(2014) 01 GUJ CK 0150

In the Gujarat High Court

Case No : Tax Appeal No. 1069 of 2013

CIT — APPELLANT

Vs

Bharat G. Patel — RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:
Income Tax Act, 1961 — Section 142, 143, 143(2), 143(3), 158BC

Citation : (2014) 01 GUJ CK 0150

Hon'ble Judges : Sonia Gokani, J;Akil Abdul Hamid Kureshi, J

Bench : Division Bench

Advocate : Varun K. Patel, Advocates for the Appellant

Judgement

Akil Abdul Hamid Kureshi, J.—Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 28-6-2013 raising following questions for our consideration:--

"(a) Whether in the facts and circumstances of the case, the learned ITAT has erred in law in confirming the order of Commissioner (Appeals) quashing the assessment order under section 158BC of the Income Tax Act?

(b) Whether in the facts and circumstances of the case, the learned ITAT has erred in law in holding to the effect that omission to issue notice under section 143(2) in time cannot be a procedural irregularity and is not curable?

(c) Whether in the facts and circumstances of the case, the learned ITAT has erred in law in ignoring the provisions of section 292BB of the Income Tax Act while holding to the effect that the original assessment order under section 158BC of the Income Tax Act, was bad in law as notice under section 143(2) was not issued within the prescribed time?"

2. In nutshell issue is single, namely, validity of block assessment proceedings in absence of notice issued under section 143(2) of the Income Tax Act, 1962 ("the Act" for short) within the prescribed time limit.

3. Briefly stated the facts are that for the block period between 1.4.1987 to 17.6.1997 the assessment was undertaken by the Assessing Officer in the case of the respondent assessee. The assessment order first gave rise to a revisional order under section 263 of the Act by the Commissioner. The assessee also challenged the order before the Appellate Commissioner, who at one stage passed an order which was adverse to the assessee, upon which the assessee approached the Tribunal. The Tribunal remanded the proceedings before Commissioner (Appeals) with certain observations asking the Appellate Commissioner to pass fresh order in accordance with law.

4. In the second round, the Appellate Commissioner passed order dated 11-2-2008 annexed at Annexure-B to the appeal and held that in absence of a valid notice under section 143(2) of the Act within the time permitted, the block assessment order itself was invalid. He accordingly declared the same as bad in law and refused to enter into the merits of the additions made by the Assessing Officer.

5. The order of Commissioner (Appeals) came to be challenged by the Revenue before the Tribunal. The Tribunal by the impugned order dated 28.6.2013 confirmed the view of Commissioner (Appeals) and dismissed the Revenues appeal. The Tribunal placed reliance on the decision of the Apex Court in the case of Assistant Commissioner of Income Tax and Another Vs. Hotel Blue Moon, . The Revenue is thereupon before us in the present appeal.

6. Having heard learned counsel Mr. Varun Patel and having perused the documents on record, we have no hesitation in confirming the decision of the Tribunal.

7. Admitted facts are that for the block assessment, the Assessing Officer did not issue notice under section 143(2) of the Act within the time permitted. Though such notice was issued, it was delayed by over six months. It is well settled by the decision of the Supreme Court in the case of Hotel Blue Moon (supra) that notice under section 143(2) would be mandatory even in case of block assessment proceedings. It was held that issuance of notice is mandatory, it is the notice which is the very foundation of the jurisdiction of the Assessing Officer. It was held that notice under section 143 would be necessary to check the return if the assessment is to be completed under section 143(3) read with section 158BC. Notice under section 143(2) should be issued within one year from the date of filing of the block return. Omission on the part of the Assessing Officer to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable, and therefore, the requirement of notice cannot be dispensed with. It was further held and observed as under:--

16. The case of the Revenue is that the expression" so far as may be apply" indicates that it is not expected to follow the provisions of section 142, sub-sections (2) and (3) of section 143 strictly for the purpose of block assessments. We do not agree with the submissions of the learned counsel for the Revenue,

since we do not see any reason to restrict the scope and meaning of the expression "so far as may be apply". In our view, where the Assessing Officer in repudiation of the return filed under section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of section 142, sub-sections (2) and (3) of section 143.

8. In view of this position, failure on the part of the Assessing Officer to issue notice within the prescribed time must vitiate the assessment order. Counsel for the Revenue however, harped upon the Assessing Officer having issued notice though belatedly and the assessee having participated in the assessment proceedings.

9. He would draw our attention to section 292BB of the Act to contend that in view of the substantial compliance with the procedural requirement and in view of the assessees participation in the assessment proceedings, no invalidity to the assessment order should be attached.

10. We are unable to accept the contention. We have noticed that Supreme Court in the case of Hotel Blue Moon (supra) has held that even in case of block assessment notice is mandatory and the very notice gives jurisdiction to the Assessing Officer. The time limit for issuing such notice has also been specified. In view of the Assessing Officer failing to issue notice within time limit merely because the assessee participated or that the notice was issued later on would not cure the jurisdictional defect. What would be the position in view of the provisions of section 292BB of the Act is not necessary for us to opine since such provision was introduced only with effect from 1.4.2008, and therefore, was not in the statute book during the period under consideration. In the result, Tax Appeal is dismissed.

