(2014) 03 KAR CK 0313

In the Karnataka High Court

Case No : ITA No. 721 of 2007

Gudwill Housing Ltd. — APPELLANT

Vs

ITO — RESPONDENT

Date of Decision : 24-03-2014

Acts Referred:

Income Tax Act, 1961 — Section 132, 147, 148, 158BA, 158BC

Citation : (2014) 03 KAR CK 0313

Hon'ble Judges : D.B. Bhosale, J;B. Manohar, J.

Bench : Division Bench

Advocate : S. Parthasarathi, for the Appellant; K.V. Aravind, for the Respondent

Judgement

1. This Income Tax Appeal, under section 260A of the Income Tax Act, 1961 (for short the Act), is directed against the order dated 30.05.2007 passed by the Income Tax Appellate Tribunal, Bangalore Bench-A (for short the Tribunal) disposing of ITA Nos. 1441-1443 of 2004 pertaining to the assessment years 1996-97, 1999-2000 and 1998-99. The Tribunal also decided other four appeals filed by the revenue by the very same order. However, we are not concerned with the same, since the order disposing of those appeals, is not the subject matter of the instant appeal. The appeals before the Tribunal were directed against the orders of Commissioner of Income Tax (Appeals) (for short, Commissioner (Appeals)) dated 17.03.2004 arid 25.03.2004, whereby Commissioner (Appeals) had partly allowed the appeals filed by the assessee. The appeals before the Commissioner (Appeals) were directed against the assessment order dated 30.01.2003 passed by the Income Tax Officer, Ward-11 (2), Bangalore (for short, assessing officer).

2. This Court while admitting the appeal on 29-1-2008 formulated the following substantial question of law for consideration:

''Whether re-assessment as made under section 147 of the Act for the relevant assessment years in the case of the appellant were valid and, thus, sustainable?''

3. Briefly stated the facts against which, the substantial question of law, as framed vide order dated 29-1-2008, arises for our consideration are that the appellant-assessee constructed a building, during the relevant assessment years and had filed return of income declaring nil income. In the building constructed by the assessee, one M/s. Monalisa Interior Decorators Private Limited (for short, Monalisa), had purchased the premises for running their own office. A search was conducted of the premises of Monalisa under section 132 of the Act on 24-12-1999. During the search, a fax message was seized revealing some payment made by Monalisa to the assessee. The amount that was disclosed in the fax was Rs. 12,52,750. On the basis thereof, it was revealed that the amount disclosed by the assessee in his return, having received from Monalisa, was only Rs. 4,97,417. In this backdrop, the assessing officer issued notice under section 148 of the Act, reopening the assessment for the assessment years 1996-97, 1998-99 and 1999-2000 and added the amount of Rs. 37,59,689 for the assessment year 1996-97, Rs. 6,05,000 for the assessment year 1998-99 and Rs. 7,16,642 for the assessment year 1999-2000. The Tax liability, on the basis of the additions was determined as Rs. 19,58,498, Rs. 3,75,357 and Rs. 3,95,147 respectively. This order was challenged by the assessee in appeals before Commissioner (Appeals). The Commissioner (Appeals) confirmed the order passed by the assessing officer insofar as these additions are concerned.

3.1 The order of the Commissioner (Appeals) was then confirmed by the Tribunal. Before the Tribunal, the challenge was two fold. Firstly, on the ground of jurisdiction of reopening of the assessment by issuing notice under section 148 of the Act, and secondly, on merits. Insofar as the first ground of challenge raised before the Tribunal is concerned, it appears from the observations made in Paragraph 2 of the order that, the said ground was not seriously pressed on behalf of the assessee. However, in the present case, the only substantial question of law raised by the assessee on which the appeal was admitted, is in respect of the jurisdiction of the assessing officer to reopen the assessment by issuing notice under section 148 of the Act. No other contention or substantial question of law was urged/raised on behalf of the assessee.

