(2011) 07 P&H CK 0230

In the Punjab And Haryana At Chandigarh

Case No : Income-Tax No. 171 of 2011

Commissioner of Income Tax — APPELLANT

Vs

Ramesh Kumar — RESPONDENT

Date of Decision : 19-07-2011

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

Citation : (2012) 204 TAXMAN 121

Hon'ble Judges : A.K. Goel, Acting C.J.;Ajay Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ajay Kumar Mittal, J.—This appeal u/s 260A of the income tax Act, 1961 (for short "the Act"), has been filed by the Revenue against the order dated June 25, 2010, passed by the income tax Appellate Tribunal, Chandigarh Bench "B", Chandigarh (in short "the Tribunal") in ITSS(A) No. 5/Chandi/2010, for the block period from April 1, 1998, to February 5, 2003.

2. The following substantial question of law has been claimed for determination of this court :

Whether, on the facts and in law, the Hon''ble income tax Appellate Tribunal was justified in holding the recording of satisfaction u/s 158BD by the assessing officer of the person searched and consequent issuance and service of notice u/s 158BD on December 8, 2005, was belated and beyond the period prescribed by law when section 158BD read with section 158BE does not specify that satisfaction has to be recorded by the assessing officer before completion of assessment u/s 158BC of the income tax Act, 1961.

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are that the respondent-assessee is an individual who is carrying on business of manufacturing of hosiery goods. On February 5, 2003, a search operation u/s 132(1) of the Act was carried out at the residence of one S. K. Bhatia, a yarn

dealer. During the course of the search, certain loose documents were seized which related to two business concerns of S. K. Bhatia, viz., M/s. Swastik Trading Co. and M/s. Kavita International agencies. It was found that the entries recorded in those documents had not been incorporated in the books of account of the aforesaid two concerns. It was revealed from the seized documents that the assessee had made purchases worth Rs. 7,44,900 from M/s. Swastik Trading Co. and of Rs. 2,24,000 from M/s. Kavita International Agencies on different dates during the financial years 2001-02 and 2002-03.

4. The assessing officer, Central Circle II, Ludhiana, having jurisdiction over the cases of the Bhatia group, on examination of the matter sent his satisfaction u/s 158BD of the Act in the case of the present asses-see for the block period from April 1,1998, to February 5, 2003, on July 15, 2005. The block assessment in the case of the Bhatia group of companies was completed on March 30, 2005. After service of relevant notice and completion of other legal formalities the undisclosed income of the assessee for the block period aforesaid was computed at Rs. 8,81,830. Accordingly, the block assessment was finalized at the aforesaid undisclosed income, vide order u/s 158BC read with section 158BD of the Act on December 18, 2007.

5. The Commissioner of income tax (Appeals) (for short "the CIT(A)/), on an appeal being filed by the respondent-assessee observed, vide order dated January 27, 2010, that assumption of jurisdiction by the assessing officer u/s 158BD Of the Act and the proceedings initiated pursuant thereto were rendered invalid and void as the block assessment orders in the case of the Bhatia group of cases were passed on March 30, 2005, whereas the satisfaction note in the case of the assessee was recorded on July 15, 2005, as per the assessment order.

6. The Tribunal on appeal carried by the Revenue upheld the order passed by the Commissioner of income tax (Appeals) and consequently dismissed the appeal, vide the order under appeal.

7. This is how the Revenue is in appeal before us.

8. The issue that arises for consideration in this appeal is, whether proceedings u/s 158BD of the Act would be valid where satisfaction recorded in the case of the assessee is after the block assessment proceedings u/s 158BC of the Act in the case of the searched person had already been finalized ?

9. Learned counsel for the Revenue did not dispute that an identical issue came up for consideration before this court in CIT v. Mridula, Prop. Dhruv Fabrics (2011) 335 ITR 266 (Punjab and Haryana) which was decided against the Revenue and the appeal was dismissed. After analyzing the provisions under sections 158BD and 158BE of the Act, it was held as under (page 271) :

According to the plain reading of section 158BD ibid, the assessing officer, while framing assessment of an assessee u/s 158BC of the Act against whom action has been taken u/s 132 or 132A of the Act, is mandatorily required to record satisfaction before action can be initiated u/s 158BD of the Act against such other person. In other words, the satisfaction by the assessing officer making assessment u/s 158BC of the Act, in the case of the person searched, that there is certain undisclosed income as a result of examination of the seized material which belongs to some other identified person, is essential for assuming jurisdiction u/s 158BD of the Act. The satisfaction required to be recorded is prima facie satisfaction and is not firm or conclusive satisfaction at that stage.

Section 158BE of the Act prescribes time limit for framing of assessments under sections 158BC and 158BD of the Act. The assessing officer of the person against whom action u/s 132 or 132A of the Act has been taken, is the assessing officer who initiates the proceedings u/s 158BD of the Act by recording satisfaction that any undisclosed income belongs to such other person so as to take action u/s 158BD of the Act against that person. The Act nowhere specifically prescribes any time limit or limitation for initiation of proceedings u/s 158BD of the Act or for recording of satisfaction before taking action under that provision. The plain and reasonable construction that can be placed on the aforesaid provision would be that the recording of satisfaction for taking action against any other person u/ s 158BD of the Act has to be between initiation of proceedings u/s 158BC and before completion of block assessment u/s 158BC of the Act in the case of the person searched. It would, thus, mean that the action contemplated u/s 158BD of the Act against a third party to a search, is necessarily to be during the course of block assessment proceedings u/s 158BC of the searched person. It cannot be after the conclusion of the same as there is no occasion for an assessing officer to examine the seized material or documents of the searched person when the block assessment proceedings have concluded and no other proceedings are pending before him. If any other time limit is read in the provisions/ statute, it shall lead to anomaly and would be arbitrary and unreason'' able. It could not be read in the provision that where block assessment u/s 158BC of the Act in the case of an assessee against whom action u/s 132 or 132A of the Act had been carried out is finalized, the Revenue can take action at any time in the absence of any specific limitation prescribed in the statute. A construction which leads to such an anomaly should be avoided.

10. In view of the above, no substantial question of law as claimed by the Revenue arises and finding no merit in the appeal, the same is accordingly dismissed.

