(2008) 11 PAT CK 0047

In the Patna High Court

Commissioner of Income Tax and Others APPELLANT

Vs

Md. Rizwan RESPONDENT

Date of Decision : 27-11-2008

Acts Referred:

Citation : (2008) 11 PAT CK 0047

Judgement

1. The Commissioner of Income Tax aggrieved by the order dated November 10, 2003, passed by the Patna Bench of the Income Tax Appellate Tribunal, in I.T.A. No. 99 (Patna) of 2002 has preferred this appeal u/s 260A of the Income Tax Act, 1961.

2. Short facts giving rise to the present appeal are that the respondent, Md. Rizwan (hereinafter referred to as "the assessee"), is a dealer in fire crackers. On October 31, 1998, he filed his return of income showing a loss of Rs. 1,880.

3. The case was selected for scrutiny and a notice u/s 143(2) of the Income Tax Act (hereinafter referred to as "the Act") was served on the assessee and ultimately assessment was made u/s 143(3) of the Act by order dated March 26, 2001, on a total income of Rs. 51,81,173.

4. The assessee aggrieved by the same, preferred an appeal before the Commissioner of Income Tax (Appeals) and the same was dismissed by an order dated January 17, 2002. Thereafter, the assessee filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Tribunal"). It seems that during the pendency of the appeal, a search and seizure operation in the residential and godown premises of the assessee was conducted u/s 132(1) of the Act on October 29, 2002. A notice was issued to the assessee u/s 158BC of the Act and he filed the return for the block period April 1, 1996, to October 29, 2002, on December 23/24, 2002. The assessee brought the aforesaid fact to the notice of the Tribunal and contended that the assessment for the assessment year 1998-99 shall be merged with the assessment of the block period April 1, 1996, to October 29, 2002, of which the assessment has to be made u/s 158BC of the Act. This submission of the assessee found favour with the Tribunal and it

disposed of the appeal, inter alia, observing as follows:

We have heard both the parties and perused the material available on record. On a perusal of the assessee''s letter dated September 10, 2003, we find that the assessment for the assessment year under appeal falls under the block period as defined in Section 158B(a) of the Act and the assessment of which is to be made u/s 158BC as per law. Since the assessment for the assessment year 1998-99 is merged with the assessment for the block period April 1, 1996, to October 29, 2002, to be made u/s 158BC of the Act, the matter is restored back to the Assessing Officer.

5. Aggrieved by the same, the Commissioner of Income Tax has preferred this appeal u/s 260A of the Act and by an order dated January 5, 2007, this appeal has been admitted on the following substantial questions of law:

1. Whether, on the facts and circumstances of the appellant''s case, that the Tribunal erred in law in holding that since the assessment framed for the assessment year 1998-99 u/s 143(3) is to be merged with the assessment to be made for the block period April 1, 1996, to October 29, 2002, the assessment is to be made u/s 158BC of the Act.

2. Whether the order of the Tribunal suffers from the error of law in so much as per the provisions of Chapter XIV-B and also settled by a catena of judicial decisions that there could be a regular assessment in addition to block assessment under Chapter XIV-B and both the proceedings could go simultaneously.

6. Mr. Rishi Raj Sinha, appearing on behalf of the appellants submits that the Tribunal erred in law in holding that the assessment framed for the assessment year 1998-99 u/s 143(3) of the Act shall merge with the assessment to be made for the block period April 1, 1996, to October 29, 2002, u/s 158BC of the Act. He submits that a regular assessment in addition to a block assessment under Chapter XIV-B of the Act is permissible. In support of his submission, he has placed reliance on a decision of the Calcutta High Court in the case of Caltradeco Steel Sales (P.) Ltd. and Others Vs. Deputy Commissioner of Income Tax, and our attention has been drawn to the following passage which reads as follows:

Therefore, the limited question before us is when there is a proceeding of assessment under Chapter XIV-B of the Act pending, can the Assessing Officer proceed to assess the income of the same year which forms part of the block period? In our view, when Chapter XIV-B of the Act pertains to undisclosed income and the assessment u/s 143(3) pertains to disclosed income, there should be no dispute on the fact that both the proceedings can go on simultaneously as both are for different types of income, though for the same period, one proceeding is for undisclosed income and the other proceeding u/s 143(3) is for disclosed income.

If any income is assessed and taxed under the regular proceeding, that is, u/s

143(3) of the Act, that cannot be taxed under the special Chapter in pursuance of the notice u/s 158BC, the Assessing Officer can proceed u/s 158BC to tax the income which has not been disclosed. Thus, the proceedings u/s 143(3) will go on simultaneously along with the proceeding in pursuance of the notices u/s 158BC of the Act.

7. Mr. Brijendra Kumar, appearing on behalf of the respondent-assessee, however, contends that after the order of the Tribunal, the Assessing Officer has passed separate orders of assessment of the block period including the assessment year 1998-99. He points out that against the regular assessment for the assessment year 1998-99 the appeal is pending before the Commissioner of Income Tax (Appeals) and against the block assessment, the matter is pending before the Tribunal.

8. Having appreciated the rival submissions, we find substance in the submission of Mr. Sinha and the judgment relied on, supports his contention. The heading of Chapter XVI-B of the Act is a special procedure for assessment of search cases. Section 158B(a) and (b) defines block period and undisclosed income respectively. Section 158BC of the Act provides for procedure for assessment of undisclosed income as a result of search for the block period, i.e., previous year relevant to six assessment years preceding the previous year in which the search was conducted u/s 132 of the Act. So far as the assessment u/s 143(3) of the Act is concerned, the same is on the basis of return filed and income disclosed by the assessee. Thus, proceeding under Chapter XIV-B is a different proceeding than proceeding u/s 143(3) of the Act. Therefore, in our opinion, simply the fact that assessment for the block period shall cover the period of regular assessment, latter shall not merge with the assessment to be made u/s 158 BC of the Act.

9. In that view of the matter, we are of the opinion that the Tribunal erred in holding that assessment framed for the assessment year 1998-99 u/s 143(3) of the Act shall merge with the assessment to be made u/s 158BC of the Act for the block period April 1,1996, to October 29, 2002. We are further of the opinion that there could be a regular assessment in addition to a block assessment under Chapter XIV-B of the Act. Both the questions are answered accordingly.

10. In the result, the appeal is allowed and the matter is restored back to Tribunal for reconsideration of the appeal in accordance with law.

11. In the facts and circumstances of the case, there shall be no order as to costs.

