

(2008) 08 DEL CK 0026

In the Delhi High Court

Case No : ITA 953 of 2008

The Commissioner of Income Tax

APPELLANT

Vs

Deepak Aggarwal

RESPONDENT

Date of Decision : 12-08-2008

Acts Referred:

Income Tax Act, 1961 — Section 132, 132(3), 158BC, 158BE, 158BE(1)

Citation : (2009) 221 CTR 307 : (2009) 308 ITR 116 : (2008) 175 TAXMAN 1

Hon'ble Judges : Rajiv Shakhder, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : R.D. Jolly and Paras Chaudhary, for the Appellant; O.S. Bajpai, for the Respondent

Judgement

Badar Durrez Ahmed, J.—These appeals have been filed by the revenue against the common order passed by the Income Tax Appellate Tribunal on 30.11.2007 in IT (SS) A. No. 1/Del/2004 (in respect of the assessee - Deepak Aggarwal) and IT (SS) A. No. 204/Del/2004 (in respect of assessee - Mangla Marbles & Granite Pvt. Ltd). Sh. Deepak Aggarwal is one of the directors in Mangla Marbles & Granite Pvt. Ltd.

2. The common issue that arises for consideration in these appeals is with regard to the provisions of Section 158BE, Explanation 2 read with Section 158BE(1)(b). A search u/s 132 of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") was conducted as per warrant dated 31.10.2000. In view of the provisions of Section 158BE(1)(b), the block assessment u/s 158BC ought to have been completed on or before 31.10.2002. However, it was completed on 27.12.2002. The assessee's stand was that this was beyond the time prescribed u/s 158BE(1) and, therefore, the assessment was bad. The stand of the Department, on the other hand, was that there was another panchnama, which had been drawn on 23.12.2000 and that this was the last panchnama and, therefore, the two-year period has to be reckoned from the end of the month in which this panchnama was drawn and executed. In other words, the period of

limitation would begin to run from 31.10.2000 and, consequently, time was available for completion of the assessment up to 31.12.2002. Since the assessment was completed on 27.12.2002, according to the Department, the assessment was in time. It is also relevant to note that on 31.10.2000 a prohibitory order u/s 132(3) of the said Act had also been passed in respect of the inventory of stock as per Annexure-S to the original panchnama dated 31.10.2000. It is also pertinent to note that this prohibitory order continued till it was revoked on 23.12.2000. The revocation order makes interesting reading and the same is as under:

23.12.2000

Revocation Order

The restraint placed u/s 132(3) of the Income Tax Act, 1961 during the search operation on 31.10.2000 at room located in Ward No. 1, House No. 6/4, Mehrauli, Delhi is hereby revoked for the purpose of continuation of search.

The seals placed have been found intact.

3. The Tribunal, after considering the arguments advanced on the part of the Department as well as the assessee and after considering the decision of this Court in the case of Commissioner of Income Tax (Central) Vs. Sarb Consulate Marine Products Pvt. Ltd., , concluded that the revocation order did not amount to execution of a search as no asset was seized under that order and what happened was only the revocation of the prohibitory order passed earlier. The Tribunal found that in this situation, it could not be said that there was an execution of a search on 23.12.2000 so as to enable the reckoning of the period of limitation from the end of December 2000. The assessment could, therefore, not be passed on any date beyond 31.10.2002. The Tribunal concluded that since the assessment order was passed on 27.12.2002, it was beyond time and consequently, the assessee's appeal was allowed.

4. The decision of this Court in Sarb Consulate (supra) is applicable to the facts of the present case. In that case a similar situation had arisen and the question before the Court was whether the panchnama drawn on 06.11.1996 was the last panchnama or whether it was the panchnama drawn on 14.09.1998 which was the last for the purpose of reckoning the commencement of the limitation period. The Court examined various decisions including Dr. C. Balakrishnan Nair and Another Vs. Commissioner of Income Tax and Another, and Commissioner of Income Tax Vs. Mrs. Sandhya P. Naik, Vinay A. Naik, Mrs. Manjusha V. Naik, Mrs. Mira A. Naik, Ananta N. Naik (Decd.) (through legal representatives) and Pandurang A. Naik, and concluded as under:

A general consensus appears to have emerged among the High Courts to the effect that a search u/s 132 of the Act should be continuous and if it is discontinued and thereafter resumed, then there must be a valid explanation for the gap. Insofar as the present case is concerned, the facts on record show that

prima facie there was absolutely no justification for keeping the search pending for more than one year and ten months without any semblance of any activity by the Revenue.

It may be noted that in Dr. C. Balakrishnan Nair (supra) the gap was only of 14 days. In the present case the gap between the search on 31.10.2000 and the purported last search on 23.12.2000 is approximately 53 days. There is no explanation whatsoever with regard to this period between the two intervening dates. In fact, the revocation order does give an indication that the prohibitory order was passed merely for continuing the search possibly for the purposes of extending the limitation. The Tribunal has come to a conclusion of fact that the second purported search on 23.12.2000 was not a search at all and all that was required to be searched and seized had been concluded on 31.10.2000 itself. In fact, there is no explanation forthcoming from the revenue as to what transpired from 31.10.2000 to 23.12.2000 so as to enable us to take a different view than what the Tribunal has taken. In these circumstances we feel that the ratio of this Court in Sarb Consulate (supra) squarely applies to the facts and circumstances obtaining in the present case. The Tribunal has followed the said decision and we find that there is no error in the Tribunal's order. No substantial question of law arises for our consideration. These appeals are dismissed.