

**(2012) 06 MAD CK 0011**

**In the Madras High Court**

**Case No : Tax Case (Appeal) No. 1083 of 2005**

K. Sakthivel

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

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**Date of Decision : 14-06-2012**

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 5, Order 18 Rule 8, Order 18 Rule 9  
Criminal Procedure Code, 1973 (CrPC) — Section 164  
Income Tax Act, 1961 — Section 131, 131(1), 132, 132(4), 142(1)

**Citation : (2012) 252 CTR 531 : (2012) 211 TAXMAN 22**

**Hon'ble Judges : K. Ravichandra Baabu, J;Chitra Venkataraman, J**

**Bench : Division Bench**

**Advocate : Vikram Sriram, for the Appellant; T. Ravikumar, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Mrs. Chitra Venkataraman, J.—The assessee is on appeal as against the order of the Tribunal relating to assessment year for the period 1st

April, 1989 to 1990-91. The above tax case (appeal) was admitted on the following substantial questions of law :

(a) Whether the notice issued under s. 158BD of the IT Act, 1961 is sustainable in law if it does not mention the block period ?

(b) Whether non-mentioning of the block period in the notice could be characterized as a curable defect, particularly in the teeth of judgments

reported in :

(1) (2000) 75 ITD 183

(2) Y. Narayana Chetty and Another Vs. The Income Tax Officer, Nellore and Others,

(3) Commissioner of Income Tax, Gujarat II Vs. Kurban Hussain Ibrahimji

Mithiborwala,

(4) Nyalchand Malukchand Dagli Vs. Commissioner of Income Tax, Gujarat,

(5) P.N. Sasikumar and Others Vs. Commissioner of Income Tax,

(6) Commissioner of Income Tax Vs. Hindustan Motors Ltd.,

(7) Indian Banks' Association, Bombay and Others Vs. Devkala Consultancy Service and Others,

(c) Whether the finding of the Tribunal that provision of order 18, rules 5 and 9 CPC and s. 164, CrPC need not be followed while recording a

confessional statement under s. 131 of the IT Act, 1961 is sustainable in law, in view of the specific language of s. 131(1) and s. 132(4) of the IT

Act, 1961 ?

(d) Whether an order of assessment could be passed merely upon a statement under s. 131 without any corroborative material ?

The assessee also raised additional questions of law which are as follows :

(a) Whether a notice issued under s. 158BD of the IT Act, 1961 is valid if the AO never recorded his satisfaction in the said notice that the alleged

undisclosed income belonged to the appellant ?

(b) Whether the respondent could have issued a notice under s. 158BD of the IT Act, 1961 without following the procedure prescribed under s.

158BC of the IT Act, 1961 and without conducting a search on the appellant under s. 132 of the IT Act 1961 ?

2. It is seen from the facts narrated that the search was conducted in residential and business premises of one V.S. Kathirvel on 22nd June, 1999

and concluded on 19th Oct., 1999. During the course of the search, various incriminating documents were seized from the residential and business

premises of V.S. Kathirvel. It was seen that he had indulged in unaccounted real estate transaction. Some of the documents pertained to the

transaction with the assessee who had purchased 3 acres of land from V.S. Kathirvel for a consideration of Rs. 9,75,000. Enquiry proceedings

were initiated against the assessee. The assessee participated in the enquiry proceedings and had given sworn statement on 5th Aug. 1999 under s.

131 of the IT Act. In answering the enquiry, the assessee is stated to have made the following statement, which, as recorded in the order of

assessment and appeal, is the translation of the statement recorded in Tamil,

which reads as under :

Q 9. I am showing the original sale deed of Rs. 1,99,000 purchased on 6th Dec., 1995. This land of 3 acres was purchased on 6th Dec., 1995.

Pl. state how much you gave and to whom ? Whether this amount was accounted ?

Ans. I bought the above land of 3 acres through Sri V.S. Kathirvel, Komarapalayam. Before buying this property, myself and V.S. Kathirvel made an agreement and I paid in cash towards the consideration. Since I have paid all the amount as per agreement, now (I) do not have that agreement.

According to that agreement, 1 acre = Rs. 3,25,000, totalling to Rs. 9,75,000 for three acres. This amount was given by me to V.S. Kathirvel i.e.

Rs. 9.75,000. Later on 6th Dec., 1996, a sale deed was registered in my name for 3 acres. I paid the entire amount in cash before the date of

registration. But I do not know the exact dates. The registration was made for Rs. 1,95,000 only. The remaining amount was given as on-money.

