D.B. INCOME TAX APPEAL NO.41/2007

Dr. Sahib Ram Giri **Vs.** Income Tax Officer, Ward-2, Sri Ganganagar.

Date of judgment : 10th April, 2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. Suresh Ojha for the appellant.

Heard learned counsel for the appellant.

This appeal is directed against the order of the Tribunal dated 18th August, 2006. The appeal relates to assessment year 1994-95 whereas the order of the Tribunal is common for appeals arising out of assessment years 1994-95 to 1999-2000. That appeals have been decided jointly.

According to the assessee, he has filed return on 2.4.1996 for the assessment year 1994-95 declaring an amount of Rs.46,530/- as texable income. The ITO did not accept the return to be valid on the ground that

it was filed beyond the period prescribed under the Statute. The notice under Section 147 was issued to the assessee and in response to which again return was filed on 12.6.2000 declaring the same income.

The assessee had demanded the reasons for reopening which were not supplied by the ITO. The reasons were supplied to the assessee only when the proceedings were pending before the CIT (A) in appeal.

The assessee's clear contention was that reasons had not been recorded before the issuance of the notice. The fact about the request made by the assessee about the reasons having not been recorded before issuing notice under Section 148 has been noticed. However, while the Tribunal has recorded that the assessment for the years 1996-97 and 1999-2000 were reopened by issuing separate notice after recording separate reasons, no such finding was recorded in respect of recording of the reasons for reopening the assessment year 1994-95. Whether the reasons were recorded in fact before the issuance of the notice. The

Tribunal merely found that the reasons were supplied to the assessee.

Since objections to validity of notice issued under Section 148 had not been decided by the Assessing Officer and, therefore, the appeals filed by the assessee were allowed and the cases were sent back to the assessing officer for fresh decision. The other objections that A.O. had not passed reasoned order was also upheld.

The Assessing Officer was directed to decide the assessee's objections by passing speaking orders and, thereafter, if it so required, he may proceed to frame the re-assessment orders as per law. The Assessing Officer was further directed not to repeat the same assessment orders and to pass reasoned orders. Thus, objection to assuming jurisdiction under Section 148 is to be decided by the first authority. In case the objections of the assessee are over ruled by reasoned order, he is then to proceed further and to pass fresh assessment orders in accordance with law also by an

speaking order. In the process finding already recorded by the Assessing Officer as well as CIT (A) in any manner were all set aside as it was implicit when directions were issued not to repeat the assessment order as it is but to frame fresh assessment order.

In these circumstances, we are of the opinion that no substantial question of law for consideration in this appeal arises at all at this stage.

The assessee's further grievance is that since he lodged a complaint against the Assessing Officer his matter may not be decided by same Assessing Officer, but be decided by some other independent officer.

Undoubtedly, the facts about the filing of a complaint against the Assessing Officer has been noticed by the Tribunal. Apparently, in these circumstances, it will be appropriate for assessee to approach to competent authority exercising power to assign jurisdiction by transfer the cases inviting attention of the competent authority to the aforesaid

finding of the Tribunal and request the competent authority to pass appropriate orders. If any such application is made, he shall pass appropriate order considering well known maxim that justice may not only be done but also seen to have been done.

Subject to aforesaid observations, the appeal is dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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