

---

**(2006) 01 MP CK 0110**  
**In the Madhya Pradesh High Court**

Commissioner of Income Tax

APPELLANT

Vs

Vimla Khatri

RESPONDENT

---

**Date of Decision :** 25-01-2006

**Acts Referred:**

Income Tax Act, 1961 — Section 120, 132, 139, 143, 158

**Citation :** (2007) 208 CTR 296 : (2007) 288 ITR 168 : (2007) 163 TAXMAN 291

**Hon'ble Judges :** A.K. Patnaik, C.J.; R.K. Gupta, J

**Bench :** Division Bench

---

**Judgement**

A.K. Patnaik, C.J.—This is an appeal u/s 260A of the Income Tax Act, 1961, (for short "the Act"), filed by the Commissioner of the Income Tax, Bhopal, against the order dated December 11, 2000, of the Income Tax Appellate Tribunal, Indore Bench, Indore.

2. The facts briefly are that search and seizure operation u/s 132 of the Act were carried out during October 18, 1996, to October 30, 1996, in the premises of Sarva Shri Purshottam Khatri, C.L. Khatri, Asandas Khatri and their group. In the case of the respondent, a warrant of authorisation u/s 132 of the Act and Rule 112(1) of the Income Tax Rules, 1962 (for short "the Rules"), authorising the search of locker No. 133 in Allahabad Bank, Royal Market, Bhopal, belonging to the respondent and C.L. Khatri was also issued on October 18, 1996, and pursuant thereto search was carried out in the said locker. Thereafter, the Assistant Commissioner of Income Tax (for short "the ACIT") (Investigation), Circle 1, Bhopal, made an assessment u/s 158BC read with Section 143(3) of the Act on the respondent by the block period April 1, 1986 to October 18, 1996, i.e., for the assessment years 1987-88 to 1997-98 (up to October 18, 1996) determining the total undisclosed income of Rs. 3,34,273. Aggrieved the respondent filed an appeal before the Income Tax Appellate Tribunal, Indore Bench, Indore (for short, "the Tribunal"). By order dated December 11, 2000, the Tribunal inter alia held that the assessment is to be made by a regular Assessing Officer who has jurisdiction over the assessee and the ACIT (Investigation) had

no jurisdiction to make this assessment and accordingly annulled the assessment. The Tribunal also, inter alia, held that since the total income of the respondent remained below the taxable income after deduction claimed u/s 80L of the Act, she was not required to file return u/s 139(1) of the Act for the assessment years 1987-88 and 1989-90 to 1996-97 and her income was not to be treated as undisclosed income of the block period and directed the Assessing Officer accordingly.

3. On December 6, 2005, the court after hearing Mr. Rohit Arya, learned Senior Counsel for the appellant and Mr. A.P. Shrivastava, learned Counsel for the respondent, formulated the following four substantial questions of law for decision in this appeal:

(i) Whether, on the facts and circumstances of the case, the learned Tribunal was legally justified in annulling the assessment order on the ground that the Assessing Officer did not have valid jurisdiction over the assessee and whether the finding of the learned Tribunal was not perverse and inconsistent with/contrary to the material available on record?

(ii) Whether, on the facts and circumstances of the case and the provisions of Section 158BB(1) and 158BB(1)(c), the learned Tribunal was legally justified in holding that if the total income in those assessment years in which the return was not filed before the search was conducted, is below the taxable limit after claiming deduction u/s 80L of the Act, the income of that year shall not be considered as part of the undisclosed income and whether such decision of the learned Tribunal is not contrary to the scheme of the Income Tax Act, 1961?

(iii) Whether, on the facts and circumstances of the case, the learned Tribunal was legally justified in deleting the addition of Rs. 7,000 in the assessment year 1987-88 being unexplained cash on the ground that since even after making such addition, the total income of the assessee for the assessment year 1987-88 remains below the taxable limit and hence no addition is called for?

