(2006) 04 KAR CK 0047

In the Karnataka High Court

Case No : Writ Petition No. 33039 of 2003

B.N. Reddy APPELLANT

Vs

Assistant Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 17-04-2006

Acts Referred:
Income Tax Act, 1961 — Section 132, 142 (2A), 158 BC, 158 BH, 288 (2)

Citation : (2006) ILR (Kar) 2234 : (2006) 284 ITR 245

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : K.P. Kumar and A. Shankar, for the Appellant; M.V. Seshachala, for the Respondent

Final Decision : Dismissed

Judgement

Mohan Shantanagoudar, J.—Heard Sri K.P. Kumar, learned senior advocate appearing for Sri A. Shankar for petitioner and Sri M.V. Seshachala, learned Central Government standing counsel, appearing on behalf of the respondents and perused the material on record.

2. The notices dt. 31st Jan., 2003 issued u/s 158BC of the IT Act 1961 (Act for short) vide Annex.-B and dt. 30th Jan., 2003 issued u/s 142(2A) of the Act vide Annex.-C are called in question in this writ petition.

3. This Court does not find any illegality in the notice Annex.-B issued u/s 158BC of the Act. By issuing said notice, the AO has merely requested the petitioner to prepare a true and correct return of his total income including the undisclosed income assessable for the block period. Thus, it is open for the petitioner to file his statement in answer to the said notice at Annex.-B. Hence, the challenge to notice at Annex.-B must fail and no interference is called for by this Court.

4. Insofar as the notice at Annex.-C issued u/s 142(2A) of the Act by the Asstt. CIT is concerned, the same is sought be challenged mainly on the ground that the same is not preceded by the assessment proceedings and that there cannot

be any complexity of the accounts of the assessee inasmuch as, during seizure only few pages of the accounts are seized.

5. Learned senior counsel appearing on behalf of the petitioner vehemently submits that the search of the premises of petitioner was conducted on 16th Jan., 2001 and the search proceedings were completed on the very day. Then the matter was kept in cold storage till 30th Jan., 2003, on which date, the notice u/s 142(2A) of the Act vide Annex.-C was issued against the petitioner. He argued that as notice issued u/s 158BC of the Act was on 31st Jan., 2003, the proceedings relating to assessment are deemed to have been commenced only on 31st Jan., 2003. In other words, he submits that the assessment proceedings have commenced from the date of issuing notice vide Annex.-B, i.e., on 31st Jan., 2003 and that therefore, the proceedings could not be said to have been pending prior to that date. Thus, according to him, as the proceedings relating to assessment were not pending as on 31st Jan., 2003, the notice u/s 142(2A) of the Act could not have been issued by the concerned authority, inasmuch as the same is premature. Hence, he prays for quashing of the notice at Annex.-C.

6. In this regard, it is relevant to note the provisions of Sub-section (2A) of Section 142 of the Act which reads thus :

(2A) If, at any stage of the proceedings before him, the AO, having regard to the nature and complexity of the accounts of the assessee and the interests of the Revenue, is of the opinion that it is necessary so to do, he may, with the previous approval of the Chief CIT or CIT, direct the assessee to get the accounts audited by an accountant, as defined in the Explanation below Sub-section (2) of Section 288, nominated by the Chief CIT or CIT in this behalf and to furnish a report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed and such other particulars as the AO may require.

The bare reading of the above provision makes it clear that there must be application of mind on the part of the AO for an eventuality which necessitates exercise of power under Sub-section (2A), namely, (a) the nature and complexity of the accounts and (b) the interests of the Revenue. The aforesaid provision further makes it clear that while passing an order under Sub-section (2A) of Section 142 of the Act, the proceedings should be pending before the AO.

