(2014) 07 GUJ CK 0153

In the Gujarat High Court

Case No : Special Civil Applications Nos. 15311 and 15315 of 2004

Goyal Industries Ltd. APPELLANT

Vs

Assistant Commissioner of Income Tax RESPONDENT

Date of Decision : 30-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Income Tax Act, 1961 - Section 131, 132, 158, 158BC, 158BD

Citation : (2016) 283 CTR 350 : (2015) 372 ITR 514

Hon'ble Judges : M.R. Shah, J;Kaushal Jayendra Thaker, J.

Bench : Division Bench

Advocate : B.S. Soparkar, Advocate, for the Appellant; Sudhir M. Mehta, for the Respondent

Judgement

M.R. Shah, J.?As the common question of law has arisen in both these petitions, they are heard and disposed of by this common judgment and order. In both these petitions under article 226 of the Constitution of India, the respective petitioners have prayed for an appropriate writ, order or direction to quash and set aside the impugned notice at annexure A to the petitions, by which proceedings are initiated against the respective petitioners of block assessments under section 158BD read with section 158BC of the Income-tax Act (hereinafter referred to as "the Act").

2. The facts leading to the present petitions in a nut-shell are as under:

3. That a search was conducted under section 132 of the Income-tax Act in the case of the Malpani groups. During the course of search in the Malpani groups, a locker key was found at the residence of Shri Surjanath Sidh. It was found that the locker in Oriental Bank of Commerce was in the name of Shri Pursottam Mundra, who was an employee of said Surajnath Sidh. During the course of search, in the locker, certain dishonoured cheques were found and seized. Out of these, the major dishonoured cheques were found to be in respect of Raju Fabrics, Roopan Textiles and Rahul International of Rs. 45 lakhs, Rs. 15 lakhs and

Rs. 45 lakhs, respectively. That the details were called from the bank, to which the cheques belonged to, regarding the account holders. The copy of the bank statements were also called for from the banks. From the copy of the bank accounts called for, it was observed that a huge amount of cash was deposited and the cheques have been issued. The said cheques were from the accounts of Rahul International and Roopa Textiles and were mostly issued in the names of (i) Gunjan Exports, (ii) Raju Fabrics, and (iii) Aditya Yarn Pvt. Ltd. On further enquiry, during the search, the address given in the bank accounts were found to be bogus except in the case of Rahul International, Prop. Shri Dilip V. Makwana. During the course of the statement under section 131 of the Income-tax Act, the aforesaid Shri Dilip V. Makwana stated that he has been working as a peon in the office of Shri Rajendra Goyal, director of Goyal Industries Ltd. (hereinafter referred to as "the petitioner"). He admitted that the account in the Udhna Citizen Co-operative Bank Ltd., Ring Road, Surat, was opened at the instruction of Shri Satyanarayan Sharma at Dayma, who was the manager of Goyal Industries Ltd. He also admitted that the blank cheques were signed by him at the instruction of Shri Satyanarayan Sharma. He stated that he has no knowledge regarding the deposit of cash or issue of cheques in the said account. In the circumstances, the statement of Shri Satyanarayan Sharma was recorded by issuing of summons under section 131 of the Income-tax Act. As the Department''s case, the said Shri Sharma stated that he was working as manager in the Goyal Industries Ltd. and the bank accounts which were in the name of Rahul International Prop. Shri Rahul Chopra, Rahul International Prop. Shri Dilip Makwana, Roopa Textiles Prop. Shri Rajesh Nath and Raju Fabrics Prop. Shri Satyanarayan, Dayma, were operated by him on the instruction of Shri Rajendra Goyal (director of Goyal Industries Ltd.). During the interrogation, the said Shri Satyanarayan Sharma confirmed that he was working as manager in the Goyal Industries Ltd., i.e., Shri Rajendra Goyal, but two concerns, namely, Raju Fabrics and Gunjan Exports were being run as his proprietary concerns and the books of account were being written at the office of Shri Rajendra Goyal, director of Goyal Industries Ltd. He also stated that the cash deposited in the accounts of Rahul International and Roopa Textiles was actually given to him by the aforesaid Rajendra Goyal, director of Goyal Industries Ltd. He also stated that he was actually handling all the bank accounts of the group at the instruction of Shri Rajendra Goyal. It appears that in view of the aforesaid statement made by the said Shri Satyanarayan Sharma, summons were issued to Shri Rajendra Goyal and his statement was also recorded under section 131 of the Income-tax Act. The aforesaid Rajendra Goyal denied the knowledge of bank accounts and he also denied that the said Shri Satyanarayan Sharma is his employee. According to him, he was purchasing the yarn from Goyal Industries Ltd. However, the authority did not accept the case on behalf of the aforesaid Shri Rajendra Goyal, director of Goyal Industries Ltd. and formed an opinion that undisclosed income discovered during the search has been earned and belongs to the persons, i.e., Goyal Industries Ltd., Goyal Synthetics Pvt. Ltd., Foremost Finvest Pvt. Ltd., Aditya Yarn Pvt. Ltd. and Raju Fabrics and Gunjan Exports, Prop. Shri Satyanarayan Sharma, which are other than persons covered under section 132 of the Income-tax Act and, therefore, having so satisfied has issued notices upon the respective petitioners and others as mentioned in the notice under section 158BD of the Income-tax Act.

