(2013) 02 P&H CK 0188

In the Punjab And Haryana At Chandigarh

Case No : Income Tax A. No. 551 of 2010

Commissioner of Income Tax — APPELLANT

Vs

Ram Singh — RESPONDENT

Date of Decision : 05-02-2013

Acts Referred:
Income Tax Act, 1961 — Section 132, 132(1), 158, 158BA, 158BC

Citation : (2013) 262 CTR 96 : (2013) 351 ITR 391

Hon'ble Judges : A.K. Sikri, C.J;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Savita Saxena, for the Appellant; Radhika Suri, for the Respondent

Judgement

A.K. Sikri, C.J.—By this judgment, we shall be disposing of five appeals, i.e., I.T.A. No. 551 of 2010 titled as CIT v. Ram Singh, I.T.A. No. 559 of 2010 titled as CIT v. Gurdeep Singh, I.T.A. No. 604 of 2010 titled as CIT v. Amarjit Singh, I.T.A. No. 664 of 2010 titled as CIT v. Gurmail Singh and I.T.A. No. 665 of 2010 titled as CIT v. Dalip Singh, which arise out of the common orders passed by the learned income tax Appellate Tribunal, dated November 28, 2008. Common questions of law were framed on February 8, 2012, while admitting these appeals which are as under:

1. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the assessments by holding that the assumption of jurisdiction by issuance of notice u/s 158BC was invalid and void ab initio ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in cancelling the assessment by holding that the assumption of jurisdiction by issuance of notice u/s 158/ 158BC was invalid and void ab initio though the jurisdiction over the person (Lal Singh) in whose case search warrant was issued and the other person (the assessee under consideration) in whose case warrant was not issued vested with the same Assessing Officer ?

2. These questions of law have arisen on the basis of the information received

from some person to the effect that Prem Jain and Rattan Jain, residents of village Malerkotla are big property dealers of the town and have given various movable and immovable assets disproportionate to their known sources of income and income declared to the income tax Department.

3. The statement of the informer was recorded which also revealed that these two brothers had kept their account books with Lal Singh resident of Malerkotla. On that basis, Additional Director of income tax (Investigation) recorded his satisfaction for searching the premises of Prem Jain, Rattan Jain, Ram Singh, Lal Singh and Gurcharan Singh big property dealers residents of Railway Road, Malerkotla, and issued warrants of authorization u/s 132(1) of the income tax Act, 1961. The premises of the aforesaid persons were searched, wherein as per the Revenue, many incriminating documents and material were found and were seized. During search of the premises of Lal Singh, the same incriminating documents were found which pertained to the respondents-assessees herein who are the sons of Lal Singh.

4. On the basis of that material, notices were issued to Lal Singh as well as the assessees herein (sons of Lal Singh) u/s 158BC of the income tax Act, 1961 (hereinafter referred to as "the Act"), for April 1, 1985, and October 5, 1985, and, ultimately, they filed their returns and declared undisclosed income. The Assessing Officer, thereafter, carried out the assessment. The returns filed by these persons were not accepted. Many additions were made on various accounts as is clear from the assessment order.

5. However, having regard to the nature of question of law involved, it is not necessary to take note of the nature of these additions. Suffice to state that because of these additions of amount treated as undisclosed income, the appellants preferred separate appeals (five in number) before the income tax Appellate Tribunal.

6. The main contention of the learned counsel for the appellants was that the entire assessment proceedings were without jurisdiction and void ab initio for the reason that there was no authorization for issuing search warrants against them and, in these circumstances, there could not have been any proper assessment against them u/s 158BC of the Act. It was submitted that, in such circumstances, block assessment, if any, could have been only u/s 158BD of the Act but the procedure for carrying out the assessment in that manner, which was mandatory in nature, was not followed.

7. The learned Tribunal has found force in the aforesaid submission of the learned counsel for the appellants and it is for this reason that the Tribunal while accepting the appeals of these assessees, have set aside the order of the Additional Director of income tax treating the same as invalid and void ab initio.

