(2012) 02 DEL CK 0411

In the Delhi High Court

Case No : ITA 190 of 2006 (Block Period 1-4-1988 to 27-10-1998)

CIT APPELLANT

Vs

Kanti Bhai Damani RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:
Income Tax Act, 1961 — Section 132, 143(3), 158BA, 158BC, 260A

Citation : (2012) 206 TAXMAN 94

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : Kamal Sawhney, for the Appellant;

Judgement

1. In the present appeal u/s 260A of the Income Tax Act, 1961 (Act, for short), which relates to block assessment period 1-4-1988 to 27-10-

1998, we are required to answer the following substantial question of law :--

Whether the Income Tax Appellate Tribunal was right in law in deleting the addition made by the assessing officer in the block assessment and

directing him to treat the protective assessment as having been made on substantive basis?

The respondent assessee is an individual and was working as a broker/agent in aluminium market. Search and seizure operation u/s 132 of the Act

was conducted on 27-10-1998. Thereafter, statutory notice u/s 158BC of the Act was issued to which the respondent assessee had filed the

return dt. 24-12-1999 declaring nil undisclosed income.

2. The respondent assessee had earlier made a disclosure of Rs. 2,85,00,000 on 23-12-1997 under Voluntary Disclosure of Income Scheme,

1997. Thereafter, certificate u/s 68(2) under the said scheme was issued to him on 24-12-1997. As per the said certificate, the cash and bank

balance declared as on 31-3-1997 was Rs. 1,28,58,390.

3. During the course of search, it appears that the respondent assessee had surrendered and cash amount of Rs. 30,10,000 was found.

4. In the block assessment proceedings, the assessing officer issued notice dt. 14-9-2000 why Rs. 30,10,000 found in cash should not be treated

as undisclosed income of the respondent assessee for the period 1-4-1998 to 28-10-1998 and added in the block assessment. In response to this

notice, the respondent assessee contended that amount of Rs. 30,10,000 was not actually found but was disclosed by him as his income to the

search party. The respondent assessee had stated that he had informed the search party that he was having cash of Rs. 25,00,000 in lump sum on

the date of the search, but no adverse inference should be drawn against him.

5. The assessing officer examined the said contention and held that cash amount of Rs. 30,10,000 was not reflected in the books of accounts. He,

however, noticed that Rs. 4,66,855 had been recorded as cash received in the name of the respondent assessee during the period 1-7-1998 to

26-10-1998. Accordingly, difference between Rs. 30,10,000 and Rs. 4,66,855, i.e., Rs. 25,43,145 was held as unexplained or undisclosed

income and an addition to this extent was made in the block assessment proceedings.

6. It appears that the assessing officer in the regular assessment proceedings had made an addition of a similar amount on protective basis out of

abundant caution.

7. In the first appeal, the respondent succeeded as the Commissioner (Appeals) deleted the said addition holding that the cash found of Rs.

30,10,000 was disclosed by the respondent assessee voluntarily. He observed that the assessing officer was required to restrict the block

assessment proceedings to recoveries in the course of search and not look into the income declared under the Voluntary Disclosure of Income

Scheme, 1997. He had held that Rs. 30,10,000 was clearly reflectible and was a part of the disclosure of Rs. 2,85,00,000 made under the

Voluntary Disclosure of Income Scheme, 1997.

8. The Revenue appealed against this order before the tribunal. The tribunal noticed the time gap between the voluntary disclosure which was

made on or about 23-12-1997 and the date of search, i.e., 27-10-1998 and observed that the cash amount of Rs. 30,10,000, which was not

recorded in the books of accounts, cannot be attributed to the voluntary disclosure. To this extent, the contention of the Revenue was accepted

and the finding recorded by the Commissioner (Appeals) was held to be bad and was reversed. Thereafter, the tribunal held that addition of Rs.

25,43,145 should not be made in the block assessment proceedings as the assessing officer had made a similar addition in the regular assessment

proceedings on protective basis. The tribunal relied upon decision of Calcutta High Court in Shaw Wallace and Co. Ltd. Vs. Assistant

Commissioner of Income Tax and Another, .

9. The aforesaid decision of the single Judge was made subject matter of challenge before a Division Bench and the decision of the Division Bench

is reported as Deputy Commissioner of Income Tax and Others Vs. Shaw Wallace and Co. Ltd., . The Division Bench noticed the amendments

made in Chapter XIV-B and addition by way of insertion of an explanation to section 158BA in view of the conflicting decisions or opinions

expressed by various courts. The said explanation was inserted by Finance (No. 2) Act, 1998 with retrospective effect from 1-7-1995 and reads

as under:

[Explanation.-- For the removal of doubts, it is hereby declared that--

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block

period;

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such

block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.]

10. Referring to the said Explanation, it has been held by the Division Bench in Shaw Wallace and Company Limited (supra) that both regular

assessment as well as the block assessment can be continued separately. Undisclosed income is a subject matter of the block assessment

proceedings, whereas in the regular assessment proceedings the assessing officer is to compute the regular income as disclosed in the books of accounts after applying the relevant provisions of the Act. It has been held :--

Considering the fact that if the regular assessment is not allowed there may be scope for escapement of assessable income. The interpretation

suggested by learned counsel for the assessee, Shri Bajoria, will run counter to the intention of the Legislature. Therefore, we are in agreement with

the view expressed by the Gujarat High Court in N.R. Paper and Board Limited and Others Vs. Deputy Commissioner of Income Tax, , and also

the view taken by this court in the case of Caltradeco Steel Sales (P.) Ltd. and Others Vs. Deputy Commissioner of Income Tax, , that there can

be a regular assessment in addition to the assessment made under Chapter XIV-B and both the proceedings that is assessment of income u/s

143(3) and assessment in the block period under Chapter XIV-B can go on simultaneously. As income assessable under Chapter XIV-B is an

''undisclosed income'' while the income assessable u/s 143(3) is not an ''undisclosed income'' that has been clarified in the Explanation that the

undisclosed income relating to that block period shall not include the income assessed in the regular assessment. Therefore, if any income is

assessed under the regular assessment that cannot be taxed twice while making the assessment of the block period. But in the returns if some

deductions have been claimed which are not permissible under the provisions of the Act of 1961, they can be assessed and taxed only in the

regular assessment.

In view of the aforesaid legal position, we have to hold that the findings recorded by the tribunal that the addition could not have been made in the

block assessment, is incorrect. The facts noted above clearly show that income/ cash of Rs. 30,10,000 had been found at the time of search and

was undisclosed income that can be brought to tax in the block assessment proceedings. Question of law is accordingly answered in negative, i.e.,

in favour of the Revenue and against the respondent assessee.

The appeal is disposed of. No costs.