(2003) 03 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 1340 to 1342 of 2003

Vimal Chand Gautam Chand APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 29-03-2003

Acts Referred:
Income Tax Act, 1961 — Section 142, 144A, 148

Citation : (2003) 133 TAXMAN 41

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Advocate : Gajenra Maheshwari, for the Appellant;

Judgement

Prakash Tatia, J.—Heard learned counsel for the petitioner. In all these three matters having the identical facts and grievance the common order is passed.

2. The facts in all the cases reveal that the respondent No. 4 issued a notice to the petitioner, which was received by the petitioner on 7-2-2003. This notice is purported to be u/s 142 of the income tax Act, 1961, wherein the petitioner was asked to remain present on 14-2-2003, before the respondent No. 4. According to petitioner he found from the letter dated 7-2-2003, that a notice u/s 148 of the of was alleged to have been issued to the petitioner on 29-5-2001. In response to above notice fixing the date 14-2-2003 (Annexure P/1A) the petitioner gave two letters to the respondent No. 4 on 10-2-2003, and requested inspection of complete file pertaining to the proceedings against the assessee before 14-2-2003. In second letter, request for grant of certified copies was made by the petitioner. It is pointed out by the petitioner that the notice u/s 148 of the Act of 1961 alleged to have been issued to the petitioner on 29-5-2001, was never served upon the petitioner. The petitioner also in his request sent letter dated 10-2-2003, requesting the respondent No. 4 to provide the reasons recorded by Asstt. Director of income tax for issuance of notice u/s 148 of the Act of 1961.

3. On 14-2-2003, the first date was fixed by the respondent No. 4 and petitioner raised certain preliminary objections with respect to the validity of the notice u/s 148 and jurisdiction of the officer issuing the notice, etc. with the request that the preliminary objections should be decided first, thereafter, reply can be submitted on merits. The respondent No. 4 fixed the next date after three days on 17-2-2003. It is stated by the petitioner that again he requested to drop the proceedings initiated by issuing notice u/s 148. The petitioner also submitted a brief reply on merits for the sake of abundant caution. No proceedings took place from 14-2-2003 to 5-3-2003, and respondent No. 4 issued another letter on 5-3-2003, informing the petitioner that notice u/s 148 of the Act was issued for the assessment year 1992-93 which was served on the same date at the business premises of the concerned and received by Shri Mahaveer Singh who was stated to be representative of the petitioner. It appears that next date was fixed by the respondent No. 4 is of 13-3-2003, for filing reply by the petitioner. The petitioner before that, on 11-3-2003, raised objections in detail with a request to decide the objections and pointed out certain decisions of the Hon''ble Supreme Court wherein it is laid down that in case notice issued u/s 148 of the 1961 Act, first of all preliminary objections should be decided by the assessing authority. From the background of these facts it will be relevant to quote certain observations of the respondent No. 4 observed in its communication dated 13-3-2003. The para No. 3 of the communication sent by the ITO to the petitioner is as under:

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Some portion of para No. 8 is also as under:

graphic

further:

graphic

In above circumstances the petitioner submitted an application dated 19-3-2003, (Annexure 9), u/s 144A of the income tax Act, 1961, for issuing necessary directions by the Addl. CIT, Pali Range, Jodhpur.

4. The petitioner yet received another communication dated 24-2-2003, from the ITO, Sumerpur, wherein the ITO, Sumerpur, went to the extent of saying that:

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5. These facts reveal that in entire communications sent to the petitioner, it has not come on record that, when notice u/s 148 of the income tax Act was served upon the petitioner on 29-5-2001, as mentioned in Annexure 6 by the ITO, Sumerpur, how and why the proceedings remained pending till the year 2003. This fact becomes relevant as the respondent No. 4 blamed the petitioner, tax advisor and advocates for causing delay when the petitioner was, for the first time, asked to appear on 14-2-2003, only and the letter dated 13-3-2003,

accused the petitioner and the tax advisors and the advocates for causing delay and blamed that they diverted the attention of the authorities with intention to cause the obstruction in the legal process. The time-gap between first date of appearance before the respondent No. 4 and issuance of Annexure 8 is only one month.

6. It may be true that sometimes even the Courts may be annoyed by the delay caused in the legal proceedings, but that itself cannot be a ground of annoyance resulting into passing orders only because of annoyance. The Hon''ble Supreme Court in the case of Balraj Taneja and Another Vs. Sunil Madan and Another, held that in a case where defendant adopted dilatory tactic, and the Court passed by the decree in favour of the petitioner observed that such annoyance should not disturb the judicial composure. The facts of the case, which were decreed, were recorded in the judgment of the Supreme Court and relevant portion is as under:

''The defendants are adopting this tactic only to protect the proceedings and have not filed the written statement and reply to the application in spite of sufficient opportunity having been given.

Accordingly, the suit is decreed for specific performance in favour of the plaintiff and against the defendants with the directions to the plaintiff to deposit the balance amount of Rs. 3,00,000 (Rupees three lakhs) in this Court within six weeks from today....''" (p. 412)

7. But here in this case not only the respondent No. 4 expressed his unwarranted annoyance on the assumption and even went to the extent of justifying his own stand by citing judgments of the Hon''ble Supreme Court, which is clear from the language used in para No. 3 of the communication dated 13-3-2003 (Annexure 8). The authority who is to decide, judicially has no right to argue the case and justify the decision, which he is proposing to take, that too, before reaching the stage of taking decision. By Annexure 8 dated 13-3-2003, the ITO respondent No. 4 by taking help of a judgment which in the opinion of the respondent No. 4 applies to the facts of this case, by communication decided that the petitioner has no right to know the reasons for issuance of the notice u/s 148 of the income tax Act and unfortunately, the respondent No. 4 very arrogantly observed that in case petitioner wants to go to the Supreme Court, he may go there and he will get the right decision. Such an arrogance and attitude is not only absolutely unwarranted, but discloses the pre-determination of the officer to decide the matter in particular manner, which has not been heard. The ITO also observed that instead you (petitioners) are saying that the notice is wrong and he (petitioner) forcibly wants to interpret the judgment of the Supreme Court in his favour.

8. The ITO without there being any rhyme and reason condemned the tax officers and advocates by saying that these persons are adopting tactic to divert attention from the principal question and by raising frivolous pleas causing obstruction in the judicial process.

9. The prejudice of the respondent No. 4 is apparent when he in its communication dated 24-3-2003, recorded that he assumed that even after receipt of chart, the petitioner will not give any explanation. In these circumstances, petitioner requested Addl. CIT, to decide the issue of jurisdiction himself or direct the ITO to decide petitioner''s objections first raising objections of prejudice of ITO against the petitioner. This Court is taking judicial notice of bias to the mind of the respondent No. 4 from the communications sent by the respondent No. 4 to the petitioner referred above. Therefore, notice be issued to Shri S.D. Pamnani, ITO, Sumerpur in his personal capacity that this Court is proposing to issue direction to hear this matter by another officer and before that an opportunity is given to Shri S.D. Pamnani to explain his stand and to submit his objection against hearing of the case of the petitioner by some other officer of the Department, who lawfully can hear the matter of the petitioner.

Issue notice to the respondents also for final disposal, returnable within four weeks.

Meanwhile, further proceedings before respondent No. 4 are stayed.

