(2007) 03 MAD CK 0038

In the Madras High Court

Commissioner of Income Tax APPELLANT

Vs

L.K. Ramasamy RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Citation : (2007) 03 MAD CK 0038

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—The above tax case appeal is directed against the order of the Income Tax Appellate Tribunal made in IT(SS)A No. 84/Mds/ 2003, 24-2-2006, for the block assessment period 1-4-1999, to 22-6-1999.

2. The brief facts of the case are stated as hereunder:

3. The revenue is the appellant and the relevant block assessment period involved is 1-4-1999, to 22-6-1999. The respondent/assessee is engaged in the business of manufacture and sale of cloth. Concededly, even though there was a search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), on 22-6-1999, in the business and residential premises of the respondent/ assessee, even prior to the date of search, the assessee filed his regular returns for the previous years falling within the block period as detailed hereunder:

Previous year ended/ Assessment year

Date of filing of return

Income admitted(Rs.)

31-3-95/95-96

13-4-1999

23,830

31-3-96/96-97

13-4-1999

14,260

31-3-97/97-98

13-4-1999

55,160

31-3-98/98-99

13-4-1999

65,810

31-3-99/99-2000

11-6-2001

1,33,870

4. However, at the time of search, it was found that the respondent/assessee, Sri. K. Ramasamy, along with five others, had purchased about 4.26 acres of land from Sri. V. S. Kathirvel on 7-11-1995, for a consideration of Rs. 31.68 lakhs and in order to ascertain the sources for the purchase consideration, enquiries were made by the Deputy Director of Income Tax (Inv.) with the assessee. It was admitted by the assessee in his sworn statement given on 5-7-1999 before the Deputy Director of Income Tax (Inv.) that he had contributed Rs. 5.28 lakhs, being 1/6th share of the purchase consideration for the said piece of land. According to this statement, Rs. 4.00 lakhs out of Rs. 5.28 lakhs were borrowed from third parties and the assessee offered at that time to admit Rs. 1.28 lakhs as his undisclosed income and to pay the tax thereon.

5. On the satisfaction that there were certain undisclosed incomes, action u/s 158BD of the Act was initiated and notice u/s 158BC(a) of the Act was issued on 10-10-2000 and the same was served on the assessee on 17-10-2000. In response to the said notice, the assessee filed the return for the block assessment in Form No. 2B on 4-10-2000, admitting undisclosed income of Rs. 1.28 lakhs for the previous year 1995-96 falling within the block period. The case was taken up for scrutiny and after examining the documents seized during search and on hearing the submissions of the assessee, the assessing officer proceeded to make the block assessment.

6. The assessing officer found that for the assessment years 1997-98 and 1998-99, the regular returns were filed beyond the due date specified u/s 139(1) of the Act and hence, the incomes that were admitted for these years were also treated as undisclosed income for the respective years in terms of the provisions of Section 158BB(1)(c) of the Act.

7. Consequently, the assessing officer computed the undisclosed income of each year comprised in the block period as under:

Previous year ended 31-03-96/asst. year 96-97

Rs.

Total income returned/assessed

14,317

Add : Undisclosed income admitted by the assessee

1,28,000

Total income including undisclosed income

1,42,317

Previous year ended 31-03-97/assessment year 1997-98

Total income returned

Nil

Add : Undisclosed income admitted by the assessee

55,160

Total income including undisclosed income

55,160

Previous year ended 31-03-98/assessment year 1998-99

Total income returned

Nil

Add: Undisclosed income admitted by the assessee

65,810

Total income including undisclosed income

65,810

8. The total undisclosed income for the block period was computed as under:

Previous year/ Assessment year

Total income including undisclosed income

Total income returned/ assessed (Rs.)

F.Y.94-95/95-96

23,830

23,830

F.Y.95-96/96-97

1,42,317

14,317

F.Y.96-97/97-98

55,160

Na

F.Y.97-98/98-99

65,810

Nil

F.Y.98-99/99-2000

1,33,874

1,33,874

Period ended 22-6-1999

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4,20,991

1,72,021

9. The assessing officer had not taken into account the total income for the previous year relevant to the assessment years 1990-91 to 1994-95 while computing undisclosed income, since they were below the taxable limit. Thus, the undisclosed income was computed at Rs. 2,48,970 (Rs. 4,20,991 - Rs. 1,72,021) and accordingly, the total tax payable to the tune of Rs. 2,12,344 was demanded, as per the following calculation, of course, reserving the penalty proceedings u/s 158BFA(2) of the Act, to be initiated separately:

Rs.

income tax at 60%

1,49,382

Surcharge at 15%

22,407

1,71,789

Less : Tax paid/adjusted

20,000

Balance tax payable

1,51,789

Add : Interest u/s 158BFA(1) for 7 month at 2 per cent, and for 17 months at 1.25 per cent.