7. It is not in dispute that in the case on hand, the petitioner''s premises were searched on 16th Jan., 2001 and certain documents were recovered from the petitioner, as could be seen from Annex.-A (seizure Panchanama). The search was commenced at 8.45 a.m. on 16th Jan., 2001 and ended at 7.15 p.m. on the very day. The petitioner is working as business manager in M/s Maxwell Industries Ltd., which is being assessed in Bombay. Said M/s Maxwell Industries Ltd., was also searched on 16th Jan., 2001. The respondent, with a view to centralize the assessments pertaining to the said firm with one officer so as to enable him to complete assessments in an effective manner, the proceedings for

transferring the jurisdiction of the assessee from Bangalore to Mumbai was initiated by issuing letter dt. 4th March, 2002. As the assessee objected for the same, the transfer proceedings were dropped. As could be seen from the additional statement of objection filed by the respondent, all the seized materials disclosing the undisclosed income of the assessee were handed over to the AO on 27th Jan., 2003, The same is also borne out from the records maintained by the respondents. The AO, on receipt of search material has observed amongst others in his report as under :

The assessee has not maintained proper books of account. In the absence of up-to-date statements of accounts for various years, it would be difficult to pass the assessment order. There are several bank transactions of which the position as to whether the assessee has accounted in his books or not, is not known. Keeping in view the complex nature of accounts involved and also the interest of Revenue, I propose to get the accounts of the assessee audited under Section. 142(2A) of the Act.

Thereafter, he proceeded to pass order u/s 142(2A) of the Act. The aforesaid observations of the AO in his appraisal report would make prima facie clear that he found that the accounts seized are complex in nature. Hence, on that ground and also in the interests of Revenue, he proposed to get the accounts of the assessee audited u/s 142(2A) of the Act.

Moreover, the question as to whether the accounts are complex in nature or not, is the pure question of fact to be determined by the AO only. The said preliminary conclusion regarding complexity of accounts is based on subjective satisfaction of the AO. In view of the same, in my considered opinion, the AO has applied his mind before passing the order u/s 142(2A) of the Act. He also found that the nature of accounts in question is complex in nature.

8. Now the only question that remains to be considered by this Court is as to whether the proceedings were said to be pending before the AO at the time of passing an order u/s 142(2A) of the Act or not ?

9. It is relevant to refer at this stage to the Expln. 2 of Section 132 of the Act which reads thus :

Explanation 2 : In this section, the word ''proceeding means any proceeding in respect of any year, whether under the Indian IT Act, 1922 (11 of 1922) or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

It is clear from the said Explanation that after search, the proceedings awaiting assessments can be safely termed as pending proceedings for the purpose of the Act. The special procedure for assessment in search cases is prescribed in Chapter XIV-B of the Act. Section 158BH of the Act makes it further clear that all the provisions of IT Act shall apply to assessment made under Chapter XIV-B. Thus, the provisions of Section 132 including Expln. 2 and Section 142(2A) of the Act shall apply to the procedure for assessment made in search cases. Chapter XIV-B not. only contemplates passing of block assessment order in the case of search but also prescribes the procedure for passing assessment order such as issuing notice and adopting the provisions of Section 142(2A) of the Act. Thus, it is clear that Chapter XIV-B is the special machinery provided for passing the assessment orders in search cases.

10. Looking to the scheme of Chapter XIV-B of the Act, in my considered opinion, the machinery for passing the assessment orders in search cases commences with the search itself and after search, various stages may take place and ultimately, the same may culminate in the assessment order. In this view of the matter, the contention of the learned senior counsel, that since notice u/s 158BC is issued by the AO on 31st Jan., 2003, the proceedings prior to that date cannot be treated as assessment proceedings, cannot be accepted.

11. By issuing notice u/s 158BC of the Act, the concerned AO has merely directed the petitioner to furnish a fresh return of income. Said notice issued u/s 158BC cannot be treated as the notice issued for commencement of assessment proceedings. On the other hand, as aforesaid, the proceedings can be said to have been pending from the date of search itself. As the assessment proceedings in this case are based on search and seizure, the assessment proceedings will start from the date of search itself. As stated earlier, the AO, was entrusted with the file on 27th Jan., 2003, i.e., prior to the date of issuing of notice at Annex.-C u/s 142(2A) of the Act. The assessment proceedings in this case are in the nature of suo motu proceedings and they are commenced by the respondents by initiating search and seizure proceedings. The assessment proceeding cannot be independent of the search and seizure proceedings under Chapter XIV-B of the Act, which chapter specifically deals with special procedure relating to assessment in search cases. In view of the same, it cannot be said that no proceedings are pending on the date of passing of order u/s 142(2A) of the Act. Hence, I do not find any illegality in the impugned notice at Annex.-C issued u/s 142(2A) of the Act. Viewed from any angle, the writ petition is devoid of merits and the same is liable to be dismissed.

Writ petition is dismissed accordingly.