(iv) Whether, on the facts and circumstances of the case, the learned Tribunal was legally justified in deleting the addition of Rs. 5,000 in the assessment year 1996-97 being unexplained investment in FDR on the ground that since even after making such addition, the total income of the assessee for the assessment year 1996-97 remains below the taxable limit and hence no addition is called for?

4. Mr. Rohit Arya, learned senior Counsel for the appellant submitted that by notification dated April 28, 1995, the Chief Commissioner of Income Tax, in exercise of his powers u/s 120 of the Act, had directed that the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, would be the Assessing Officer in respect of all cases/persons of the District Bhopal falling under the territorial jurisdiction of the various Assessing Officer stationed at Bhopal wherein search and seizure operations u/s 132 of the Act are carried out on or after April 1, 1995. In the present case, since the search was carried out u/s 132 of the Act of the locker No. 133 in the Allahabad Bank, Royal Market,

Bhopal, belonging to the respondent, the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, was the Assessing Officer in the case of the respondent for block period April 1, 1986 to October 18, 1996, and since the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, has passed the assessment order in the case of the respondent, the finding of the Tribunal that the Assessing Officer did not have valid jurisdiction to make the assessment was perverse and inconsistent with the material on record.

5. Mr. A.P. Shrivastava, learned Counsel for the respondent, submitted that there was no proof before the Tribunal that any search was carried out in respect of the respondent and therefore for this reason the Tribunal held that the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, who made the assessment in question had no jurisdiction to make the assessment. He relied upon Section 158BD of the Act which provides that when in the course of a search in respect of a person, the books of account or other documents or assets of some other person are seized, such books of account or other documents or assets so seized shall be handed over to the Assessing Officer having jurisdiction over such other person for making the assessment.

6. We find from paragraph 3 of the impugned order of the Tribunal that learned Counsel for the respondent contended before the Tribunal that no search was conducted in the case of the respondent and that if books of account, other documents or other assets are seized in any search in respect of any other person they are to be handed over to the regular Assessing Officer having jurisdiction over the respondent to make the assessment. We further find from paragraph 4 of the impugned order that the department's representative refuted the aforesaid contentions on behalf of the assessee saying that the Assistant Commissioner of Income Tax (Investigation) had jurisdiction to make the assessment and filed a letter of the ADIT, Bhopal, which stated that in view of the Notification No. 1/NCPFN/BPL/95-96 dated April 28, 1995, the jurisdiction over the search case situated in Bhopal district where the search and seizure operation carried out on or after April 1, 1995, vests with the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal. We further find from para. 4 of the impugned order that the representative of the Department submitted that the Assistant Commissioner of Income Tax (Investigation) thus got jurisdiction over all the assessees upon whom search and seizure operations were carried out in respect of whom some incriminating evidence was noticed by the Assistant Commissioner of Income Tax while framing the assessment in search cases. In para. 5 of the impugned order, the Tribunal held that the onus was upon the Revenue to prove that the assessment was framed by the competent Assessing Officer who has valid jurisdiction over the assessee by placing some evidence on record in this regard but the Revenue has badly failed to prove the valid jurisdiction over the assessee and since Section 158BD clearly states that assessment was to be framed by a regular Assessing Officer who had jurisdiction over the assessee, the Assistant Commissioner of Income Tax (Investigation) who has made the assessment in respect of the respondent had

no valid jurisdiction to make the assessment.

