
(2014) 02 DEL CK 0086
In the Delhi High Court
Case No : ITA 2055 of 2010

CIT

APPELLANT

Vs

Umesh Chandra Gupta

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Citation : (2014) 3 AD 286 : (2014) 267 CTR 126 : (2014) 362 ITR 1

Hon'ble Judges : Ravindra Bhat, J;Rajiv Shakdher, J

Bench : Division Bench

Advocate : Balbir Singh, Sh. Rupender Sinhmar and Sh. Abhishek Singh Baghel, for the Appellant;

Judgement

Ravindra Bhat, J.—The Revenue claims to be aggrieved by an order of the ITAT (hereafter referred to as "the Tribunal") dated 20.11.2009. The Tribunal, by the impugned order, rejected the Revenue's appeal. A search was carried-out in the premises of Manoj Aggarwal on 03.08.2000; he was issued with notice u/s 158BC pursuant to which he filed revised return for the block period 1991-92 to 2001-02. The assessment in his case (hereafter referred to as "the main assessee") was completed on 29.08.2002. On 14.07.2003, apparently the Assessing Officer (AO) in the present case-dealing with the respondents' assessments-was supplied with information by the DCIT Central Circle-3. The assessee was concededly a third party and not the subject of search and seizure u/s 132. The notice was issued even later, on 14.10.2004. Apparently, the notice was served with some difficulty on 14.06.2005 to the assessee u/s 158BD. Thereafter, the assessment was completed on 30.06.2007 and an addition to the tune of Rs. 1.09 crores was sought to be made. The assessee appealed to the CIT on diverse grounds, including inter alia, that the notice issued u/s 158BD to him was beyond the time prescribed. The first appeal succeeded before the CIT (Appeals). The Revenue unsuccessfully appealed to the Tribunal.

2. The CIT (Appeals) accepted the assessee's appeal inter alia holding as follows:

XXX XXX XXX

On the basis of the above facts and circumstances, it is held that the communication dated 14.7.2003 by the AO holding jurisdiction over Major Aggarwal cannot be constructed to be the satisfaction as required by the provisions of Sec. 158BD. This letter was written after the completion of the Block Assessment of Shri Manoj Aggarwal. Therefore, this cannot be treated as a valid satisfaction, in the light of the judicial pronouncements discussed above.

Secondly, it is seen that the notice u/s. 158BD was issued on 14.6.2005 which is approximately 34 months after the framing of the assessment of Shri Manoj Aggarwal which was made on 29.8.2002. Therefore, it cannot be said that the notice was issued within reasonable time. Hence, in the light of the case laws as discussed above, it is held that the notice u/s. 158BD was issued well beyond a reasonable period of time.

Since, the above finding are sufficient to dispose of the appeal in favour of the appellant, it is unnecessary to deal with the merits of block assessment and additions made therein on account of cash allegedly found to have been recorded against the name of the appellant.

In the result, the appeal is allowed.

3. It is urged on behalf of the revenue that the finding in the impugned order in effect mandates a period of limitation, and fetters the discretion of the AO who deals with their party's case when in fact no such period of limitation was prescribed for. Learned counsel relied upon Section 158BE to suggest that the period of limitation prescribed for completion of block assessment of such third parties commences only from the issuance of notice and ends two years from the end of the month from which such notice is served. So viewed, submitted counsel, the period of limitation in this case was in fact ended much after the assessment was actually completed in 2007.

4. Learned counsel also sought to make distinction between the time limit prescribed for completion of assessment in the case of searched persons-which he stated, is governed by Section 158BE(1) and contrasted the phraseology adopted by that provision with that in Section 158BE(2). He also relied upon Section 124 to argue that the jurisdiction of the AO can be questioned only in very limited circumstances and that the present case did not constitute one such exception.

5. This Court has considered the submissions. The assessment in this case, of the person searched, was completed on 29.08.2002. The drift of reasoning of the CIT (Appeals) and the Tribunal appears to be that if the AO-who deals with the assessment of third parties, like the assessee in this case-were to record his satisfaction, based upon the materials he goes by in the case of assessee over whom he has jurisdiction, such satisfaction is to be recorded during the course of assessment proceedings of the person searched. In other words, the jurisdiction

to issue notice itself u/s 158BD and the consequent time period prescribed u/s 158BE in respect of third parties would get defined within the two year time period given to the AO u/s 158BE(1).

6. This Court finds that such reasoning is sound for the simple reason that if the disjointed interpretation of Section 158BE suggested by the revenue were to be adopted, startling and perhaps unintended consequences would ensue. The period of limitation in respect of the primary individual, i.e. the searched person is controlled by Section 158BE(1) which is subject to well-defined exceptions under Explanation (1) to that provision. If the Revenue's logic were to prevail, while the authority to carry-out assessment in the case of third parties itself stems-out of a search conducted of the searched person, the AO (of the searched person) would be left free with untrammelled discretion to take-up the materials which he deems to be incriminating and forward to the concerned AO (of the third party) at his will and pleasure. Surely, such a startling and far-reaching consequence was not intended. The third reason why this Court rejects the Revenue is that the dissection of Section 158BE in the manner suggested would mean that Section 158BE(2) would stand on its own without any period of limitation. Instead of this, the approach of the Tribunal appears to have been to hold the AO (of the searched person) who primarily possessed jurisdiction over the subject matter, including the jurisdiction to record a satisfaction that the third party also had to file block assessment and was subject to such notice u/s 158BD, to complete the assessment and also to record satisfaction within the basic period of two years. This interpretation, in the opinion of the Court, not only furthers the intention of the Parliament, but also sub-serves the larger public interest in that it places reasonable fetters upon the jurisdiction of the concerned AO who might otherwise be left with uncontrolled discretion in such matters. Fourthly, Section 158BE expressly states that the satisfaction is to be recorded by the AO with respect to the need to issue notice to the third party before he hands-over possession of books and assets seized or requisitioned, to the AO of such third party. This too clearly has a reference to the primary jurisdiction of the AO of the searched person and the consequential limitation placed upon him to complete assessment within the period of two years spelt-out u/s 158BE. For the above reasons, this Court holds that there is no substantial question of law which arises for consideration. The appeal is accordingly dismissed.