(2010) 04 DEL CK 0268

In the Delhi High Court

Case No : Income Tax A. No. 1652 of 2006

Commissioner of Income Tax — APPELLANT

Vs

D.D. Axles P. Ltd. — RESPONDENT

Date of Decision : 09-04-2010

Acts Referred:
Income Tax Act, 1961 — Section 132, 132(1), 132(3), 158BE(1), 260A

Citation : (2010) 323 ITR 558 : (2010) 195 TAXMAN 277

Hon'ble Judges : Siddharth Mridul, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; Manu Monga, for the Respondent

Judgement

Siddharth Mridul, J.—This appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is directed against the order dated April 28, 2006, passed by the Income Tax Appellate Tribunal in IT(SS) No. 313/D/1997 pertaining to the block period April 1, 1986 to August 29, 1996. The appellant/ Revenue is aggrieved by the fact that the Tribunal held the block assessment order to be barred by limitation and, therefore, quashed the same.

2. The facts of the case are that search u/s 132(1) of the Act was conducted on August 29, 1996 which concluded on August 30, 1996. A panchnama was drawn on August 29, 1996 when books of account and other documents were seized. On that date a restraint order was passed. By another order passed on October 28, 1996 the restraint order was extended till November 18, 1996. On November 18, 1996 a panchnama was drawn and nothing further was seized from the premises of the assessee. By the order dated November 18, 1996 the restraint placed vide order u/s 132(3) of the Act dated the October 18, 1996 on a steel almirah was vacated.

3. The case of the Revenue is that since the last panchnama was drawn on the November 18, 1996, the search was concluded on that date. The assessee had submitted that the search having been conducted on the August 29, 1996/

August 30, 1996, the assessment made on November 28, 1997, was barred by limitation in view of the provisions contained in Section 158BE(1)(a) of the Act. In other words, the assessment order has been passed beyond the period of one year from the end of the month in which the last authorization for search u/s 132 of the Act had been executed and, therefore, the assessment made u/s 158BC deserves to be vacated.

4. The Tribunal noticed that the search must be considered to have been completed on the date of the last panchnama drawn when certain seizure was affected. The Tribunal further noted that the restraint order issued u/s 132(3) of the Act does not amount to seizure. In order to search the premises again, in accordance with the provisions of Section 132(1) of the Act, the authority to initiate the search must have firm belief that some income remained undisclosed, that was represented by books of account, money, bullion etc. and issue an authorization for search. This was not done. Further, the officials who visited the premises on various dates, after gaps and after repeated action of lifting and reimposing the restraint order, did not feel any necessity for seizing any files. The Tribunal observed that, therefore, the last authorization was executed on the date when the search party left the premises of the assessee, after seizing those items considered to be related to the undisclosed income of the assessee. The assessment was to be completed within one year from the end of the month of that date. The Tribunal found that in the instant case the search was completed on August 30, 1996 and the panchnama was drawn on August 29, 1996 when books of accounts were seized. The restraint order placed on an almirah was passed on August 30, 1996 which was extended further till November 18, 1996 by an order passed on October 18, 1996. The Tribunal found that on November 18, 1996 another panchnama was drawn when nothing was seized and the restraint order was vacated. The Tribunal held that in the circumstances, for all practical purposes, the search concluded on August 29, 1996/August 30, 1996 when the panchnama was drawn in execution of the warrant to search u/s 132(1) of the Act and the necessary seizure was made. The Tribunal also held that after that the Revenue has not done anything tangible on October 18, 1996 and November 18, 1996 to demonstrate that the search was still in progress. Hence, the Tribunal came to the conclusion that the last authorization was executed on August 29, 1996, and the one year time limit for framing the block assessment started from the end of the month, i.e., August 31, 1996 and ended on August 31, 1997. Accordingly, the Tribunal held that the block period assessment framed on the November 28, 1997 was barred by limitation and was, therefore, bad in the eyes of law. The Tribunal accordingly quashed the same.

5. In Commissioner of Income Tax Vs. Shri S.K. Katyal, , a Division Bench of this Court observed as under (page 180):

This discussion leads us to the question-Was the panchnama of January 3, 2001, of the type mentioned in the said Explanation 2(a) ? From the facts narrated above, it is clear that the panchnama of January 3, 2001, itself reveals that nothing was seized on that date. Nor was anything ''found'' on that date. In fact, no search was conducted. The jewellery that was put in the cash box of the almirah had already been searched, found, inventorised and valued by the DVO on November 17, 2000, itself. Nothing remained to be searched thereafter. And, in fact, no further search was conducted after November 17, 2000. Obviously, nothing else could be found. All that was done on January 3, 2001, in the presence of the witnesses (panchas), was that the seals were removed from the cash box and the almirah and the keys were handed back to the assessee. Essentially, the revocation of the restraint order was given effect to. This is exactly what the Tribunal found as a fact and meant when it concluded that the panchnama dated January 3, 2001, was merely a release order and could not extend the period of limitation.

6. In the present case, it is obvious that the search started on the August 28, 1996 and continued till August 30, 1996, during which period various articles and documents were seized. On August 30, 1996 a restraint order was passed with regard to an almirah that had been sealed. Nothing remained to be searched thereafter. The restraint order passed on August 30, 1996 was extended on October 18, 1996 till November 18, 1996, when the last panchnama was drawn up. On November 18, 1996 the restraint order was vacated. Therefore, essentially from August 30, 1996 when the panchnama was drawn and the restraint order passed, till November 18, 1996 when the last panchnama was drawn and the restraint order vacated, nothing else was found and in fact no further search was conducted. Therefore, the last panchnama dated the November 18, 1996 was merely a release order and could not extend the period of limitation, as found by the Tribunal.

7. In view of the foregoing discussion, we agree with the learned Counsel for the respondent/assessee that the impugned order does not call for any interference on our part and that no substantial question of law arises for our consideration.

8. The appeal is dismissed.

