(2011) 09 BOM CK 0175

In the Bombay High Court

Case No : IT Appeal No. 285 of 2005

Commissioner of Income Tax — APPELLANT

Vs

Sandeep C. Dugad — RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:
Income Tax Act, 1961 — Section 132(1), 142(2A), 158BC

Citation : (2012) 21 TAXMAN 508

Hon'ble Judges : K.K. Tated, J;J.P. Devadhar, J

Bench : Division Bench

Advocate : Vimal Gupta, for the Appellant; P.J. Pardiwala and Sudhir Hardikar, for the Respondent

Final Decision : Dismissed

Judgement

J.P. Devadhar, J.—Whether the Tribunal was justified in holding that the block assessment order passed in the present case was barred by limitation, is the question raised in this appeal. A search and seizure action under s. 132(1) of the IT Act, 1961 (''Act'' for short) was carried out at the residential premises of the assessee and other members of Dugad Family on 26th June, 1997. During the course of search, certain incriminating materials were seized. Thereupon, notice under s. 158BC of the Act was issued to the assessee on 28th Aug., 1997, pursuant to which block return was filed by the assessee on 25th Jan., 1999.

2. On 16th April 1999, order under s. 142(2A) of the Act was passed by the AO in the case of Shri M.N. Dugad to get the books audited from the chartered accountant Shri S.B. Sabne and to submit the special audit report within four months from the date of receipt of the said order. By a letter dt. 20th April, 1999, the assessee sought clarification from the AO as to whether the order dt. 16th April, 1999 was restricted to the case of Shri M.N. Dugad or would it apply to all other members of the Dugad family including the assessee herein, who had filed block returns as per the notice issued under s. 158BC of the Act.

3. Thereupon, order dt. 16th June, 1999 was passed by the AO under s. 142(2A) of the Act calling upon the assessee to get the books of account audited from Shri S.B. Sabne within four months of serving the notice dt. 16th April, 1999 on Shri M.N. Dugad.

4. In the meantime, challenging the order passed by the AO under s. 142(2A) on 16th April 1999 as also the order dt. 21st April, 1999, Shri M.N. Dugad filed Writ Petn. No. 2905 of 1999. When the said writ petition was taken up for admission on 21st June, 1999, counsel for the Revenue agreed to maintain status quo. Thereafter, on 20th Sept., 1999, the writ petition was admitted and ad interim order in terms of prayer cl. (c) of the Writ Petn. No. 2905 of 1999 was granted, which reads thus:

(c) pending the hearing and final disposal of this petition, this Hon''ble Court may be pleased to restrain the respondents, their officers and agents, by an order of injunction, from processing further, by way of recovery or otherwise in pursuance of the said order dt. 16th April 1999 and 21st April, 1999 issued by the first respondent;

5. Subsequently, on an application made by the Revenue, this Court by an order dt. 29th Nov., 1999 vacated the ad interim stay granted on 20th Sept., 1999. This Court further clarified that the stay initially granted on 20th Sept., 1999 in the said writ petition was restricted to the case of Shri M.N. Dugad.

6. Thereafter, the special audit was carried out and the report to that effect was submitted. On the basis of the special audit report, block assessment order was passed on 28th July, 2000, making additions to the block return filed by the assessee.

7. Challenging the said block assessment order, the assessee filed an appeal before the CIT(A). By order dt. 30th March, 2001, the CIT(A) set aside the assessment order dt. 28th July, 2000 by following his order in the case of Shri M.N. Dugad and restored the issue to the file of the AO for passing fresh assessment order.

8. Challenging the order of the CIT(A), both the Revenue as also the assessee filed appeals before the Tribunal. The Revenue was aggrieved by the order of the CIT(A) in setting aside the block assessment order dt. 28th July, 2000 and restoring the issue back to the file of the AO. The assessee was aggrieved because the CIT(A) had failed to consider the additional ground raised by the assessee to the effect that the block assessment order itself was time-barred.

9. By the impugned order dt. 9th Sept., 2004, the Tribunal dismissed the appeal filed by the Revenue and allowed the appeal filed by the assessee by holding that the original block assessment order dt. 28th July, 2000 was time-barred. Challenging the aforesaid order passed by the Tribunal, the Revenue has filed the present appeal.

10. The argument of the Revenue is that the Writ Petn. No. 2905 of 1999 was

filed by Shri M.N. Dugad on behalf of himself as also on behalf of all the members of Dugad family and that the ad interim stay granted by this Court on 20th Sept., 1999 was applicable to the case of the assessee as well. While vacating the stay granted on 20th Sept., 1999, this Court on 29th Nov., 1999 had recorded a statement made by the counsel for the Revenue that the special audit would be completed within a period of six months from that date. It is contended on behalf of the Revenue that if the statement made by the counsel for the Revenue contained in the order dt. 29th Nov., 1999 is taken into consideration, then, the block assessment order passed on 28th July, 2000 in the case of the assessee would be in time. Accordingly, it is submitted that the Tribunal was not justified in holding that the block assessment order was barred by time.

11. We find it difficult to accept the above contention of the Revenue. In the case of the assessee, order for special audit under s. 142(2A) was passed on 16th June 1999, whereas, Writ Petn. No. 2905 of 1999 was filed by Shri M.N. Dugad on 27th May, 1999 to challenge the order passed under s. 142(2A) of the Act on 16th April, 1999 and 21st April, 1999. Thus, on 27th May 1999 when Writ Petn. No. 2905 of 1999 was filed by Shri M.N. Dugad, there was no order for special audit passed in the case of the assessee. Admittedly, special audit in the case of the assessee was passed on 16th June, 1999, whereas, writ petition was filed by Shri M.N. Dugad on 27th May, 1999 and, therefore, it cannot be said that writ petition was filed by Shri M.N. Dugad on 27th May, 1999 to challenge the special audit order passed in the case of the assessee on 16th June, 1999.

12. Moreover, the prayer clause in Writ Petn. No. 2905 of 1999 filed by Shri M.N. Dugad specifically seeks quashing of the special audit order dt. 16th April 1999 and reiterated on 21st April, 1999 in the case of Shri M.N. Dugad. Therefore, the argument of the Revenue that the stay order granted by this Court on 20th Sept., 1999 in Writ Petn. No. 2905 of 1999 amounts to staying order passed in the case of the assessee on 16th June, 1999 cannot be accepted.

13. Apart from the above, this Court, while vacating the stay on 29th Nov., 1999 has specifically observed that the stay granted in Writ Petn. No. 2905 of 1999 was restricted to the case of Shri M.N. Dugad and not to the case of other members of Dugad family. Consequently, the statement made by the counsel for the Revenue in Writ Petn. No. 2905 of 1999 on 29th Nov., 1999 that the special audit would be completed within the date recorded therein would be restricted to the case of Shri M.N. Dugad and would not apply to the other members of the Dugad family including the assessee. It is not in dispute that if the statement made by the counsel for the Revenue in Writ Petn. No. 2905 of 1999 on 29th Nov., 1999 is held not applicable to the assessee, then the block assessment order passed in the case of the assessee would be time-barred. In the present case, since we have held that the statement made by the counsel for the Revenue in Writ Petn. No. 2905 of 1999 is not applicable to the case of the assessee, the decision of the Tribunal that the block assessment order passed on 28th July, 2000 was barred by time cannot be faulted. Accordingly, we see no

merit in the appeal and the same is dismissed with no order as to costs.

