

(2014) 05 AHC CK 0218

In the Allahabad High Court

Case No : Income Tax Appeal No. 422 of 2006 (Block Assessment Period 1-9-1996 to 4-9-2002)

Commissioner of Income Tax

APPELLANT

Vs

Umang Agarwal

RESPONDENT

Date of Decision : 16-05-2014

Acts Referred:

Income Tax Act, 1961 — Section 139, 143(3), 147, 148, 158BB

Citation : (2014) 365 ITR 164

Hon'ble Judges : Tarun Agarwala, J; Satish Chandra, J

Bench : Division Bench

Advocate : R.K. Upadhyaya, Advocate for the Appellant; R.R. Agrawal, Senior Counsel, and Suyash Agrawal, Advocate for the Respondent

Judgement

1. The present appeal is filed against the judgment and order dated May 26, 2006, passed by the income tax Appellate Tribunal, Allahabad, in ITR No. 464/Alld./05 for the block period April 1, 1996, to September 4, 2002. On May 15, 2012, a co-ordinate Bench of this court has admitted the appeal on the following substantial question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the case of the assessee (respondent) was covered by clause (c) of sub-section (1) of section 158BB of the income tax Act, 1961, and not under clause (ca) of sub-section (1) of section 158BB of the said Act and in setting aside the order of the Commissioner of income tax u/s 263 of the income tax Act, 1961, and in upholding the reduction made by the Assessing Officer in respect of the income shown in the belated return for the assessment year in question from the block assessment in respect of the assessee (respondent)?

2. The brief facts of the case are that on April 9, 2002, a search and seizure operation was carried out at the business and residential premises of the assessee where some incriminating material was seized. Block assessment u/s

158BC was completed on March 30, 2004, for an undisclosed income of Rs. 1,48,94,580. On September 1, 2004, the assessee had filed a regular return for the assessment year 2002-03 (which falls within the block period) by showing the income of Rs. 53,27,812. The same was accepted by the Assessing Officer.

3. However, on April 19, 2005, the Commissioner of income tax, after issuing a proper notice, has passed an order u/s 263 of the income tax Act and rejected the claim of the assessee for the income of Rs. 53,27,812 shown for the assessment year 2002-03 by observing that the return was filed belatedly. The full advance tax was not paid. Finally, the Commissioner of income tax has directed the Assessing Officer not to allow the claim of the assessee for the disclosed income 2002-03 to the tune of Rs. 53,27,812. Being aggrieved, the assessee has filed an appeal before the Tribunal.

4. The Tribunal has allowed the claim of the assessee by observing that partial advance tax was paid, return was filed within the extended time allowed u/s 139 of the income tax Act. The assessee was maintaining proper books of account. Not being satisfied the Department has filed the present appeal.

5. With this background, Shri R.K. Upadhyaya, the learned counsel for the Department submits that the return for the assessment year 2002-03 was filed on September 1, 2004, which was time barred.

6. He further submits that on March 14, 2002, the assessee has paid advance tax of Rs. 5,71,000 only. The balance tax of Rs. 10,12,827 was not paid before filing the return. Therefore, the case of the assessee falls under the provision of section 158BB(1)(ca) of the Act. He read out the said section which is reproduced as under :

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under clause (c);

7. On a specific enquiry made by the Bench, he admits that on the assessee's return for the assessment year 2002-03, an order was passed u/s 143(3)/147 of the Act, which was challenged before the appellate authority. Finally, the controversy pertaining to the return was settled by the Tribunal while passing an order dated May 13, 2011, in I.T.A. No. 424/Alld/06 for the assessment year 2002-03. Perhaps the matter is before this hon'ble court.

8. He further submits that while completing the block assessment, the income shown in the return for the assessment year 2002-03 cannot be accepted and the same will have to be treated as undisclosed income for the block period. The Assessing Officer has wrongly accepted the return. According to section 158BB(1)(ca), the income declared for the belated return for the assessment year 2002-03 could not be reduced from the disclosed income. The notice issued u/s 148 cannot in any way affect the return by virtue of section 158BB(1)(ca). The order passed by the Assessing Officer was erroneous in so far as it was prejudicial to the interests of the Revenue. Lastly, he made a request to set aside

the impugned order and restored the order passed by the Commissioner of income tax u/s 263 of the Act.

