IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2012

Coram

The Honourable Mrs.Justice CHITRA VENKATARAMAN

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case (Appeal). No.1240 of 2006

A.Rakesh Kumar Jain
Prop.Supreme Computers
18/18, Majestic Plaza
Narasingapuram Street
Mount Road, Chennai-600 002 .. Appellant

-vs-

The Joint Commissioner of Income Tax
Central Range IV
Chennai-600 034 .. Respondent

Tax Case (Appeal) against the common order dated 02.10.2005 passed by the Income Tax Appellate Tribunal, Chennai in IT (SS) A.No.82/Mds/2005 for the Block period 01.04.1995 to 31.03.2001 and 01.04.2001 to 12.12.2001.

For Appellant : Mr.T.N.Seetharaman

For Respondent : Mr.M.Swaminathan

Standing Counsel for Income Tax

Department

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 Chennai passed in IT (SS) A.No.82/Mds/2005 for the Block period 01.04.1995 to 31.03.2001 and 01.04.2001 to 12.12.2001 raising the following questions of law:-

" 1. Whether the Tribunal was right in law in upholding the block assessment made under Section 158BC of the Act especially when legally acceptable evidence was singularly absent ?

2. Whether the Tribunal was right in holding that the proceedings are not barred by limitation under Section 158BE especially when the execution of the warrant was mechanically extended without any justification ?

3. Whether the Tribunal was right in holding that the sum of Rs.40 lakhs constituted undisclosed income as per the provisions of Chapter XIV B of the Income Tax Act, 1961 which is a code by itself ?

4. Whether the Tribunal exercised the discretion in a judicial manner while refusing to entertain additional evidence as though it is an afterthought failing to appreciate that Income tax litigation is not adversarial in nature ?

5. Whether the Tribunal was right in holding that the bad debt claim cannot be allowed while computing the undisclosed income in a block assessment when there cannot be any books of account that can be maintained ?"

2. The assessment herein relates to one under Chapter XIV-B of the Income Tax Act, 1961 (hereinafter called as the "Act"). The facts are not in dispute. The Revenue herein conducted search initiation operation on 12.12.2001. A Prohibitory order was issued on 13.12.2001. Based on the search authorisation dated 03.12.2001, the search at the assessee's premises commenced on 12.12.2001 at 10.30 a.m., noting that the "search continues", the proceedings was closed on 13.12.2001 at 5.45 a.m.

Evidently, there was certain materials seized at the time of inspection. A panchanama evidencing the seizure of materials was also drawn.

3. It is a matter of record that on 08.02.2002, on 15.02.2002, further panchanamas were drawn evidencing issuing of prohibitory order. Based on these details, the Revenue took the view that the assessment made under Section 158BC of the Act on 27.02.2004 was within the limitation prescribed under Section 158BE read with Explanation 1 for passing the order under Section 158 BC.

4. The assessee contended that the prohibitory orders drawn after 13.12.2001 i.e., on 08.02.2002 and 15.02.2002 were not in relation to any search conducted pursuant to any authorisation issued, that, even though while first of the panchanama was drawn noting that the "search continued" and there were prohibitory orders made on 13.12.2001 or 08.02.2002, nevertheless, the prohibitory orders made not being in pursuance of any fresh authorisation, the limitation could not be calculated from 15.02.2002, but only from 13.12.2001. Going by that, the two year period for passing the assessment order expired on 31.12.2003 ; as the assessment order was passed on 27.02.2004, hence, beyond the period of limitation, the same was invalid and contrary to the provisions. Aggrieved by the assessment made, the assessee filed appeal before the Income Tax Appellate Tribunal.

5. In the course of hearing, the Revenue relied on the decision of the Special Bench of the Tribunal, Bangalore in the case of

C.Ramaiah Reddy Vs. ACIT, reported in 87 ITD 439 (Bang)(SB). The Income Tax Appellate Tribunal held that the issue raised was squarely covered by the Special Bench of the Tribunal, consequently, the plea of limitation was not sustainable. The Tribunal held the merits of the case as against the assessee and thus it ultimately dismissed the appeal. Aggrieved by this, the assessee is on appeal before this Court.

