(2000) 12 GUJ CK 0021

In the Gujarat High Court

Case No : Special Civil Application No. 10396 of 2000

Rushil Industries Ltd. APPELLANT

Vs

Harsh Prakash RESPONDENT

Date of Decision : 27-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 132, 132A, 142(1), 158B, 158BC

Citation : (2001) 166 CTR 300 : (2001) 251 ITR 608 : (2002) 120 TAXMAN 67

Hon'ble Judges : D.M. Dharmadhikari, C.J;M.S. Shah, J

Bench : Division Bench

Advocate : S.N. Soparkar, for the Appellant; Mihir Joshi, for Manish R. Bhatt, for the Respondent

Judgement

D.M. Dharmadhikari, C.J.—After hearing learned counsel, rule is issued, Learned counsel for the Department waives service of rule. Learned counsel for both the parties are finally heard.

2. The petitioner, by way of this petition under Article 226 of the Constitution of India, challenges the notice dated August 29, 2000, issued by the Joint Commissioner of Income Tax, Rajkot (respondent) under the provi- sions of Section 158BC read with Section 158BD of the Income Tax Act, 1961 ("the Act" for short).

3. According to the petitioner, it has been regularly assessed for Income Tax under the Act. It is engaged in the business of ship-breaking at Alang, District Bhavnagar. According to the petitioner, in the course of the business it sells materials to several parties and receives the price of the same some times in cash and at times by cheque. In some cases, cheques are drawn by the debtors from their own bank accounts and at times the cheques are obtained from other concerned persons with whom the purchasers may have transactions. The purchase price so realised, however, is duly credited to the profit and loss account of the petitioner. As is stated, on affidavit-in-reply, by the respondent,

Joint Commissioner of Income Tax, certain seizure operations were carried out against Mahendra H. Shah and Hemant C. Shah of Bhavnagar in exercise of powers u/s 132 of the Act. The petitioner''s case is that during the course of search proceedings against the above two named persons with whom the petitioner has no direct concern, no books of account or documents or any assets belonging to the petitioners were discovered, so as to come to the conclusion against the petitioner that it had any undisclosed income, for resorting to his assessment for the block period in accordance with the provisions contained in Chapter XIV-B of the Act. The petitioner, therefore, has assailed and seeks quashing of the proceedings initiated by the respondent, Joint Commissioner of Income Tax, by notice dated August 29, 2000, at annexure A, directing the petitioner in accordance with the provisions of Section 158BC(a)(ii) of the Act to furnish the return for assessing him to Income Tax for the block period.

4. Section 158BD on the basis of which the impugned notice for submitting a return by the petitioner has been issued in accordance with Section 158BC(a)(ii) in the relevant parts reads as under :

"158BD. Undisclosed income of any other person.--Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132 or whose books of account or other documents or any assets were requisitioned u/s 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly."

5. Section 158BC contains the procedure for block assessment and reads ;

"158BC. Procedure for block assessment.--Where any search has been conducted u/s 132 or books of account, other documents or assets are requisitioned u/s 132A, in the case of any person, then,-

(a) the Assessing Officer shall- . . .

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under Clause (i) of Sub-section (1) of Section 142, setting forth his total income including the undisclosed income for the block period :

Provided . . .".

6. The two expressions "block period" and "undisclosed income" are defined u/s 158B(a) and (b), respectively, and read as under : "158B, Definitions-- in this

Chapter, unless the context otherwise requires,--

(a) ''block period'' means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted u/s 132 or any requisition was made u/s 132A, and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition ;

(b) ''undisclosed income'' includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act."

7. In assailing the action initiated by the impugned notice against the petitioner for alleged undisclosed income based on the search and seizure proceedings conducted against the two above-named persons, learned counsel, Shri S. N. Soparkar, very strenuously urged that the condition precedent for exercising the powers u/s 158BD is that the documents or assets belonging to an assessee should have been seized or requisitioned during the course of search proceedings against the third party. As this condition precedent is not satisfied in this case because no documents or assets belonging to the present petitioner-assessee were found in the search proceedings, the initiation of proceedings for block assessment against the petitioner by the impugned notice is wholly without jurisdiction. Alternatively, on behalf of the petitioner, learned counsel contends that on the basis of the documents, books of account and other records that might have been seized from the premises of the said two persons, it was not possible to even prima facie raise an inference that the petitioner is in possession of any undisclosed income. Merely because for the sale of certain material, some cheques were issued by the above two named parties cannot reasonably lead to a conclusion that the petitioner did not disclose his income. The sale transactions effected by him and the purchase price received have been duly accounted for in his profit and loss account and tax has been paid on the same in regular assessment.

8. On behalf of the respondent representing the Department, Shri Mihir Joshi, learned counsel invited the attention of the court to the fact discovered in certain seizure operations against the two above named parties leading to the initiation of proceedings for block assessment against the petitioner. It is submitted that the facts revealed in search operations show that almost a racket is operating in collusion with ship breakers at Alang solely with a purpose to convert black money into white. The modus operandi resorted to was that the two abovenamed persons had opened bank accounts in several names and by using these bank accounts they would deposit cash receipts from ship breakers at Alang and thereafter would draw cheques against this cash in favour of ship breakers and in

the bargain earn commission up to 1.5 per cent. In the reply affidavit an example is given thus :

"Cash received from ship breakers was deposited in the account of ''A'', ''A'' would transfer to the credit of account of ''B''. ''B'' again would pay to the credit of account ''C'' and ''C'' to ''D'' and so on. Finally, the cheque would be issued by the last holder of the bank account to the ship breakers."