9. On the other hand, Shri R.R. Agrawal, the learned senior counsel assisted by Shri Suyash Agrawal, the learned counsel for the assessee, justified the impugned order passed by the Tribunal. He, at the strength of the written submission, submits that the substantial amount was deposited as an advance tax. The assessee is maintaining regular books of account. Accounts were audited and audit report was obtained. He read out the section 158BB(1)(c) which on reproduction reads as under :

(c) where the due date for filing a return of income has expired, but no return of income has been filed,--

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search of requisition where such entries result in computation of loss for any previous year falling in the block period; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;.

10. He also read out paragraphs (XIV) and (XV) of the written submission where it is stated that the regular assessment order u/s 143(3)/148 has also been passed by the Assessing Officer and all issues relating to regular assessment have been dealt by the hon''ble income tax Appellate Tribunal for the assessment year 2002-03, hence, any action or consequence to the order of learned Commissioner of income tax (C), Kanpur, u/s 263 would lead to double taxation. The order of hon''ble income tax Appellate Tribunal in the regular assessment of assessment year 2002-03 has already been filed before this hon''ble court.

11. Further, in due course of search at the premises of the respondent, some jewellery and Indira Vikas Patras, were seized. These were treated in the hands of the respondent's wife, Dipti Agarwal and his father, Mr. Anand Agarwal. Both are income tax assesseees and true copy of their hon''ble income tax Appellate Tribunal block assessment order is enclosed herewith as annexures 3 and 4 of the written submission.

12. To support of his arguments, he relied on the ratio laid down in the following cases :

(a) Commissioner of Income Tax Vs. Mrs. Kumkum Kohli, and

(b) The Assistant Commissioner of Income Tax, Chennai Vs. A.R. Enterprises,

13. Lastly, he made a request to dismiss the appeal.

14. We have heard both the parties at length and gone through the material

available on records. From the record, it appears that the assessee is maintaining proper books of account for the assessment year 2002-03. The audit report was obtained. An order was passed for the said assessment year u/s 143(3)/147 of the income tax Act. The same was upheld by the Tribunal as stated above. Be as it may be.

15. It may be mentioned that for the short fall in the payment of the advance tax, the assessee is liable to pay the interest u/s 234B and section 234C. But the fact remains that the assessee has filed the return for the assessment year 2002-03 beyond the time allowed u/s 139 of the income tax Act and was, therefore, non est.

16. In the notice as well as in the order passed by the Commissioner of income tax u/s 263 of the Act, it was clearly mentioned that the Assessing Officer did not properly examine the computer generated account for the assessment year 2002-03, which were generated from the CPU seized during the course of the search and seizure operation on September 4, 2002, and do not include the undisclosed income reflected from the said accounts while completing the aforesaid block assessment order.

17. Further, it was mentioned that the assessee's application was pending before the hon'ble Settlement Commission but, during the course of arguments, both the parties were unable to tell the status of the said application. There is no discussion whatsoever about this issue in the block assessment order. Also from the records of the block assessment proceedings, no indication appears that this issue was discussed with the assessee at any stage of the block assessment proceedings.

18. From the records, it also appears that filing of the regular return for the assessment year 2002-03 was within the knowledge of the Assessing Officer at the time of completing the block assessment order dated September 30, 2004, but the Assessing Officer while passing the block assessment order has failed to take into account the correct position of law.

19. From the above, it appears that these vital issues were not examined by the Tribunal before passing the impugned order though the same were raised by the Commissioner of income tax in its order. When it is so, then in the interest of justice, we set aside the impugned order passed by the Tribunal and remand the matter back to pass afresh order in the light of the above discussion, after providing reasonable opportunity to the assessee. The impugned order is hereby set aside. We hope that the Tribunal will pass order afresh at the earliest, say within a period of three months after receiving the certified copy of this order.

20. When the matter is remanded, the answer to the substantial question of law is not required. In the result, appeal filed by the Department is allowed for statistical purpose.