
(2006) 10 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : IT Appeal No. 265 of 2004

M.R. Singhal

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(4), 158B, 158BB, 158BB(1)

Citation : (2006) 206 CTR 129 : (2007) 290 ITR 162 : (2007) 160 TAXMAN 25

Hon'ble Judges : Rajesh Bindal, J;A.K. Goel, J

Bench : Division Bench

Advocate : Salil Bali, for the Appellant; S.K. Garg Narwana, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal has been preferred by the assessee against the order of the Income Tax Appellate Tribunal, Chandigarh Bench, "B", Chandigarh (for short, "the Tribunal") dt. 1st July, 2003 in IT(SS)A No. 2/Chandi/1998, in respect of block assessment period from 1st April, 1985 to 21st Dec, 1995, proposing following substantial questions of law:

(i) Whether, on the facts and circumstances of the case, the learned Tribunal was right in not allowing the deduction of expenses to the tune of the composite amount of Rs. 3,20,000 for various asst. yrs. 1991-92 to 1995-96, especially when it is an admitted fact that deduction of expenses to the tune of Rs. 1,35,000 as claimed for the asst. yr. 1995-96 has been allowed ?

(ii) Whether, in the facts and circumstances of the case, the learned Tribunal was right in upholding the order of Asstt. CIT wherein the income for the asst. yrs. 1994-95 and 1995-96 were declared to be undisclosed overlooking the provisions of Section 139(4) ?

2. Facts relevant for decision of the appeal appearing from the order of the Tribunal are that search and seizure operation was conducted at the premises of the assessee on 21st Dec, 1995. It was observed that the assessee was earning

commission income from the encashment of demand drafts. The assessee filed returns on 3rd Oct., 1996 after the search and seizure for the asst. yrs. 1994-95 and 1995-96. The income disclosed was treated as undisclosed income u/s 158BB of the Act. Rejecting the contention on behalf of the assessee that though filing of returns was due on 31st Oct., 1994 and 31st Oct., 1995 respectively, the returns were within the time allowed u/s 139(4) of the Act and the return filed within the said time should also be treated as return filed within the meaning of the expression "due date" u/s 158BB of the Act.

3. It was next submitted that deduction of expenses to the tune of composite amount of Rs. 3,20,000 for asst. yrs. 1991-92 to 1995-96 should have been allowed having regard to the fact that deduction of expenses to the tune of Rs. 1,35,000 had been allowed for the asst. yr. 1995-96.

4. Learned Counsel for the Revenue opposed the submissions made on behalf of the assessee and supported the findings recorded by the Tribunal.

5. We have considered the rival submissions and perused the record.

6. Our findings on the questions proposed are as under:

Re : Q. No. (i)

6.1 On this question, the Tribunal has recorded the following finding:

8. As regards assessee's claim for deduction of expenses, we find that assessee has not given any details in the form of bills and vouchers for any such expenditure incurred. Major component of the expenses claimed relates to salaries of Rs. 12,000, Rs. 24,000, Rs. 72,000 and Rs. 90,000 for the asst. yrs. 1992-93, 1993-94, 1994-95 and 1995-96 respectively. Even if the details of other expenses like local conveyance, entertainment and miscellaneous expenses were not available, the assessee could have given the name of the employees to whom salary had been paid. No such details have been furnished. Besides, in none of the seized documents, there is any entry in regard to incurring of such expenditure. A copy of the income and expenditure account for the period ending on 31st March, 1994 is on record. The same separately shows salary expenses of Rs. 60,000 debited to such account. Therefore, it can be said that assessee was getting such work done through regular employees. In any case, there is no evidence to support the claim of the assessee for deduction at higher amount. Moreover, commission income has also been estimated at a rate of 0.35 per cent which works out to nominal amount of Rs. 3,500 per lac. The amount covered in the bank drafts is also sizeable. Therefore, it would have not required much effort in depositing the same in the bank account, withdrawing the money and returning the same to the person to whom these drafts actually belonged. In the light of these facts and circumstances of the case, we are of the considered opinion that deduction of Rs. 1,35,000 allowed by the AO is fair and reasonable and the order of the AO does not merit any interference. This ground of appeal is dismissed.

6.2 The above observations show that the Tribunal has recorded a finding of fact that claim for deductions could not be proved by the assessee by the relevant evidence and in these circumstances, deduction of Rs. 1,35,000 allowed by the AO was upheld. From the mere fact that the AO required the assessee to give proof of expenditure for a particular year, did not mean that the same was to be treated as precedent for all times to come. In absence of any material, disallowance of the expenses claimed could not be held to be illegal.

7. Accordingly, while affirming the findings of the Tribunal on this issue, we do not find any substantial question of law arises.

