(2011) 08 PAT CK 0129

In the Patna High Court

Case No : Misc Appeal No. 579

Arun Kumar Agarwal APPELLANT

Vs

Commissioner of Income Tax, Central Circle, Patna RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Income Tax Act, 1961 — Section 143(3), 158B(b), 158BC, 158BE(1)(b), 158BH

Citation : (2012) 2 PLJR 573

Hon'ble Judges : S.K. Katriar, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : K.N. Jain, for the Appellant; Rishi Raj Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—These are appeals u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as ''the Act''). The appellants of the two appeals are husband and wife, are engaged in the same and/or overlapping business, and raise common issues of law. There are minor variations of facts with respect to the two appeals which would be indicated separately, if needed. Both the appeals relate to block assessment for the period AY 1991-1992 to 2000-2001 (upto August 30.8.2001), under the provisions of Section 158BC of the Act. The appellants have framed the following substantial questions of law for our consideration in the two appeals:-

1. Whether on the admitted facts and circumstances of the case and the materials on record the impugned assessment order dated 29.8.2002 is barred by limitation u/s 158BE of the Income Tax Act, 1961 and consequently illegal, unauthorized and without the sanction of law and fit to be set aside?

2. Whether when the income derived from the various assets have been duly declared in the regular returns, the related assets thereto also stand disclosed, particularly because there is neither any specific provision nor any column in the

prescribed return form requiring for their specific disclosure as such?

3. Whether the investments made in the aforesaid assets can be considered to represent undisclosed income within the meaning, of Sec. 158B(b) and if not (sic) the unexplained amount be (sic) only under the normal procedure prescribed u/s 143(3) and not under the special procedure prescribed u/s 158BC of the Act?

M.A. No. 579 of 2007

2. There was a search and seizure of the common residence and business premises of the two appellants on 28.6.2000, which concluded with search and seizure of the bank locker in their joint names on 30.8.2000. The appellant had submitted his returns. On a consideration of the entire materials on record, the learned Assistant Commissioner of Income Tax, Patna, being the Assessing Officer, passed order of assessment on 29.8.2002, whereby he assessed the appellant to tax. Aggrieved by the order of the learned Assessing Officer, the appellant preferred appeal before the learned Commissioner of Income Tax (Appeals), Patna, which was disposed of by order dt. 20.1.2004, whereby certain reliefs were granted to the appellant, and certain additions were also made. Aggrieved by this order, the appellant as well as the Revenue preferred separate appeals before the learned Income Tax Appellate Tribunal, Patna Bench, which were disposed of by a common order dated 27.7.2007, whereby the appeal filed by the assessee was dismissed, and that of the Revenue was allowed in part. Aggrieved by the order of the learned Tribunal, the assessee has preferred the present appeal under the provisions of Section 260A of the Act, and impugned herein.

3. While assailing the validity of the impugned order, learned counsel for the appellant submits that if 28.6.2000 is taken to be last date of search, then the order of assessment is hit by the bar of limitation engrafted in Section 158BE(1)(b) of the Act. He relies on the judgment of Allahabad High Court in CIT vs. Vandana Verma, (2011) 330 ITR 533 (paras 37 and 38). An order u/s 158BC of the Act has to be passed within a period of two years from the date of search and seizure as contemplated by Section 158BE(1)(b) of the Act. He relies on a Division Bench judgment dated 25.10.2007 of the Delhi High Court in Commissioner of Income Tax Vs. Rajhans Aromatics, , and against which leave to appeal was rejected by the Supreme Court by order dated 29.10.2010, passed in SLP (Civil) No. 31207 of 2000, reported in 2000 ITR 334 Page 1 (Statutes). He next submits that if the order of assessment is hit by the bar of limitation, then the order on merits is of no effect. He relies on the following reported judgments:-

(i) Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, .

(ii) Commissioner of Income Tax, Delhi, Central-I Vs. Escorts Farms P. Ltd., .