4. Mr. Parthasarathy, learned Counsel appearing for the appellant-assessee, at the outset, invited our attention to section 158BA and section. 158BD in Chapter XIV-B of the Act to submit that the assessing officer had no option but to invoke the provisions contained in Chapter XIV-B of the Act to proceed against the assessee on the basis of evidence found as a result of the search made under section 132 of the Act, of the premises of Monalisa. He submitted that it was not open to the assessing officer to reopen assessment under section 147 by issuing notice under section 148 of the Act. In short, he submitted that having found the evidence regarding undisclosed income during search, the only option open to the assessing officer was to invoke block assessment under Chapter XIV-B of the Act.

5. It is true that section 158BD states that where the assessing officer is satisfied

that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132, then the books of accounts, other documents or assets seized shall be handed over to the assessing officer having jurisdiction over such other person and that the assessing officer shall proceed under section 158BC against such other person and the provisions of these Chapter shall apply accordingly. This provision by itself, in our opinion, is not sufficient to hold that the assessing officer, on the facts and in the circumstances, as occurred in the present case, could not have proceeded against the assessee under section 147 by issuing notice under section 148 of the Act. This provision fell for consideration of the Delhi High Court and the Allahabad High Court. The Allahabad High Court in Commissioner of Income Tax Vs. Abhyudaya Builders (P) Ltd., was considering not only these provisions but was examining the same in the light of similar facts, as fall for our consideration in the present case. While doing so, the Allahabad High Court placed reliance upon the judgment of the Delhi High Court in Janki Exports International Vs. Union of India (UOI) and Others, to hold that the provisions contained in section 158BD of the Act are analogous to the provisions contained in section 147 of the Act, insofar as the procedure that is required to be followed. Section 147 contemplates that if the assessing officer has reasons to believe that there is escapement of income, then notice can be issued under section 148 of the Act. Section 158BD of the Act provides that if the Assessing officer is satisfied that any undisclosed income belongs to any person other than the person with respect to whom search was made under section 132 of the Act, upon such satisfaction, is required to forward the relevant documents, papers, etc. to the assessing officer having jurisdiction over such other person in respect of whom the undisclosed income has been disclosed for block assessment. Thus, it is open to the assessing officer to proceed against the assessee, if he has reason to believe that his income has either escaped the assessment or whose undisclosed income is unearthed during the search conducted under section 132 of the Act of the premises of some other person. From plain reading of these provisions, we do not find any impediment in proceeding against such person by issuing notice under section 148 of the Act. In other words, Chapter XIV-B do not preclude the assessing officer to proceed against such assessee by issuing notice under section 148 of the Act. The remedies, available to the assessing officer, under these provisions are independent of each other, and the provisions being analogous, it is for the assessing officer to opt for either of them in a situation, such as in the present case. The Legislature, in our opinion, has given choice to the assessing officer to either proceed under Chapter XIV-B or under section 148 of the Act against the assessee, such as the one in the present case.

6. In the present case, the assessing officer reopened the case under section 147 by issuing notice under section 148 and completed the assessment. Till the assessment was completed and till the matter reached the Tribunal, the assessee did not make any grievance whatsoever. Even before the Tribunal, though the ground of jurisdiction was raised, it was not seriously pressed by learned counsel

appearing for the assessee and in this view of the matter, the Tribunal proceeded to consider merits of the case. In the present appeal, the appellant chose to confine its challenge only on the ground of jurisdiction and did not raise challenge on merits. In this backdrop, we find no reason to interfere with the order passed by the Tribunal. We are satisfied that the assessing officer has option to proceed against the assessee by issuing notice under section 148 of the Act in a situation as occurred in the present case. Hence, we answer the substantial questions of law as formulated by this Court vide order dated 29-1-2008 against the assessee and in favour of the Revenue.

7. Before we part, we observe that no other grounds were either raised or urged on behalf of the assessee. The appeal is accordingly dismissed. No costs.

