

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRA BAABU

TC(A). No. 1083 of 2005

K.Sakthivel

Prop. Sri Ravendra Tex

Erode

... Appellant

-vs-

The Assistant Commissioner of Income Tax

Central Circle- 1,

Coimbatore

... Respondent

Tax Case Appeal against the order of the Income Tax Appellate Tribunal, D Bench, Chennai, dated 29.4.2005 passed in I.T.(SS)A.No. 105/(Madras)/2004.

For Appellant :Mr.Vikram Sriram for

M/s.G.R.Associates

For Respondent :Mr.T.Ravikumar

Standing Counsel

JUDGMENT

(Judgment of the Court was made by CHITRA VENKATARAMAN,J)

The assessee is on appeal as against the order of the Income Tax Appellate Tribunal relating to assessment year for the period 1.4.1989 to 1990-91. The above Tax Case (Appeal) was admitted on the following substantial questions of law:-

"a) Whether the notice issued under Sec.158 B.D. of the Income Tax Act 1961 is sustainable in law if it does not mention the block period ?

b) Whether non-mentioning of the block period in the notice could be characterized as a curable defect, particularly in the teeth of judgments reported in:

1) 75 I.T.D. 183 (All) (Verma Roadways V. Asst. Commissioner of Income Tax)

2) 35 I.T.R. 388 (SC)(Narayana Chetty V. I.T. Officer)

3) 82 I.T.R. 821 (SC)(CIT V. Kurpan Hussain)

4) 59 I.T.R. 24 (Guj)(NyalchandMalukchand Dagli V. CIT,Gujarat)

5) 170 I.T.R.80 (Ker)(Sastkumar V. CIT)

6) 107 I.T.R. 164 (Cal)(CIT V. HindustanMotors Ltd.)

7) 267 I.T.R.179 (Indian Banks Assn. V. Devkala Consultancy)

c) Whether the finding of the Income Tax Appellate Tribunal that provision of Order 18 Rules 5 and 9 Code of Civil Procedure and Section 164 Cr.P.C. need not be followed while recording a confessional statement under sec.131 of the Income Tax Act 1961 is sustainable in law, in view of the specific language of sec.131(1) and sec.132(4) of the Income Tax Act, 1961?

d) Whether an order of assessment could be passed merely upon a statement u/s 131 without any corroborative material?

2. The assessee also raised additional questions of law which are as follows:-

a) Whether a notice issued under Section 158BD of the Income Tax Act, 1961 is valid if the Assessing Officer never recorded his satisfaction in the said notice that the alleged undisclosed income belonged to the Appellant?

b) Whether the respondent could have issued a notice under Section 158BD of the Income Tax Act, 1961 without following the procedure prescribed under Section 158BC of the Income Tax Act, 1961 and without conducting a search on the appellant under Section 132 of the Income Tax Act, 1961?"

3. It is seen from the facts narrated that the search was conducted in residential and business premises of one V.S.Kathirvel on 22.6.1999 and concluded on 19.8.1999. During the course of the

search, various incriminating documents were seized from the residential and business premises of V.S.Kathirvel. It was seen that he had indulged in unaccounted real estate transaction. Some of the documents pertained to the transaction with the assessee who had purchased 3 acres of land from V.S.Kathirvel for a consideration of Rs.9,75,000/-. Enquiry proceedings were initiated against the assessee. The assessee participated in the enquiry proceedings and had given sworn statement on 5.8.1999 under Section 131 of the Income Tax Act. In answering the enquiry, the assessee is stated to have made the following statements, which, as recorded in the order of assessment and appeal, is the translation of the statement recorded in Tamil, which reads as under:-

"Q9. I am showing the original sale deed of Rs.1,99,000/- purchased on 6.12.1995. This land of 3 acres was purchased on 6.12.95. Pl. State how much you gave and to whom? Whether this amount was accounted?