He submits in the same vein that a mandatory provision of law cannot be waived or overlooked. He relies on the judgment in Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others, . He also submits that the question of jurisdiction can be raised at any stage. He relies on the judgment of a Division Bench of the Bombay High Court in Inventors Industrial Corporation Ltd. Vs. Commissioner of Income Tax, . He submits that the question of limitation is a substantial question of law. He relies on the judgment of the Supreme Court in Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., . He next submits that the three items dealt with by the learning Assessing Officer on facts, namely, cash amount, unexplained amount, and unexplained income in cash were already disclosed in the returns. The same can, therefore, be considered in regular proceedings and not in block period assessment. He relies on a Division Bench judgment of the Delhi High Court in CIT vs. Bluechip Construction Company, (2007) 213 CTR 530. He lastly submits that the learned Tribunal has erred in deciding adversely on the question of FDR in the name of two daughters of the appellant from the first wife. The power of assessment is of the learned Assessing Officer, and the learned appellate authority cannot trace a new source of income for assessment. The same was indeed a gift from the grandfather and, therefore, the appellant cannot be held liable.

4. Learned counsel for the respondents has supported the impugned order. He submits that the search had started on 28.6.2000, and concluded on 30.8.2000. The period of two years in terms of Section 158BE(1)(b), commenced on 30.8.2000. The order was passed within two years from the date of execution of the last authorization. He relies on the judgment of a Division Bench of the Delhi High Court in Commissioner of Income Tax Vs. Shri S.K. Katyal, . He next submits that the issues are concluded by findings of fact. He relies on the following reported judgments:-

(i) Judgment of the Supreme Court in K. RAVINDRANATHAN NAIR Vs. COMMISSIONER OF INCOME TAX, .

(ii) Judgment of a Division Bench of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Vippy Solvex Products Ltd., .

(iii) Judgment of a Division. Bench of J&K High Court in Sudesh Kumar Vs. Commissioner of Income Tax and Others, .

He further submits that there is a presumption about search and seizure in terms of Section 292C of the Act that the document belongs to the person in whose premises it was seized. The FDRs in the name of the two daughters were found during the course of search and seizure, and the question as to who is the donor is essentially a question of fact. He submits in the same vein that Section 158BH is applicable. He submits that investments made in construction is a question of fact. He relies on the judgment of the Division Bench of the Allahabad High Court in Commissioner of Income Tax Vs. Sudarshan Dass Bhasin, . He further submits that the addition u/s 69 of the Act on the basis of estimation is a question of fact.

He relies on the judgment of the Division Bench of the Allahabad High Court in Anjani Alankar Mandir Vs. Commissioner of Income Tax, . He also relies on the following reported judgments:-

(i) M. Janardhana Rao Vs. Joint Commissioner of Income Tax,

(ii) Division Bench judgment of this court in Dy. Commissioner vs. Sulabh International Social Organization, 2011(3) BBCJ 117

(iii) Sudesh Kumar Vs. Commissioner of Income Tax and Others,

5. Learned counsel for the appellant has in reply submitted that the findings of facts bind this Court in appeal u/s 268 of the Act, except perverse findings of fact. He relies on the judgment of Deputy Commissioner vs. Sulabh International Social Organization (supra) (para 7).

6. We have perused the materials on record and considered the submissions of the learned counsel for the parties. It is evident on a perusal of the materials on record that the search and seizure had commenced on 28.6.2000, in the joint office and residential premises of the two appellants, and had concluded on 30.8.2000 on which date the joint locker of the two appellants was searched. The learned Assessing Officer passed the order of assessment on 29.8.2002, which is obviously within a period of two years from date of the last requisition and execution of the authorization thereof in terms of Section 158BE(1)(b) of the Act. The position is so evident in view of the facts on record that it does not admit of any argument, nor the support of a precedent. The elaborate and wholly irrelevant arguments on behalf of the appellant is without any substance at all. The contention on behalf of the appellant on the ground of limitation is rejected.

