(2010) 11 DEL CK 0049

In the Delhi High Court

Case No : IT Appeal No. 714 of 2009

Commissioner of Income Tax APPELLANT

Vs

Sunil Bhala RESPONDENT

Date of Decision : 23-11-2010

Acts Referred:

Citation : (2011) 3 AD 132 : (2011) 336 ITR 550

Hon'ble Judges : Suresh Kait, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, for the Appellant; Rakesh Gupta and Poonam Ahuja, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, J.—A search was conducted in the case of Mr. S.K. Jain and M/s GCB Capital Finance (P) Ltd. (referred to as ''M/s GCB Capital'') on 14th Dec, 1999. Certain documents/papers were seized during the search which allegedly related to the two Assessees herein namely Mr. Sunil Bhala and M/s Rajgul Credit Investment (P) Ltd. (referred to as ''M/s Rajgul Credit''). Since these two Assessees were the third person i.e. the persons other than those whose premises were searched, after the search, statement of Mr. Sunil Bhala, a chartered accountant by profession, was also recorded. The AO in the case of M/s GCB Capital completed the assessment, forwarded the assessment order pertaining to M/s GCB Capital as well as statement of Mr. Sunil Bhala recorded after the search and seizure operation, to the AO of Sunil Bhala and M/s Rajgul Credit for necessary action. The exact communication addressed by the AO of M/s GCB Capital to the AO of these two Assessees reads as under:

F. No. Dy. CIT/Cir. 12(1)/2001-02 Office of the Dy. CIT, Circle 12.(1),

To New Delhi

The Asstt. CIT, Circle 38(1), Dated 31st Dec, 2001

New Delhi.

Sub: Block assessment in the case of Shri Sunil Bhala, director of M/s GCB Capital Finance (P) Ltd.

The block assessment order u/s 158BC in the case of M/s GCB Capital Finance (P) Ltd. has been passed on 28th Dec, 2001. Most of the seized records containing notings of cash transactions have been stated by Shri Sunil Bhala to be not pertaining to M/s GCB Capital Finance (P) Ltd. A copy of the statement of Shri Sunil Bhala and a copy of assessment order in the case of M/s GCB Capital Finance (P) Ltd. is being forwarded to you for reference and necessary action.

As communicated earlier, the seized records are lying with the undersigned and these may be perused at any time during office hours by yourself or by any Inspector of IT authorized for this purpose.

Yours faithfully

(R.K. Jha)

Dy. CIT, Circle 12(1),

New Delhi.

2. The notices to these Assessees were initially issued u/s 158BC of the Act which proceedings were dropped and thereafter notices u/s 158BD of the Act were issued to these two Assessees directing them to file the return for the block period 1st April, 1989 to 14th Dec, 1999 respectively. The assessment made by the AO pursuant to the said notices has been set aside by the Tribunal on the grounds that the mandatory procedure contained in Section 158BD of the Act was not followed, in as much as, (i) there was no satisfaction recorded by the AO of M/s GCB Capital while forwarding the case to the AO of these two Assessees, and (ii) he did not also forward the necessary records seized during the search and seizure operation.

3. Sec 158BD of the Act reads as under:

158BD. Undisclosed income of any other person.--Where the AO is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132 or whose books of account or other documents or any assets were requisitioned u/s 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO shall proceed u/s 158BC against such other person and the provisions of this chapter shall apply accordingly.

4. It is clear from the bare perusal of the aforesaid provision that the satisfaction of the AO has to be recorded. It is also clear from the aforesaid provision that while sending the case to the concerned AO, who is the AO of the person other than the person whose premises are searched, AO has to hand over the records

of the case. We have already reproduced the exact wording of the letter by which the case was forwarded to the AO of these Respondents. No where any satisfaction is recorded by the AO of M/s GCB Capital stating that he was satisfied that the income for this block period in respect of Assessee had escaped assessment. Further, it is also clear that the records were also not sent, instead he merely stated that these records were available with the forwarding AO which could be "perused" by the concerned AO during the office hours.

