(2006) 09 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Vidya Sagar APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2008) 305 ITR 124

Hon'ble Judges : Rajesh Bindal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—This is a petition, whereby the petitioner has invoked the extraordinary jurisdiction of this Court under article 226/227 of

the Constitution of India praying for quashing of the notice dated June 2, 1987, (annexure P-4), issued u/s 148 of the Income Tax Act, 1961 (for

short, ""the Act""). Further prayer is for restraining the respondents from taking any further action in pursuance of the said notice.

2. Briefly, the facts, as pleaded in the petition, are that the petitioner is an Income Tax assessee having his main source of income as rent from

property known as SCO-49-50-51, Sector 17C, Chandigarh. The petitioner is the owner to the extent of half share in the said property. Besides

this, the petitioner is also a partner in a firm, namely, M/s. Aggarwal Flour Mills, Karnal. For the assessment year 1979-80, the petitioner filed his

return of income. While dealing with the same, the Assessing Officer allowed statutory deduction of 1/6th from the income from house property on

account of repairs, as claimed by the petitioner. During the subsequent years, i.e., 1980-81, 1981-82 and 1982-83, similar statutory deduction had been allowed by the Assessing Officer. Against the orders passed for these years, no further proceedings were taken and the same attained

finality.

3. For the assessment year 1983-84, the petitioner filed his return of income and claimed 1/6th statutory deduction u/s 24(1)(i)(a) of the Act.

During the course of assessment, the Assessing Officer disallowed the deduction, vide order dated August 30, 1984. Aggrieved against the said

order, the petitioner went in appeal before the Commissioner of Income Tax (Appeals), Chandigarh (for short ""the CIT(A)""), who, vide his order

dated June 4, 1987, accepted the plea of the petitioner and set aside the order of assessment. Before any decision in the appeal could be taken,

the Assessing Officer issued notice to the petitioner u/s 148 of the Act for the assessment year 1979-80 alleging that income for that year had

escaped assessment within the meaning of Section 147 of the Act. In response to the notice, the petitioner filed his return, which was originally filed

by him. The petitioner approached this Court by filing the present petition, while further proceedings before the Assessing Officer in pursuance of

the notice issued u/s 148 of the Act after filing of return by the petitioner were in progress. As is evident from the petition, the petitioner did not file

any reply before the authority taking any objection against initiation of proceedings u/s 148 of the Act.

4. In the petition, challenge to the notice issued u/s 148 of the Act is on the ground that no reasons have been recorded before issue of notice,

which is statutory requirement. Further, it is pleaded that the petitioner has never failed or omitted to disclose the material facts fully or truly which

are necessary for assessment of income chargeable to tax. Still further, it is pleaded that notice itself is beyond the statutory period prescribed

under the Act for issue of notice, as in terms of the provisions, the same could be issued within a period of four years. Accordingly, notice dated

June 2, 1987, for the assessment year 1979-80 is beyond the period of limitation.

5. In reply, the stand of the respondents is that the petitioner having not spent even a single penny on the repair of the building was not entitled to

any deduction, as claimed for. It is further pleaded that the Department was already in appeal against the order passed by the Commissioner of

Income Tax (Appeals) in the case of the petitioner for the assessment year

1983-84, though the court was not apprised of its present status. It is

further pleaded that before issue of notice of the petitioner, prior approval of the Commissioner of Income Tax, Haryana, Rohtak, was obtained

u/s 151(2) of the Act after duly recording the reasons, as provided for under the Act and the limitation for issue of notice to the petitioner had not

yet expired. Finally, taking the plea that the petitioner has alternative remedy of presenting before the authority and thereafter in case an order is

passed, statutory rights of appeal, etc., are available to the petitioner for redressal of his grievance.

6. No one has appeared on behalf of the petitioner. I have heard Mr. Yogesh Putney, learned Counsel for the respondents.

Mr. Putney at the very out-set cited a judgment of the hon''ble Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19,

wherein if was observed as under (page 20):

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 abovesaid five assessment years.

7. The same view was followed by this Court in Kapur Sons Steels Pvt. Ltd. Vs. Assistant Commissioner of Income Tax and Another, and

Saraswati Industrial Syndicate Ltd. Vs. Union of India (UOI) and Others, and the Gujarat High court in Arvind Mills Ltd. Vs. Assistant

Commissioner of Wealth Tax, .

8. Once the hon''ble Supreme Court has laid down the procedure to be followed in the cases of objections to notices issued u/s 148 of the Act,

the petitioner is bound to follow the same and no interference at this stage is called for as the petitioner has not even filed reply to the notice issued

u/s 148 of the Act, even though the return of income had been filed.

9. For the reasons stated above, the writ petition is dismissed as premature with liberty to the petitioner to file objections to the show-cause notice

issued u/s 148 of the Act before the concerned officer and on filing thereof, the same shall be dealt with and decided by passing a speaking order

after hearing the petitioner or his representative before proceeding further in the matter.