In this, Rs. 1,95,000 was accounted for and the remaining amount of Rs. 7,80,000 was not shown in my books of accounts.

Q. 10. On 22nd June, 1999, a search was conducted in the office premises of Sri V.S. Kathirvel, Komarapalayam. During the course of search, a

loose bunch in NR/B & D/S-30 was seized. In this loose bunch, (in) sheet Nos. 159, 155 and 143, some amounts are credited in the name of

PMS and in sheet No. 155, an account was written under the PMS account.

Pl see this and give details about it.

Ans. I have seen the above account, and it is the account of land purchased by me through V.S. Kathirvel. The sheet Nos. 159, 155 and 143

(NR/B & D--S-30) shows the account details as stated by me in the answer to the previous question. Accordingly, this is the amount paid as per

the agreement for the purchase of 3 acres. On 30th June, 1995 and 6th Dec. 1995. I paid Rs. 3,00,000 and Rs. 6,75,000 to Sri V.S. Kathirvel.

Q. 11 : For purchasing 3 acres of land, you have registered for Rs. 1,95,000 only. Pl show me where it was accounted.

Ans. This amount (Rs. 1,95,000) was accounted in M/s. Sri Ragavendra Tex. Prop. K. Sakthivel (Ind 1). It was in L.F. No. 4 dt. 6.12.1995 in

the day book. The total amount is Rs. 2,21,000 (including other charges). This amount was credited in my HUF personal books i.e. from 1st

April, 1989 to 5th Aug., 1999. Now I am showing those books.

Q. 12 : You have shown the said amount of Rs. 1,99,000 + stamp duty only in your books. Please state about the remaining amount of Rs.

7,80,000. How you got this amount ?

Ans : I have stated Sri Ragavendra Tex only on 1st April, 1994. Before that I was doing commission in textiles for about 5 years. Upto 6th Dec,

1995, I got Rs. 7,80,000 from my commission business and my individual business. This income was not written in the books of accounts. So

from 1st April, 1990 to 6th Dec, 1995 I have earned Rs. 7,80,000 which is not accounted and I agree to pay the respective tax for that amount.

3. Thus as evident from the statements and seized documents, the assessee confirmed that the purchase of the land was at the cost of Rs. 9,75,000

and only a sum of Rs. 1,95,000 was recorded in the sale deed and the balance of Rs. 7,80,000 paid from out of undisclosed income. This led to

the issuance of notice under s. 158BD r/w s. 158BC dt. 27th Aug., 2001 served on the assessee on 3rd Aug., 2001. Thereafter, notice under s.

142(1), summons under s. 131 were also served. Admittedly the assessee participated in the enquiry proceedings. On 15th May, 2002, the

assessee filed a letter which reads as under :

In response to the above, I beg to submit that I received your above-referred notice directing me to file my block return on or before 15th May.

2002. In this regard, I am to state that I am presently facing heavy financial crunch and chronic liquidity problem and therefore, I could not make

the payment of tax due for the block return and to file the same within 15th May. 2002. In view of the same, I request your goodself to kindly

grant me two months time for arrangement of funds for paying the necessary tax due under the block return in my individual status. I also undertake

to pay the total tax due and interest thereon under the block return within the time requested for and file the return along with challans for payment

of tax.

4. Ultimately, the assessee filed the block return in Form No. 2B on 6th Aug., 2002 declaring undisclosed income at Rs. Nil and return was taken

up for scrutiny by issuance of notice under s. 143(2) dt. 8th Aug., 2002. Admittedly, the assessee participated in the assessment proceedings along

