
(2008) 01 MP CK 0011
In the Madhya Pradesh High Court

Commissioner of Income Tax	Vs	APPELLANT
Rajendra Kumar		RESPONDENT

Date of Decision : 02-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 132, 139, 158B, 158BC

Citation : (2009) 178 TAXMAN 208

Hon'ble Judges : S.R. Waghmare, J;Ramesh Surajmal Garg, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

May it please your Lordships,

1. The above named appellant being aggrieved by the order passed by the ITAT in IT Appeal (SS) No. 1 I/Ind./2005 dated 20-7-2007 for the block period 1-4-1995 to 5-12-2001 humbly prefers this appeal as under:

Facts In Brief

2. The brief facts of the case are that the search action u/s 132 of the Act was conducted in this case on 5-12-2001. The assessee was doing the business of sales and purchases of wheat, gram, soya, etc. During the assessment proceedings, it was noted that there were cash entries in the name of the farmers.

income tax Appeal No. 430/2007, 2-1-2008

3. Mr. R.L. Jain, senior advocate with Ms. Veena Mandlik, counsel for the appellant.

Heard on the question of admission.

4. The appellant being aggrieved by the order passed by the Income Tax Appellate Tribunal in IT Appeal (SS)No. 11 /Ind./2005, dated 20-7-2007 for the Block period between 1-4-1995 to 5-12-2001, is before this Court with a

submission that the Tribunal erred in not appreciating the question argued before it and also erred in not appreciating that the block assessment was made rightly by the authorities. It is to be seen from the appeal memo submitted before the Income Tax Appellate Tribunal, only question raised was on the facts and in the circumstances of the case, learned Commissioner of Income Tax (Appeals) erred in deleting the addition of Rs. 13,37,237 made by the Assessing Officer for peak credit of farmer's account holding that such addition is totally outside the scope of the block assessment proceedings. From paragraph 3 the order passed by the learned Income Tax Appellate Tribunal, it would again appear that the above referred was the only question raised before the Tribunal.

5. Shri Jain, learned senior counsel for the appellant vehemently con-tended that the Income Tax Appellate Tribunal did not take into consider-ation the accounting made in Section 158B(b) of the Income Tax Appellate Tribunal defining "undisclosed income". He also submitted that proper and appropriate opportunity to defend was given to the respondent-assessee during which he did not object and, therefore, Assessing Officer was justified in making assessment against the interest of the assessee.

6. We have heard Shri Jain at length and have also gone through the order passed by the learned Appellate Tribunal.

7. Learned Income Tax Appellate Tribunal has referred to the arguments of the representatives of the parties in paragraphs 7, 8 and 9 in its order. It has found that a search was conducted on 3-12-2001 and notice u/s 158BC was issued by the Assessing Officer on 9-12-2002. In compliance to that, return was furnished on 10-1-2003. First assessment proceeding was initiated on 6-8-2003, when the case was to become barred by limitation on 31-12-2003. The Tribunal also observed that there is no delay on the part of the assessee. The Tribunal also took note on the fact that the Assessing Officer required the assessee to produce more than 900 farmers, which was an impossible task. It was submitted by the assessee that the Assessing Officer was making wrong allegation against the assessee, especially in relation to the delay while in fact, the Assessing Officer himself was solely responsible for causing or committing the delay.

8. After hearing the parties, learned Income Tax Appellate Tribunal had observed that during course of search no document or paper was found by the search party which could reveal that the assessee was doing unaccounted business. It was also noted by the Income Tax Appellate Tribunal that during the course of search, books of account seized by the department, were maintained in regular course of business and in regard to those books of account the returns of income had already been filed by the assessee u/s 139 before conducting the search by the department. On the facts, Income Tax Appellate Tribunal found that the Assessing Officer could not bring any evidence on record to justify addition of Rs. 13,37,237.

9. Being in general agreement with the findings recorded by the CIT (Appeals)

and learned Income Tax Appellate Tribunal, we are of the opinion that the present is not a fit case for any interference. Even otherwise, for the reasons noted aforesaid, we can safely say that the present appeal does not deserve any consideration by the High Court/The appeal is, accordingly, dismissed.