(1999) 04 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Writ Petition No. 187 of 1983

Saraf Textile Mills Pvt. Ltd. APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 147, 148

Citation : (2000) 245 ITR 27

Hon'ble Judges : Ashok Parihar, J

Bench : Single Bench

Advocate : P.K. Kasliwal, for the Appellant; Ashok Gaur, for the Respondent

Judgement

Ashok Parihar, J.—The petitioner has challenged the notice dated December''s, 1982, issued by respondent No. 2 u/s 148 of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"), for escaped assessment for the assessment year 1978-79 u/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 respondent No. 2 not to pass any final orders on reassessment proceedings for the assessment year 1978-79 vide interim order dated January 27, 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 the returns filed by the petitioner, another officer of the same rank subsequently could not have issued notice for escape assessment u/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 had been recorded, the same are not tenable.

5. The respondents, in their reply, have submitted that before issuing notice u/s

148 of the Act detailed reasons have been recorded by the concerned officer and only after that, a notice u/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.

6. 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 cases of The Commissioner of Income Tax, Calcutta Vs. Burlop Dealers Ltd., ; Income Tax Officer and Others Vs. Madnani Engineering Works Ltd., Calcutta, ; Indian Oil Corporation Vs. Income Tax Officer, Calcutta and Others, and a 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, .

7. 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 learned counsel for the parties.

8. Only a show-cause notice has been issued to the petitioner u/s 148 of the Act for escape assessment u/s 147 of the Act. The final orders have yet to be passed by the competent authority u/s 147 of the Act. There is a remedy of appeal provided u/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 the writ jurisdiction of this court at this stage, more so, when the final order has yet to be passed by the competent authority and remedy of filing of an appeal is also provided under the Act.

9. 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.

10. Since no interference is being made by this court in the present case, the petitioner shall be free to approach the concerned authorities by filing a proper reply to the show-cause notice issued u/s 148 of the Act, along with the relevant record and if any order is passed by the authority u/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 concerned authority by filing a 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.

11. This court, vide order dated January 27, 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 a certified copy of this order. Since the matter relates to the year 1982-83 for the assessment year 1978-79, the

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

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

