

(2015) 02 AHC CK 0031
In the Allahabad High Court

Case No : Income Tax Appeal No. 86 of 2011 and Writ Tax No. 572 of 2012

Commissioner of Income Tax and Others

APPELLANT

Vs

Anil Kumar Chadha

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(1), 132A, 132A(1)(c), 132A(3)

Citation : (2015) 275 CTR 407 : (2015) 374 ITR 10 : (2015) 230 TAXMAN 89

Hon'ble Judges : Tarun Agarwala, J.; Satish Chandra, J.

Bench : Division Bench

Advocate : A.N. Mahajan, Ssc. and D. Awasthi, for the Appellant; Krishna Agrawal, Advocates for the Respondent

Judgement

Dr. Satish Chandra, J.—The present appeal is filed by the Department against the impugned order dated 5.10.2010 passed by the Income Tax Appellate Tribunal, Allahabad in ITA No. 05/Alld/09 for the Block Period 1.4.1988 to 3.5.1998. The assessee has also filed the writ petition praying for refund of the seized cash.

2. The brief facts of the case are that on 2nd May, 1998, three persons namely Shri Mahesh Kumar Khandelwal, Shri Vijay Kumar Soni and Shri Phool Raj Singh were going on a Rickshaw to board the Prayagraj Express Train for going to Delhi. They were detained by the police and a total sum of Rs. 17,00,000/- was recovered from their possession. On interrogation, all the three persons stated that the money belongs to the assessee i.e. Anil Kumar Chaddha alias Guddu, who in reply to the query by the police stated that the cash belongs to the Firm M/s. Chaddha and Others. Finally, the matter was referred to the Income Tax Department, who has issued a notice under Section 158BC of the Act in the name of the assessee and made the addition being undisclosed income alongwith the income of Rs. 1,11,700/- disclosed by the assessee in his return. Finally, the undisclosed income of Rs. 18,11,700/- was taxed in the hands of the assessee.

3. The CIT(A) has confirmed the same, but the Tribunal has deleted the addition by observing that no search warrant was issued under Section 132 of the Act in

the name of the assessee. So, no notice can be issued in the name of the assessee under Section 158BC of the Act. Being aggrieved, the Department has filed the present appeal.

4. With this background Shri Bharat Ji Agrawal, learned Senior Counsel for the Department submits that all the three persons were carrying the cash, specifically told that the money belongs to the assessee. The Tribunal has wrongly held that if the undisclosed income was to be assessed in the hands of the assessee, it could have been done under Section 158BD and not under Section 158BC before framing the assessment. It is mandatory to issue the notice under Section 158BD and also to record a satisfaction by the Assessing Officer having jurisdiction over the persons search and nothing has been brought on record that any notice under Section 158BD was issued to the assessee. Learned Senior Counsel also submits that this finding is wrong for the reason that no notice under Section 158BD is provided under the Act, assuming that Section 158BD is applicable, still notice has to be issued under Section 158BC. The provisions of Section 158BC and Section 158BD are machinery provisions which provides the procedure for block assessment. Hence, the assessment of undisclosed income cannot be set aside only on the ground that notice under Section 158BD should have been issued, even though Section 158BD contemplates the issuance of the notice only under Section 158BC.

5. Learned Senior Counsel further submits that no objection was raised either before the Assessing Officer or the CIT(A), hence this objection cannot be taken for the first time before the Tribunal. It is also a submission of the learned Senior Counsel that Section 158BC provides for the procedure for block assessment of undisclosed income. On perusal of the said Section it is clear that "any" search having been conducted under Section 132 or books of accounts, assets etc. having been requisitioned under Section 132A of the Act, the Assessing Officer after having issued notices to the persons, may proceed to assess the undisclosed income of such persons. Therefore, an order of requisition under Section 132A and issuance of the notice under Section 158BC to relevant person are essential for proceeding to assess the undisclosed income. He elaborated his submission by mentioning that Section 132A falling under Chapter XIII of the Income Tax Act which enunciates the powers of the Income Tax Authorities, nowhere provides that the search or requisition be done by a particular officer who has jurisdiction over a particular person. On a conjoint reading of Section 132A, Section 158BC and Section 158BD, the only condition precedent, for the Assessing Officer to initiate proceeding of assessment of the undisclosed income of any person, is that a proper search or requisition must have been done as per Chapter XIII and a satisfaction must have been recorded by the Assessing Officer based on such search or requisitioned documents, assets etc. irrespective of the person against whom the search was conducted or documents, assets requisitioned.

6. To support his argument, he relied upon the ratio laid down in the following

cases:-

- "(a) Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, ;
- (b) Commissioner of Income Tax Vs. Mridula, Prop. Dhruv Fabrics, ;
- (c) Commissioner of Income Tax-III Vs. Calcutta Knitwears, Ludhiana, ;
- (d) Khandubhai Vasanji Desai and Others Vs. Deputy Commissioner of Income Tax, ; and
- (e) Commissioner of Income Tax Vs. Aboo Mohamed, "

7. Lastly, he made a request that the impugned order passed by the Tribunal may kindly be set aside and the order of the CIT(A) may kindly be restored.