4. Feeling aggrieved and dissatisfied with the impugned notice issued under section 158BD of the Income-tax Act, the respective petitioners have preferred the present petitions under article 226 of the Constitution of India.

5. Mr. B.S. Soparkar, learned advocate appearing on behalf of the petitioners, has vehemently submitted that the impugned notices issued against the petitioners under section 158BD of the Act is absolutely illegal and contrary to law. It is submitted that as such none of the requirements as contemplated/provided under section 158BD are satisfied in the present case. It is submitted that as such in the impugned notices, nothing has been mentioned with respect to his satisfaction against the respective petitioners, more particularly, that undisclosed income belong to the respective petitioners. It is submitted that as such whatever is alleged and/or the satisfaction arrived at is against Rajendra Goyal individually and not against the respective petitioners. It is submitted that even if during the course of search something might have been found against the said Rajendra Goyal, who may be a director of the Goyal Industries Ltd. it cannot be said that any undisclosed income is belonged to the respective petitioners. Relying upon section 158BD of the Act it is submitted that only in a case where the Assessing Officer is satisfied that any undisclosed income belong to any persons other than the persons with respect to whom search was made under section 132 of the Act or whose books of account or any assets were searched under section 132 of the Act in such a case alone, block assessment proceedings under section 158BD of the Act can be initiated against that person of which the Assessing Officer is satisfied that any undisclosed income belong to the said person. It is submitted that in the present case, there is no such satisfaction and/ or it does not born out that the Assessing Officer is satisfied that any undisclosed income is belonged to the respective petitioners. It is, therefore, submitted that as requirements as provided under section 132 of the Act are not satisfied, the subjective satisfaction of the Assessing Officer against the respective petitioners is vitiated and, therefore, the impugned notices for block assessment under section 158BD require to be quashed and set aside. Making the above submissions, it is requested to allow the present petitions.

6. Both these petitions are vehemently opposed by Mr. Sudhir Mehta, learned advocate appearing for the respondent-Revenue. A detailed affidavit-in-reply is filed on behalf of the respondents. It is submitted that during the course of the search conducted in the case of the Malpani group, certain incriminating material was found against Rajendra Goyal, director of Goyal Industries Ltd. and even against the respective petitioners and others against whom notices under section 158BD of the Act have been issued. It is submitted that considering the statements recorded during the inquiry/search, more particularly, one Shri Dilip

