
(2008) 01 RAJ CK 0068
In the Rajasthan High Court

Commissioner of Income Tax

APPELLANT

Vs

Durga Shankar Kansara

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 132A, 158BE, 158BG, 80P

Citation : (2008) 215 CTR 176

Hon'ble Judges : N.P. Gupta, J;Deo Narayan Thanvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal by the Revenue, seeks to challenge the judgment of the Income Tax Appellate Tribunal dated 26.5.2003, accepting the appeal of the assessee, and holding the block assessment, to be barred by time.

2. This appeal was admitted on 21.7.2004, by framing following two substantial questions of law:

(i) Whether in the facts & circumstances of the case, on true interpretation of Section 158BE read with explanation 2 the Tribunal was justified in holding the assessment orders passed by the Assessing Officer as barred by time?

(ii) Whether in the facts and circumstances of the case, the Tribunal was justified in holding that the authorisation for search made with approval of search operation could not be validly given by D.C.I.T. so as to vitiate the assessment proceedings u/s 158BE?

3. The necessary facts are, that on 18.3.1996, Rs. 8.35 lacs were seized by the S.H.O., Abu Road and the information was sent to the Commissioner of Income Tax about the seizure on 21.3.1996, who informed the Assistant Director, who investigated, and on enquiry, it was revealed, that the seized cash belonged to the respondent assessee. Consequently, the statement of the respondent assessee was recorded on 22.3.1996, wherein he admitted the amount to be

unaccounted-for. Then, on the basis of that statement, the warrant of authorization u/s 132A, was signed by the Commissioner on 25.3.1996, requisitioning the said seized asset. The S.H.O. declined to deliver the assets to the income tax authorities. Then, the application was moved in the Court of ACJM, Railways, who directed the asset to be handed over to the assessee. That order was challenged before this Court, and This Court vide order dated 16.5.97, in S.B. Cr. Misc. Petition No. 337/1996, directed that a sum of Rs. 5.01 lacs should be handed over to the CIT, and further directed, that the assessment be completed within a period of three months, which time was subsequently extended. The Assessing Authority, after completing necessary proceedings, passed the assessment order Annex.1, dt.13.11.1997.

4. This assessment was challenged in appeal before the Tribunal, and a preliminary objection was raised on behalf of the Revenue, that the appeal would lie to the Commissioner, and not to the Tribunal, and the Tribunal overruled the objection. Then, the matter was heard by the Tribunal, and the appeal of the assessee was allowed vide impugned order dated 26.5.2003.

5. The learned Tribunal found that in the present case, the service of authorization u/s 132A falls between 1.7.1995 to 31.12.1996. However, the objection was raised, that since the assessment order was passed on 13.11.97, it becomes barred by time, and also on the ground, that there was no previous approval, obtained from the CIT, to pass the assessment order in question. Learned Tribunal was of the opinion, that the assessment was barred by time, inasmuch as the requisition by the Tribunal was made on 25.3.1996, and the assessment was completed on 13.11.1997. Regarding the effect of Finance Act of 1998, whereby the amendment was inserted with effect from 1.7.1995, it was held that, that is of no help to the Revenue, as the assessment that had already become barred by limitation, and could not be regularized by the retrospective amendment. It was also held, that the subsequent law cannot validate an order, which is already barred by time, and, for that purpose, it relied upon a judgment of the Hon''ble Supreme Court, in National Agricultural Co-operative Marketing Federation of India Ltd. and Another Vs. Union of India and Others, Then, regarding the authorization, it was contended by the Revenue, that the Dy. Commissioner had delegated the power to grant previous approval, but then, this stand could not be substantiated by the Revenue. Thus, the appeal was allowed, observing, that remaining grounds taken on merits, have become academic.