6. Even though the assessee has also raised questions on the merits of the assessment apart from the legal issue on limitation to pass the assessment order, we feel it is suffice for us to consider the question of jurisdiction by reason of the limitation starring at the assessment.

7. Learned counsel appearing for the assessee placed before us the orders of this Court in the unreported decision in T.C.1257 of 2005 and 1128 of 2010 dated 21.06.2012 (Commissioner of Income Tax IV, Chennai and P.Balaji Vs. P.Shanthi and the Deputy Commissioner of Income Tax, Chennai) as well as T.C.Nos.1470 to 1473, 1483 and 1484 of 2005 dated 21.06.2012 (Commissioner of Income Tax-IX, Chennai Vs. Usha Agarwal and others), wherein, this Court had agreed with the view of the Karnataka High Court in the case of C.Ramaiah Reddy Vs. Assistant Commissioner of Income-Tax (IMV) reported in (2011) 339 ITR 210 as well as the Delhi High Court decision in the case of Commissioner of Income-Tax Vs. Anil Minda reported in (2010) 328 ITR 320 that going by Explanation 1 to sub-clause (1) of Section 158BE of the Act, the limitation has to be looked at from the last of the Panchanama drawn indicating the conclusion of the search conducted as per their authorisation.

8. Learned counsel appearing for the assessee submitted that even though the said decisions are cases of multiple warrants of authorisation, yet, the decision of the Karnataka High Court would answer the issue raised herein. He further pointed out that considering the fact that the appeal order of the Tribunal rested on the decision of the Special Bench of the Tribunal in the case of C.Ramaiah Reddy (cited supra), which was reversed by the Karnataka High Court, the assessee merits to succeed on the ground of limitation.

9. Per contra, learned Standing Counsel appearing for the Revenue submitted that even though there may not be several of authorisations issued, it is only the drawing of the panchanama which has to be taken note of for the purpose of working out the limitation. Referring to Explanation 1 to Section 158BE of the Act, learned Standing Counsel for the Revenue pointed out that the purpose of the Explanation introduced itself was to save limitation in cases, when more than one panchanama is drawn, where last panchanama in relation to any person, in whose case, warrant was issued has to be taken note as starting point of panchanama drawn.

10. We had in our earlier unreported decision expressed our agreement with the decision of the Karnataka High Court and Delhi High Court. It is no doubt true that the decision given by us related to the multiple authorisations issued, nevertheless, we may note that the Karnataka High Court considered elabortely a case similar to the facts here.

11. Before going into the merits of the contention, sub-clause

(1) of Section 158BE reads as under:

" Time limit for completion of block assessment

158 BE (1) The order under Section 158BC shall be passed-

(a) within one year from the end of the month in which the last of5ears from the end of the month in which the last of the authorisations for search under Section 132 or for requisition under Section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents, or any assets are requisitioned on or after the 1st day of January, 1997."

A reading of the above section show that it consciously takes note of the cases of more than one authorisation for search issued. In such cases, the Explanation provided for the deemed conclusion to the execution of the warrant as extended to the last of the panchanama in relation to the person, in whose case authorisation was issued. But, could the Explanation be extended to a case of single authorisation issued but with panchanamas of more than one drawn ?

12. We do not subscribe to the view of the Revenue based on the Explanation that several of the authorisations drawn and executed on different dates and the several panchanamas drawn would have bearing to a case of single authorisation for search, but showing several panchanamas. In this connection, reasoning of the Karnataka High Court in the case of C.Ramaiah

Reddy (cited supra) in paragraph 77 would be of relevance.

" The panchnama referred to in Explanation 2 to the said section specifically refers to search under Section 132 and Section 132 specifically refers to authorisation to enter and search and it has no reference to entering and searching the premises which are the subject-matter of prohibitory order or restraint order. No authorisation is required to enter the premises and inspect the materials which are the subject-matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials which are the subject-matter of those orders and it also empower them to seize any incriminating material. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for the purpose of the block assessment in pursuance of search under Section 132(1) of the Act. The panchnama evidencing such inspection and seizure would be the last panchnama in respect of the said premises. But for the purpose of limitation under Section 158BE, it would not be the last panchnama drawn in proof of conclusion of search, as defined in Explanation 2 to Section 158BE. For the purpose of limitation, there can be only one search and one panchnama."

