
(2009) 08 MP CK 0051
In the Madhya Pradesh High Court

Smt. Savita Mihani and Others

APPELLANT

Vs

ITO and Others

RESPONDENT

Date of Decision : 24-08-2009

Acts Referred:

Income Tax Act, 1961 — Section 147, 148

Citation : (2009) 08 MP CK 0051

Hon'ble Judges : S.C. Sharma, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Dipak Misra, J.—Keeping in view the similarity of the controversy involved in these writ petitions, though they were heard on two different dates, they are disposed of by a singular order. For the sake of clarity and convenience, the facts in Writ Petn. No. 16760 of 2007 are expounded herein.

2. The petitioner, a regular assessee under the Income Tax Act, 1961 (for brevity the Act), had filed return for the assessment year 2000-01 and an assessment order was passed by the Income Tax Officer, Itarsi. The assessment was reopened under s. 148 of the Act on the ground that certain income had escaped assessment and (there) was under-assessment. After verification of the case, the IT return was accepted with the modification and the share income of the firm was taken as per the firm's assessment. The said order for reassessment was passed on 15-3-2005 as per Annex.P/6. Thereafter, a notice u/s 148 of the Act was issued on 22-3-2007 alleging that certain income had escaped assessment requiring the assessee-petitioner to file a return and an identical notice was issued for the assessment year 2002-03.

3. As pleaded, the petitioner filed an application and prayed the respondents to furnish the reasons for the belief that the income had escaped assessment for issue of a notice. The respondents forwarded the reasons recorded by them stating that the Police Department had made inquiries according to the

acquisition of the assets which were disproportionate to the known source of income. The assessee was provided the reasons with a copy of the letter. The reasons have been brought on record as per Annex. P/5. It is contended that the action of the police investigation was challenged and eventually, a Division Bench of this Court quashed the same vide order dated 11-10-2006 passed in M.Cr.C. No. 10496 of 2005. It is "put forth that the proceedings for reassessment initiated by issuance of notice under Sections 147 and 148 of the Act are without jurisdiction and without any authority of law. It is averred that the reasons that have been recorded do not indicate any information as to investment of any such amount during the relevant accounting year. The report of the police has been treated as sacrosanct and the proceedings have been initiated without any application of mind. The jurisdiction of the authority has been challenged on the ground that there has been no sanction and even if there is anything, that has been done in a mechanical manner. It is put forth that the notice had been issued solely on the basis of the report submitted by the police and it is founded on suspicion and hence, it cannot form the foundation of notice u/s 147 of the Act. Emphasis has been laid on the concept of reasons to believe and in that background, a prayer has been made for issue of a writ of certiorari for quashment of the initiation of proceedings u/s 147 of the Act and issue of notice u/s 148 of the Act.

4. At this juncture, it is apposite to note that barring two cases, in other cases no application was filed, reasons were supplied and only issuance of notice was under assail.

5. We have heard Mr. U.S. Shrivastava, learned senior counsel, along with Mr. Sandesh Jain and Mr. Abhijeet Shrivastava and Mr. G.S. Ahluwalia, learned Counsel for the petitioners, and Mr. Sanjay Lal, learned Counsel for the respondent-Revenue.

6. The learned Counsel appearing for the petitioners have submitted that there was no justification for issue of a notice in the manner in which it has been issued in as much as there is no substantial ground to issue such a notice. In the absence of satisfaction of reasons to believe, the same is not permissible. It is canvassed that once a criminal proceeding has been quashed, the same cannot be placed reliance upon by the IT Department to sustain the notice.

7. Mr. Sanjay Lal, learned Counsel appearing for the revenue, per contra, submitted that the challenge to the notice by the assessee-petitioner is absolutely premature; the mere quashment of the initiation of proceedings against the petitioners under the CrPC would not nullify the action taken by the revenue as the information that has been obtained by the revenue does not become extinct.

