(1999) 03 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 18009 of 1997 and C.M. No. 4673 of 1999

Vivek Gupta APPELLANT

Vs

Central Board of Direct Taxes and others RESPONDENT

Date of Decision : 09-03-1999

Acts Referred:
Income Tax Act, 1961 — Section 147, 148, 28

Citation : (1999) 238 ITR 124

Hon'ble Judges : N.K. Agarwal, J;J.L. Gupta, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The petitioner is aggrieved by the notices dated March 20, 1997, by which the Income Tax Officer informed him that he had "reason to believe that - income in respect of - assessment years 1994-95 and 1995-96, has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961". These notices related to two years. The reasons were communicated vide documents, copies of which have been produced as annexures P-31 and P-32. It was pointed out that during the period from June 30, 1993, to February 23, 1994, the petitioner had made deposits of monthly instalments of a total sum of Rs. 69,538 in respect of the assessment year 1995-96, the petitioner was informed that he had made a deposit of an amount of Rs. 14,000 on March 9, 1995. Thus, notice u/s 148 was given to the petitioner.

2. Mr. Mittal, learned counsel for the petitioner, contends that the notices issued by the authority are wholly without jurisdiction. This contention is based upon the fact that vide order dated September 27, 1996, the Assistant Commissioner of Income Tax (Investigation Circle-II), Ambala, had passed an order of assessment and taken the plot in respect of which the deposit had been made by the petitioner into consideration.

3. It is not disputed that the amounts of Rs. 69,538 and Rs. 14,000 have been

deposited by the petitioner. According to Mr. Mittal, the deposits had been made on behalf of Mr. Dharam Pal. Is it really so ? Who gave the money ? What was the source ? These are matters which have to be gone into by the assessing authority. At the present moment, it cannot be said that the assessing authority could not have any reason to believe that some income had escaped assessment. Still further, on the petitioner''s own showing, he does not hold a power of attorney on behalf of Dharam Pal. He is only an attorney of Prem Chand and Lekh Ram. If he holds the power of attorney on behalf of these two gentlemen, he would not be entitled to make a deposit on behalf of Dharam Pal. Thus, the view taken by the authority that the amount requires to be explained, cannot be said to be wholly fanciful or imaginary. The petitioner would normally have no occasion to make any deposit on behalf of Mr. Dharam Pal. In this situation, we cannot say that the requirements of section 147 of the Income Tax Act were not fulfilled.

4. Mr. Mittal has placed reliance on the decisions of the different courts. He has referred to the judgments in R. S. CHIRANJI LAL and SONS Vs. COMMISSIONER OF Income Tax, DELHI, AJMER, RAJASTHAN, AND MADHYA BHARAT., ; Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, ; Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, and ASOKE KUMAR SEN Vs. Income Tax OFFICER, SPECIAL CIRCLE-V, NEW DELHI, AND ANOTHER., . It is undoubtedly correct that proceedings u/s 147 can be initiated only when the assessing authority has reason to believe that income chargeable to tax has escaped assessment. It must have reasonable grounds for forming that opinion. It cannot act on the basis of mere rumour or suspicion. The belief must be that of an honest and reasonable person. There is no quarrel for these propositions. However, in the present case, there is nothing to show that the authority did not have any reason to believe that income chargeable to tax has escaped assessment. It has not been shown by the petitioner by any evidence on record as to what was the source of the money, which had been deposited by him during the years 1994-95 and 1995-96. Assuming the petitioner has an explanation, he would offer it before the authority and we have no doubt that it shall be considered. As at present, the issue of notice cannot be said to be in derogation of section 147 of the proceedings. Thus, the matter calls for no interference.

5. Mr. Mittal states that in C.M. No. 4673 of 1999, the petitioner has given an explanation with regard to the source of income, etc. This is a matter, which shall be considered by the competent authority. We do not wish to express any opinion lest the interest of the petitioner or the Revenue may be prejudicially affected.

6. No other point has been raised.

7. In view of the above, we find no ground to interfere. Resultantly, the writ petition is dismissed.

