(2004) 12 KL CK 0032

In the High Court Of Kerala

Case No : Income Tax R. No. 29 of 2000

Commissioner of Income Tax APPELLANT

Vs

Deep Arts RESPONDENT

Date of Decision : 01-12-2004

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

Citation : (2005) 194 CTR 181 : (2005) 1 ILR (Ker) 371 : (2005) 274 ITR 571 : (2005) 1 KLT 670

Hon'ble Judges : K.S. Radhakrishnan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.K. Raveendranatha Menon, for the Appellant; C. Kochunny Nair, for the Respondent

Judgement

K.S. Radhakrishnan, J.—Whether Assessing Officer has got jurisdiction to make an assessment u/s 158BC read with Section 158BD of the Income Tax Act in the absence of search conducted u/s 132 of the Act in the premises of the assessee, is the question posed before us. The Tribunal took the view that since no search has been conducted u/s 132 of the Income Tax Act in the premises of the assessee in respect of his business it would be illegal to make an assessment u/s 158BC read with Section 158BD as has been done by the Assessing Officer.

2. Assessee, a partnership firm, engaged in the business of manufacture and sale of note books, greeting cards, X''mas cards etc. has been assessed to tax from the assessment year 1986-87 onwards. M/s. Don Bosco Industries, Kollam, is the sister concern. Business premises of Don Bosco Industries was searched as per the provisions of Section 132 of the Act. Certain books of account and document relating to the assessee were seized from the said business premises, scrutiny of which gave an impression that sales had been grossly understated in the books of accounts. Assessing Officer made cross verification with statements of outstanding amounts etc. available in the agent''s file which were seized which gave the impression that there was suppression of sales. Partners of the firm

were the spouses of the partners of M/s. Don Bosco Industries. Assessing Officer later completed the assessment by determining the total undisclosed income from the block period at Rs. 2,71,270/-.

3. Assessee took up the stand that the accounts of the assessee seized from the premises of M/s. Don Bosco Industries cannot constitute a good ground to make an assessment u/s 158BC read with Section 158BD for the block period in question. Assessee further stated that addition of Rs. 76,000/- as bogus credits was not made on the basis of evidence found in the course of search and that even the sum of Rs. 19,527/- is in the account book of M/s. Don Bosco Industries and this was pointed out to the assessing officer. Further it is also stated that since there was no search u/s 132 of the Act the assessing officer had no jurisdiction to make an assessment u/s 158BC read with Section 158BD and hence the assessment be cancelled.

4. We are surprised to note the Tribunal has accepted the stand taken by the assessee. Had the Tribunal taken pains to read Section 158BD there would have been no doubt about the Assessing Officer''s jurisdiction to make assessment u/s 158BC read with Section 158BD even if search was not conducted in the premises of the assessee u/s 132 of the Act. In this connection we may refer to Sections 158BC and 158BD, as follows:

158BC. Where any search has been conducted u/s 132 or books of account, other documents or assets are requisitioned u/s 132A, in the case of any person, then --

a) the Assessing Officer shall --

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such persons requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated of 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.

Provided that no notice u/s 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158BB and the provisions of Section 142, Sub-sections (2) and (3) of Section 143 and Section 144 shall, so far as may be, apply;

(c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

(d) the assets seized u/s 132 or requisitioned u/s 132 A shall be retained to the extent necessary and the provisions of Section 132B shall apply subject to such modifications as may be necessary and the reference to "regular assessment" or "reassessment" in Section 132B shall be construed as references to "block assessment".

158BD.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 u/s 132 or whose books of account or other documents or any assets were requisitioned u/s 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.

From a reading of the above mentioned provision it is clear that the Assessing Officer need only satisfy himself that any undisclosed income belongs to any person other than the person with respect to whom search was made u/s 132 or whose books of account or other documents or any assets were requisitioned u/s 132A then the books of account or other documents or any 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.

5. We find no ambiguity in those provision since language is clear and requires no interpretation or construction. Going by the above provision if a search is conducted u/s 132 the assessing officer is only required to satisfy the books of accounts or other documents and or any assets found in the search undisclosed income of the person other than one against whom the search was conducted. The definition would also include any entries in the books of account or other documents showing concealment of the real source of income. The above issue came up for consideration before the Gujarat High Court in Rushil Industries Ltd. Vs. Harsh Prakash, , wherein the Court held as follows:--

"A bare reading of the provisions of Section 158BD showed that for taking action under the said section, the Assessing Officer was merely required to be satisfied that the books of account or other documents or assets found in the search showed undisclosed income of the person other than one against whom the search was conducted. Merely because no books of account or other documents or assets were found in the search against the two abovenamed persons it cannot be said that no action for alleged undisclosed income was called for against the petitioner u/s 158BD. The expression "undisclosed income'' had been defined to include income based on an entry in the books of account or other documents which has not been or would not have been disclosed for the purpose of this Act. In our considered opinion, the definition of "undisclosed income" would include any entries in the books of account or other documents showing concealment of the real source of income as on the present case herein."

We are therefore of the view that even if no search is conducted in the premises of the assessee the Assessing Officer has got jurisdiction to make assessment u/s 158BC read with Section 158BD on the basis of the materials unearthed in a search conducted on another premises. The question is therefore answered accordingly. The order of the Tribunal would not therefore stand and would stand set aside.

Communicate a copy of the order to the Income Tax Tribunal, Cochin Bench.