60,555

Total tax payable

2,12,344

10. Accordingly, the assessing officer passed the order of demand 31-10-2002, u/s 158BC(c) read with Section 158BD of the Act.

11. Aggrieved by the same, the assessee preferred an appeal before the Commissioner (Appeals), challenging the finding of the assessing officer that since the regular returns for the assessment years 1997-98 and 1998-99 were filed beyond the due date specified u/s 139(1) of the Act, the income admitted for these years should be treated as undisclosed income for the respective years in terms of provisions of Section 158BB(1)(c) of the Act. The respondent/assessee also challenged the levy of surcharge. The Commissioner, by order 12-2-2003, while accepting the case of the assessee on the first point, upheld that the levy of surcharge on the tax determined on undisclosed income of Rs. 1.28 lakhs.

12. Against the said order of the Commissioner, the revenue preferred an appeal before the Tribunal again contending that since the returns of income for the assessment years 1997-98 and 1998-99 were filed beyond the due date specified u/s 139(1) of the Act, the incomes admitted in the said returns can be treated as undisclosed income for the block assessment in terms of the provisions of Section 158BB(1)(c) of the Act. But the Tribunal held in favour of the assessee holding that once the return of income was filed, even though the same was filed beyond the date specified u/s 139(1) of the Act, the income admitted in the said belated returns cannot be treated as an undisclosed income for the block assessment, since that information was available with the department even before the date of search. Hence, this appeal giving rise to the following substantial questions of law for consideration:

(i) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in holding that the income disclosed in the regular returns filed by the assessee after the date specified u/s 139 of the Income Tax Act is not undisclosed income ?

(ii) Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in not considering Section 158BB(1)(c) of the Income Tax Act whereby the regular returns of income filed beyond the due dates specified u/s 139(1) would be treated as undisclosed income ?

13. Both the above questions revolve on the only point, whether the income admitted in the belated returns can be treated as an undisclosed income for the block assessment and therefore, they are dealt with jointly.

14. Section 158B(a) defines the block period to mean a period of previous years relevant to the ten assessment years preceding the previous year in which the search was conducted and the period up to the date of commencement of such search. Section 158BA(2) declares that the total undisclosed income relating to the block period shall be charged to tax at the rate specified in Section 113, as income of the block period irrespective of the previous year or years to which such income relates.

15. Of course, the returns for the assessment.years 1997-98 and 1998-99 filed beyond the due date specified u/s 139(1) of the Act may be invalid returns, but, it cannot be disputed that the information contained in such belated returns showing the earning of corresponding income by the assessee is a valid information imparted by the assessee to the assessing officer. If that be so, a mere search after such filing of belated returns of income, as in the instant case, where the search was conducted on 22-6-1999, by itself, will not entitle the revenue to treat the incomes admitted by the assessee in these years as undisclosed income of the assessee for the block assessment.

16. The above view is also supported by the decision of another Division Bench of this Court in T. C. No. 268 of 2001 (between CIT v. J. K. Narayanan) by judgment 1-4-2004.

17. Mr. N. Murali Kumaran, learned senior standing counsel appearing for the revenue, invited our attention to the decision of a Division Bench of the Madhya Pradesh High Court in Dr. Brijesh Lahoti Vs. Commissioner of Income Tax and Others, , to sustain the order of the assessing officer treating the income admitted by the assessee as undisclosed income. Admittedly, in the case before the Madhya Pradesh High Court, referred to supra, there was no material to establish that the assessee had disclosed his income before the date of search, that means, the return was filed after the date of search by the department. Therefore, the decision of the Madhya Pradesh High Court in Dr. Brijesh Lahoti Vs. Commissioner of Income Tax and Others, , has no application to the facts of the present case.

18. Accordingly, finding no question of law arises for consideration, the above tax case appeal is dismissed.