Ans. I bought the above land of 3 acres through Sri.V.S. Kathirvel, Komarapalayam. Before buying this property, myself and V.S.Kathirvel made an agreement and I paid in cash towards the consideration. Since I have paid all the amount as per agreement, now do not have that agreement. According to that agreement, 1 acre = Rs.3,25,000/-, totalling to Rs.9,75,000/- for three acres. This amount was given by me to V.S.Kathirvel i.e. Rs.9,75,000/-. Later on 6.12.96, a sale deed was registered in my name for 3 acres. I paid the entire amount in cash before the date of registration. But I do not know the exact dates. The registration was made for Rs.1,95,000/- only. The remaining amount was given as on-money. In this, Rs.1,95,000/- was accounted for and the remaining amount of Rs.7,80,000/- was not shown in my books of accounts.

Q10. On 22.6.99, a search was conducted in the office premises of Sri. V.S.Kathirvel, Komarapalayam. During the course of search, a loose bunch in NR/B & D/ S-30 was seized. In this loose bunch, sheet Nos. 159, 155 and 143, some amounts are credited in the name of PMS and in Sheet No. 155, an account was written under the PMS A/c.

| | | | |
|-----------|----------|----------|----------|
| PMS A/c. | | | |
| 30.6.95 | : | 3,00,000 | |
| 6.12.95 | : | 6,75,000 | |
| | | ----- | |
| 3.25 X 3= | 9,75,000 | : | 9,75,000 |
| | | | ----- |

Pl see this and give details about it.

Ans. I have seen the above account, and it is the account of land purchased by me through VS.Kathirvel. The sheet Nos. 159, 155 and 143 (NR/ B & D? S-30) shows the A/c details as stated by me in the answer to the previous question. Accordingly, this is the amount paid as per the agreement for the purchase of 3 acres. On 30.6.95 and 6.12.95, I paid Rs.3,00,000 & Rs.6,75,000/- to Sri.V.S.Kathirvel.

Q.11 : For purchasing 3 acres of land, you have registered for Rs.1,95,000/- only. Pl. Show me where it was accounted.

Ans. This amount (Rs.1,95,000) was accounted in M/s.Sri Ragavendra Tex Prop.K.Sakthivel (Indl.). It was in L.F.NO. 4 dated 6.12.1995 in the day book. The total amount is Rs.2,21,000/- (including other charges). This amount was credited in my HUF personal books i.e. from 1.4.89 to 5.8.99. Now I am showing those books.

Q.12 : You have shown the said amount of Rs.1,99,000/- + stamp duty only in your books. Please state about the remaining amount of Rs.7,80,000/-. How you got this amount?

Ans: I have stated Sri Ragavendra Tex only on 1.4.94. Before that I was doing commission in textiles for about 5 years. Upto 6.12.95, I got Rs.7,80,000/- from my commission business and my individual business. This income was not written in the books of accounts. So from 1.4.90 to 6.12.95 I have earned Rs.7,80,000/- which is not accounted and I agree to pay the respective tax for that amount?"

4. Thus as evident from the statements and seized documents, the assessee confirmed that the purchase of the lands was at the cost of Rs.9,75,000/- and only a sum of Rs.1,95,000/- was recorded in the sale deed and the balance of Rs.7,80,000/- paid from out of undisclosed income. This led to the issuance of notice under Section 158BD read with Section 158BC dated 27.7.2001 served on the assessee on 3.8.2001. Thereafter, notice under Section 142(1), summons under Section 131 were also served. Admittedly the assessee participated in the enquiry proceedings. On 15.5.2002, the assessee filed a letter which reads as under:-

"In response to the above, I beg to submit that I received your above referred notice directing me to file my block return on or before 15.5.2002. In this regard, I am to state that I am presently facing heavy financial crench and chronic liquidity problem and therefore, I could not make the payment of tax due for the block return and to file the same within 15.5.2002. In view of the same, I request your goodself to kindly grant me two months time for arrangement of funds for paying the necessary tax due under the block return in my individual status. I also undertake to pay the total tax due and interest thereon under the block return within the time requested for and file the return along with challans for payment of tax".