with his advocate. He filed a letter during the course of hearing on 12th June,

2003 and 26th June. 2003. Along with letter dt. 26th June, 2003, the assessee is stated to have filed an affidavit wherein he had stated that on 5th Aug., 1999, he received a summons dt. 2nd Aug.. 1999 issued by Dy. Director of IT (Inv.) Erode and when he appeared for the summons at IT Department, Erode, he was not allowed to meet the concerned Dy. Director of IT (Inv.) Erode. Later one Inspector of Investigation enquired him about the land purchased from V.S. Kathirvel, Komarapalayam, but the Inspector recorded a different statement, that he was not told of the content of the said recorded statement but got his signature by threatening. He further stated in the affidavit that he was not allowed to read the statement written by that Inspector and hence, he had not given the statement voluntarily. Further he did not write the usual writings like "the statement is given by me voluntarily without threat or coercion. I read the statement and it was written correctly as I have said". Thus, in the sworn statement, filed on 26th June, 2003, the assessee retracted the earlier statement by stating that the land was purchased by him at the cost of Rs. 2,21,000 inclusive of all expenses and not Rs. 7,80,000. Apart from this, the assessee objected to the summons issued under s. 131 of the Act. In dealing with the said submission, the assessing authority held that this retracted statement was an afterthought. Considering the fact that on 15th May, 2002, the assessee himself had not stated anything about the statement recorded and that he had stated that in view of the financial difficulty, he could not make the payment of tax due for the block period, he filed a return only on 15th May, 2002. Thus on verification of the books impounded as well as on the statement given by the assessee on 5th Aug., 1999, the assessing authority came to the conclusion that the assessee had accounted for Rs. 2,21,000 only, which was inclusive of the stamp duty charges in his books of accounts. As regards the balance amount of Rs. 7,80,000, the assessee had not filed any explanation except to state that the sworn statement recorded on 5th Aug., 1999 was not valid in law. On going through the records, the assessing authority, ultimately held that the assessee had undisclosed the income of Rs. 7,80,000 and the same was assessed at 60 per cent of the undisclosed income. Interest under s. 158BFA was also levied. Aggrieved by this, the assessee went on appeal before the CIT(A), wherein the assessee took a plea that notice dt. 27th

Aug., 2001 issued to the assessee did not indicate the block period, for which return was submitted. In considering the contentions of the assessee, the CIT(A) pointed out to the answers given by the assessee at the time of enquiry and the filing of the return of income for the block period 1st April, 1989 to 19th Aug., 1999. The first appellate authority pointed out that the assessee had complied with notice issued under s. 158BD and filed a return of income in Form 2B after ascertaining the block period. The conditions mentioned in s. 158BD were fulfilled before proceeding with the block assessment and the appellant had no doubt as to the purpose for which the notice was issued. Hence, the absence of non-mentioning of the block period would not vitiate the block assessment. By placing reliance on the decision of this Court in *Sakthivel Bankers, Rana Investments, Rana Cotton Yarn, Saraswathi and Co. and L. Saroja Vs. Assistant Commissioner*, rejected the assessee's contention that non-mentioning of the block period in the notice would not vitiate the proceedings.

5. As far as the statement retracted by the assessee is concerned, the first appellate authority pointed out that there was no evidence of any coercion brought on record before the AO as well as before the first appellate authority. The said statement made long after the recording of the statement. Thus, when the burden was on the assessee to prove that the statement was obtained by such means, in the absence of any material to substantiate such allegations, the CIT(A) rejected the same as baseless.

6. As regards the admissibility of the retraction statement, referring to the decision of the Supreme Court in *Surjeet Singh Chhabra Vs. Union of India* and others, held that any admission made before the assessing authority would bind the person. Except for the bland denial of the statement dt. 5th Aug., 1999, there was no retraction by the assessee for the AO to take cognizance of.

7. As regards the failure to follow rule 5 of order XVIII of the CPC, the first appellate authority held that there was no merit in such contention since the said statement was recorded before the Dy. Director of IT (Inv.) Erode, who had also signed the statement on 5th Aug., 1999. Thus the CIT(A) rejected the appellant's contention and dismissed the appeal. Aggrieved by this, the assessee went on further appeal before the Tribunal.

8. The Tribunal pointed out that the assessee had challenged the order of the

CIT(A) only on technical issues and not on merits of the assessment.

Thus, the Tribunal confined its attention only on technical aspects raised by the assessee. The first contention raised by the assessee related to

notice issued under s. 158BD. On the AO not mentioning the block period in the notice issued under s. 158BD, the Tribunal pointed out to the

letter written by the assessee's counsel on 12th June, 2003 that the said representative met the AO after receipt of notice under s. 158BC and

after ascertaining the details of block period, the return was also filed in Form 2B. The assessee was also summoned under s. 131 and he was

examined about the purchase consideration. Thus, it was very clear that the assessee participated in the assessment proceedings knowing fully well

about the block period and the details of undisclosed income which was subject-matter of the enquiry. Therefore, non mentioning of the block

period in the notice would not vitiate the assessment proceedings.

9. Even though learned counsel for the assessee raised a serious dispute on this aspect, we summoned the assessment files before this Court. On

perusal of the same, we find that the return was filed by the assessee only after ascertaining the block period and such statement is also found even

in the return itself filed by the assessee by way of remark as against the column of block period covered.