Makwana who was serving as peon in the office of Rajendra Goyal, director of Goyal Industries Ltd. as well as Satyanarayan Sharma who was the manager of Goyal Industries Ltd. the Assessing Officer was satisfied that the undisclosed income has been earned and belonged to the persons against whom the notices issued under section 158BD of the Act. It is submitted that considering the provisions of section 158BD of the Act the petitioners and other persons/firm against whom the notices have been issued can be said to be the persons other than the persons with respect to whom the search was made under section 132 of the Act. It is submitted that having arrived at the subjective satisfaction as provided under section 158BD of the Act the impugned notices have been issued under section 158BD of the Act. It is further submitted that as such the satisfaction arrived at by the Assessing Officer initiating the proceedings under section 158BD are on the basis of the material on record collected during the course of the search under section 132 of the Act. It is submitted that the contention on behalf of the petitioners that at the most it can be said that during the course of search/inquiry some incriminating material has been found against Rajendra Goyal, however, it cannot be said that undisclosed income belongs to the respective petitioners for which the proceedings initiated under section 158BD is vitiated. It is submitted by Mr. Mehta that as such during the course of inquiry it has been found that accounts in the respective banks in the name of other persons were actually benami accounts of Goyal Industries Ltd. and the same were operated by Shri Satyanarayan Sharma on the instructions of Rajendra Goyal, director of Goyal Industries Ltd. It is submitted that having satisfied with the accounts in the name of different firms in different banks are actually benami accounts of Goyal Industries Ltd. the proceedings under section 158BD of the Act have been initiated. It is submitted that as such Goyal Industries Ltd. is a company who runs through directors and its employees. It is submitted that the satisfaction arrived at by the Assessing Officer while initiating the proceedings under section 158BD of the Act are not vitiated and the block assessment proceedings under section 158BD of the Act are rightly initiated by issuing the notice under section 158BD of the Act. Making the above submissions, Mr. Mehta requests to dismiss both the petitions.

7. Heard the learned advocates appearing for the respective parties.

8. At the outset, it is required to be noted that what is challenged in the present petitions is initiation of block assessment proceedings against the respective petitioners under section 158BD of the Act, i.e., notices issued by the Assessing Officer under section 158BD of the Act. It is required to be noted that the impugned notices have been issued and/or the block assessment proceedings under section 158BD of the Act are issued with the following satisfaction note:

"2. During the course of search in the Malpani group of cases, a locker key was found from the residence of Shri Surjnath Sidh. The locker in Oriental Bank of Commerce was in the name of Shri Pursottam Mundra. Shri Pursottam Mundra is an employee of Shri Surjanath Sidh. During the course of search at locker, certain dishonoured cheques were found and seized. Out of these, the major dishonoured cheques were found to in respect of Raju Fabrics, Roopa Textiles and Rahul International as below:

The details were called from the banks, to which the cheques belonged to, regarding the account holders. The copy of the bank statements were also called for from the banks. The details of entries contained in the said accounts are as below:

3. From the copy of the bank accounts called, it is observed that the cash has been deposited and cheques have been issued. The cheques from the account of Rahul International and Roopa Textiles were mostly issued in the names of (i) Gunjan Exports, (ii) Raju Fabrics, and (iii) Aditya Yam Pvt. Ltd.

4. The address given in the bank accounts were found to be bogus except in the case of Rahul International, Prop. Shri Dilip V. Makwana. During the course of statement under section 131 of the Income-tax Act, Shri Dilip Makwana stated that he has been working as a peon in the office of Shri Rajendra Goyal, director of Goyal Ind. Ltd. It was admitted by him that the account in The Udhna Citizen Co-operative Bank Ltd., Ring Road, Surat, was opened at the instruction of Shri Satyanarayan Sharma at Dayma, who was the manager of Goyal Ind. Ltd. The blank cheques were signed by him at the instruction of Shri Satyanarayan Sharma. It was stated by him that he has no knowledge regarding the deposit of cash or issue of cheques in the said account. In the circumstances, a statement of Shri Satyanarayan Sharma was recorded by issuing of summons under section 131 of the Income-tax Act. Shri Satyanarayan Sharma stated that he was working as manager in the Goyal Ind. Ltd. and the accounts as below were operated by him at the instruction of Shri Rajendra Goyal.

