

SUPREME COURT OF INDIA

Comunidado of Chicalim

Vs.

Income Tax Officer

(S.P. Bharucha, R.C. Lahoti and N. S. Hegde JJ.)

28.07.2000

ORDER

1. Under appeal by special leave is an order of a Division Bench of the High Court at Bombay, sitting at Panaji. By that order the writ petition filed by the appellant was summarily dismissed.
2. By the writ petition the appellant challenged the validity of a notice issued to it by the first respondent under Section 148 of the Income-tax Act, 1961. The notice alleged that the first respondent had reason to believe that the appellant's income chargeable to tax for the assessment year 1986-87 had escaped assessment and that, therefore, the first respondent proposed to assess the appellant's income for that assessment year. It was averred in the writ petition that the first respondent had failed to disclose the reasons that he was obliged to record under Section 148(2) for reopening the assessment. Further, the writ petition averred that the respondents had already issued a notice to the appellant under Section 148 of the Income-tax Act, 1961 for the same assessment year and that the appellant had, in compliance therewith, filed a return. It was asserted that, therefore, the second notice under Section 148 did not lie.
3. The Division Bench took the view that Section 148 merely required that reasons should be recorded, not that they should be communicated. Since, therefore, there was, in its view, no failure to perform a statutory duty, it could not call for and examine the reasons. As to the ground in relation to the previous notice, the Division Bench noted that it had not been asserted in the writ petition that the Income Tax authority had made an assessment pursuant to the previous notice. It observed that the appellant had submitted to the jurisdiction of the authority under Section 148 and, therefore, "acquiesced off the grievance".
4. We are afraid that the High Court was in error on both counts. It is trite law that when an assessee challenges a notice to reopen under Section 147 on the ground that no reasons under Section 148 had been recorded or disclosed, the court must call for and examine the reasons, and, in fact, ordinarily, the reasons are set out by the respondents to the writ petition in their counter. The High Court also did not appreciate that if the appellant had already been served with a notice under Section 148 and had complied therewith by filing a return, it was entitled to contend that no second notice lay and also to submit that, in any event, the second notice was barred by time.
5. It is, therefore, necessary to set aside the order of summarily dismissal of the writ petition and to restore the writ petition (Writ Petition No. 356 of 1991) to the file of the High Court to be heard and disposed of on merits. Our observations are confined to the order of summarily dismissal that is

impugned and should not in any way influence the decision of the court on merits. Both the parties shall be entitled to take all available contentions at such hearing. The writ petition, having regard to the lapse of time, shall be decided expeditiously.

6. Order on the appeal accordingly. No order as to costs.