5. Ultimately, the assessee filed the block return in Form No.2B on 6th August 2002 declaring undisclosed income at Rs.NIL and return was taken up for scrutiny by issuance of notice under Section 143(2) dated 8.8.2002. Admittedly, the assessee participated in the assessment proceedings along with his advocate. He filed a letter during the course of hearing on 12.6.2003 and 26.6.2003. Along with letter dated 26.6.2003, the assessee is stated to have filed an affidavit wherein he had stated that on 5.8.1999, he received a summon dated 2.8.99 issued by DDIT (Inv.) Erode and when he appeared for the summons at IT Department, Erode, he was not allowed to meet the concerned DDIT (Inv.) Erode. Later one Inspector of Investigation enquired him about the land purchased from V.S.Kathirvel, Komarapalayam, but the Inspector recorded a different statement, that he was not told of the content of the said recorded statement but got his signature by threatening. He further stated in the affidavit that he was not allowed to read the statement written by that Inspector and

hence, he had not given the statement voluntarily. Further he did not write the usual writings like "the statement is given by me voluntarily without threat or coercion. I read the statement and it was written correctly as I have said". Thus, in the sworn statement, filed on 26.6.2003, the assessee retracted the earlier statement by stating that the land was purchased by him at the cost of Rs.2,21,000/- inclusive of all expenses and not Rs.7,80,000/-. Apart from this, the assessee objected to the summons issued under Section 131 of the Act. In dealing with the said submission, the Assessing Authority held that this retracted statement was an after thought. Considering the fact that on 15.5.2002, the assessee himself had not stated anything about the statement recorded and that he had stated that in view of the financial difficulty, he could not make the payment of tax due for the block period, he filed a return only on 15.5.2002. Thus on verification of the books impounded as well as on the statement given by the assessee on 5.8.99, the Assessing Authority came to the conclusion that the assessee had accounted for Rs.2,21,000/- only, which was inclusive of the stamp duty charges in his books of accounts. As regards the balance amount of Rs.7,80,000/-, the assessee had not filed any explanation except to state that the sworn statement recorded on 5.8.1999 was not valid in law. On going through the records, the Assessing Authority, ultimately held that the assessee had undisclosed the income of Rs.7,80,000/- and the same was assessed at 60% of the undisclosed income. Interest under Section 158 BFA was also levied. Aggrieved by this, the assessee went on appeal before the Commissioner of Income Tax (Appeals), wherein the assessee took a plea that notice dated 27.7.2001 issued to the assessee did not indicate the block period, for which return was submitted. In considering the contentions of the assessee, the Commissioner of Income Tax (Appeals) pointed out to the answers given by the assessee at the time of enquiry and the filing of the return of income for the block period 1.4.89 to 19.8.1999. The first Appellate Authority pointed out that the assessee had complied with notice issued under Section 158BD and filed a return of income in Form 2B after ascertaining the block period. The conditions mentioned in Section 158BD were fulfilled before proceeding with the block assessment and the appellant had no doubt as to the purpose for which the notice was issued. Hence, the absence of non mentioning of the block period would not vitiate the block assessment. By placing reliance on the decision of this Court reported in 255 ITR 144 - SAKTHIVEL BANKERS v. ASST. COMMISSIONER, the Commissioner of Income Tax (Appeals), rejected the assessee's contention that non mentioning of the block period in the notice would not vitiate the proceedings.

6. As far as the statement retracted by the assessee is concerned, the first Appellate Authority pointed out that there was no evidence of any coercion brought on record before the Assessing Officer as well as before the first Appellate Authority. The said statement made long after the recording of the statement. Thus, when the burden was on the assessee to prove that the statement was obtained by such means, in the absence of any material to substantiate such allegations, the Commissioner of Income Tax (Appeals) rejected the same as baseless.