5. It was confirmed by Shri Satyanarayan Sharma that factually he was working as manager in Goyal Ind. Ltd., i.e., Shri Rajendra Goyal, but two concerns, namely, Raju Fabrics and Gunjan Exports were being run as his proprietary concerns and the books of account were being written at the office of Shri Rajendra Goyal, director of Goyal Ind. Ltd. It was stated by him that the cash deposited in the accounts of Rahul International and Roopa Textiles as pointed out above was actually given to him by Shri Rajendra Goyal. It is stated by Shri Sharma that he was actually handling all the bank accounts of the group at the instruction of Shri Rajendra Goyal.

6. In view of the statement made by Shri Satyanarayan Sharma, summons were issued to Shri Rajendra Goyal and his statement was recorded under section 131 of the Income-tax Act. Shri Rajendra Goyal denied the knowledge of accounts, mentioned in paragraph 4 above. It was stated by him that Shri Satyanarayan Sharma was not his employee, but he was purchasing yarns from Goyal Ind. Ltd. It is stated by Shri Rajendra Goyal that he had only business relations with Shri Satyanarayan Sharma. He expressed his complete ignorance about the accounts, as mentioned in paragraph 4 or deposit of cash in the said accounts.

7. The statement made by Shri Rajendra Goyal does not appear to be correct because the sequence of transaction is as below:

(I) The three concerns, namely, (i) Goyal Ind. Ltd., (ii) Goyal Synthetics Pvt. Ltd., and (iii) Foremost Finvest Pvt. Ltd. were 100 per cent, export oriented units. They were importing yarns. The imported yarns were sold to the following concerns:

(a) Raju Fabrics, Pro. Shri Satyanarayan Sharma

(b) Gunjan Exports, Prop. Shri Satyanarayan Sharma

(c) Aditya Yarn Pvt. Ltd., director Shri Satyanarayan Sharma.

(II) The first two concerns, i.e., Raju Fabrics and Gunjan Exports were stated to be involved in manufacturing of grey and third concern, i.e., Aditya Yam Pvt. Ltd. was to be involved in texturing.

(III) The payments against the purchases were made by the aforesaid three concerns to (i) Goyal Ind. Ltd., (ii) Goyal Synthetics Pvt. Ltd., and (iii) Foremost Finvest Pvt. Ltd. by way of cheques. The three concerns owned by Shri Satyanarayan Sharma were stated to have sold grey or texturised yarn to 100 per cent export oriented units locally. But, it is found that the three concerns were receiving cheques from the fictitious concerns, pointed out in paragraph 4, i.e., Rahul International and Roopa Textiles. In the bank accounts of the said concerns, huge cash was deposited and cheques were issued on the same dates. The cheques were in the name of (i) Raju Fabrics, (ii) Gunjan Exports, and (iii) Aditya Yarn Pvt. Ltd., who will in turn issue cheques to Goyal Ind. Ltd., Goyal Synthetics Pvt. Ltd., and Aditya Yarn Pvt. Ltd.

(IV) Shri Satyanarayan Sharma during course of his statement has confirmed that he was handling all the bank transactions of Goyal Ind. Ltd. and group concerns. The cash was being given to him by Shri Rajendra Goyal, director of Goyal Ind. Ltd. for depositing in banks and, subsequently, the cheques were issued in the name of three concerns as pointed out above. The total credits and deposits by way of cash in the accounts is as below:

(V) In addition to the deposit by way of cash in the aforesaid accounts, the entries have been received by way of transfer from other accounts in the same bank, i.e., the Udhna Citizen Co-operative Bank Ltd. The statement of such four accounts have been called for.

(a) Pakeeza Dresses A/c. No. 898

(b) Tin Silk Mills A/c. No. 996

(c) Jay Rayon A/c. No. 1063

(d) Surti Textiles A/c. No. 929

In the aforesaid accounts also, some cash is deposited. The total credits and deposits by way of cash in the accounts is as below:

Shri Satyanarayan, Dayma has admitted that the accounts are actually the benami accounts of the Goyal Ind. Ltd. group and the same were operated by him i.e. the cash as well as the cheques were deposited by him at the instructions of Shri Rajendra Goyal. The fact that the accounts are actually the benami accounts of the Goyal Industries group has also been admitted by Shri M.S. Padanthava, the branch manager of the Udhna Citizen Co-operative Bank Ltd. during the course of his statement under section 131 of the Income-tax Act.