8. On the other hand, Shri Rishi Raj Kapoor, the learned counsel for the assessee has supported the order passed by the Tribunal. He submits that as per the language and provisions of Section 158BC of the Income Tax Act, where any search has been conducted under Section 132 or books of accounts, other documents or assets are requisitioned under Section 132A, in the case of any person, then, (a) The Assessing Officer shall (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under Clause (i) of sub section (1) of Section 142, setting forth his total income including the undisclosed income for the block period.

9. He further submits that as per section 132A(1)(c) and Section 132A(3) of the Income Tax Act, the assets which are requisitioned by authorised officer of Income Tax Department, such assets will be treated as assets seized under Section 132(1) or the Income Tax Act, by the requisitioning officer from the custody of the person referred to in Clauses (a), (b) or (c) of sub Section (1) of Section 132A of the Act. Hence, for initiation or proceeding under Section 158BC of the Income Tax Act, the seizure or survey or requisition must be in the name of the assessee, against whom proceeding has been initiated. The submission of the learned counsel is, that in the instant case, search, seizure or requisition of money was not in the name of the assessee, and in this regard finding is recorded by the Tribunal in paragraph 7 and onwards in which Tribunal has recorded a finding of fact that the assessee was not searched and there was no search warrant and requisition was not made in the name of the assessee, and in paragraph 7.1 of the impugned order, it is specifically held that:

"In the instant case, no search was conducted in the hands of the assessee and even there was no requisition in the case of the assessee. Therefore the provisions of Section 158BC were not applicable." 10. That revenue has not challenged this finding, hence the Tribunal being last fact finding authority, order

of the Tribunal is legally right and valid and there is no question of law arises from the order of Tribunal. Hence, in view of the settled legal position, the proceedings under Section 158BC of the Income Tax Act, is illegal and invalid and the Tribunal has rightly held that the provisions of Section 158BC are not applicable in the case of present assessee, and due to this reasons no question of law arise from the order of Tribunal, hence the appeal filed by the Department should be dismissed.

11. To support his arguments he relied upon the ratio laid down in the following cases:-

"(a) Commissioner of Income Tax Vs. Ms. Rohini S. Walia and Ms. Pushpa Rani, ;

(b) Jayantilal Damjibhai Soni and Others Vs. Director of Investigation and Another, ;

(c) Raghuraj Pratap Singh and Others Vs. Assistant Commissioner of Income Tax, ; and

(d) New Delhi Auto Finance (P) Ltd. Vs. Jt. Commissioner of Income Tax, Special Range-15, "

12. We heard both the parties at length and gone through the materials available on record. From the record, it appears that the police recovered a sum of Rs. 17,00,000/- from the possession of three persons namely:-

13. It is evident that there was no search warrant in the name of the assessee nor assets were requisitioned from the assessee. Therefore, the provisions of Section 158BC is not applicable in the instant case. Section 158BC reads as under:

"Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under Section 132A in the case of any person, then...." 14. Further, no warrant or requisition was issued either in the name of the Firm or the assessee. In the instant case, at the best the seized amount might have been added in the hands of the assessee under Section 158BD.

15. An opportunity was provided by this Hon''ble Court to the Department to produce the original records, but the Department expressed its inability to produce the records as stated by learned Senior Counsel of the Department.

16. It may be mentioned that Section 158BC and Section 158BD are not identical, both have the different purposes. The Hon''ble Supreme Court in the case of Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, observed that before the provisions of Section 158BD of the Income Tax Act, 1961, are invoked against a person other than the person whose premises have been searched under Section 132 or documents and other assets have been requisitioned under Section 132A, the conditions precedent have to be

satisfied.

17. In the instant case Rs. 17,00,000/- were requisitioned from the S.H.O. Kotwali, Allahabad under Section 132A of the Act, which was seized from three persons. Therefore, the provision of Section 158BD is applicable in the instant case, but the same was not applied by the Department. The assessment was framed after issuing notice under Section 158BC which is not applicable in the instant case, since the assessee was neither searched nor assets were requisitioned from him under Section 132A of the Act. Further, there were no warrant of authorization in the name of the assessee.

18. In view of the above discussion and by considering the totality of the facts and circumstances of the case, it appears that no substantial question of law is emerging from the impugned order. When it is so, then we find no reason to interfere with the impugned order passed by the Tribunal, the same is hereby sustained alongwith the reasons mentioned therein.

19. In the result, the appeal filed by the Department is dismissed.

20. In the writ petition, the assessee has made the request for issue a writ order or direction in the nature of Mandamus commanding the respondents to refund forthwith the cash of Rs. 17,00,000/- seized on 2nd May, 1998 alongwith the interest.

21. After considering the rival submissions, it is evident that the addition in the hands of the assessee has been deleted by the Tribunal as well as by this Hon'ble Court. The petitioner's application for refund is pending consideration before the authority concerned. We accordingly direct the authority to decide the application within a period of four months from the date of production of certified copy of this order, the writ petition filed by the assessee is accordingly disposed of.