Re : Q. No. (ii)

8. The finding recorded by the Tribunal on this question is as under:

20. Section 158BB(1) deals with the computation of undisclosed income. The case of the assessee is covered by Clause (ca) of Section 158BB(1), which provides that where the due date for filing the return of income has expired but no return of income has been filed, income declared in the regular return is to be taken as nil. This means that the entire income computed in the block assessment relating to those assessment years would be treated as undisclosed income. In the case of *Sat Pal Singh v. Asstt. CIT* (supra) Tribunal, Chandigarh Bench had by relying on its earlier decision dt. 24th Feb., 2000 in the case of *Smt. Usha Goel* in ITA No. 1178/1996 for block asst. yrs. 1986-87 to 1995-96 has held that where income for a particular assessment year falling in the block period, even after making additions and disallowances remains below the taxable limit, the same cannot be treated as undisclosed for the purpose of block assessment. However, where income so declared exceeds the minimum taxable limit on account of any addition, surrender made, the entire income for that assessment year would be treated as undisclosed and liable to tax @ 60 per cent. In this case, income declared in the return filed beyond the period allowed u/s 139(1) itself exceeds the taxable limit and after making addition, the income for the asst. yrs. 1994-95 and 1995-96 has been assessed at more than Rs. 6 lacs and Rs. 10 lacs respectively. Moreover, the assessee had also not paid advance tax or self-assessment tax at the relevant time and there was inordinate delay in filing the return. Therefore, it could not be said that the assessee had ever intended to disclose such income. Therefore, the entire income has to be treated as undisclosed income. Reliance of the learned Counsel on the decision of Tribunal, Lucknow Bench in the case of *B.K. Agarwal v. Asstt. CIT* (supra), is misplaced. In that case, the assessee had explained that he could not file the return for the asst. yr. 1995-96 before the due date as his books of account and other details were in the possession of the Department following search and seizure operations. However, details of payment of salary and commission, etc. were available in the record of the employer in the form of audit report u/s 44AB. Tax was deducted at source and assessee also paid advance tax and the remaining amount was paid as self-assessment tax. Therefore, such income declared in the belated return was held to be disclosed. These are not the facts

of the present case. The assessee had neither recorded the transactions in the regular books of account nor filed the returns before the due dates. No advance tax and self-assessment tax had also been paid. Further, no reason for delay in filing the return of income had also been explained. Therefore, the income declared in the belated returns fall in the category of undisclosed income within the meaning of Section 158B(b) of the IT Act r/w Section 158BB(1)(ca) of the Act. The learned Counsel for the assessee has relied on the decision of Tribunal, Chandigarh Bench in the case of Surekha Singh v. Asstt. CIT Circle 1(2), Ludhiana in IT(SS)A No. I/Chandi/1997 (supra). In that case, the search and seizure action had been carried out on 21st Dec, 1995. The assessee filed the return for the asst. yr. 1995-96 on 22nd Jan., 1996 declaring therein income of Rs. 41,730 which was marginally above the exemption limit. Full facts of the case are not on record. It is not known whether such income was recorded in the regular books of account or whether the assessee had paid advance tax or self-assessment tax or even otherwise was in the knowledge of. Department. Therefore, in the absence of such details, we are of the opinion that this decision is not applicable to the facts of the present case. The facts of the present case clearly show that entire income is undisclosed within the meaning of Section 158B(b). Moreover, the view taken by the Tribunal, Chandigarh Bench in the case of Sat Pal Singh v. Asstt. CIT (supra) is consistently being followed by Tribunal, Chandigarh Benches. In fact, one such case was decided on 25th June, 2003 in ITA No. 1129/Chandi/1996 in the case of Smt. Renu, Thanesar, Kurukshetra v. Asstt. CIT, Investigation Circle, Ambala. In fact, in the case of CIT v. MM. George (supra), Hon'ble Kerala High Court has taken the view that for the purpose of block assessment u/s 158BC, even the income below the taxable limit of any previous year falling in the block period has to be included in the undisclosed income if such income has not been declared by the assessee in the regular return u/s 139(1). This judgment is not applicable to the facts of the present case because the income declared in the returns and finally assessed far exceeds the minimum taxable limit and, therefore, the decision of Tribunal, Chandigarh Bench in the case of Sat Pal Singh v. Asstt. CIT (supra), is directly applicable to the facts of the present case.

8.1 Though, learned Counsel for the assessee has relied upon Section 139(4) of the Act which permits return to be filed even after expiry of due date, for purposes of Section 158BB(1)(c) of the Act, consequence of return having not been filed by the due date cannot be nullified by return filed u/s 139(4) of the Act. Even otherwise, Section 158BB(1)(d) of the Act clearly provides that even where date for filing return has not expired, transactions recorded on the basis of entries relating to income in the books of account have to be taken into account. In the present case, no advance tax or self-assessment tax had been paid at the relevant time. In such a situation, return filed u/s 139(4) of the Act could not be taken into account.

9. We are in agreement with the view taken by the Tribunal that where no advance tax or self-assessment tax is paid, return filed u/s 139(4) cannot be

treated as return filed before the due date specified u/s 139(1) of the Act.

10. Accordingly, while affirming the findings of the Tribunal on this issue, we do not find any substantial question of law arises.

11. In view of the above, the appeal is dismissed.