(2015) 09 P&H CK 0227

In the Punjab And Haryana At Chandigarh

Case No : ITA No. 58 of 2009

Commissioner of Income Tax — APPELLANT

Vs

Ajay Singh — RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:
Income Tax Act, 1961 — Section 132, 132A, 158BC, 158BD, 260A

Citation : (2015) 09 P&H CK 0227

Hon'ble Judges : Ajay Kumar Mittal and Ramendra Jain, JJ.

Bench : Division Bench

Advocate : Tejinder K. Joshi, Advocate, for the Appellant; Ravi Shankar and B.M. Monga, Advocates, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall shall dispose of ITA Nos. 58 and 76 of 2009 as the issue involved in both the appeals is identical. However, the facts are being extracted from ITA No. 58 of 2009.

2. ITA No. 58 of 2009 has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 17.7.2008, Annexure A.III passed by the Income Tax Appellate Tribunal, Delhi Bench ''E'', New Delhi in IT (SS) Nos. 94/D/2005 for the block period ending 1987-88 to 1997-98, claiming following substantial questions of law:--

"i) Whether, on the facts and in the circumstances of the case, the learned ITAT is right in law in quashing the assessment made under section 158BC of the Income Tax Act, 1961 read with section 158BD of the Income Tax Act, 1961 by ignoring the findings of learned CIT(A) recorded in para 5 of her appellate order regarding recording of proper reasons and satisfaction before issue of notice under section 158BD of the Income Tax Act, 1961 which clearly established that the Assessing Officer was well within his jurisdiction to initiate the proceedings under section 158BD ?

ii) Whether on the facts and in the circumstances of the case, the learned ITAT is right in law in quashing the assessment framed under section 158BC /158BD of the Income Tax Act, 1961 and not deciding the issues involved in the case on merits by holding that since the assessment has been quashed, the dispute regarding the additions deleted by the learned CIT(A) is rendered academic in nature and not required to be adjudicated upon?"

3. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 58 of 2009 may be noticed. Search and seizure operation was carried out at the residence of Shri Mangal Singh, father of the assessee on 18.2.1997. The seized records revealed that the assessee had made huge investments in the purchase of immovable property and also deposited huge amounts in the bank accounts. On the basis of the information and documents made available to the Assessing officer, he proceeded to initiate proceedings in the case of the assessee Shri Ajay Singh by issuing notice under section 158BD of the Act on 24.8.2001 after recording a satisfaction. The income of the assessee was assessed at Rs. 1,28,77,300/- vide order dated 29.8.2003, Annexure A.1 passed under section 158BC read with Section 158BD of the Act. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 17.11.2004, Annexure A.II, the CIT (A) partly allowed the appeal upholding the proceedings initiated under section 158BD , order under sections 158BC and 158BD of the Act and addition of Rs. 30,37,272/- on account of amount spent by the assessee in the purchase of agricultural land. However, disallowance on account of investment of a sum of Rs. 98,40,000/- made by the assessee in the residential house was restricted to 50% i.e. Rs. 49,20,000/-. Not satisfied with the order, both the appellant and the revenue filed appeals before the Tribunal. Vide order dated 17.7.2008, Annexure A.III, the Tribunal dismissed the appeal of the revenue and allowed that of the assessee. It was held that since the Assessing Officer in the case of Shri Mangal Singh, father of the assessee, the person searched had not recorded any satisfaction as contemplated under section 158BD of the Act, the satisfaction recorded by the Assessing Officer in the case of the assessee on 24.8.2001 before issuing notice under section 158BD of the Act on 4.8.2001 could not be said to be legally valid requisite satisfaction under section 158BD of the Act. Hence the instant appeals by the revenue.

4. We have heard learned counsel for the parties.

5. Section 158BD of the Act reads thus:--

"158BD. Undisclosed income of any other person - Where the Assessing Officer is satisfied that any undisclosed income belongs to any person other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A , then the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly."

6. It was not disputed by the learned counsel for the revenue that there was no satisfaction recorded by the Assessing Officer of the searched person as required under Section 158BD of the Act. However, the satisfaction was recorded by the Assessing Officer of the assessee on 24.8.2001. In Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, , while delving into identical situation, the Apex Court held as under:--

"The condition precedent for invoking a block assessment is that a search has been conducted under section 132 , or documents or assets have been requisitioned under section 132A . The said provision would apply in the case of any person in respect of whom search has been carried out under section 132A or documents or assets have been requisitioned under section 132A . Section 158BD , however, provides for taking recourse to a person, the conditions precedent wherefore are (i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) the Assessing Officer has proceeded under Section 158BC against such other person.

The conditions precedent for invoking the provisions of section 158BD , thus, are required to be satisfied before the provisions of the said Chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under section 132A of the Act."

7. In the present case, the Tribunal after considering the entire material on record noticed that since the Assessing officer of the searched person had not recorded any satisfaction as contemplated under section 158BD of the Act, the satisfaction recorded by the Assessing Officer of the assessee on 24.8.2001 before issuing notice under section 158BD on 4.8.2001 could not be said to be legally valid requisite satisfaction. The operative portion of the order passed by the Tribunal reads thus:--

"11. In this view of the matter, respectfully following the decision of the Hon''ble Apex Court in the case of Manish Maheshwari (supra) and the decision of Coordinate Bench of ITAT Delhi in the cases (supra) relied upon by the learned AR for the assessee, it is held that since the AO in the case of Shri Mangal Singh, father of the assessee, the person searched has not recorded any satisfaction as contemplated under section 158BD , the satisfaction recorded by the Assessing Officer in the case of the assessee on 24.8.2001 before issuing notice under section 158BD on 4.8.2001 cannot be called to be legally valid requisite satisfaction as contemplated under section 158BD . The consequence of the same is that the instant assessment framed in the case of the assessee Shri Ajay Singh has been made without recording the mandatory condition of recording satisfaction precedent of section 158BD . Accordingly the assessment framed under Section 158BC /158BD in the instant case is hereby quashed.".

8. Learned counsel for he appellant has not been able to show any illegality or perversity in the findings recorded by the Tribunal. Consequently, the substantial questions of law as claimed are answered accordingly. Both the appeals stand dismissed.