10. As regards the issue relating to the recording of the statement is concerned, the assessee placed reliance on the provisions of the CPC. The

assessee contended that the statement recorded were not in conformity with order 18, rules 5 and 8 of CPC and s. 164 of the CrPC. The assessee

further questioned the validity of the retracted statement by referring to the apex Court decision relied on by the first appellate authority in *Surjeet*

*Singh Chhabda vs. Union of India* (supra). The Tribunal pointed out that the ITOs are not Police Officers. The confession though retracted was an

admission binding on the assessee. The Tribunal pointed out that though the assessee stated that the statement given was not voluntarily yet, the

said retracted statement was made after three years from the date of recording the statement, the delay thus, remained unexplained as to why the

assessee did not make the allegations immediately after the statement was recorded. The assessee had also signed in all places wherever there

were corrections in the statement recorded. The assessee had also read the

statement before signing. In the circumstances, the Tribunal rejected the contention of the assessee that he was not allowed to read the statement and that he was not made the statement voluntarily. In the absence of any material to support the allegation, as had been raised in the affidavit filed in the year 2003 the Tribunal rejected the said plea of the assessee.

11. As regards the compliance of provisions of order 18, rules 5 and 8 of CPC and provisions of s. 164 of the CrPC, the Tribunal held that even though the said provisions are to be observed, yet, the said provisions do not convert the income tax proceedings into regular civil or criminal proceedings. Therefore, the strict principles laid down in the CPC and in the CrPC were not warranted. Apart from that, the Tribunal, as a matter of fact, held that the statement made by the assessee was recorded in the presence of Dy. Director of IT. As such, there is no violation of provisions of order 18 rules 5 and 8 of CPC or s. 164 of CrPC.

12. As regards evidentiary value of the statement recorded, the Tribunal pointed out that the material seized from the premises of Kathirvel and Arumugam and the statement recorded from the assessee clearly showed the consideration paid on the purchase of the landed property by the assessee. When the assessment was based on materials and information available on record, together with the statement made under s. 131, there was no substance in the contention of the assessee that the assessment which was made purely on the statement recorded could not be sustained. Thus, the Tribunal pointed out that since the contentions of the assessee are confined only to the technical aspects, they were not going in to the merit of the addition made by the lower authorities. Aggrieved by this, the assessee is before us.

13. Even though learned counsel appearing for the assessee reiterated the contentions in the grounds as had been taken before the Tribunal and contended that when the issuance of notice under s. 158BD is the very foundation to initiate proceedings against the assessee, the non-mentioning of the block period in the notice would cut at the very root of the assessment proceedings. Learned standing counsel for the Revenue placed before us the decisions in *Shirish Madhukar Dalvi Vs. Assistant Commissioner of Income Tax and Others*, , (2005) 95 TTJ 461 as well as

*Sakthivel Bankers, Rana Investments, Rana Cotton Yarn, Saraswathi and Co. and*

L. Saroja Vs. Assistant Commissioner, and submitted that

when the assessee had acted on the notice and filed the return knowing fully well the period of block assessment, yet considering the fact the notice

issued under s. 158BD is only procedural and not related to assumption of jurisdiction, it is not open to the assessee to contend that the

assessment was not valid.

14. In the decision relied on by the assessee in Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another, the apex Court

considered the scheme of block assessment procedure and pointed out that s. 158BD provides the methodology to make block assessment in

terms of s. 158BC in respect of any other person other than the person whose premises had been searched. The conditions required thereon are

that there must be satisfaction recorded by the AO that the undisclosed income belongs to any person, other than the person with respect to whom

the search was made under s. 132 of the Act; the books of account or other documents or assets seized or requisitioned had been handed over to

the AO having jurisdiction over such other person and the AO has proceeded under s. 158BC against such other person. As far as this aspect is

concerned, on going through the file, we find that there is no difficulty in holding that there is compliance of the provisions of the Act.

15. As far as the non-mentioning of the block period in the notice issued under s. 158BD is concerned, in the decision relied on by learned

standing counsel for the Revenue Shirish Madhukar Dalvi vs. Asstt CIT (supra), the Bombay High Court considered the nature of the proceedings

contained in s. 158BD. On going through the provisions contained under ss. 147, 148 and 158BC, the Bombay High Court held that s. 158BA

refers to jurisdiction of the AO to assess undisclosed income in accordance with Chapter XIV-B, whereas s. 158BA(2) is the charging section, s.