13. As reasoned out therein, there could be only one authorisation and a panchanama drawn as regards the conduct

of the search, i.e., once when the search party concluded the search and leaves the premises after carrying with them the seized material, the authorisation for the search is fully implemented upon and execution completed. There afterwards , if the Department has to enter the premises again, as by way of search, certainly, one requires fresh authorisation ; however, as stated by the Karnataka High Court, no such authorisation is required to enter the premises to inspect the materials, which are the subject matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials, which are the subject matter of those orders. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for the purpose of the block assessment in pursuance of search under Section 132(1) of the Act. Thus, the panchanama evidencing such inspection and seizure would be the last panchanama in respect of the said premises. But for the purpose of limitation under Section 158BE, it would not be the last panchanama drawn in proof of conclusion of search, as defined in Explanation 2 to Section 158BE. For the purpose of limitation, there can be only one search and one panchnama as reasoned out by the Karnataka High Court.

14. Referring to the Kerala High Court decision in the case of Dr.C.Balakrishnan Nair Vs. CIT reported in (1999) 237 ITR 70 (Ker), the Karnataka High Court held that there is no provision in the Criminal Procedure Code or in the Income Tax Act therein, for postponing the search for such a long period. It is worthwhile to extract the decision of the Karnataka High Court,

which in clear terms brings out the concept of search and validity of the authorisation issued for the search.

" Similarly, in circumstances not covered under those provisions, it is open for him to pass a prohibitory order under sub-section (3) not amounting to seizure which order will be in force for a period of 60 days after securing the possession of the materials, articles etc., in the aforesaid manner. Action under Section 132(3) of the Income Tax Act can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income. Power under Section 132(1)(iii) of the Income-tax Act thus cannot be exercised, so as to circumvent the provisions of Section 132(1)(iii) read with section 132(1)(v) of the Income Tax Act. It is open for the authorised officer to visit the place for the purpose of investigation securing further particulars. Under the scheme, the law provides for such procedure. But not when he visits the premises for further investigation for the materials already secured. It does not amount to search as the materials to be looks into and investigated is already known and is the subject-matter of a prohibitory order or a restraint order. Though it is not seizure or deemed seizure, it amounts to deemed possession. What is in your possession is to be looked into to find out, is there any incriminating material. It does not amount to search as understood under Section 132 of the Act. It is only because of paucity of time he has gone back and wants to come back and look into the matter leisurely. There is no provision in the Criminal Procedure Code or in the Income-tax Act or the rules for postponing the search for a long period. Then, the concept of

search as understood either under the provisions of the Criminal Procedure Code or the Act which are made applicable expressly, would lose its meaning. "

15. As already seen, merely because, more than one panchanama is drawn in the given case on one authorisation, one cannot construe that the subsequent and the last of the panchanama issued as one flowing out of the search as a last of the panchanama referrable to Explanation (2) to Section 158BE. Once the warrant of authorisation has been issued and the premises is searched and the search party leaves the premises, there is the end of the search and what could be postponed is only seizure of the articles and issuance of prohibitory order ; however, limitation for the completion of the block assessment begins on the conclusion of the search and issuance of panchanama and in case of single authorisation, the moment such party leaves the premises by drawing of the panchanama noting conclusion of the search, the limitation period begins.

16. Going by the facts herein, viz., as to the search completed on 13.12.2001 with drawing of the panchanama and the search party leaving the premises, the mere fact that the panchanama contain the observation that "search continues" per se would not enable the search party to keep the search in a suspended animation to carry on the search in future date to contend that the limitation has to be worked out on the last panchanama drawn ie. 15.02.2002, thus calculating the limitation from 15.02.2002. We have no hesitation in accepting the case of the assessee that the limitation ends on 31.12.2003. The contention of the Revenue that the limitation has to be taken as 29.02.2004 does not go with the provisions of the Act. In

such circumstances, the Tax Case Appeal is allowed. Accordingly, we set aside the order of the Income Tax Appellate Tribunal. No costs.

To

1. The Joint Commissioner of Income Tax, Chennai

2. The Income Tax Appellate Tribunal, Chennai Bench 'A'

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