8. The notice that has been issued u/s 148 of the Act states that an information has been received from the Police Department, Itarsi, that the assessee has acquired movable and immovable properties which are not declared to the IT

Department in his/her return of income and, therefore, the income is chargeable to tax as the same has escaped assessment in the case of the assessee within the meaning of Section 147 of the Act. Be it noted, the notice pertaining to various assessment years. The reasons that have been supplied to the assessee are basically founded on the police report. The said police report has been brought on record. At this stage, it is worth noting that the Station House Officer of the Police Station, Itarsi, moved an application before the Judicial Magistrate First Class, Itarsi, for initiating proceedings against the petitioner under Chapter VII-A of the CrPC and to pass appropriate orders for attachment and forfeiture of the properties which could be identified to have been derived from or used in the commission of the offence out of their criminal activities. It was put forth in the said petition that the petitioners were involved in criminal activities since long and had accumulated huge wealth directly or indirectly by such criminal and unlawful activities. They had been able to trace and identify them and hence, an order should be passed to take necessary steps for attachment. The petition that was preferred u/s 482 of the CrPC came before a Division Bench as there were two conflicting decisions. The Division Bench, after taking note of the various provisions of the CrPC expressed the view as under:

31. No doubt, it is true that the words terrorist activities or international crime or crime including crimes involving currency transfers, have not been used in any of the sections falling in Chapter VII-A of the Code, but that alone would not be sufficient to hold that the provisions can be invoked even when any other cognizable offence has been committed by an accused within the territory of India. The true, correct and proper interpretation of the sections falling under Chapter VII-A of the Code, would be that the same can be invoked only when it pertains to two Contracting States. Contracting States would mean that any country or place outside India on the one hand and Indian territory on the other hand, if there exists a treaty between the two countries

33. Thus, the question as projected hereinabove is answered by saying that the provisions of Chapter VII-A of the Code are applicable only to the territories which are foreign territories and in which, by reciprocal arrangements, provisions of the Code are made applicable.

After holding so, the Division Bench directed the matter to be placed before the learned Single Judge who, on the basis of the ratio laid down by the Division Bench, quashed the action of the investigating authority.

9. As has been stated earlier, in some cases, applications have been filed for furnishing reasons and they have been supplied and in some cases, reasons were not asked for. No real objection has been filed with regard to the jurisdiction or the authority or any other ground by which the notice is invalid. What is urged in the same case the assessing officer has proceeded with the assessment. Be it noted, this Court had directed stay of further proceedings before the assessing officer.

10. In this context, we may refer with profit to the decision rendered in *GKN Driveshafts (India) Ltd. v. ITO and Ors.* (2003) 259 ITR 19 (SC). In the said case, a Division Bench of the High Court of Delhi had dismissed the writ petition filed by the appellant to challenge the validity of the notice issued under Sections 148 and 143(2) of the Act. The High Court took the view that the appellant could have taken objections by filing reply to the notices and as such, the writ petitions were premature. Against the order of dismissal of the writ petition, the assessee preferred an appeal before the Apex Court and their Lordships noted the submissions of the learned Counsel for the assessee-appellant and expressed the view as under:

We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice u/s 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file a return and if he so desires, to seek reasons for issuing notices. The assessing officer 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 assessing officer 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 assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years.

11. In view of the aforesaid, we are inclined to grant liberty to the assessee-petitioners to file objections, if not filed, and to take appropriate steps as has been held by their Lordships in *GKN Driveshafts (India) Ltd.* (supra) and the assessing officer shall be guided by the dictum of the Apex Court while adjudicating the controversy.

12. Be it noted, we have not expressed any opinion with regard to the legal acceptability of the material brought before this Court by way of police investigation despite the submission put forth by Mr. Sanjay Lal, learned Counsel appearing for the revenue, that the same can be relied upon in spite of the search and seizure having been declared invalid.

13. The writ petitions are accordingly disposed of without any order as to costs.