(2012) 10 AHC CK 0252

In the Allahabad High Court

Case No : IT Appeal No''s. 160 and 161 of 2009

CIT APPELLANT

Vs

Parikalpana Estate Development (P.) Ltd. RESPONDENT

Date of Decision : 11-10-2012

Acts Referred:
Income Tax Act, 1961 — Section 132, 139(1), 142(1), 143, 143(2)

Citation : (2012) 10 AHC CK 0252

Hon'ble Judges : Sunil Ambwani, J;Aditya Nath Mittal, J

Bench : Division Bench

Advocate : Bharat Ji Agarwal and Dhananjay Awasthi, for the Appellant; Ashish Bansal, for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard Shri Bharat Ji Agarwal, senior advocate assisted by Shri Dhananjay Awasthi for the IT Department. Shri Ashish Bansal appears for the respondent-assessees. In these income tax appeals, the Department has raised following questions of law for consideration by the Court:

1. Whether Hon''ble Tribunal erred in holding the assessment to be void and illegal for want of service of notice u/s 143(2) whereas there is no such requirement in block search assessment proceedings because the return therein is not filed u/s 139(1) or in response to notice u/s 142(1) but in response to notice u/s 158BC.

2. Whether Hon''ble Tribunal erred in holding the assessment to be void and illegal for want of service of notice u/s 143(2) whereas the requirement of issuing notice u/s 143(2) is only procedural which may be inferred to have been acquiesced in or waived from the conduct of the assessee.

2. The search and seizure operation was carried out u/s 132 of the IT Act, 1961 (in short, the Act) on 23-8-1996 at the business and residential premises of Jindal group of cases. The notices u/s 158BD were issued and served on the

assessees. The notices u/s 142(1) were also issued subsequently along with a questionnaire. The assessees filed return of income in response to the notices u/s 158BD and also complied with the notice u/s 142(1). During the course of search the assessees had admitted having maintained some benami bank accounts. However, during the course of block assessment proceedings the statement was retracted.

3. The AO found the total undisclosed income for the block period at Rs. 1,02,000 in the case of M/s. Parikalpana Estate Developer (P) Ltd., Kanpur; and at Rs. 71,10,616 in the case of M/s. Jindal Stocks Ltd., Kanpur. Against the orders of AO the assessees filed the appeals before the CIT(A) in which an additional ground was taken that in absence of service of a valid notice u/s 143(2), the block assessment order was illegal. The Tribunal relying upon a judgment in Smt. Bandana Gogoi Vs. Commissioner of Income Tax and Another, , held that the requirement of a notice u/s 143(2) cannot be dispensed with in a case where the AO proceeds to make an enquiry for the purpose of assessment u/s 158BC and determination of taxes payable after issuing notice u/s 142(1). The Gauhati High Court held that even the assessments passed u/s 158BC(a) have to follow the provisions of sub-section (2) of section 143 of the Act.

4. Shri Bharat Ji Agarwal, appearing for the IT Department, submits that once a notice u/s 158BC has been given, and that the assessee has knowledge of the proceedings, and that the AO decided to proceed to make assessment in view of the materials found during the search, the notice u/s 143(2) was not mandatory.

5. Shri Ashish Bansal, appearing for the respondent-assessees has relied upon a judgment of Supreme Court in Assistant Commissioner of Income Tax and Another Vs. Hotel Blue Moon, , which has been followed by this Court in The Commissioner of Income Tax Alld and Another Vs. Sh. Mukesh Kumar Agrawal and IT Appeal No. 180 of 2005 (Nawal Kishore & Sons Jewellers v. CIT) decided on 10-7-2012 (reported at (2012) 79 DTR (AW 241--Ed.). He submits that in Asstt. CIT v. Hotel Blue Moon (supra) the Supreme Court has put the controversy at rest, in holding that where in response to notice u/s 158BC(a) of the Act relating to the block assessment, the AO, for any reason repudiates the return filed by the assessee, the AO must necessarily issue notice u/s 143(2) of the Act within the time prescribed. In the proviso to section 143(2), the issuance of notice is mandatory and that the very foundation of the jurisdiction u/s 158BC of the Act requires a notice to be served on the person, who is found to have undisclosed income. The requirement of notice u/s 143(2) cannot be dispensed with.

6. Shri Bharat Ji Agarwal relies on section 292BB of the Act, which was added by Finance Act, 2008 w.e.f. 1-2-2008 providing for a deeming clause in certain circumstances in which the notice is treated to be valid.

7. In CIT v. Mukesh Kumar Agrawal (supra) this Court has dealt with the purpose of insertion of section 292BB. It was held that section 292BB is a rule of

evidence, which validates the notice in certain circumstances. The newly inserted section provides that where an assessee appears in any proceedings or has co-operated in any enquiry relating to assessment or reassessment, it shall be deemed that any notice under any provisions of the Act, which is required to be served upon him, has been duly served upon him in accordance with the provisions of the Act, and such assessee shall be precluded from taking any objections in any proceedings or enquiry under the Act that the notice was not served upon him or not served upon him in time, or served upon him in an improper manner. Section 292BB is a rule of evidence for deeming the service of notice. It has nothing to do with the mandatory requirement of giving the notice and specially a notice u/s 143(2), which is a notice giving jurisdiction to the AO to frame an assessment.

8. Shri Bharat Ji Agarwal submits that in Asstt. CIT v. Hotel Blue Moon (supra) and the judgments rendered by this Court the effect of section 292BB was not considered and that the matter requires reconsideration.

9. We do not agree. In Asstt. CIT v. Hotel Blue Moon (supra) it was held that a notice u/s 143(2) is necessary, where for any reason the AO repudiates the return filed by the assessee in response to the notice u/s 158BC(a) relating to the block assessment. Rule 292BB (sic-section 292BB) of the Act is a rule of evidence, and not a rule which dispenses with the requirement of giving notice under the Act.

10. Both the questions framed by the Revenue are decided in favour of the respondent-assessee and against the Revenue. Both the income tax appeals are dismissed.