(2008) 11 MAD CK 0204

In the Madras High Court

Case No : T.C. (A.) No. 502 of 2005

Commissioner of Income Tax APPELLANT

Vs

P.K. Ganeshwar RESPONDENT

Date of Decision : 24-11-2008

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

Citation : (2009) 308 ITR 124

Hon'ble Judges : Prabha Sridevan, J;K.K. Sasidharan, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant; T.N. Seetharaman, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The following questions of law were framed in this tax case. However, the learned Counsel would refer only to questions 1 and 4 for consideration.

1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the block assessments u/s 158BC could not be made unless the assessment is based only on materials, valuables, etc., found during the course of such search ?

2. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the issues considered in the block assessment should have been considered in a reassessment procedure and not in a block assessment ?

3. Whether, in the facts and circumstances of the case, the Tribunal was right in holding that the information not found during the course of search cannot be used to arrive at an undisclosed income under the block assessment as per Section 158BB amended with retrospective effect from July 1, 1995 ?

4. Whether, in the facts and circumstances of the case, the Tribunal was right in admitting the additional plea which altogether changes the complexion of the case is not permissible to be raised at the time of hearing ?

2. The assessee is an individual. On September 10, 1997, a search was carried out u/s 132 of the Income Tax Act, 1961. Certain items were seized and assessment was made for the block period April 1, 1987, to September 10, 1997. Pursuant to investigation which followed after the search, a letter of credit was found which led to the discovery of fixed deposits standing in the names of several persons and the value of the fixed deposit in the fictitious names amounted to Rs. 2.83 crores.

3. In the return for the block assessment the assessees had, however, showed only Rs. 36.10 lakhs as his undisclosed income. Therefore, the Assessing Officer arrived at a huge undisclosed income, including an amount of Rs. 2.56 crores. Against that, an appeal was filed. The appellate authority confirmed the order of assessment and treated Rs. 2.56 crores as undisclosed income.

4. The Department was aggrieved by the deletion of Rs. 21.70 lakhs from the undisclosed income. So both the assessees and the Department filed appeals before the Income Tax Appellate Tribunal. Before the Tribunal additional evidence was filed by the assessee in spite of the objection by the Department. The Tribunal considered the additional evidence and after giving a finding on the merits, rejected the additional evidences.

5. However, with regard to the sustainability of the addition of the undisclosed income, the Tribunal held that the existence of the fixed deposits was not detected as a result of the search but by investigation which followed the search and in view of Chapter XIV-B of the Act which is a special procedure for assessment of "undisclosed income found as a result of the search only" held that the sum of Rs. 2.56 crores cannot be included in the undisclosed income of the block period. Against this the Department preferred this appeal.

6. Heard the counsel Mr. T. Ravikumar for the Revenue and Mr. T. N. Seetharaman for the assessee.

7. The facts are not in dispute. This question has been considered in the following cases:

Commissioner of Income Tax Vs. G.K. Senniappan, ;

CIT v. Ravi Kant Jain [2006] 250 ITR 141 ; and

Commissioner of Income Tax Vs. S. Ajit Kumar, .

8. In Commissioner of Income Tax Vs. G.K. Senniappan, , a search was conducted in respect of an individual and the documents seized during such search indicated that the assessee had utilized the undisclosed incomes for making contribution to certain unregistered chits. Thereafter, a survey was conducted in the business premises of the assessees, on the basis of which, the

Assessing Officer included the undisclosed income found during the survey. The Commissioner of Income Tax (Appeals) excluded that portion of the undisclosed income which has been included based on the materials found during the survey. The Tribunal also confirmed the same. This Court held that a reading of Section 158BB would show that the undisclosed income of the block period should be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of the Act. This Court further held that no other material except that evidence which was found as a result of search can form the basis for computation of undisclosed income of the block period.

9. In the case of CIT v. Ravi Kant Jain [2006] 250 ITR 141 (Delhi), the materials seized and the books of account were of a complex nature and hence, special auditors were appointed, with instruction to submit a report. On the basis of the report submitted by the special auditors, assessment was made. It was contended by the assessee that the income was determined not on the basis of any materials unearthed during search, but on the basis of the report of the special auditors. The court held (page 145):

The special procedure of Chapter XTV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to Sections 132 and 132A.

10. In Commissioner of Income Tax Vs. S. Ajit Kumar, , the office and residential premises of the assessee were searched and pursuant to the search, a survey was done in the premises of the builder and interior decorator of the assessees and based on the survey, a block assessment was completed bringing certain amount to tax as undisclosed income. The Tribunal held that the information of materials found in the survey operation of the premises of the interior decorator was not related to any material found during the course of search operation and the same cannot be a basis for making any addition in the block assessment. The Department appealed before this Court and the same was dismissed following Commissioner of Income Tax Vs. G.K. Senniappan, reported above.

11. In this view of the matter questions Nos. 1, 2 and 3 are answered against the Revenue.

12. As regards question No. 4, it does not require any answer since the Tribunal has rejected the evidence. However, the learned Counsel for the respondent-assessee referred to Commissioner of Income Tax Vs. Coromandal Indag

Products (P.) Ltd., where the question related to imposition of penalty and this Court held that while considering the question of imposition of penalty and remitting the matter to the Assessing Officer to reconsider the claim for deduction, the Tribunal ought not to have observed that the claim for deduction was only a legal contention and the claim could not be recorded as false claim. The view expressed by the Appellate Tribunal that the claim for deduction was not a false claim was not approved by the court.

13. The learned Counsel for the assessee also submitted that after having held that the additional evidence shall not be taken into account, it was not open to the Tribunal to go into the merits of the additional evidence in the assessee''s challenge to the inclusion of any undisclosed income, the observations made by the Tribunal will prejudice the assessee.

14. Here, the grievance of the assessee is with regard to the observations of the Tribunal at paragraph 20, which is extracted as below:

20. The additional evidence of turnover and stock values to our mind in these circumstances do not make any dent to the already empty and weak claim. On the factual aspect of the addition, we are of the opinion that the assessee could not substantiate by any evidence at all and hence rejected.

15. Since it appears that the regular assessment has been made with regard to the undisclosed income and the same is pending decision, any authority deciding the regular assessment proceedings independent of the above findings of the Tribunal. The tax case is disposed of as above. No costs.