6. Assailing the impugned judgment, it is contended by the learned Counsel for the Revenue, that the judgment in National Agricultural Cooperative Marketing Federation Ltd.'s case (supra) is not applicable to the present case, inasmuch as, there, the amendment was examined, on the question, as to whether it was retrospective or not, though holding, that it cannot be disputed that the amendment can be retrospective. With this it was contended, that a look at the relevant Finance Act, introducing amendment, does show, that the amendment was expressly made retrospective, by using the words "following explanation

shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1995", therefore, the legislature had expressly amended the provision of Section 158BE, by adding the second Explanation with retrospective effect, and according to that Explanation 2(b), in the case of requisition u/s 132A, the authorization is deemed to have been executed on actual receipt of the assets, by the authorized officer, which, in the present case, were received on 5.6.1997, pursuant to the order of this Court dated 16.5.1997, passed in Criminal Misc. Petition, referred to above, and therefore, the limitation is required to be calculated for all purposes accordingly. Likewise, it was also contended, that a look at the provisions of Section 158BG would also show, that since the authorization is deemed to have been executed on 5.6.97, when the assets were received, the provisions of proviso (b) to Section 158BG apply, as it then existed as on 5.6.1997, and thereunder, the Dy. Commissioner of Income tax was the competent authority, for according previous approval, and, therefore, no delegation was required to be substantiated, as expected by the Tribunal.

7. Nobody appears on behalf of the assessee, despite service of notice, which was served way back on 4.1.07. We have considered the submissions of the learned Counsel for the Revenue, and have gone through the judgment of the Hon'ble Supreme Court, in National Agricultural Cooperative Marketing Federation Ltd.'s case (supra), and various relevant provisions of the Act, and also the Finance Act.

8. Coming to the judgment of the Hon'ble Supreme Court in National Agricultural Cooperative Marketing Federation Ltd.'s case (supra), it will suffice to say, that at page 555, the Hon'ble Supreme Court has clearly held as under:

The legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the question of competence but is also subject to several judicially recognized limitations.... The first is the requirement that the words used must expressly provide or clearly imply retrospective operation....

9. In that case, by amendment of Section 80P(2)(a)(iii), the legislature substituted the word "of", which was construed by the Supreme Court in 1998 as "belonging to" with the phrase "grown by" and it was in that context, that the Hon'ble Supreme Court held, that the amendment should not be construed as authorizing the revenue authorities to reopen the assessment, when the reopening was clearly barred by limitation. A look at the amending provision being the Finance Act 2 of 1998, Section 46 thereof does show, that the words used are "In Section 158BE of the Income Tax Act, after Sub section (2), the existing explanation shall be renumbered as Explanation 1 and after Explanation 1 as so renumbered, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of July, 1995". In our view, this language leaves no manner of doubt, that the legislature, expressly, and in categorical terms, amended the provision with retrospective effect, with effect from 1st July, 1995, and the Explanation inserted or added, has been

deemed to have been inserted with effect from 1st July, 1995.

10. There is yet another aspect of the matter, mainly a look at Sub-section (1) and Sub-section (2) of Section 158BE, does show that precise distinction between the two Sub clauses (a) and (b) of either of these sub-sections, is that the period of one year is prescribed under Clause (a), with respect to matters, between 30th June, 1995 to before 1st of January, 1997, and two years limitation is prescribed under Clause (b), with respect to matters, after 1.1.1997. In this background, the Explanation 2 is added on 1.4.1998, by which time, the period of one year, in cases covered by Clause (a) of either of two sub-sections, obviously, did expire, and either the assessment must have been made within one year, or the assessment stood time barred. Obviously, so far as the Clause (b) is concerned, since the limitation was two years, this Explanation is not relevant. Thus, in our view, it further does clearly show, that the Explanation was deliberately added, making it retrospective, by providing for giving a different starting point of time for calculation of limitation. Taking any other interpretation, about possibility of not giving retrospective effect to the Explanation, would have the effect of rendering the amendment, otiose.

11. Thus, in our view, this Explanation 2, as added on 1.4.1998, with effect from 1.7.1995, does govern the present controversy also, and since the assets have been received by the concerned officer on 5.6.1997, the period of one year has to be computed from that date. The assessment order in the case, has been passed on 13.11.1997, which, in view of the above, is clearly within the period of one year. Likewise, at that time, the DCIT was the competent authority to grant previous consent for the assessment u/s 158BG, as it then existed.

12. Thus, we are not able to sustain the order impugned. The two questions, framed in the order dated 21.7.2004 are, accordingly, answered in favour of the Revenue and against the assessee.

13. The appeal is allowed, the impugned orders are set aside, and the assessment order is restored.