9. So the abovementioned parties were carrying on the business of converting black money into legally accounted funds for a meagre commission. The seized materials in the case of abovementioned parties indicate that the petitioner was involved in converting its unaccounted funds into legally accounted funds in the garb of sales made by him which were not found to be genuine. The petitioner, Rushil Industries Limited, during the financial years 1998-99 and 1999-2000 had deposited a sum of Rs. 58,72,000 in cash and received cheques/demand drafts to the bank account of Shri M. H. Shah in the garb of having made sales to Royal Enterprises, Mumbai. The transaction was not found to be genuine. During the course of search and enquiry made at Mumbai by the investigating team it was revealed that Royal Enterprises stated to be situated at 163-A, Prabhat Colony Road, 201, Udai Building, Santa Cruz, East Mumbai, do not exist at any such address. The premises were found actually to be a four storeyed residential building and Flat No. 163-A and Flat No. 201, were occupied by Navin Joshi and Nilesh N. Dixit, who were petty traders and doing small scale marketing. The search operations prima facie revealed that the petitioner, Rushil Industries Limited, has converted unaccounted income to the extent of Rs. 58,72,400 into legally accounted funds by making bogus sales to Royal enterprises and crediting the funds to its books of account conveniently through bank account maintained by Shri M. C. Shah. The above finding is corroborated by the statement of Shri M. C. Shah u/s 132(4) of the Act, wherein he has clearly admitted while answering questions Nos. 2, 10 and 11 that he is in the business of providing cheques against cash. The respondent, therefore, was satisfied on the documentary evidence available that the petitioner had deposited cash with the above-named parties and obtained cheques against the same and on this opinion, proceedings u/s 158BD were initiated.

10. The petitioner has. tried to meet the case set up by the Department in the reply affidavit by filing an affidavit-in-rejoinder. In the rejoinder it has been stated that during the assessment year 1998-99, the petitioner in fact had sold air-conditioning plant, air-compressor, oil filters, chilling compressor, workshop machinery, etc., acquired from ship breaking and those items were sold to Royal Enterprises of Mumbai by five different invoices. The documents of transport of Vijay Lakshmi Transport with copies of five invoices collectively have been annexed with the rejoinder. It is stated that the items so sold were exported by the paying party to a foreign buyer in Oman. In the bill of lading issued in favour of the buying party Royal Enterprises has also annexed through its copy. According to the petitioner, since the items were purchased by Royal Enterprises

from the petitioner for export it was not liable to sales tax. The paying purchaser has issued Form No. H to the petitioner, a copy of which is also annexed. It is stated that the whole sale transaction has been duly accounted for in the books of account of the petitioner. It is submitted that the petitioner is not aware of the activities of Mr. M. H. Shah may be that he was a financier and may be that he has given some havala to some other parties by cash or by loans. In short, the submission made is that the alleged disclosure made in the search operations against the two abovenamed parties did not constitute a ground to even prima facie infer that the petitioner had any undisclosed income for resorting to proceedings for block period assessment u/s 158BC in accordance with Chapter XIV-B.

11. We have given our thoughtful consideration to the submissions made by counsel opposing each other in the light of the facts disclosed in their affidavits. True it is that in a search operation against the two abovenamed parties no books of account or other documents or assets were seized or requisitioned, but, it is not correct on the part of the petitioner to contend that action u/s 158B cannot be taken unless in the search operations against a particular person books of account or other documents or assets showing undisclosed income of any other person are found. A bare reading of the provisions of Section 158BD (quoted above) would show that for taking action under the said section, the Assessing Officer is merely required to be satisfied that the books of account or other documents or assets found in the search show undisclosed income of a person other than one against whom the search was conducted. Merely because no books of account or other documents or assets were found in the search against the two abovenamed persons it cannot be said that no action for alleged undisclosed income was called for against the petitioner u/s 158BD. The expression "undisclosed income" had been defined to include income based on an entry in the books of account or other documents "which has not been or would not have been disclosed for the purposes of this Act". In our considered opinion, the definition of "undisclosed income" would include any entries in the books of account or other documents showing concealment of the real source of income as on the present case herein. Learned counsel appearing for the Department is very right in his submission that the requirement of Section 158BD is only a prima facie satisfaction by the Assessing Officer that in the search operation there is material to show undisclosed income of a person other than the one who is searched. From the nature of the proceedings undertaken in Chapter XIV-B containing special procedure for assessment of search cases, at the time of initiating action u/s 158BD the Assessing Officer at that stage is not required to come to a firm or conclusive satisfaction, before issuing such notice as is sought to be urged on behalf of the assessee. The facts revealed in the search operations have been stated in the reply affidavit that one Royal Enterprises through the two abovenamed persons M. H. Shah and M. C. Shah were engaged in clandestine business of converting black money into white in the garb of bogus sales of ship breaking material of Alang. The petitioner has been paid the

purchase price by the two abovenamed persons having connection with Royal Enterprises. Certain disclosures were made by them with regard to the nature of the transactions they were engaged in. This disclosure in the search operations against the two abovenamed persons was a relevant material for forming of an opinion and satisfaction that the petitioner has not truly disclosed his income and the action u/s 158BD was, therefore, called for.

12. It is true that in block assessment, the assessee has to pay tax at higher rate but that is no ground to say that instead of resorting to block assessment procedure the Department ought to have resorted to other provisions for bringing to tax the alleged undisclosed income of the petitioner. On the facts disclosed in the reply affidavit we do not find that the action initiated by the respondent-authority u/s 158BD read with Section 158BC is in any manner without jurisdiction or illegal.

13. Consequently, we find no merit in this petition. It is accordingly dismissed. Rule is discharged.

14. There shall be no order as to costs.