5. Mr. Sanjeev Sabharwal, learned Counsel appearing for the Revenue submitted that the satisfaction inferred though not specifically recorded in the said communication, can be inferred from the circumstances. For this purpose, he heavily relied upon the statement of Mr. Sunil Bhala which was recorded after the search operation and was forwarded to the AO of these Assessees and during the assessment proceedings of M/s GCB Capital. We have found that Mr. Sunil Bhala in his statement has stated that some of the documents seized during the search operation either related to Mr. Sunil Bhala himself or to M/s Rajgul (P) Ltd. However, that would not meet the requirement of recording the satisfaction. Merely stating that some of the documents belonged to these two Assessees would not suffice. It was necessary for the AO while forwarding the case, to record satisfaction to the effect that there was undisclosed income belonging to those Assessees. As pointed out above, there was no such statement recorded in the forwarding letter; even from the statement of Mr. Sunil Bhala this ingredient cannot be inferred as having been established. Thus, there is neither specific stipulation regarding satisfaction nor we are able to find out any implied satisfaction having been arrived at by the AO while forwarding the case.

6. In these circumstances, we are of the view that learned Tribunal has rightly relied upon the judgment of the Supreme Court in the case of Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, to set aside the proceedings on this ground. Following discussion, therefrom, is of advantage:

14. From the above, we find that satisfaction of the AO must be recorded to the effect that there is undisclosed income belonging to any person, other than the person in respect of whom the search was made u/s 132 of the said Act. The second condition is that the books of accounts or other documents or assets seized or requisitioned have to be handed over to the AO having jurisdiction over such person (i.e., the person other than the person in respect of whom the search was made). It is only thereafter that the AO can proceed u/s 158BC against such other person. In the present case, we find that both the CIT(A) and the Tribunal have held that no satisfaction was recorded by the AO of Yadav & Co. They have also recorded that no material whatsoever was handed over by the AO of Yadav & Co. to the AO of the Assessee company. It is obvious that the essential preconditions which needed to be satisfied for the purposes of invoking the provisions of Section 158BD have not been fulfilled.

15. An argument was sought to be raised on behalf of the learned Counsel for the Appellant that Section 158BD nowhere specifies that the satisfaction is to be

of the AO of the searched party and not of the AO of the Assessee. We fail to appreciate this argument because the plain reading of the provision makes it clear that unless and until the AO of the person who is searched is satisfied that there is any undisclosed income belonging to any person, other than the person with respect to whom search was made u/s 132, no further steps can take place. The further steps are provided in Section 158BD itself and they are that such AO, after being satisfied that there is undisclosed income belonging to such other person, is required to hand over the books of accounts, other documents or assets seized or requisitioned to the AO having jurisdiction over such other person. It is from that point on, that the AO of such other person is required to proceed in accordance with the other provisions of Chapter XIV and issue notice u/s 158BC.

16. The learned Counsel for the Appellant also submitted that the satisfaction of the Addl. Director of IT was sufficient compliance with the provisions of Section 158BD. We cannot agree with this submission because the plain reading of the provisions of Section 158BD specify that it is the AO who is to be satisfied that there is any undisclosed income belonging to such other person. The Addl. Director of IT (Investigation) was not the AO of Yadav & Co. It is only the satisfaction of the AO of the person in respect of whom the search is conducted that is relevant. In the present case there is no such satisfaction recorded. As a consequence we feel that the Tribunal has correctly applied the law as laid down by the Supreme Court in the case of Manish Maheshwari (supra) in arriving at the conclusion that the proceedings u/s 158BD/BC in respect of the Assessee were without jurisdiction. No substantial question of law arises for the consideration of this Court, the position in law being settled by the Supreme Court.

7. It is also an admitted case that the records were not forwarded as well and no satisfactory answer on this account could be given. We are, therefore, of the opinion that no substantial question of law arises and these appeals are dismissed accordingly.

