has relied on some judgments of the apex Court in the case of The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., , Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, , In than Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, and Division Bench judgment of this Court in the case of Additional Commissioner of Income Tax Vs. Ganeshilal Lal Chand, On the other hand, learned counsel for the respondents has relied on the judgment of the apex Court in the case of M/s. Phool Chand Bajrang Lal and another Vs. Income Tax Officer and another,

6. After having considered the submissions made at the Bar, I have carefully gone through the material on record, relevant provisions of the Act and also judgments cited by the learned counsel for the parties.

7. Only a show-cause notice has been issued to the petitioner under S. 148 of the Act for escape assessment under s. 147 of the Act. Final orders have yet to be passed by the competent authority under s. 147 of the Act. There is a remedy of appeal provided under s. 246 of the Act itself. In the facts and circumstances of the present case since disputed questions of fact and law are involved in the present writ petition, I find no ground for any interference in the present writ petition in writ jurisdiction of this Court at this stage, when final order has yet to be passed by the competent authority and remedy of filing of an appeal is also provided under the Act.

8. The judgments cited by learned counsel for the parties at the Bar have to be seen on their own facts and, in my opinion, they are not applicable in the facts and circumstances of the present case.

9. Since no interference is being made by this Court in the present case, the petitioner shall be free to approach the concerning authorities by filing proper reply to the show-cause notice issued under s. 148 of the Act along with relevant record and if any order is passed by the authority under s. 147 of the Act, the petitioner shall be free to challenge the same in accordance with law. Learned counsel for the petitioner while concluding his submissions prayed that in case the petitioner approaches the concerning authority by filing reply/explanation to the impugned notice, he should be allowed to raise all objections as have been raised, in the present writ petition. There cannot be any objection in this regard.

10. This Court, vide order dt. 27th Jan., 1983, restrained the respondents from passing any final order of reassessment, in the interest of justice, I deem it proper to direct the petitioner to file his reply and objections before the assessing authority within 30 days from the receipt of certified copy of this order. Since the matter relates to the year 1982-83 for the asst. yr. 1978-79, the assessing

authority is also directed to pass necessary orders within 30 days thereafter.

11. The writ petition is disposed of accordingly. There will be no order as to costs.

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