(2001) 05 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 5457 of 2000

Ved Parkash Nagori APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 29-05-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 139, 143(1), 147, 148, 149

Citation : (2001) 251 ITR 161

Hon'ble Judges : Nirmal Singh, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : K.L. Goyal, for the Appellant; R.P. Sawhney and Rajesh Bindal, for the Respondent

Judgement

G.S. Singhvi, J.—The petitioner has invoked jurisdiction of this court under Article 226 of the Constitution of India for quashing the notice issued by the respondent u/s 148 of the Income Tax Act, 1961 (for short, "the Act"), proposing reassessment of his income for the assessment year 1997-98.

2. The facts of the case are that on August 31, 1997, the petitioner filed a return for the assessment year 1997-98 showing an income of Rs. 66,720. He also claimed refund of Rs. 12,145 towards the advance tax paid during the relevant year. The Assessing Officer finalised the assessment u/s 143(1)(a) and granted refund in terms of the prayer made by the petitioner. Thereafter, he issued notice annexure P-2, dated January 31, 2000, and called upon the petitioner to file a return for the assessment of the income which had escaped assessment. In response to the notice, the petitioner filed the return annexure P-3, dated March 1, 2000, showing his income at Rs. 66,720. Thereafter, vide annexure P-4 the respondent conveyed the reasons for reopening the assessment. The same read as under :

"Reasons for issuing notice u/s 148 :

It has been learnt that the assessee purchased a plot for shop in the New Grain Market on March 5, 1997. The consideration shown in the registration deed is at Rs. 3,00,000. It has been mentioned in the body of the registration deed that the stamp charges have been paid by the asses-see at an enhanced figure as the market rate fixed by the Revenue authorities of this property is at Rs. 4.60 lakhs. The inspector of this office who was deputed to make inquiries in the matter about the market value of this property has reported that the market value is Rs. 8,00,000 approximately. It is, therefore, concluded that the assessee has suppressed the cost of construction and invested his unaccounted income to purchase the property. I have, therefore, reasons to believe that income chargeable to tax to the tune of Rs. 1,60,000 at least, has escaped assessment. Notice u/s 148 is being issued to the assessee to reassess the income which, as per the assessment already completed u/s 143(l)(a) on March 23, 1998, was worked out at Rs. 67,115."

3. The petitioner has challenged the notice proposing reassessment of his income on the following grounds :

(i) The payment of stamp duty for the purpose of registration of sale deed cannot constitute basis for forming a belief that his income had escaped assessment.

(ii) The approximate value of the shop plot indicated in the reasons conveyed by the respondent is highly excessive and on that basis, the assessment cannot be reopened.

(iii) The allegation of suppression of cost of construction contained in the reasons supplied by the respondent is false and vexatious because the plot is vacant and no construction has been made over it.

4. In his written statement, the respondent has prayed for dismissal of the writ petition by asserting that it is pre-mature. He has averred that no order adversely affecting the petitioner has been passed so far and, therefore, he cannot seek intervention of the court at this stage. On the merits it has been averred that the petitioner had purchased shop plot for a much higher price than the one specified in the sale deed and it had been done with a view to avoid the payment of tax. According to the respondent, the impugned notice was issued in the light of revelation made about registration of sale deed by paying stamp duty in lieu of the value of the land which was shown as Rs. 4,60,000.

5. We have heard learned counsel for the parties and perused the record. The substantive part of Section 147 and Section 148 of the Act, which have bearing on the decision of this petition, read as under :

"147. If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section, or recompute the loss or the depreci- ation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this Section and in Sections 148 to 153 referred to as the relevant assessment year) ;

148. (1) Before making the assessment, reassessment or recomputa-tion u/s 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed ; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished u/s 139.

(2) The Assessing Officer, shall before issuing any notice under this Section, record his reasons for doing so."

6. The ambit and scope of the above reproduced Sections was considered by the Supreme Court in Phool Chand Bajrang Lal v. ITO [1995] 203 ITR 456. After reviewing several judicial precedents on the subject, a two-judge Bench of the Supreme Court held as under (page 477) :

"From a combined review of the judgments of this court, it follows that an Income Tax Officer acquires jurisdiction to reopen an assessment u/s 147(a) read with Section 148 of the Income Tax Act, 1961, only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that, by reason of omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profits or gains chargeable to Income Tax has escaped assessment. He may start reassessment proceedings either because some fresh facts had come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief is not for the court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the. court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer, at the time of making the original assessment, could or could not have found by further enquiry or investigation, whether the transaction was genuine or not if, on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material facts at the time of original assessment and, therefore, income chargeable to tax had escaped assessment . . .

One of the purposes of Section 147 appears to us to be to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say ''you accepted my lie, now your hands are tied and you can do nothing''. It would be a travesty of justice to allow the assessee that latitude."

7. In Raymond Woollen Mills Ltd. Vs. Income Tax Officer and Others, , their Lordships of the Supreme Court rejected the challenge to the notice issued for reassessment by observing that at that stage, the court can only consider whether there is a prima facie case for reassessment and reopening proceedings cannot be struck down by going into the sufficiency or correctness of the material relied upon by the assessing authority for the purpose of reopening.

8. In view of the above referred decisions, it must be treated as a settled proposition of law that in exercise of jurisdiction under Article 226 of the Constitution of India, the High Court cannot interfere with the show-cause notice issued u/s 148 of the Act unless it is satisfied that the belief formed by the officer concerned is not, at all, bona fide or is based on irrelevant or extraneous consideration. However, the mere possibility of forming a different opinion cannot be a ground for quashing the proceedings of reassessment.

9. We may now advert to the facts of this case and determine whether the reasons recorded by the respondent for initiation of proceedings u/s 148 are irrelevant or extraneous and the opinion formed by him is based on no material justifying intervention by the court at this stage. A reading of annexure P-4 shows that the main factor which prevailed with the respondent for initiating action u/s 148 was that although the price of the plot shown in the registration deed is Rs. 3,00,000, the petitioner had paid stamp duty on the premise that the price of the property is Rs. 4,60,000 and this was indicative of an attempt to suppress correct information about his income. In our opinion, this alone could constitute a valid ground for forming a prima facie opinion that the assessee''s income had escaped assessment warranting initiation of proceedings u/s 148 of the Act. Therefore, we do not find any justification to quash the impugned notice.

10. The argument of Shri Goyal that the plot is still vacant and, therefore, the other reason assigned by the respondent should be treated as nonexistent is appealing, but that by itself cannot bo made basis for invalidation of the impugned notice because the main reason assigned by the respondent for initiation of proceedings u/s 148 is quite plausible and could, as mentioned above, be legitimately considered for taking action for reassessment.

11. For the reasons mentioned above, the writ petition is dismissed leaving the

petitioner free to pursue the remedies available to him under the Act, if any order adversely affecting him is passed by the respondent.