158BB provides for computation of undisclosed income for the block period, whereas s. 158BC provides the procedure for block assessment. In

the decision in Sakthivel Bankers & Ors. vs. Asstt. CIT (supra), this Court held that failure to mention the provision in the notice was not a

circumstance which could be said to vitiate the ultimate order. The said decision relates to the assessment made consequent on the search

conducted in assessee's place and notice was issued thereon to eight firms and

to the wife of the assessee. Referring to s. 158BD, this Court held that non-mentioning of the purpose for which the notice was issued or the source of the authority of the officer issuing the notice per se would not defeat the aspect of the persons since the persons against whom the notice issued were fully aware of the purpose of issuing the notice.

16. In the light of the above-said decision of this Court as well as in view of the Bombay High Court cited supra, we reject the contention of the assessee that the non-mentioning of the block period would defeat the very assessment. Quite apart from this, the assessee participated in the enquiry conducted under s. 131 of the FT Act and had also made a statement confirming the purchase of the land. Subsequent thereto, the assessee had participated in the enquiry and on 15th May, 2002, in response to the notice under s. 142(1) the assessee expressed his inability to file the return on or before 15th May, 2002 on account of liquidity problem, hence he sought for time to file return. Ultimately, when the assessee filed the return under Form No. 2B, as already noted in the preceding para, the assessee mentioned the block period as ascertained from the ITO and said fact is stated by the assessee in the return filed by him. Thus, when the assessee received the notice issued on 5th Aug.. 1999, the assessee had no doubt as to the nature of proceedings initiated, the purpose of the said proceedings and the block period for which proceedings were initiated. In the circumstances, it is too late for the assessee to contend that non-mentioning of the block period would defeat the assessment proceedings. In the circumstances, we reject the assessee's contention.

17. As regards the contention of the assessee that the statement recorded was in violation of provisions of CPC and CrPC, we do not think that the said contention would be well received by this Court. The conduct of the assessee has to be seen herein. The assessee made a statement in the enquiry conducted by the Department as regards the parting of a sum over and above what was recorded in the sale deed. A reading of the questions and answers which are extracted in the preceding para shows that the assessee was well aware of the contents of the statement made by him. The statement was recorded in the year 1999 and the assessee thereafter too participated in the enquiry until 2003 and he had no doubt about the truthfulness of the statement made. However, for some reason best known to

him, the assessee in the letter on 26th June, 2003, took a plea that the statements were not recorded in the presence of Dy. Director of IT (Inv.) and statements were not given voluntarily. It may be seen that the assessee is stated to have written letters on 12th June, 2003 and 26th June, 2003 and it is relevant to point out that the so-called retraction came to be made only in the letter dt. 26th June, 2003, which clearly shows that it is merely an afterthought to say that he made the statement under threat or coercion. Consequently, this ground fails.

18. As far as the recording of the statement not being in the presence of Dy. Director of IT (Inv.) is concerned, on a factual finding made by the Tribunal that the statement was recorded in the presence of Dy. Director of IT (Inv.), the contention of the assessee that the statement was recorded in violation of provisions of order 18, rules 5 and 8 of CPC and s. 164 of the CrPC fails.

19. As far as relevancy of the retraction statement is concerned, in the decision in Vinod Solanki Vs. Union of India (UOI) and Another, the apex

Court considered the similar contention, wherein the apex Court pointed out that merely because a statement is retracted, it cannot be treated that

the First statement was involuntary or unlawfully obtained. It is only for the maker of the statement who alleges inducement, threat, promise etc., to

establish that such improper means have been adopted. Going by the above said decision, taking note of the time of retraction, in the absence of

any materials to substantiate the said contention, coupled with other material documents available in the form of seizure made on the premises of

Kathirvel and Arumugam and the consistency in the answers made by the assessee, we reject the contention of the assessee that the Department

committed serious error in ignoring the retraction. The decision referred to by the assessee in Vinod Solanki vs. Union of India (supra), does not in

any manner advance the case of the assessee and the same has to fail. The said decision in fact fully supports the contention of the Revenue.

20. As far as the third contention that the assessment had not been made taking note of the independent materials is concerned, here too, we do

not accept the contention of the assessee that the assessment was based on the materials seized from the premises of Kathirvel and Arumugam,

who were parties to the sale transaction as well as on the basis of the statement

recorded under s. 131 from the assessee, as such, it cannot be held that the assessment was based just on the statement recorded from the assessee. Considering the above facts, we have no hesitation in confirming the order of the Tribunal. Consequently, we reject the plea of the assessee and thereby, the order of the Tribunal is confirmed. The tax case (appeal) is dismissed. No costs.