

(2008) 07 MAD CK 0101
In the Madras High Court

Commissioner of Income Tax

APPELLANT

Vs

A.M. Mohan Babu

RESPONDENT

Date of Decision : 07-07-2008

Acts Referred:

Income Tax Act, 1961 — Section 132, 139, 142, 158BB, 158BD

Citation : (2008) 07 MAD CK 0101

Hon'ble Judges : P.P.S. Janarthana Raja, J;K. Raviraja Pandian, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

K. Raviraja Pandian, J.—These appeals are filed by the revenue against the order of the Tribunal Madras "A" Bench dated 27-10-2007 in IT(SS)A Nos. 121 and 123/Mad/2006 respectively. The relevant assessment years are 1991-92 to 2001-02 (part). The common substantial question of law formulated in these appeals is as follows:

Whether on the facts and circumstances of the case, the Tribunal was right in holding that the income shown in the belated return after the date of search is not undisclosed income contrary to the provisions of Section 158BB(1)(c) of the Income Tax Act?

2. The facts of the case are as follows:

The assesseees are individuals. Search u/s 132 took place on 28-11-2000 as the assesseees were found to be earning commission income apart from their salary from M/s Sree Gokulam Chits & Finance Company (P) Ltd. and the commission was not shown in the regular income fully and truly. On the basis of search materials, the assessing officer had issued Section 158BD notices on 22-5-2002 calling for the return of income. The assesseees did not file the regular return of income for the assessment years 1999-2000 and 2000-01 before the date of search. The regular returns of income for the assessment years 1999-2000 and 2000-01 were filed only on 23-7-2002 and 1-4-2002 respectively, in which the

assessee in Tax Case (Appeal) No. 741 of 2008 claimed Rs. 4,11,470 and Rs. 3,97,732 as disclosed income and the assessee in Tax Case (Appeal) No. 742 of 2008 claimed Rs. 3,87,011 and Rs. 3,36,031 as disclosed income. But the assessing officer restricted the claim to the basic exemption of Rs. 50,000 for those years and block assessment was passed. Aggrieved by the order of the assessing officer, the assessee filed appeals before the Commissioner (Appeals), who by his order dated 21-2-2006 held in favour of the assessee by holding that the total income declared in the regular returns cannot be treated as undisclosed income. The revenue filed appeals against the order passed by the Commissioner (Appeals)-1 to the Tribunal and the Tribunal dismissed the appeals following the decision of this court in the case of *The Assistant Commissioner of Income Tax Vs. A.R. Enterprises*, . The correctness of the said order of the Tribunal is challenged by the appellant in these appeals.

3. Learned Counsel appearing for the revenue has submitted that the issue involved in these appeals is covered by the judgment of this court in the case of *Asstt. CIT v. A.R. Enterprises* (supra).

4. In the case of *Assistant Commissioner v. A.R. Enterprises* (supra), the facts are identical to the present case. In that case, the assessee was a partnership firm. A search was conducted by the revenue authorities u/s 132 of the Income Tax Act, 1961 on 23-2-1996 in the premises of M/s A.R. Mercantile (P) Ltd. During the course of search, certain books and documents relating to the assessee were seized. On scrutiny, it was noticed that the assessee earned taxable income for the assessment year 1995-96, but no return was filed till the date of search. Therefore, the assessing officer based on the material viewed the same as a detection of undisclosed income and initiated action u/s 158BD of the Act. The assessee filed returns in Form No. 2B admitting the income returned by them for the assessment years 1993-94 and 1995-96 and offered additional income to be assessed under Chapter XIV-B of the Act. The assessee also raised an objection that the assessee has already paid advance tax in three instalments to the tune of Rs. 4,80,000 and the proof of the payment of advance tax was also made. available and also brought to the notice of the assessing officer that for the assessment year 1995-96, even though the assessee did not file return, but paid advance tax. Nevertheless, the assessing officer opined that since the assessee failed to file return as on the date of search, there was income, which remained undisclosed. Thus, invoking Chapter XIV-B of the Act, the assessing officer brought the income as an undisclosed income. In those factual circumstances, the Division Bench of this Court, after taking into consideration the judgments of the Division Bench of the Gauhati High Court in *Dr. Mrs. Alaka Goswami and Dr. Anil Kumar Goswami Vs. Commissioner of Income Tax*, , of the Supreme Court in the case of *Commissioner of Income Tax, Bhopal Vs. Shelly Products and Another*, , and of the Full Bench of the Gujarat High Court in the case of *Saurashtra Cement and Chemical Industries Ltd. Vs. Income Tax Officer*, , wherein it was observed that "there cannot be any manner of doubt that when the assessee pays advance tax the advance tax payment is assessed by the

assessee on the basis of self- assessed income. The advance tax reflects the income admitted by the assessee. When the assessee pays the advance tax he discloses his income at the particular point of time, Which may or may not be taxable on a subsequent date, on the return submitted by him u/s 139 or under Sub-section of Section 142 because of the assessee's tax planning or he may claim exemption and refund of the tax paid, but for doing so he will have to show the income on which the advance tax is paid and then claim refund or complete exemption, as the case may be, as permissible under the relevant statute. Disclosure of the self-assessed income by the assessee would only entitle the assessee to claim refund or exemption from tax as the assessee is required to show the income on the basis of which the advance tax is paid or ultimate claim is made. The moment the advance tax is paid the taxable income at that point of time is disclosed to the revenue by the assessee. It cannot be said by the revenue that the advance tax paid would or may not be the tax payable on the basis of the ultimate assessment made and, therefore, it cannot be taken to be a representation of the income on which the advance tax was paid" held in favour of the assessee.

5. In view of the decision of this Court, as the question of law formulated in these appeals has already been decided against the revenue, the appeals are dismissed. Consequently, the connected Misc. Petn. No. 1 of 2008 is closed.