8. The admitted facts which emerge from the second are that there is no authorization of search or search warrants u/s 132(1) of the Act in respect of these assessees. No doubt, while searching the premises of their father, Lal

Singh, some documents and other material which were not belonging to the assessees were seized and on that basis, there could be block assessment. However, in such a situation when there was no authorization in respect of these assessees, it is the provisions of section 158BD of the Act which would be attracted and not the provisions of section 158BC.

9. The Tribunal has rightly pointed out that the jurisdiction to assess the undisclosed income for the block period under Chapter XIV-B vests in the Assessing Officer by virtue of the provisions of section 158BA in a case where a search u/s 132 is initiated after June 30, 1995. Again, in term of section 158BC, a notice under that section can be issued where any search has been conducted u/s 132 of the Act. However, assessment is to be carried out in respect of undisclosed income of other person, i.e., a person in whose case, there was no search made u/s 132 of the Act, the provisions of section 158BD are to be invoked. These provisions are reproduced below:

Section 158BD of the income tax Act 1961, authorises the Department to assess a person other than the searched person based on materials recovered during search. No independent notice is contemplated under the section because it only given the jurisdiction to the Assessing Officer to assess a person other than the searched person based on materials gathered during search. The procedure for assessment of a person other than the searched person u/s 158BD is the same procedure contained in section 158BC. Since no notice is prescribed u/s 158BD, which is required is to issue an intimation about the initiation of proceedings u/s 158BD by the officer, and then to call for return in Form 2B prescribed under rule 12(1)(a) of the income tax Rules, 1962, for assessment u/s 158BC.

10. These provisions categorically mention that in that eventuality, the Assessing Officer has to proceed u/s 158BC against such other person and the provisions of this Chapter are applicable accordingly.

11. In the present case, however, the assessment against the assessees was not u/s 158BD of the Act but they were issued notices u/s 158BC and the assessment order was passed under that provision. In the absence of any search warrants in respect of these assessees u/s 132(1) of the Act, assessment could not have been u/s 158BC of the Act. Such an assessment without authorization is void ab initio. The Tribunal has referred to the judgment of the Special Bench in the case of (2005) 95 ITD 489 , Delhi Special Bench in this behalf. No issue remains res integra and law has been settled by various judgments of the High Courts as well.

12. In the case of AJIT JAIN Vs. UNION OF INDIA and Others, the High Court dealt with the precise issue in the mariner as under (page 312):

Since the search in the present case had taken place on January 11, 1996, in accordance with the said provisions, an ex parte block assessment for the assessment years 1986-87 to 1996-97 was made on January 31, 1997, creating a total demand of Rs. 50,13,204 on the petitioner in his status as individual. As the title of the said Chapter suggests these are special procedure for assessment of search cases and, therefore, a search u/s 132 is a prerequisite for invoking the provisions of the said Chapter. It is axiomatic that search u/s 132, as contemplated in the Chapter has to be a valid search. An illegal search is no search and as a necessary corollary in such a case, Chapter XIV-B would have no application. Since in the instant case, we have come to the conclusion that the search conducted on January 11, 1996, was without jurisdiction and was thus void ab initio, the imminent consequence would be that the provisions of Chapter XIV-B cannot be invoked against the petitioner, pursuant to the said search of his room at Chennai. Consequently, the block assessment order dated January 31, 1997, cannot be sustained. We accordingly quash the same.

13. This judgment was upheld by the Supreme Court in the case of Union of India (UOI) Vs. Ajit Jain and Another, To the same effect is another judgment of the Delhi High Court in the case of Dr. Nalini Mahajan, Ram Lal Mahajan Charitable Trust, Shri Rakesh Mahajan, Pan Foods Ltd. and Others and Mahajan Industries Pvt. Ltd. and Others Vs. Director of Income Tax (Inv.) and Others, . Thus, we answer both the questions in the affirmative, i.e., in favour of the assessees and against the Revenue. As a result, these appeals are hereby dismissed.