(2005) 03 AHC CK 0045

In the Allahabad High Court

Case No : Writ Petition No. 1026 of 2005

Vijay Kumar Jain APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 01-03-2005

Acts Referred:
Income Tax Act, 1961 — Section 142, 143(1), 148

Citation : (2006) 205 CTR 546

Hon'ble Judges : U.K. Dhaon, J;G.K. Gupta, J

Bench : Division Bench

Advocate : S.M.K. Chaudhary, for the Appellant; D.D. Chopra, P. Agarwal and Dipak Seth, for the Respondent

Judgement

1. Heard Sri S.M.K. Chaudhary, learned Counsel for the petitioner and Sri D.D. Chopra, learned standing counsel appearing for the opposite parties.

2. The petitioner has approached this Court against the notices dt. 4th Feb., 2005, 5th Jan., 2005 and 31st March, 2004, the copies of which have been annexed as Annex. Nos. 1, 2 and 3 to the writ petition. The petitioner has alleged that the return for the asst. yr. 1997-98 was filed by the petitioner which was accepted by the assessing authority and intimation u/s 143(1) of the IT Act, 1961 (hereinafter referred as ''the Act'') was received by the petitioner on 15th July, 1998. The petitioner has further alleged that on 2nd April, 2004, the petitioner received a notice dt. 31st March, 2004 issued by opposite party No. 3 u/s 148 of the IT Act in respect to asst. yr. 1997-98 and thereafter the petitioner filed the return on 29th April, 2004. The petitioner has further alleged that opposite party No. 3 again issued notice on 5th Jan., 2005 u/s 142 of the Act requiring the petitioner to appear on 17th Jan., 2005. The learned Counsel for the petitioner submits that reasons for reopening the assessment proceedings were not intimated to the petitioner in spite of the letter dt. 17th Jan., 2005. He further submits that the notice u/s 148 of the IT Act was issued after expiry of the period of four years from the end of the asst. yr. 1997-98. He further submits

that as no reason has been assigned in the notice u/s 148 of the IT Act, the notice deserves to be quashed. He has relied upon the decisions in Peerless General Finance and Investment Co. Ltd. v. Dy. CIT, Man Mohan Singh Vs. Assistant Commissioner of Income Tax, and Sohan Lal Singhania Vs. Income Tax Officer, . He further submits that in spite of the letter dt. 17th Jan., 2005, no reason has been assigned to the petitioner by the assessing authority.

3. Sri D.D. Chopra, learned Counsel appearing on behalf of the opposite parties, submits that the application dt. 17th Jan., 2005 filed as Annex. No. 6 to the writ petition is not available on the record and in compliance of the notice u/s 148 of the IT Act, the return was submitted by the petitioner in April, 2004 and the assessing authority shall decide the matter after affording opportunity to the petitioner. He further submits that before issuing the notice u/s 148 of the Act, the assessing authority has recorded the reasons on the file.

4. We have considered the arguments of the learned Counsel for the parties.

5. On 28th Feb., 2005, a direction was issued by this Court to the learned Counsel for the opposite parties to produce the record and in compliance of the order passed by this Court, the opposite parties have produced the record before us. The application dt. 17th Jan., 2005, a copy of which has been annexed as Annex. No. 6 to the writ petition is not available on the record produced before us, although, there is another application of the same date on the record. Through the application dt. 17th Jan., 2005, which is alleged to have been moved by the petitioner before the assessing authority, the petitioner has sought the reasons regarding the reopening of the matter for the asst. yr. 1997-98. The record reveals that a complaint was received by the assessing authority and thereafter a notice u/s 148 of the IT Act was issued which was duly served upon the petitioner. The record also reveals that before issuing the notice u/s 148 of the Act, the assessing authority has recorded the reasons. The notice dt. 31st March, 2004 u/s 148 of the Act was received by the petitioner on 2nd April, 2004 and thereafter the petitioner filed the return on 29th April, 2004 knowingly well that the reasons for reopening the assessment proceedings were not mentioned in the notice dt. 31st March, 2004. The petitioner has filed the instant petition on 16th Jan., 2005 challenging the validity of the notice dt. 31st March, 2004 which was duly served upon the petitioner on 2nd April, 2004. The case laws cited by the learned Counsel for the petitioner are not applicable to the facts of the present case as on the file, there are reasons for reopening the proceedings of the asst. yr. 1997-98. Since the alleged application dt. 17th Jan., 2005 is not available on the record of the Revenue authorities, the reasons for reopening the case were not communicated to the petitioner. In case the petitioner is interested to know the reasons for reopening of the matter, he may move an application before the assessing authority within a week from today, and if such an application is moved, the assessing authority shall communicate the reasons for reopening of the assessment proceedings for the asst. yr. 1997-98. We are not inclined to quash the impugned notices at this stage as the petitioner has

submitted the return in response to the notice u/s 148 of the Act.

6. With the above observations, the writ petition is finally disposed of.

