

(2005) 03 MP CK 0038
In the Madhya Pradesh High Court
Case No : IT Appeal No. 105 of 1999

Commissioner of Income Tax

APPELLANT

Vs

Indore Constructions (P) Ltd.

RESPONDENT

Date of Decision : 14-03-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Income Tax Act, 1961 — Section 132, 132A, 133A, 158BC, 158BD

Citation : (2005) 195 CTR 217 : (2005) 279 ITR 545 : (2005) 146 TAXMAN 286

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Division Bench

Advocate : R.L. Jain and V. Mandlik, for the Appellant; G.M. Chafekar and Sarda, for the Respondent

Final Decision : Allowed

Judgement

A.M. Sapre, J.—This is an appeal filed u/s 260A of the IT Act by the CIT against an order dt. 29th Dec., 1998, in IT(SS)A No. 81/Ind/1996, for the asst. yr. 20th Sept., 1986, to 20th Nov., 1995.

2. On 16th March, 2000, this appeal came up for hearing on the question of admission before the Division Bench of this Court (comprising R.D. Vyas, J. and Shambhoo Singh, J.) when following order was passed :

"16.3.2000

Shri Mohan Pathak, learned counsel for the appellant.

Heard on admission.

Admit.

Issue notice to the other side on payment of P.F. within a week."

3. Section 260A of the IT Act is akin to Section 100 of CPC. Sub-section (3) of Section 260A provides, rather makes it obligatory upon the High Court to

formulate a substantial question of law for deciding the appeal. Sub-section (4) then provides that the appeal shall be heard only on the question so formulated. Any appeal, whether u/s 100 of CPC or u/s 260A of the Act cannot be heard much less decided without there being a specific question of law formulated by the Court for decision. In other words, jurisdiction of this Court to hear and decide the appeal filed u/s 260A ibid depends upon the formulation of substantial question of law. Since, this exercise was not done on the date when the appeal was admitted for final hearing and hence, we formulate the following substantial questions of law for our decision. In our opinion, the questions of law do arise out of the impugned order of Tribunal impugned in this appeal. Indeed, the arguments were heard only on these questions at length and hence, there is no real prejudice which is likely to be caused to the parties and in particular to the respondent if mandate of law is complied with though at a later stage but after affording an opportunity to argue on merits of these questions. Indeed, on being pointing out the aforesaid infirmity in the order dt. 16th March, 2000, it was fairly conceded to by the counsel that questions of law has got to be framed to make the appeal in conformity with the requirement of Section 260A of the Act. Both learned counsel then addressed the Court on questions of law arising out of the case on merits, thereby causing no real prejudice to either in framing the question at a later stage :

"1. Whether Tribunal was justified on the facts of this case in holding that no assessment under Chapter XIV-B could be made by AO for want of any authorization of search warrant u/s 132 of Act in relation to the premises of assessee ?

2. In the absence of any search warrant u/s 132 ibid, whether AO had the jurisdiction to make any assessment under Chapter XIV-B of the assessee for the block period in question ?

3. Whether AO had the jurisdiction to proceed against the assessee by taking recourse to the provisions of Section 158BD for making assessment under Chapter XIV-B even in the absence of search warrant u/s 132 of the Act issued in respect of assessee's premises ?

4. Whether Tribunal was justified in allowing the assessee to challenge the assessment order on a preliminary ground having once submitted to the jurisdiction of AO by not raising any objection before him ?"

4. Assessee is a private limited company engaged in the business of construction and sale of residential flats. One Mr. R.R. Maheshwari is the director of the assessee-company. In fact, assessee being the private limited company, is fully controlled by Mr. R.R. Maheshwari--being its promoter and rather controlling director. Mr. Maheshwari is also having other business/ professional activity in addition to the construction business--such as tax consultant, etc.

5. On 21st Nov., 1995, a search operation as contemplated u/s 132 ibid was carried out in the premises of Mr. R.R. Maheshwari and Smt. Lalita Devi by the

Income Tax sleuths. It is in this search operation, several incriminating documents including some documents relating to assessee's business were seized.

6. It is this raid operation, which gave rise to initiating assessment proceeding against the assessee u/s 158BC of the Act. The assessee submitted to the jurisdiction of AO, and eventually an order of assessment dt. 29th Nov., 1996 (pp. 22 to 31 of paper book), came to be passed on merits. It is against this order of assessment; the assessee (respondent) filed an appeal to Tribunal out of which this appeal arises. In the appeal before the Tribunal, the assessee raised a preliminary ground contending, inter alia, that since there was no warrant of search issued against the assessee u/s 132 ibid, AO had no jurisdiction to proceed against the assessee for making a block assessment under Chapter XIV-B i.e., u/s 158BC. In other words, the preliminary objection was that in order to proceed to make block assessment u/s 158BC, there has to be an authorization as required u/s 132 ibid and since in this case there was no authorization so far as assessee is concerned, but it was in the name of Mr./Mrs. Maheshwari, no assessment u/s 158BC could have been made of the assessee. It was also contended that survey conducted u/s 133A cannot empower the AO to proceed u/s 158BC against an assessee. In the alternative, the assessee also raised other grounds on merits in challenging the assessment order.

7. The Tribunal by impugned order upheld the preliminary ground urged by the assessee and while allowing the appeal filed by the assessee struck down the assessment order dt. 29th Nov., 1996, referred supra. In this view, the Tribunal did not consider it necessary to examine other points raised on merits by the assessee. It is against this order of Tribunal, the CIT has come up in appeal.

