(1985) 03 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 711 of 1984

Sharad L. Patel APPELLANT

Vs

K.J. Chacko, 3rd Additional Income Tax Officer and another RESPONDENT

Date of Decision : 17-03-1985

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (1985) 49 CTR 131 : (1986) 159 ITR 791 : (1986) 25 TAXMAN 7

Hon'ble Judges : M.L. Pendse, J

Bench : Single Bench

Judgement

Pendse, J.—By this petition filed under article 226 of the Constitution of India, the petitioner is challenging the legality of the notices dated January 18, 1984, issued by the respondent No. 1 u/s 148 of the Income. tax Act, 1961 (hereinafter referred to as "the Act"). The notices were issued in respect of the assessment years 1975-76 to 1979-80. They are in identical terms and merely recite that respondent No. 1 has reason to believe that income chargeable to tax for the relevant assessment year has escaped assessment within the meaning of section 147 of the Act and, therefore, the respondent No. 1 proposes to reassess the income. The petitioner was called upon to deliver, within 30 days, return in the prescribed form of income in respect of which the petitioner is assessable for the relevant years. On receipt of these notices, the petitioner addressed a letter dated January 30, 1984, to respondent No. 1 seeking the reasons for the issue of the notices and also as to whether the reassessment proceedings were proposed to be taken u/s 147(a) or section 147(b) of the Act. Respondent No. 1 did not send any reply and thereupon another letter dated February 20, 1984, was addressed by the petitioner and apprehension was sounded that the notices were issued only on the basis of audit objection. To this letter, a reply was sent by the respondent No. 1 on February 25, 1984, stating that it was not possible to give reasons for the issue of the notice at that stage. This reply on the part of the respondent No. 1 has given rise to the filing of the present petition.

2. The respondents have not filed any return to disclose what reasons prompted them to issue the notices and as to whether the assessment would be reopened under the provisions of section 147(a) or section 147(b) of the Act. The attitude adopted by respondent No. 1 not to disclose the reasons and failure of the respondents to file any return should lead to the conclusion that the action of respondent No. 1 is entirely unsustainable. It is unfortunate that respondent No. 1 should decline to disclose the reasons which prompted him to initiate the proceedings u/s 148 of the Act. Mr. Deodhar, learned counsel appearing on behalf of the respondents, stated that on perusal of the file which is made available to him, it appeared that the notices were issued to the petitioner on the ground that the minor son of the petitioner had advanced an amount of Rs. 1,00,000 to the petitioner in the assessment year 1973-74 and that amount was invested in a private company, but the interest secured from the deposit was not disclosed. Even assuming that this reason has prompted respondent No. 1 to issue the notices, still it must be concluded that this was a wholly unsustainable reason to exercise power u/s 148 of the Act. Mr. Deodhar conceded that the minor son of the petitioner, Jatin S. Patel, is also an assessee and his assessment has been duly completed. It was easy for the Income Tax Officer to find out why the amount of interest secured on the deposit was not disclosed by the petitioner at the time of completion of the assessment and the failure of the Income Tax Officer to do so would not entitle him to reopen the proceedings by exercise of the powers under sections 147 and 148 of the Act. In my judgment, the issuance of notices by the respondent No. 1 was totally illegal and, therefore, the notices are required to be quashed.

3. Accordingly, the petition succeeds and the rule is made absolute in terms of prayer (a). In the circumstances of the case, there will be no order as to costs.