7. Learned counsel for the respondents is right in his submission that facts have been examined in detail by the learned three authorities under the Act. In fact, such close has been the application of the mind on issues of facts that the learned appellate authority made variations in the order of the learned Assessing Officer on facts giving rise two appeals before the learned Tribunal--one at the instance of the assessee, and the other one at the instance of the Revenue. The learned Tribunal examined the issues of facts very closely, rejected the appeal of the assessee, and allowed that of the Revenue. Indeed the issues are concluded by findings of facts. Except minor variation of findings of facts, most of the findings are common to the orders by the learned three authorities under the Act. The hair-splitting arguments before us by the learned counsel for the appellant on facts could have been advanced before the learned Assessing Officer and are least fit to be advanced in an appeal u/s 260A of the Act.

8. The scope of Section 260A of the Act has been the subject matter of a large number of authoritative pronouncements of the Supreme Court, and followed by various High Courts. Reference may be made to the Division Bench judgment of this Court to which one of us (S.K. Katriar, J.) was a party, in Deputy Commissioner vs. Sulabh International Social Organization (supra). Relying on

the judgment of the Supreme Court in M. Janardhana Rao vs. CIT (supra), this Court held that an appeal u/s 260A of the Act shall lie before this Court only if it raises a substantial question of law. This Court had also taken the opportunity to examine the authoritative pronouncements of the Supreme Court as to the scope and ambit of Section 260A of the Act read with Section 100 of the Code of Civil Procedure. Appeals under both the provisions would be maintainable only if it raises a substantial question of law which has acquired a definite connotation by judicial pronouncements. Furthermore, Second Appeal u/s 100 of the CPC is the third forum for the appellant, whereas appeal u/s 260A of the Act is the fourth forum for the appellant.

9. In view of the discussions in the orders of the learned authorities under the Act, we are of the view that the issues are concluded by findings of facts, and no question of law, much less a substantial question of law, arises in the present appeal. Learned counsel for the respondent has rightly relied on the judgment of the Division Bench of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Dr. Ashok Jain, , wherein it has been held that ".......it is only when the factual finding is entirely de hors the subject, or it is based on no reasoning, or it is absurd to the extent that no reasonable prudent man can ever reach such conclusion, or it is against the provision of law, that a case for substantial question of law is made out...." It would bear repetition to state that the discussion on the issues of fact in the orders of the three learned authorities under the Act are very well discussed, and are valid findings of facts. No ground for interference is made out. M.A. No. 579 of 2007 is hereby dismissed.

10. M.A. No. 578 of 2007 The department had conducted common search and seizure in the joint office and residential premises of the aforesaid Arun Kumar Agrawal and Smt. Bina Agrawal, who are husband and wife. The search and seizure had commenced on 28.6.2000, and had concluded with the search and seizure of the locker in their joint names on 30.8.2000. The learned Assessing Officer passed the order of assessment on 29.8.2002, for the block period AY 1991-1992, till the date of search on 30.8.2000. Aggrieved by this order, Smt. Bina Agrawal preferred appeal before the learned Commissioner of Income Tax (Appeals), Patna, who allowed the appeal in part, and substantially dismissed the same by order dated 20th January, 2004. The order of the learned Assessing Officer was substantially upheld, and certain additions were made by him. Aggrieved by this order, the appellant and the Revenue filed separate appeals which have been dismissed by a common order dated 6.7.2007, passed by the learned Tribunal, and impugned herein. Except variation of minor facts which are of no consequence in disposal of this appeal, the basic facts in this appeal are in common with that of M.A. No. 579 of 2007. The present appeal is entirely covered by the aforesaid order in M.A. No. 579 of 2007. There is no merit in this appeal. M.A. No. 578 of 2007 is accordingly dismissed. In the result, M.A. No. 579 of 2007, and M.A. No. 578 of 2007, are dismissed. The substantial questions of law are answered against the appellants, and in favour of the Revenue. In the circumstances of the case, there shall be no order as to costs.

Ahsanuddin Amanullah, J.

I agree.

