(2008) 08 SHI CK 0018

In the High Court Of Himachal Pradesh

Parveen Kumar APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 08-08-2008

Acts Referred:
Income Tax Act, 1961 — Section 158BB, 158BC

Citation : (2009) 310 ITR 192

Hon'ble Judges : Surjit Singh, J;R.B. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This appeal by the assessee is directed against the order dated September 26, 1997, of the Assessing Officer and order dated September 23, 1999, of the Income Tax Appellate Tribunal, whereby on search of the premises of the assessee undisclosed income to the tune of Rs. 8,98,550 having been found, tax liability at the rate of 60 per cent, of such income was determined.

2. The relevant facts may be summed up thus. On June 21, 1996, residential premises of the appellant/assessee were searched by the Income Tax authorities. Notice was issued on July 3, 1996, u/s 158BC of the Income Tax Act, to the appellant/assessee calling upon him to file return of his income for the block period April 1,1986, to June 20,1996, in Form 2B. There was no response from the appellant/assessee. He was reminded, vide letter dated April 11, 1997. Reminder also did not fetch any response. Ultimately, notice u/s 142(1), along with a detailed questionnaire, was served upon the assessee on May 28,1997. He was called upon to appear on June 5, 1997, and file return, failing which assessment was to be made ex parte. The appellant/assessee appeared along with a chartered accountant. The Assessing Officer, based on the reply to the questionnaire submitted by the assessee and other records and proceedings of search and seizure, held that the appellant/assessee had the following items of undisclosed income:

____________________ Rs. (i) Purchase and renovation of a hotel building known as Kohinoor 6,03,000 Hotel (ii) Deposit in Bank Account No. 400 with Punjab National Bank, 50,000 Shimla (iii) Purchase of vehicle 1,45,000 (iv) Income from Kohinoor Hotel during the year 1995-96 1,00,000 ____________ Total 8,98,000 ____

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3. The appellant/assessee felt aggrieved and filed appeal before the Income Tax Appellate Tribunal. The Tribunal upheld the order of the Assessing Officer in respect of the aforesaid items, except item (iv) pertaining to income from Kohinoor Hotel. On appeal to the Appellate Tribunal it was held that in view of the facts and circumstances of the case, income from the said hotel was to be taken to be Rs. 75,000 for the year 1995-96. The present appeal is directed only against the income from the said hotel, which was assessed at Rs. 1,00,000 by the Assessing Officer and has been reduced in appeal by the Appellate Tribunal to Rs. 75,000. It is alleged that the addition of Rs. 75,000 to the undisclosed income of the appellant/assessee is not legally sustainable and is in contravention of the provisions of Sections 158BB and 158BC of the Income Tax Act, 1961.

4. The appeal was admitted on the following substantial question of law, vide order dated November 16, 2000:

Whether, in the facts and circumstances of the case, additions sustained by the Income Tax Appellate Tribunal of Rs. 75,000 is legally sustainable or is in contravention of Section 158BB/158BC of the Income Tax Act, 1961?

5. We have heard the learned Counsel for the appellant as also the learned Counsel representing the respondent/Revenue.

6. Admittedly, the appellant/assessee had not maintained any record of the income from the hotel in question. The appellant/assessee himself took the plea before the learned Appellate Tribunal that he had purchased the hotel building on January 10,1995, and it took three or four months to renovate the building. That means the building was ready for use as a hotel in the month of April, 1995. In other words, the hotel was functional throughout the financial year 1995-96. The assessee claimed that there were only seven rentable rooms in the hotel and that the tariff, as fixed by the Tourism Department, was Rs. 125 per room. He stated that the hotel being away from motorable road, occupancy was negligible. The appellant/assessee did not produce any material on record indicating that occupancy was negligible. In fact, as noticed hereinabove, he maintained no accounts of the income from the hotel. Under these circumstances, the Tribunal and the Assessing Officer were right in assuming that the hotel was functional throughout the year and occupancy was normal and to the extent of other hotels of Shimla town.

7. According to the appellant''s own saying, daily tariff of seven rooms was Rs.

975. Now, even if it be assumed that only half of the rooms remained occupied and those too only for half of the total number of days of the year, the amount of tariff comes to around Rs. 1,00,000. Hence, the amount of Rs. 75,000, assumed as income from the hotel by the Tribunal, cannot be said to be on the higher side.

8. It was not pointed out during the course of hearing how the addition made by the Assessing Officer and the Income Tax Appellate Tribunal on account of income from the said hotel to the income from other sources of the assessee is contrary to the provisions of Sections 158BB and 158BC of the Income Tax Act or otherwise illegal.

In view of the above discussion, we answer the question against the appellant and consequently dismiss his appeal.

