(1996) 09 KL CK 0045

In the High Court Of Kerala

Case No : O.P. No. 12087 of 1996 & O.P. No. 12087 of 1996-L

N.T. John APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 30-09-1996

Acts Referred:
Income Tax Act, 1961 — Section 132, 132A, 158B, 158BA, 158BC

Citation : (1997) 1 ILR (Ker) 722 : (1997) 228 ITR 314 : (1997) 90 TAXMAN 483

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : S. Vijayan Nair, for the Appellant; N.R.K. Nair, for the Respondent

Judgement

P.A. Mohammed, J.—The subject-matter of this writ petition relates to search conducted u/s 132 of the Income Tax Act, 1961. The search was conducted on February 23, 1996. This writ petition has been filed praying for a direction to quash exhibit P-4 notice and all proceedings to complete the petitioner''s assessment for the year 1993-94 and for a direction to the second respondent to issue notice u/s 158BC for the block period involved in the search and seizure.

2. Heard learned counsel for the petitioner and also standing counsel, N.R.K. Nair, for respondents Nos. 1 and 2.

3. The crucial question involved in this writ petition is, whether the search and seizure conducted on February 23, 1996, is governed by the provisions contained in Chapter XIV-B which prescribe a special procedure for assessment of search cases. Section 158BA contained in the said Chapter deals with assessment of undisclosed income as a result of search. Sub-section (1) of the said section is as follows :

"Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995, a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter."

4. Chapter XIV-B was inserted in the Income Tax Act, 1961, by the Finance Act, 1995, with effect from July 1, 1995. It is an admitted case that the search was conducted in this case u/s 132 of the Act and that it was on February 23, 1996. That means Chapter XIV-B as it stands now would apply in the present case. Earlier Chapter XIV-B was inserted by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. It dealt with altogether a different subject, namely, charge of additional Income Tax in certain cases. It was omitted by the Direct Tax Laws (Amendment) Act, 1989. Therefore, what is contained in the present Chapter is not a substituted procedure for assessment of search cases.

5. Normally, a change in the law of procedure operates retrospectively. In this case there is no change of procedure ; but a special procedure is provided. Section 158BA will not apply in a case where a search is initiated u/s 132 before June 30, 1995, the date on which the Finance Act, 1995, came into force. In that view, it cannot be said that Chapter XIV-B has retrospective operation. At the same time, the definition of "block period" contained in Section 158B indicates that it operates for a preceding period of ten years from the year in which the search was conducted. "Block period" means the period of ten previous years preceding the previous year in which the search was conducted u/s 132 or any requisition was made u/s 132A. The search in this case was conducted during the previous year 1995-96. Therefore, the assessment year 1993-94 is one of the ten previous years contemplated in Section 158B. In other words, in respect of the year 1993-94, the special procedure prescribed in Chapter XIV-B is applicable. Thus, the contention advanced on behalf of the Revenue cannot be countenanced.

6. However, as an interim measure this court in C. M. P. No. 21095 of 1996 ordered that the assessment order shall be completed for the year 1993-94 and it shall be kept in abeyance as if it has not been passed. As against this the petitioner filed Writ Appeal No. 1027 of 1996. That writ appeal was dismissed by the Division Bench. Counsel on both sides now uniformly submit that notice has already been issued to the petitioner u/s 158BC. That means the procedure laid down in Chapter XIV-B is put in motion by the Department against the petitioner. u/s 158BC it is imperative to issue a notice to the person against whom search has been conducted u/s 132 for the purpose of "block assessment". The Assessing Officer, on determination of the undisclosed income of the block period, shall pass an order of assessment within a period of one year from the end of the month in which the last of the authorisations for search u/s 132 was executed. It is an admitted case that the assessment for the year 1993-94 was also included in the notice u/s 158BC for the purpose of "block assessment".

7. What remains to be examined in this case is as to how the assessment order for the year 1993-94 passed by the respondents pursuant to the interim order of this court dated July 29, 1996, should be dealt with. It is pointed out that the said assessment order was passed on the ground that the assessment for the

said year was otherwise getting barred. Since admittedly the assessment year 1993-94 is also included in the notice already issued by the Department for the purpose of block assessment, I do not think it proper to keep alive exhibit P-4, and subsequent assessment passed thereof. I am fortified in taking this view because if exhibit P-4 and the consequent assessment order for the year 1993-94 is kept alive the Department will find it difficult to pass a parallel order in respect of the said year u/s 158BC. Therefore, in order to augment the proceedings u/s 158BC, I think it would be appropriate to quash exhibit P-4 and the consequent assessment passed for the year 1993-94. I do so.

8. The first prayer made in the writ petition is thus allowed. The second prayer has become infructuous since the Department has already issued notice u/s 158BC for the assessment block period including the year 1993-94 as stated above. The original petition is disposed of as above.