(2002) 09 KL CK 0029

In the High Court Of Kerala

Case No : W.A. No. 125 of 1997 & Writ Appeal No. 125 of 1997 (C)

Commissioner of Income Tax APPELLANT

Vs

N.T. John RESPONDENT

Date of Decision : 27-09-2002

Acts Referred:
Income Tax Act, 1961 — Section 143, 158BA, 158BC

Citation : (2003) 179 CTR 473 : (2003) 259 ITR 224

Hon'ble Judges : S. Sankarasubban, J;K. Padmanabhan Nair, J

Bench : Division Bench

Advocate : P.K. Ravindranatha Menon and N.R.K. Nayar, for the Appellant; S. Vijayan Nair, for the Respondent

Judgement

S. Sankarasubban, J.—This Writ Appeal is tiled against the judgment of a learned Single Judge in O.P. No. 12087 of 1996. The Original Petition was filed by the respondents for quashing Ext. P4 notice relating to the assessment year 1993-94 and to command the second respondent to issue notices u/s 158BC of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') for the block period. The facts of the case are as follows:

2. Respondent (petitioner in the Original Petition) is a practising Advocate with 20 years of standing in the bar. He has been assessed to income tax for the last 10 years. His assessments are up-to-date and there is no arrears of tax due to the Department. In his latest assessment, he had disclosed a total income of Rs. 95,180/- for the assessment year 1995-96 and the same was accepted u/s 143(1) of the Act.

3. On 23.2.1996, the petitioner''s place was searched under the powers conferred on the Income Tax Authorities by Section 132 of the Act. One Assistant Director of Income Tax (Inv) and several officers and men of the Income Tax Department took part in the search operation and the action continued upto 24.2.1996. After search a Panchanama dated 24.2.1996 was prepared, copy of which is produced as Ext. P1. It is submitted that after 1.7.1995, all cases where

search and seizer operations were conducted by the Department u/s 132 of the Act, the assessments of the income detected as a result of search and seizer are to be completed under the new provisions of Chapter XIV-B introduced in the Act in 1995. Under the new procedure for assessment of undisclosed income, the undisclosed income was spread over of 10 previous years called block years and after deducting whatever income is assessed/ disclosed by the assessee the balance will be subjected to 609 tax leaving 40% to the assessee according to Section 113 of the Act.

4. The grievance of the petitioner in the Original Petition is that the second respondent Assessing Officer is trying to bypass the provisions of law by ignoring Chapter XIVB and making hasty steps to complete the assessment u/s 143(3) or 144 which is not authorised by law and hence there is no statutory remedy to keep the second respondent within limits of his powers.

5. The petitioner''s assessment for the assessment year 1993-94 was completed u/s 143(1) of the Act and intimation u/s 143(1a) dated 25.3.1994 was received by the petitioner, copy of which is produced as Ext. P2. After Ext. P2, the case was selected for detailed scrutiny as authorised by the Act. Having subjected to search u/s 132, the petitioner wanted to buy peace by undertaking to be assessed under the new procedure under Chapter XIVB of the Act. Accordingly, the petitioner wrote a letter dated 4.7.1996 to the second respondent requesting to issue notices u/s 158BC. The second respondent issued notice/letter dated 22.7.1996 proposing to complete the assessment u/s 143(3) or 144. Copy of the notice/letter is produced as Ext. P4. It is challenging Ext. P4 that the Original Petition was filed.

6. A statement was filed on behalf of the Income Tax Department in the Original Petition. Ext. P4 is regarding the assessment for the year 1993-94. The notice intends the petitioner that it was proposed to continue the assessment for the year 1993-94, u/s 144 of the Act.

7. During the pendency of the Original Petition, there was a petition for staying the passing of the assessment order for the year 1993-94. A liberty was given to the Department to proceed with the assessment against the petitioner for the year 1993-94. It was directed to be kept in abeyance till the disposal of the Original Petition. The learned single Judge, after hearing the parties, quashed Ext. P4. The learned Single Judge took the view that since the proceedings have been taken u/s 132, the assessment should be only had under Chapter XIVB of the Act. It was in the above view that the Original Petition was allowed and Ext. P4 was quashed. It is against that the present Writ Appeal is filed.

8. Learned counsel for the Revenue Sri. P.K.R. Menon contended that the judgment of the learned Single Judge is wrong. According to him, the initiation of proceedings u/s 158 of the Act does not deprive the Department to assess the assessee u/s 143 of the Act. Learned counsel pressed the point that what is assessed in the block period is the undisclosed income whereas according to the

assessment, the income and loss are taken into account. Hence both are different. Learned counsel for the assessee submitted that when once the proceedings are initiated under Chapter XIVB, the proceedings have to be continued like that and no regular assessment proceedings can be taken.

9. After hearing both sides, we are of the view that the appeal has to be allowed. Chapter XIVB of the Act deals with the procedure for assessment. Section 158BA of the Act deals with assessment of undisclosed income as a result of search, which states as follows:

"(1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) 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 and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

Explanation :- For the removal of doubts, it is hereby declared that-

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period;"

Learned counsel took the view that when proceedings are taken under Chapter XIV B, no other assessment proceedings can be taken for the years. According to us, this view is not correct. The Explanation itself shows that this is in addition to regular proceedings. A learned Judge of this Court in Malayil Bankers Vs. Assistant Commissioner of Income Tax, , held as follows: "A plain reading of Section 158BA of the Income Tax Act, 1961, and its heading makes it clear that this provision is intended to assess undisclosed income in contradistinction with a regular assessment. The Explanation inserted by the Finance (No. 2) Act 1998, with effect from July 1, 1995, clears all the doubts, if any, on the issue. Explanation (a) states that the assessment made under this Chapter shall be in addition to the regular assessment. Explanation (b) states that the total undisclosed income relating to the block period shall not include any income, assessed in any regular assessment. Hence, the contention that once an assessment has been formed for a block period u/s 158BC of the Income Tax Act, 1961, the Income tax Officer is debarred from framing an assessment u/s 143 cannot be accepted". In Caltradeco Steel (P) Ltd and Ors. v. Deputy

Commissioner of Income Tax, the Calcutta High Court held as follows: "Chapter XIVB is for assessment of undisclosed income found as a result of search and assessment u/s 143(3) pertains to disclosed income; there is no bar to proceed with to assess the income of the assessee u/s 143(3) which he disclosed in the return of a year forming part of block period, while proceedings under the provisions of Chapter XIVB are pending". A Division Bench of the Gujarat High Court in N.R. Paper and Board Limited and Others Vs. Deputy Commissioner of Income Tax, , had occasion to consider the matter in detail and held us follows: "that the notices issued u/s 143(2) were in respect of the regular assessment and the Assessing Officer was within his jurisdiction to proceed with the same as per Section 143(3) and make a regular, assessment of the total income/loss of the previous year for the assessment year 1995-96 notwithstanding the fact that the said previous year was included in the block period for the purpose of assessment of the undisclosed income and that such assessment was already done and was the subject matter of challenge before the Tribunal". We agree with the reasoning given, in the above cases and hold that there is no bar for continuing the regular assessment including the block period.

10. In the above view of the matter, we set aside the judgment of the learned Single Judge and dismiss the Original Petition. As per the interim order in the Writ Appeal, the proceedings pursuant to Ext. P4 continued and orders of assessment have been passed. Since the matter was stayed by this Court, if the respondent wishes to challenge the assessment order under appeal, he can do so within two months from today.

