(2024) 09 PAT CK 1118

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.3759 of 2020

Venky Steels Pvt. Ltd — APPELLANT

Vs

Commissioner of Income Tax-II — RESPONDENT

Date of Decision : 12-09-2024

Acts Referred:
Income Tax Act, 1961 — Section 148, 151, 151(2)

Citation : (2024) 09 PAT CK 1118

Hon'ble Judges : K. Vinod Chandran, CJ;Partha Sarthy, J

Bench : Division Bench

Advocate : D.V.Pathy, Archana Sinha

Final Decision : Dismissed

Judgement

K. Vinod Chandran, CJ

1. The petitioner is concerned with the assessment year 2013-14; on which a notice has been issued under Section 148 of the Income Tax Act, 1961. The petitioner carries on the business of iron and steel and had filed the returns for the subject assessment year marked as Annexure-1. A notice was issued under Section 148 on 26.03.2019; as per Annexure-2 pursuant to which, Annexure-3 was also filed on 24.04.2019. The petitioner then, by Annexure-4 sought for the reasons recorded in writing, for the purpose of issuing a notice under Section 148; as has been held by the Hon’ble Supreme Court in GKN Driveshafts (India) Ltd. v. Income Tax Officer and Others; (2003) 259 ITR 19(SC). Eventually, the reasons were supplied by the subsequent notices, as admitted by the petitioner in the writ petition.

2. Sri D. V. Pathy, learned Counsel for the petitioner has specifically spoken of the approval having not been recorded, as is required under Section 151.

3. By order dated 10.01.2024, a Division Bench of this Court noticed the proviso to Section 151 specifically prescribing that any notice issued after the period shall be sanctioned by the Principal Commissioner of Income Tax, especially

noticing the fact that the satisfaction in the instant case is of the Commissioner of Income Tax-I, Patna; explicit from Annexure-2. The Division Bench directed the order of approval of the appropriate authority to be produced and any notification issued designating the Commissioner of Income Tax as the Principal Chief Commissioner.

4. The Department by a supplementary counter affidavit dated 19.01.2024 produced Annexure-S, which is a communication issued by the Income Tax Officer (Tech.) on behalf of the Principal Commissioner of Income Tax-I, Patna. This speaks of approval of issue of notices under Section 148 with respect to four assessees; the writ petitioner being one of them. The notices approved in the case of the petitioner was with respect to two assessment years; 2012-13 and 2013-14.

5. By a further supplementary counter affidavit dated 15.04.2024, is produced Annexure-T, which is the approval of the Principal Commissioner of Income Tax-I, Patna. Annexure-T comprise of two separate approvals, for the two assessment years of 2012-13 and 2013-14. Column 11 of Annexure-T indicates the reasons for belief entertained by the Assessing Officer, as separately enclosed by Annexure-A.

6. For both the years, the Commissioner’s approval is recorded in the following manner:-

“Based on the reasons recorded, I am satisfied that this is a fit case for issuing notice under Section 148.”

7. Obviously, the confusion with respect to sanction having been granted by the Commissioner of Income Tax does not survive. However, the learned Counsel for the petitioner urged that the approval is mechanical and does not disclose any reasons. He relies on two judgments of the Delhi High Court and one of the Hon’ble Supreme Court.

8. In Principal Commissioner of Income Tax v. N. C. Cables Ltd; (2017) 391 ITR 11 (Del), therein the reasons recorded for re-opening of assessment under Section 148; after the expiry of 4 years, which required approval of the Commissioner of Income Tax, when put up to the approving authority, was approved by a single word i.e. ‘Approved’. The mere expression ‘approved’ denotes nothing, was the finding of the High Court of Delhi.

9. Principal Commissioner of Income Tax v. Pioneer Town Planners Pvt. Ltd.; (2024) 465 ITR 356 (Del) also indicated the mere phrase ‘Yes’ having been appended as approval which was held to be mechanical, on the face of it. The question dealt with was as to whether simply penning down a ‘Yes’ would be requisite satisfaction, as per Section 151 of the Act. N. C. Cables (supra) was relied on to find the approval to be not in consonance with the approval required under Section 151.

10. Chhugamal Rajpal v. S. P. Chaliha and Other; (1971) 79 ITR 603 (SC) was a

case in which it was found that even the Income Tax Officer had not come to a prima facie conclusion that the loan transactions to which he referred were not genuine transactions and he appeared to have entertained only a vague feeling that they might be bogus transactions, which conclusion did not fulfill the requirement of Section 151(2). It was held that the Assessing Officer has to give reasons for issuing a notice under Section 148 and there should be some prima facie grounds before him, for taking such action. Therein, the reasons recorded by the Income Tax Officer that proper investigation regarding some loans is necessary, was itself faulted. The conclusion of the Assessing Officer was only that there is a case for investigation as to the truth of the alleged transactions, which was held to be not a reason to issue notice under Section 148. Further, the Commissioner had noted the word 'Yes' as an approval without anything more.

11. Obviously, that is not the case here. The Assessing Officer had recorded reasons for believing that there was income escaping assessment which reasons, were also appended to the request for approval made to the Commissioner. The Commissioner had obviously read the reasons and made a written order that he was satisfied on the basis of reasons recorded, that this was a fit case for notice issued under Section 148. Section 151 requires the Principal Commissioner to be satisfied of the reasons recorded by the Assessing Officer, that it was a fit case for issuance of such notice, where the notice was issued beyond expiry of 4 years. There is no requirement for the Commissioner to record his own reasons and it would suffice that he records the satisfaction regarding the reasons recorded by the Assessing Officer.

12. In N.C. Cables (supra) the High Court of Delhi held in para 11, that: "It is not as if the Commissioner of Income-tax (Appeals) has to record elaborate reasons for agreeing with the noting put up. At the same time, satisfaction has to be recorded of the given case which can be reflected in the briefest possible manner." (sic para 11) This is in consonance with our finding in the previous paragraph.

13. We find absolutely no reason to interfere with the notice issued under Section 148, on the grounds raised in the writ petition.

14. The assessment order, amenable to statutory appeal can be challenged, subject to just exceptions on limitation. On that count, we notice that the above writ petition was registered on 17.02.2020 and has been pending till date, which period obviously can be considered for condonation, if an appeal is filed within a period of 2 months from the date of uploading of this order. We make it clear that we have not looked at the delay, otherwise than the pendency of the writ petition; which period alone we observe, is entitled to condonation. The writ petition stands dismissed with the above liberty.