7. As regards the admissibility of the retraction statement, referring to the decision of the Supreme Court reported in AIR 1997 SC 2560 _x0016_ SURJEET SINGH CHHABDA v. UNION OF INDIA, the Commissioner of Income Tax (Appeals), held that any admission made before the Assessing Authority would bind the person. Except for the bland denial of the statement dated 5.8.99, there was no retraction by the assessee for the Assessing Officer to take cognizance of.

8. As regards the failure to follow Rule 5 of Order XVIII of the Code of Civil Procedure, the first Appellate Authority held that there was no merit in such contention since the said statement was recorded before the DDIT (Inv.) Erode, who had also signed the statement on 5.8.1999. Thus the Commissioner of Income Tax (Appeals) rejected the appellant's contention and dismissed the appeal. Aggrieved by this, the assessee went on further appeal before the Income Tax Appellate Tribunal.

9. The Tribunal pointed out that the assessee had challenged the order of the Commissioner of Income Tax (Appeals) only on technical issues and not on merits of the assessment. Thus, the Tribunal confined its attention only on technical aspects raised by the assessee. The first contention raised by the assessee related to notice issued under Section 158BD. On the Assessing Officer not mentioning the block period in the notice issued under Section 158BD, the Tribunal pointed out to the letter written by the assessee's counsel on 12.6.2003 that the said representative met the Assessing Officer after receipt of notice under Section 158BC and after ascertaining the details of block period, the return was also filed in Form 2B. The assessee was also summoned under Section 131 and he was examined about the purchase consideration. Thus, it was very clear that the assessee participated in the assessment proceedings knowing fully well about the block period and the details of undisclosed income which was subject matter of the enquiry. Therefore, non mentioning of the block period in the notice would not vitiate the assessment proceedings.

10. Even though learned counsel for the assessee raised a serious dispute on this aspect, we summoned the assessment files before this Court. On perusal of the same, we find that the return was filed by the assessee only after ascertaining the block period and such statement is also found even in the return itself filed by the assessee by way of remark as against the column of block period covered.

11. As regards the issue relating to the recording of the statement is concerned, the assessee placed reliance on the provisions of the Code of Civil Procedure. The assessee contended that the statement recorded were not in conformity with Order 18, Rules 5 & 8 of Code of Civil Procedure and Section 164 of the Code of Criminal Procedure. The assessee further questioned the validity of the retracted statement by referring to the Apex Court decision relied on by the first Appellate Authority in AIR 1997 SC 2560 _x0016_ SURJEET SINGH CHHABDA v. UNION OF INDIA. The Tribunal pointed out that the Income Tax Officers are not Police Officers. The confession though retracted was an admission binding on the assessee. The Tribunal pointed out that though the assessee stated that the statement given was not voluntarily, yet, the said retracted statement was made after three years from the date of recording the statement, the delay thus, remained unexplained as to why the assessee did not make the allegations immediately after the statement was recorded. The assessee had also signed in all places where ever there were corrections in the statement recorded. The assessee had also read the statement before signing. In the circumstances, the Tribunal rejected the contention of the assessee that he was not allowed to read the statement and that he was not made the statement voluntarily. In the absence of any material to support the allegation, as had been raised in the affidavit filed in the year 2003, the Tribunal rejected the said plea of the assessee.

12. As regards the compliance of provisions of Order 18, Rules 5 and 8 of Code of Civil Procedure and provisions of Section 164 of the Code of Criminal Procedure, the Tribunal held that even though the said provisions are to be observed, yet, the said provisions do not convert the income tax proceedings into regular civil or criminal proceedings. Therefore, the strict principles laid down in the Code of Civil procedure and in the Code of Criminal Procedure were not warranted. Apart from that, the Tribunal, as a matter of fact, held that the statement made by the assessee was recorded in the presence of Deputy Director of Income Tax. As such, there is no violation of provisions of Order 18, Rules 5 and 8 of Code of Civil Procedure or Section 164 of Code of Criminal Procedure.