8. Heard Shri R.L. Jain, learned senior counsel, with Ku. V. Mandlik, learned counsel for the appellant, and Shri G.M. Chafekar, learned senior counsel, with Shri Sarda, learned counsel for the respondent.

9. Having heard learned counsel for the parties and having perused the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order remand the appeal to Tribunal for deciding the same on merits.

10. Section 158BD and Section 2(31) which alone are relevant for deciding the question involved in this appeal reads as under :

"Section 158BD--Where the AO 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 AO having jurisdiction over such other person and that AO shall proceed u/s 158BC against such other person and the provisions of this Chapter shall apply accordingly.

Section 2(31)--"person" includes--

- (i) an individual,
- (ii) an HUF,
- (iii) a company,
- (iv) a firm,
- (v) an AOP or a BOI, whether incorporated or not,
- (vi) a local authority, and
- (vii) every artificial juridical person, not falling within any of the proceeding sub-clauses.

Explanation.--For the purposes of this clause, an AOP or a BOI or a local authority or an artificial juridical person shall be deemed to be a person, whether or not such person or body or authority or juridical person was formed or established or incorporated with the object of deriving income, profits or gains;"

11. Mere perusal of aforequoted sections would show that "any person" defined in Section 158BD in this case would be the "assessee" for the purpose of initiating action u/s 158BC *ibid* in this case. One cannot dispute that person includes "company" and hence assessee being a private limited company would come within the mischief of any person as defined in Section 158BD. In this view of the matter, assuming that the search warrant was issued in the name of Mr. R.R. Maheshwari/Mrs. Lilawati Maheshwari, i.e., director of assessee-company u/s 132 *ibid*, even then, by virtue of powers conferred u/s 158BD, the AO had jurisdiction to proceed against the assessee u/s 158BC of the Act. It is for the reason that certain incriminating documents had been seized in relation to the business of assessee in the premises of Mr. R.R. Maheshwari who happened to be a director of assessee-company. In our opinion, it is enough to attract the rigour of Section 158BD for proceeding against the assessee. In such case, no separate authorization as contemplated u/s 132 of IT Act for this assessee, i.e., company is required. Indeed, the very object of Section 158BD is to give jurisdiction to AO to proceed against any person (assessee) other than the person against whom search warrant is issued u/s 132 or Section 132A *ibid* provided any undisclosed income belongs to such person as in this case assessee is recovered in search operation.

12. In our opinion, the Tribunal committed an error of law in placing reliance on some statement of Minister in deciding the case in favour of assessee. In fact, the Tribunal should have concentrated and confined its discussion on Section 158BD *r/w* Section 2(31) for deciding the issue involved. In our opinion, Section 158BD *r/w* Section 2(31) of the Act is the complete answer to the question involved in this appeal against the assessee and in favour of CIT on the facts found by the lower authorities.

13. In view of aforesaid discussion, we cannot accept the submission of learned counsel for the assessee when he urged that warrant of search was required to

be issued u/s 132 of the Act for searching the place of assessee and secondly, no assessment u/s 158BC could be made for want of authorization.

14. Much emphasis was being laid by the parties on what has been observed by the AO in his order. In our considered opinion, nothing really turns on what is mentioned by AO in his assessment order. It is hardly of any consequence even if AO had wrongly mentioned in his order that raid had taken place in the premises of assessee. Once this Court holds that even without there being any raid/search in the premises of assessee, the AO had the jurisdiction to proceed u/s 158BD then in such event, it is of no significance whether search has taken place in assessee's premises or not. No serious attempt was made by learned counsel for assessee to contend that no case whatsoever is made out for invoking even Section 158BD against the assessee. We have already held on facts supra that AO had acquired the jurisdiction to proceed u/s 158BD against the assessee because of recovery of some documents in relation to assessee's business in the raid that was carried out in the premises of assessee's director-Mr. R.R. Maheshwari.

15. Learned counsel for the assessee vehemently contended that the proceedings for assessment under Chapter XIV-B being of a special nature, the issue has to be dealt with strictly and since the whole thrust was against the director and his business/residential premises, the assessee cannot be made to suffer, it being a separate legal entity. We do not agree. In our view, this submission has no merit. At the cost of repetition, we may observe that the case falls in Section 158BD of the Act and hence, nothing survives.

16. Learned counsel for the assessee placing reliance on cases reported in Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain Ibrahimji Mithiborwala, ; Upper Doab Sugar Mills Ltd. Vs. Commissioner of Income Tax, and 248 ITR 356 contended that the impugned order be upheld. We find no merit in this submission. In our opinion, the cases relied upon by the learned counsel for assessee are distinguishable on facts of this case and hence, we do not wish to deal with them in detail. As held supra, we have in this case relied on Section 158BD r/w Section 2(31) for deciding the case against the assessee.

17. In view of aforesaid discussion, we allow the appeal and set aside the impugned order. We hold that AO was justified in proceeding against the assessee under Chapter XIV-B, i.e., u/s 158BC for making block assessment of the period in question. In view of this finding returned by us, we need not discuss any other question framed by us which stands answered. However, in the light of finding so returned by us, the Tribunal is now directed to decide all other issues/questions that may have been raised by the assessee on merits in their appeal on facts. Let the same be decided within three months from the date of this order strictly in accordance with law. No costs.