

(2005) 09 DEL CK 0119
In the Delhi High Court
Case No : ITA No's. 618-619 of 2005

M.B. Lal

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 22-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Income Tax Act, 1961 — Section 132, 132(1), 132(3), 132(5), 132A

Citation : (2005) 199 CTR 571 : (2005) 124 DLT 324 : (2005) 84 DRJ 563 :
(2005) 279 ITR 298 : (2005) 149 TAXMAN 490

Hon'ble Judges : T.S. Thakur, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : O.P. Singh, for the Appellant; R.D. Jolly, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Thakur, J.—These two appeals arise out of a common order, passed by the Income Tax Appellate Tribunal, New Delhi, whereby the block assessment order made against the appellant has been held to be within the period of limitation prescribed for the same. The factual matrix giving rise to the proceedings before the authorities below may be summarised as under:

2. A survey was conducted by the Income Tax Department in the business premises of the appellants in Delhi on 1st February, 2000, which continued till 10 AM on the 2nd February, 2000 when the survey proceedings were converted into a search. In the course of the said proceedings, the authorised officer passed an order in terms of Section 132(3) of the Income Tax Act, 1961 (for short "the Act") in regard to the contents of an almirah and cupboard found in the premises being searched. On the conclusion of the search, a notice u/s 158BC was issued to the appellant on 22nd January, 2002 asking him to furnish a return setting forth his undisclosed income. In response to the said notice, the appellant filed 'Nil' return. Shortly after the filing of the return, the appellant addressed a letter, inter alia, contending that the search conducted by the authorised officer

was illegal and the assessment proceedings initiated under Chapter XIV B legally invalid. A writ petition was also filed by the petitioner, seeking a writ of mandamus, quashing the authorization dated 2nd February, 2000, the search proceedings as also the notice issued u/s 158BC. A mandamus directing the respondents to forthwith return to the petitioner the seized records, books of accounts and materials was also prayed for.

3. The above writ petition came up before a Division Bench of this Court and was dismissed by order dated 6th May, 2002, on the ground that the same was barred by unexplained delay and laches. The petitioner then attempted to explain, in a letter addressed to the Assessing Officer, the reasons for surrendering Rs.25 lacs for taxation and reiterated its stand regarding the legality of the search proceedings. The Assessing Officer finalised the assessment proceedings and passed a block assessment order on 27th June, 2002, bringing to tax an undisclosed income of Rs.29,54,560/-, comprising the following:

(i) Rs.23,30,000/-, out of Rs.25 lacs, surrendered by the appellant in terms of his statement recorded on 8th January, 2001.

(ii) Rs.2,06,650/- being unexplained/ undisclosed expenses incurred on engagement/marriage ceremony of the daughter of the appellant.

(iii) Rs.1,47,895/-, representing an unexplained expenditure on the basis of document No.40-42 enclosed to the Panchnama.

(iv) Rs.2,69,928/-, representing undisclosed interest income.

4. Aggrieved by the order aforementioned, the appellant appealed to the Commissioner of Income Tax (Appeals), New Delhi, inter alia, contending that the search proceedings as also the proceedings u/s 158BC of the Act were illegal and beyond the period of limitation prescribed for the same. The estimation of the undisclosed income brought to tax was also assailed by the appellant. This appeal succeeded in part and was allowed by the Commissioner of Income Tax in terms of his order dated 16th January, 2003, who held that the survey converted into search by issue of a warrant followed by proceedings u/s 158BC of the Act were within the four corners of law. He also held that block assessment order had been made within the period of limitation prescribed for the same. The amount of undisclosed interest income estimated by the Assessing Officer at Rs.2,69,928/- was however reduced to Rs.39,638/- only.

5. Dissatisfied with the above order, the appellants preferred a further appeal before the Tribunal, who by its order dated 25th February, 2005, dismissed the same holding, inter alia, that the validity of the action taken u/s 132 of the Act could not be examined in an appeal filed before the Tribunal and that the conversion of the survey operation into search by the Director of Investigation was valid and based on the satisfaction recorded by reference to the material available on record. The Tribunal further held that the block assessment order had been made within the time prescribed for the purpose. The present appeals,

as already noticed earlier, call in question the correctness of the said view.

6. We have heard learned counsel for the parties and perused the record. Two substantial questions of law fall for our consideration. These are:

(i) Whether the Tribunal was correct in law in holding that the validity of the search proceedings could not be agitated in appeal before it?

(ii) Whether the block assessment order made u/s 158BC had been passed within the time stipulated by law?