13. As regards evidentiary value of the statement recorded, the Tribunal pointed out that the material seized from the premises of Kathirvel and Arumugam and the statement recorded from the assessee clearly showed the consideration paid on the purchase of the landed property by the assessee. When the assessment was based on materials and information available on record, together with the statement made under Section 131, there was no substance in the contention of the assessee that the assessment which was made purely on the statement recorded could not be sustained. Thus, the Tribunal pointed out that since the contentions of the assessee is confined only to the technical aspects, they were not going in to the merit of the addition made by the lower authorities. Aggrieved by this, the assessee is before us.

14. Even though learned counsel appearing for the assessee reiterated the contentions in the grounds as had been taken before the Tribunal and contended that when the issuance of notice under Section 158BD is the very foundation to initiate proceedings against the assessee, the non mentioning of the block period in the notice would cut at the very root of the assessment proceedings. Learned standing counsel for the Revenue placed before us the decision reported in 287 ITR 242 _x0016_ SHIRISH MADHUKAR DALVI v. ASST. CIT, 280 ITR 34 _x0016_ SMT. MAHESH KUMARI BATRA v. JOINT CIT as well as 255 ITR 144 _x0016_ SAKTHIVEL BANKERS v. ASST. COMMISSIONER and submitted that when the assessee had acted on the notice and filed the return knowing fully well the period of block assessment, yet considering the fact the notice issued under Section 158BD is only procedural and not related to assumption of jurisdiction, it is not open to the assessee to contend that the assessment was not valid.

15. In the decision relied on by the assessee reported in 289 ITR 341 _x0016_ MANISH MAHESWARI v. ASST. CIT, the Apex Court considered the scheme of block assessment procedure and pointed out that Section 158BD provides the methodology to make block assessment in terms of Section 158BC in respect of any other person other than the person whose premises had been searched. The conditions required thereon are that there must be satisfaction recorded by the Assessing Officer that the undisclosed income belongs to any person, other than the person with respect to whom the search was made under Section 132 of the Act; the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person and the Assessing Officer has proceeded under Section 158BC against such other person. As far as this aspect is concerned, on going through the file, we find that there is no difficulty in holding that there is compliance of the provisions of the Act.

16. As far as the non mentioning of the block period in the notice issued under Section 158BD is concerned, in the decision relied on by learned Standing Counsel for the Revenue reported in 287 ITR 242 _x0016_ SHIRISH MADHUKAR DALVI v. ASST. CIT, the Bombay High Court considered the nature of the proceedings contained in Section 158BD. On going through the provisions contained under Sections 147, 148 and 158BC, the Bombay High Court held that Section 158BA refers to jurisdiction of the Assessing Officer to assess undisclosed income in accordance with Chapter XIV-B, whereas Section 158BA(2) is the charging section, Section 158BB provides for computation of undisclosed income for the block period, whereas Section 158BC provides the procedure for block assessment. In the decision reported in 255 ITR 144 - SAKTHIVEL BANKERS v. ASST. COMMISSIONER, this Court held that failure to mention the provision in the notice was not a circumstance which could be said to vitiate the ultimate order. The said decision relates to the assessment made consequent on the search conducted in assessee's place and notice was issued thereon to eight firms and to the wife of the assessee. Referring to Section 158BD, this Court held that non mentioning of the purpose for which the notice was issued or the source of the authority of the Officer issuing the notice per se

would not defeat the aspect of the persons since the persons against whom the notice issued were fully aware of the purpose of issuing the notice.

