(2005) 03 AHC CK 0032

In the Allahabad High Court

Case No : C.M. Writ Petition No. 1026 (MB) of 2005

Vijay Kumar Jain APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 01-03-2005

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

Citation : (2005) 03 AHC CK 0032

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

Bench : Division Bench

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 dated 4-2-2005, 5-1-2005 and 31-3-2004, the copies of which have been annexed as Annexure Nos. 1, 2 and 3 to the writ petition. The petitioner has alleged that the return for the assessment year 1997-98 was filed by the petitioner which was accepted by the assessing authority and intimation u/s 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) was received by the petitioner on 15-7-1998. The petitioner has further alleged that on 2-4-2004, the petitioner received a notice dated 31-3-2004 issued by opposite party No. 3 u/s 148 of the Income Tax Act in respect to assessment year 1997-98 and thereafter the petitioner filed the return on 29-4-2004. The petitioner has further alleged that opposite party No. 3 again issued notice on 5-1-2005 u/s 142 of the Act requiring the petitioner to appear on 17-1-2005. 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 dated 17-1-2005. He further submits that the notice u/s 148 of the Income Tax Act was issued after expiry of the period of four years from the end of the assessment year 1997-98. He further submits that as no reason has been assigned in the notice u/s 148 of the Income Tax Act, the notice deserves to be quashed. He has relied upon the decisions in (2004) 88

ITD 273 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 dated 17-1-2005, 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 dated 17-1-2005 filed as Annexure No. 6 to the writ petition is not available on the record and in compliance of the notice u/s 148 of the Income Tax 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 28-2-2005, 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 dated 17-1-2005, a copy of which has been annexed as Annexure No. 6, to the writ petition it not available on the record produced before us, although, there is another application of the same date on the record. Through the application dated 17-1-2005, 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 assessment year 1997-98. The record reveals that a complaint was received by the assessing authority and thereafter a notice u/s 148 of the Income Tax 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 dated 31-3-2004 u/s 148 of the Act was received by the petitioner on 2-4-2004 and thereafter the petitioner filed the return on 29-4-2004 knowingly well that the reasons for reopening the assessment proceedings were not mentioned in the notice dated 31-3-2004. The petitioner has filed the instant petition on 16-1-2005 challenging the validity of the notice dated 31-3-2004 which was duly served upon the petitioner on 2-4-2004. 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 assessment year 1997-98. Since the alleged application dated 17-1-2005 is not available on the record of the revenue authorities the reasons for reopening the case was 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 assessment year 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.