7. It is not disputed that a warrant of authorisation u/s 132 of the Act and Rule 112(1) of the Rules was issued in Form No. 45 for search of locker No. 133 of the respondent and C.L. Khatri in Allahabad Bank, Royal Market, Bhopal. We also find from the first paragraph of the assessment order that during such search from the said locker No. 133 in Allahabad Bank, Royal Market, Bhopal, which stood in the names of the respondent and C.L. Khatri, jewellery weighing 1810.74 gms. valued at Rs. 8,54,167 which are claimed to be belonging to the respondent and Smt. C.L. Khatri were found. Hence, a search was in fact carried out in respect of the respondent. The notification dated April 28, 1995, produced before us is clear that in all cases/persons of the District Bhopal falling under the territorial jurisdiction of the various Assessing Officer situated at the station at Bhopal where the search and seizure operations u/s 132 of the Act are carried out on or after April 1, 1995, the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, would be the Assessing Officer. It will be clear from the language of Section 158BD of the Act that when the books of account, other documents or assets of a person in respect of whom no such search is carried out u/s 132 of the Act are seized, the same shall be handed over to the Assessing Officer having jurisdiction over such person for assessment. But, in the present case, we have seen that a search was in fact carried out of the locker belonging to the respondent u/s 132 of the Act and therefore it was the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, and not the Assessing Officer having jurisdiction to make the regular assessment who had jurisdiction to make the assessment by virtue of the aforesaid notification dated April 28, 1995, issued by the Chief Commissioner of Income Tax u/s 120 of the Act. We are thus of the view that the finding of the Tribunal was not legally justified in annulling the assessment order on the ground that the Assistant Commissioner of Income Tax (Investigation), Circle 1, Bhopal, who had made the assessment in this case did not have valid jurisdiction over the assessee. In view of this finding, it is not necessary to consider further as to whether the aforesaid finding of the Tribunal was perverse or inconsistent or contrary to the material available on record. The first substantial question of law is answered accordingly.

8. Mr. Rohit Arya, learned Counsel very fairly submitted that Section 158BB of the Act has been amended by the Finance Act of 2002 with effect from July 1, 1995, and the effect of such amendment is that the undisclosed income for the block period will be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of the Act including the provisions of Section 80L of the Act as reduced by the aggregate of the total income, or, as the case may be, as increased by the aggregate of the losses, of such previous years determined in the manner mentioned therein. The Tribunal was thus justified in coming to the conclusion that since the total income of the respondent remained below the taxable income after deduction claimed u/s 80L of the Act for the assessment years 1987-88 and 1989-90 to 1996-97, her income was not to be treated as undisclosed income of

the block period. The second substantial question of law is answered accordingly.

9. The Tribunal has further held paragraphs 11 and 12 of the impugned order that after allowing the deduction u/s 80L, the total income of the respondent in the assessment year 1987-88 comes to Rs. 7,537 which is below the taxable limit for the assessment year 1987-88 and accordingly the addition of unexplained cash of Rs. 7,000 was not called for because the total income of the respondent despite such addition remained below the taxable limit. Since we have held while answering substantial question No. 2 that the Tribunal was legally justified in holding that if the total income in those assessment years in which the return was not filed before search was conducted was below the taxable limit after claiming deduction u/s 80L of the Act, we also hold that the Tribunal was legally justified in deleting the addition of Rs. 7,000 in the assessment year 1987-88 being unexplained cash on the ground that even after such addition, the total income of the respondent in the assessment year 1987-88 would remain below the taxable limit. The third substantial question of law is answered accordingly.

10. The Tribunal has further held in paras. 16 and 17 of the impugned order that even after the investment of Rs. 5,000 FDR in the assessment year 1996-97 is to be treated as unexplained investment, the total income of the respondent after allowing deduction u/s 80L of the Act remains below the taxable limit and hence the same cannot be treated as undisclosed income for the block period and accordingly directed the Assessing Officer to delete addition on this account. Since we have held while answering substantial question No. 2 that the Tribunal was legally justified in holding that if the total income in those assessment years in which the return was not filed before search was conducted was below the taxable limit after deduction u/s 80L of the Act, the income of that year shall not be treated as undisclosed income, we also hold that the Tribunal was legally justified in deleting the addition of Rs. 5,000 in the assessment year 1996-97 being unexplained FDR on the ground that even after such investment, the total income of the respondent in the assessment year 1996-97 would remain below the taxable limit.

11. In the result, the appeal is allowed in part on the first substantial question of law.