17. In the light of the above said decision of this Court as well as in view of the Bombay High Court cited supra, we reject the contention of the assessee that the non mentioning of the block period would defeat the very assessment. Quite apart from this, the assessee participated in the enquiry conducted under Section 131 of the Income Tax Act and had also made a statement confirming the purchase of the land. Subsequent thereto, the assessee had participated in the enquiry and on 15.5.2002, in response to the notice under Section 142(1) the assessee expressed his inability to file the return on or before 15.5.2002 on account of liquidity problem, hence he sought for time to file return. Ultimately, when the assessee filed the return under Form No. 2B, as already noted in the preceding paragraph, the assessee mentioned the block period as ascertained from the Income Tax Officer and said fact is stated by the assessee in the return filed by him. Thus, when the assessee received the notice issued on 5.8.99, the assessee had no doubt as to the nature of proceedings initiated, the purpose of the said proceedings and the block period for which proceedings were initiated. In the circumstances, it is too late for the assessee to contend that non mentioning of the block period would defeat the assessment proceedings. In the circumstances, we reject the assessee's contention.

18. As regards the contention of the assessee that the statement recorded was in violation of provisions of Code of Civil Procedure and Code of Criminal Procedure, we do not think that the said contention would be well received by this Court. The conduct of the assessee has to be seen herein. The assessee made a statement in the enquiry conducted by the department as regards the parting of a sum over and above what was recorded in the sale deed. A reading of the questions and answers which are extracted in the preceding paragraph shows that the assessee was well aware of the content of the statement made by him. The statement was recorded in the year 1999 and the assessee thereafter too participated in the enquiry until 2003 and he had no doubt about the truthfulness of the statement made. However, for some reason best known to him, the assessee in the letter on 26.6.2003, took a plea that the statement were not recorded in the presence of DDIT (Investigation) and statements were not given voluntarily. It may be seen that the assessee is stated to have written a letter on 12.6.2003 and 26.6.2003 and it is relevant to point out that the so called retraction came to be made only in the letter dated 26.6.2003, which clearly shows that it is merely an after thought to say that he made the statement under threat or coercion. Consequently, this ground fails.

19. As far as the recording of the statement not being in the presence of DDIT (Investigation) is concerned, on a factual finding made by the Tribunal that the statement was recorded in the presence of DDIT (Investigation), the contention of the assessee that the statement was recorded in violation of provisions of Order 18, Rules 5 & 8 of Code of Civil Procedure and Section 164 of the Code of Criminal Procedure fails.

20. As far as relevancy of the retraction statement is concerned, in the decision reported in [2008] 16 SUPREME COURT CASES 537 _x0016_ VINOD SOLANKI v. UNION OF INDIA, the Apex Court considered the similar contention, wherein the Apex Court pointed out that merely because a statement is retracted, it cannot be treated that the first statement was involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc., to establish that such improper means has been adopted. Going by the above said decision, taking note of the time of retraction, in the absence of any materials to substantiate the said contention, coupled with other

material documents available in the form of seizure made on the premises of Kathirvel and Arumugam and the consistency in the answers made by the assessee, we reject the contention of the assessee that the department committed serious error in ignoring the retraction. The decision referred to by the assessee reported in [2008] 16 SUPREME COURT CASES 537 VINOD SOLANKI v. UNION OF INDIA, does not in any manner advance the case of the assessee and the same has to fail. The said decision in fact fully supports the contention of the Revenue.

21. As far as the third contention that the assessment had not been made taking note of the independent materials is concerned, here too, we do not accept the contention of the assessee that the assessment was based on the materials seized from the premises of Kathirvel and Arumugam, who were parties to the sale transaction as well as on the basis of the statement recorded under Section 131 from the assessee, as such, it cannot be held that the assessment was based just on the statement recorded from the assessee.

22. Considering the above facts, we have no hesitation in confirming the order of the Tribunal. Consequently, we reject the plea of the assessee and thereby, the order of the Tribunal is confirmed. The Tax Case (Appeal) is dismissed. No costs.

To

1. The Assistant Commissioner of Income Tax, Central Circle -I, Coimbatore.
2. The Income Tax Appellate Tribunal, D Bench, Chennai