7. The Tribunal has, as noticed earlier, answered both these questions in favor of the Revenue. It has, relying upon the decision of a Special Bench of the Tribunal at Bangalore in (2004) 268 ITR 49 held that the validity of the action taken u/s 132 of the Act could not be examined in the appeal filed before it. We see no reason to take a different view. Any appeal before the Tribunal against the block assessment made u/s 158BC does not take within its fold questions touching the validity of the search conducted u/s 132 of the Act. Whether or not the conditions precedent for a search stipulated under Clauses (a), (b) & (c) of Section 132 of the Act were satisfied in a given case falls beyond the scope of assessment proceedings instituted u/s 158BC of the Act or any statutory appeal preferred against the order made under that provision. If the petitioner was keen to test the validity of the said proceedings, his remedy lay in a writ petition under Article 226 of the Constitution. That is precisely what the petitioner did when he challenged the said proceedings, including the authorization issued for the same before this Court in a writ petition that was dismissed by this Court by order dated 6th May, 2002. It is true that the writ petition was dismissed on the ground of delay and laches only without touching the grounds of challenge urged by the petitioner-appellant, but it is equally true that directions regarding completion of the assessment proceedings expeditiously were issued by this Court to the Assessing Officer in the following words:

"In the notices dated 22.1.2002 the respondents have asked the petitioners to prepare a true and correct return of the total income including the undisclosed income, under the provisions of Section 158BC of the Income Tax Act, 1961. Mr. Sharma, the learned Senior Counsel appearing for the petitioners submitted that the relevant information has already been submitted. In case some information remains to be submitted, the same will be submitted within two weeks from today. The concerned authorities are directed to carry out the assessment proceedings as expeditiously as possible. No further directions are necessary."

8. It was, in the light of the above, no longer open to the petitioner to re-agitate the question of validity of the authorization and the legality of the search proceedings either before the Commissioner of Income Tax or before the Tribunal for that matter. The question of validity or otherwise of the search proceedings stood concluded by the judgment of this Court dated 6th May, 2002 in the writ petition mentioned above. The Tribunal was, in that view, perfectly justified in repelling the contention of the appellants that the search proceedings were

invalid or that the same could not provide a sound basis for the authorities to initiate action u/s 158BC of the Act. The conversion of the survey proceedings into a search was in any event based on the satisfaction of the Director of Investigation. The petitioner has not been able to find any fault with the said satisfaction. Even assuming, Therefore, that the validity of the search proceedings was a matter still open to consideration by the appellate authorities in proceedings u/s 158BC, there was no reason for finding fault with the said proceedings or annulling the block assessment order, passed by the Assessing Officer on the basis of the incriminating documents and cash found during the course of search.

9. That brings us to the 2nd question formulated above. It was argued by learned counsel for the appellant-assessed that an order of assessment had to be made within a period of two years from the end of the month in which the search was concluded. The search in the instant case was, according to the appellant, concluded on 2nd February, 2000, which would mean that the assessment had to be completed within two years of 28th February, 2000, i.e., on or before 28th February, 2002. The assessment order was, on the contrary, passed on 22nd June, 2002, which was beyond the period stipulated. It was argued that by merely passing an order u/s 132(3) of the Act in regard to the contents of the almirah and cupboard, the search could not be artificially prolonged. There was, according to the appellants, no practical difficulty in seizing the items liable to be seized, nor could the authorised officer exercise his powers u/s 132(3) of the Act to circumvent the provisions of Section 132(1) read with Section 132(5) of the Act.

10. Section 158BE(1)(b) and Explanation 2 which are relevant for our purposes may be extracted :

"158BE. [(1) The order u/s 158BC shall be passed-

(a) XXX XXX XXX (b) within two years from the end of the month in which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

[Explanation 2.-For the removal of doubts, it is hereby declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed,-

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition u/s 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.]"

11. From a plain reading of Explanation 2(a) supra, it is evident that an

authorization referred to in sub-section (1) is deemed to have been executed on the conclusion of search as recorded in the last Panchnama drawn in relation to any person in whose case the warrant of authorization has been issued. What is noteworthy is that the time limit for the making of an order u/s 158BC read with Section 158BE(1) will start from the last of the Panchnamas.

12. In the instant case, the authorization was issued on 2nd February, 2000. The search also started on the same date and continued till 29th June, 2000, during which period various articles and documents were seized. The Tribunal has recorded a finding to the effect that there was no delay in executing the search in as much as various lockers and steel almirah and cupboard were required to be searched. There was, Therefore, no artificial extension of the search proceedings as argued by the appellants. If that be so, the search would end only upon revocation of the order passed u/s 132(3) which, in the instant case, was revoked only on 29th June, 2000. The period of limitation for making an assessment order u/s 158BC read with Section 158BE of the Act would, Therefore, have to be reckoned from 30th June, 2000 (being the end of the month in which the last Panchnama was drawn) and would end on 30th June, 2002. The assessment order, in the instant case, was however made on 27th June, 2002, which was well within the outer limit of two years prescribed by law. The Tribunal was, in that view, justified in repelling the contention of the assessed that the order of assessment was beyond the period of limitation prescribed for the same.

13. In the light of what has been stated above, these appeals fail and are hereby dismissed but in the circumstances without any order as to costs.