
(2007) 09 MP CK 0039
In the Madhya Pradesh High Court

SICA Educational Trust (Regd.)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-09-2007

Acts Referred:

Income Tax Act, 1961 — Section 12A, 143, 147, 148

Citation : (2008) 214 CTR 244 : (2008) 167 TAXMAN 19

Hon'ble Judges : Viney Mittal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Viney Mittal, J.—The petitioner-trust is an educational trust registered in that capacity and is also registered separately with the CIT, Indore u/s 12A of the IT Act, 1961, w.e.f. 1st April, 1999. The petitioner-trust has approached this Court challenging an order of assessment dt. 29th Dec, 2006 passed u/s 143(3) r/w Section 147 of the IT Act, 1961, by the Asstt. CIT, respondent No. 3. A copy of the order dt. 29th Dec, 2006 has been appended as Annex. P-16 with the present petition. Additionally, the petitioner has challenged a demand notice dt. 29th Dec, 2006 raising a demand of Rs. 1,78,910 in pursuance to the said assessment order.

2. The petitioner-trust had filed its IT return for the asst. yr. 1999-2000. However, no formal assessment was made by the assessing authority. A notice u/s 148 of the Act was issued to the petitioner-trust by the Asstt. CIT, intentionally (sic) that same income had escaped assessment within the meaning of Section 147 and requiring the petitioner-trust to file a return in respect of the said assessment year within a period of 30 days from the date of service of the said notice. In the said notice, it was mentioned by respondent No. 3 that the said notice was being issued after obtaining the necessary satisfaction from the Jt. CIT, respondent No. 2.

3. In the reply to the said notice, the petitioner-trust addressed a communication

dt. 18th April, 2006 to respondent No. 3 denying that the petitioner-trust had received any such income which had escaped the assessment within the meaning of Section 147 of the Act. Respondent No. 3 was requested to supply the reasons for reopening the assessment. It also further appears from the record that the reasons were supplied for reopening of the assessment to the representative of the petitioner-trust. On 11th Dec, 2006, the petitioner-trust addressed a communication raising various objections against reopening of the assessment. A copy of the aforesaid objections filed by the petitioner-trust is available on record as Annex. P-15.

4. However, without passing any separate order on the said objections filed by the petitioner, an assessment order has been passed by respondent No. 3 on 29th Dec., 2006. The aforesaid assessment order is Annex. P-16 appended with the present petition and is subject matter of challenge by the petitioner-trust before this Court.

5. In the petition, the petitioner-trust has specifically raised an objection that since objections had been filed by the petitioner-trust to the notice issued u/s 148, therefore, before passing any assessment order, the assessing authority was required to deal with the said objections by passing a detailed and speaking order. But as a matter of fact, the said objections have not been decided at all by the assessing authority.

6. The claim of the petitioner-trust has been contested by the respondents. In the reply filed by them, passing of the order Annex. P-16 has been defended. It has been maintained that objections filed by the petitioner-trust had been duly considered by the assessing authority and a composite order dt. 29th Dec, 2006 (Annex. P-16) had been passed, wherein even the objections filed by the petitioner-trust had been rejected, being without any merit.

7. I have heard Shri G.M. Chaphekar, learned senior counsel for the petitioner and Shri. R.L. Jain, learned senior counsel for the Revenue and with their assistance, have also gone through the record.

8. At the outset, it may be noticed that both the learned senior counsel for the parties have commonly relied upon the law laid down by the apex Court in the case of GKN Driveshafts (India) Ltd. v. ITO and Ors. (2003) 179 CTR (SC) 11 : (2003) 259 ITR 19 . Whereas Shri G.M. Chaphekar, has contended that the assessing authority was bound in law to pass a separate speaking order while considering the objections filed by the petitioner-trust and having not done so the entire procedure for assessment and the assessment order Annex. P-16 were vitiated, Shri R.L. Jain, learned senior counsel for the Revenue, has relied upon aforesaid judgment of the apex Court to contend that the assessee had a right to take up all the pleas while filing an appeal against the assessment order Annex. P-16 and in fact had filed an appeal against the said assessment order and therefore, the said appeal being pending, the present petition is not maintainable.

9. The relevant observations made by the apex Court in GKN Driveshafts's case

(supra) may be noticed as follows:

We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice u/s 148 of the IT Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order before proceeding with the assessment in respect of the abovesaid five assessment years.

10. A similar controversy, which has arisen in the present case, had also arisen for consideration before the Division Bench of the Bombay High Court in the case of (2006) 102 ITD 426 . While relying upon the law laid down in the case of GKN (supra), the Division Bench noticed that when the objections to a notice u/s 148 had been filed by an assessee, it was not open to the assessing authority to pass a composite order rejecting the objections as well as passing an assessment order. The relevant observations made by the Division Bench, may be noticed as follows:

We have noted the submissions of both the counsel. The law as laid down by the apex Court is binding on this Court as well as on the authorities functioning under the statute. This being the position, we fail to understand as to why the first respondent did not decide the objections separately which he is duty-bound to decide. The whole idea in laying down the law in the above referred judgment of the apex Court is to give an opportunity to the assessee to know as to what is the decision on his objections, which decision has also to be arrived at after giving an opportunity to the assessee. In the present case, the assessee has been denied this opportunity. Not only that but in the first three writ petitions what we find is that a common order has been passed on the objections as well as for the reassessment. In the fourth matter, the assessment order does not disclose any decision on the objections at all and undoubtedly no such decision has been given separately on the objections.

Having noted this scenario, in our view the proper course will be to interfere with the assessment orders passed in all four matters by the concerned officer. We are aware that when an alternative remedy is resorted, the writ jurisdiction is not to be exercised, but that is a rule of self-limitation. The orders challenged in the present matter are clearly against the law laid down by the apex Court and, therefore, the exercise of writ jurisdiction is called for. That being so, we allow all these petitions and quash and set aside the assessment orders passed in all these four petitions. Inasmuch as the assessment orders are set aside, the appeals filed by the petitioners no longer require to be prosecuted. The same will stand disposed of.

11. Now that the impugned orders are set aside, the first respondent after hearing the petitioners, will pass separate speaking orders on the objections which the petitioners have filed. We further add that in the event the objections are rejected, the assessment order will not be passed for a period of four weeks thereafter.

All contentions of both the parties are kept open. We further clarify that this order does not mean any reflection on the impugned orders on merits.

12. have perused the impugned order Annex. P-16 passed by respondent No. 3 in the present petition. The objection/petition filed by the petitioner-trust has been appended as Annex. P-15. A perusal of the order Annex. P-16 discloses that the said objections were not at all adverted to by the AO. No speaking order has been passed rejecting the said objections, as required under the law laid down by the apex Court.

13. Consequently, the present petition is allowed. The order Annex. P-16 dt. 29th Dec, 2006, as well as the demand raised as a consequence thereof against the petitioner-trust, are quashed. The Asstt. CIT, respondent No. 3, is directed to consider the objections filed by the petitioner-trust and pass a separate speaking order on the said objections. It is further directed that in the event if the objections are rejected, the assessment order will not be passed for a period of 4 weeks thereafter. Before parting with the order, it must be clarified that quashing of the order Annex. P-16, is no reflection on the merits of the claim raised by the petitioner-trust or the objections filed by it. The AO, while dealing with the aforesaid objections filed by the petitioner-trust, however, shall remain uninfluenced by the earlier order Annex. P-16.