Rajeev Drona Vs. Assistant Commissioner of Income-tax and anr.

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SooperKanoon Citation : sooperkanoon.com/472880

Court : Allahabad

Decided On : Apr-26-1989

Reported in : [1989]180ITR140(All)

Judge : R.M. Sahai and ;R.P. Singh, JJ.

Acts : Income Tax Act, 1961 - Sections 147 and 148

Appeal No. : Civil Miscellaneous Writ Petition No. Nil of 1989

Appellant : Rajeev Drona

Respondent : Assistant Commissioner of Income-tax and anr.

Judgement :

R.M. Sahai, J.

1. The petitioner, a tax practitioner on the income-tax side at Kanpur, has filed this petition for quashing of the order dated March 23, 1989, passed by the Assistant Commissioner of Income-tax (Investigation), Circle 11(1), Kanpur, for the assessment years 1986-87 and 1987-88.

2. It is urged that since the notices issued under Section 147/148 of the Income-tax Act are without jurisdiction, the entire assessment orders are liable to be quashed. According to learned counsel, the procedure provided under the Act, namely, the existence, applying mind to it and recording reasons, getting

endorsement of the Commissioner were not followed. Therefore, the conditions precedent for exercise of reopening were absent.True, the law is well-settled. Notice for escaped assessment under Section 147/148 of the Income-tax Act is a jurisdictional notice. But it was not raised in the reply to the show cause notice. No finding was invited of the assessing authority. And if it be so, then it can be raised in appeal. Many decisions were placed that alternative remedy is no bar. We do not think it is necessary to mention them, as, except that the petitioner is a lawyer and huge liability has been created, no other circumstances could be pointed out. For this, the petitioner himself appears to have been responsible as he did not appear in response to various notices stated to have been issued and served on him.

3. Two other submissions may also be noticed : one is that the order is arbitrary and that it was passed without affording any opportunity. Any comment by this court on either of these aspects may prejudice the claim of the petitioner. But all this happened for what the petitioner has to blamehimself.

4. In the result, this petition fails and is dismissed on the ground of alternative remedy. Any observation made above shall not be taken into account in deciding the appeal.

5. A copy of this order may be given to learned counsel for the petitioner on payment of usual charges within three days.