8. From the above, it can be seen that the total credits as well as the deposit by way of cash in the benami accounts are as below:

The total credits in the aforesaid benami accounts are to the extent of Rs. 92,01,74,261 out of which, the sum of Rs. 40,48,31,355 is by way of cash. All the credits in the aforesaid accounts have ultimately reached the group concerns of Shri Rajendra Goyal, i.e., Goyal Ind. Ltd., Goyal Synthetics Pvt. Ltd. and Foremost Finvest Pvt. Ltd. through the concerns in the name of Shri Satyanarayan, Daymal, i.e. Raju Fabrics, Gunjan Exports and Aditya Yarn Pvt. Ltd.

9. From the facts narrated above, it is clear that the group concerns of Shri Rajendra Goyal, i.e., Goyal Industries Ltd., Goyal Synthetics Pvt. Ltd. and Foremost Finvest Pvt. Ltd. made fictitious sales to the concerns, namely, (i) Raju Fabrics, (ii) Gunjan Exports, and (iii) Aditya Yarn Pvt. Ltd. were received from benami concerns of Goyal Industries group, as pointed out in paragraph 8 above. The source of credit either by cheque or cash in the benami accounts to the extent of Rs. 92,01,74,261 remains unexplained. The accounts have been detected by virtue of inquiry in the cheques found from the locker of Shri Pursottam Mundra, employee of Shri Surajnath Sidh, who is involved in the business of cheques discounting.

10. In view of the above, I am satisfied that undisclosed income has been earned and belongs to the persons as below, which are other than persons covered under section 132 of the Income-tax Act. Hence, the notice under section 158BD of the Income-tax Act is required to be issued in the following cases.

Accordingly, I forward herewith the copy of seized documents and statement recorded in connection with these seized documents to the Assessing Officer. Concerned for initiating necessary action under section 158BD of the Income-tax Act."

9. Considering the aforesaid facts and circumstances of the case mentioned 1 in the satisfaction note, more particularly, the statements of Dilip Makwana, an employee of Rajendra Goyal, director of Goyal Industries Ltd. and Satyanarayan Sharma, manager of Goyal Industries Ltd., it cannot be said that the Assessing Officer has committed any error and/or any illegality in initiating the block assessment proceedings under section 158BD of the Act. When the subjective satisfaction has been arrived at by the Assessing Officer for initiation of the

proceedings under section 158BD of the Act on the basis of the material collected during the course of search/inquiry, it cannot be said that satisfaction arrived at by the Assessing Officer while initiating proceedings under section 158 of the Act has been vitiated in any manner.

10. Now, so far as the contention of the petitioners that during the course of 1 search/inquiry, whatever is found is against the Rajendra Goyal and not against the Goyal Industries Ltd. and, therefore, no block assessment proceedings could have been initiated against the present petitioners is concerned, it is required to be noted that there is ample material on record, so mentioned in the satisfaction note, against the respective petitioners and Goyal Industries Ltd. and another. It is required to be noted that even the said Rajendra Goyal is the director of Goyal Industries Ltd. and the Company, i.e., Goyal Industries Ltd. is run through its director/manager/employees, etc. Considering the material on record and in the facts and circumstances of the case and the satisfaction note, we are satisfied that no error or illegality has been committed in issuing notice under section 158BD of the Act.

11. It is required to be noted that as such pursuant to the interim order passed by this court, the block assessment proceedings were permitted to be concluded, however, are not served and implemented upon the petitioners. In view of the above and for the foregoing reasons, both these petitions fail and deserve to be dismissed and, accordingly, they are dismissed. Rule is discharged in each petition. Interim relief granted earlier stands vacated forthwith. No costs.

