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Court : Madhya Pradesh

Decided On : Mar-28-2003

Reported in : [2003]129TAXMAN659(MP)

Appeal No. : W.P. No. 433 of 2003 28 March 2003

Appellant : Suryakant

Respondent : Dy. Cit

Advocate for Pet/Ap. : P.M. Choudhery, *for the Assessee*

Judgement :

ORDER

Having heard the L/c for the petitioner and having perused the record of the case, I find absolutely no merit in this writ and hence it deserves dismissal in limine.

2. What is challenged in this writ by the petitioner is a notice dated 30-1-2003 (Annexure P/12) issued by the assessing officer under section 142 of the Income Tax Act read with section 158BC(b) and 158BD *ibid*. It is not in dispute that pursuant to impugned notice issued, the petitioner has filed reply to the notice on 3-3-2003 (Annexure P/13). It is then the petitioner has come to this court and has sought quashing of such notice.

I do not wish to burden my order with entire facts which are sought to make subject matter of petition as it will simply add to confusion without adding any thing useful in its disposal. That apart, it is really not necessary to so narrate the facts in view of the short controversy raised by the petitioner in assailing the impugned notice. Suffice it to say the entire facts and the chequered history which led the assessing officer to invoke the provisions of section 142 read with provisions relating to block assessment as contemplated under section 158BD *ibid* have been succinctly recapitulated by the assessing officer in the impugned notice.

3. In my considered view, the assessing officer was perfectly within his jurisdiction to invoke the powers conferred on him under section 142 *ibid*. It cannot be disputed that by virtue of section 158BC(b) *ibid*, the provisions of section 142 *ibid* are also made applicable to cases falling in Chapter XIV-B i.e., special procedure for assessment of search cases. The powers conferred under section 142 are only in the nature of holding an inquiry before assessment. Such power cannot be questioned as being without jurisdiction. It is within the powers of assessing officer to serve a notice to seek information necessary for making assessment, As observed *supra* the petitioner has already subjected himself with the notice and filed reply in answer to the queries made by assessing officer in the notice. It is now for the assessing officer to decide what action is to be taken and in what manner after taking into account the reply filed by the petitioner.

4. In my considered opinion, the action initiated by assessing officer under section 142 *ibid* cannot be regarded as an action adverse to petitioner (assessee). It is in the nature of collecting information from the assessee. Law gives such right to assessing officer to collect such information. The assessee cannot avoid to supply the information so asked.

5. L/c of the petitioner mostly argued on the basis of several facts contained in the notice impugned as also on the basis of some decisions rendered by the criminal courts and on that basis contended that action initiated under section 142 *ibid* as also invoking the powers of block assessment is without jurisdiction. I failed to appreciate the submission as in my opinion it is entirely misplaced for several reasons. Firstly, this court cannot in its writ jurisdiction enter into the facts of the

case which are being probed by the assessing officer in an inquiry contemplated under section 142 *ibid*. Secondly, it is for the assessing officer to record his satisfaction. Thirdly, sub-section (3) of section 142 completely provides complete safeguard to petitioner as against any action after affording an opportunity of being heard in the matter to the petitioner. In substance, therefore, the inbuilt provisions contained in section 142 *ibid* provides for complete machinery and safeguard so far as petitioner's interest is concerned.

6. L/c for the petitioner then contended that it was not a case where procedure for block assessment as contemplated under section 158BC could be invoked against the petitioner. I do not agree. Section 158BD of the Act fully empowers the assessing officer to invoke the provisions of section 158BC, even against a person other than those who was not subjected to search proceedings under section 132 of the Act. It is clear that the proceedings in question are fall out of a raid conducted in the premises of one firm Madanlal Chaganlal and its partners from 20-11-1997 to 24-11-1997.

7. L/c for the petitioner than placed reliance on a decision in *Kshetra Mohan Roy v. ITO* : [1983]139ITR441(Cal) . In my view the decision is entirely inapplicable to the facts of the case. It was a case relating to penalty proceedings under section 271(1)(c) of the Act. It can have no application so far as present case is concerned which deals with the issue relating to section 142 read with section 158BD *ibid*.

8. As a consequence of aforesaid discussion, I find the petition to be entirely devoid of substance. It fails and is dismissed in *limine*.