

*** HIGH COURT OF DELHI : NEW DELHI**

+ WP (C) No. 1604 of 2008

% Decided on: February 27, 2008

Saraya Industries Ltd.
309,D-2, DDA Distt. Centre,
Saket, New Delhi-17

...Appellant

Through Mr. O.S. Bajpai, Advocate.

Versus

1. Union of India,
Ministry of Finance,
Department of Revenue,
Through its Secretary

2. Assistant Commissioner of Income Tax,
Centre Circle-4,
E-2, ARA Center, Jhandewalan Extn.,
New Delhi.

3. Deputy Commissioner of Income Tax,
Centre Circle-19,
E-2, ARA Center, Jhandewalan Extn.,
New Delhi.

...Respondents

Through Mrs. P.L. Bansal, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

- | | |
|--|-----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J. (ORAL)

The grievance of the Petitioner is with regard to the constitutional validity of Section 153C read with Section 153A of the Income Tax Act, 1961 (the Act).

2. According to the Petitioner, both these provisions deserve to be declared unconstitutional and in the alternative they have to be read down suitably. It was not explained to us how and in what manner should the provisions be read down, and the only submissions made were that the provisions were constitutionally invalid.

3. Sections 153A and 153C of the Act read as follows:-

“Assessment in case of search or requisition.

153A. Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall

- (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
- (b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:

Provided further that assessment or reassessment, if any, relating

to any assessment year falling within the period of six assessment years referred to in this section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate.

Explanation. For the removal of doubts, it is hereby declared that,

- (i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;
- (ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

153B xxx xxx xxx xxx xxx xxx

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or 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 each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A :

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is

made under section 132A and in respect of such assessment year

- (a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or
- (b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or
- (c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

4. According to learned counsel for the Petitioner, the provisions treat unequal persons as equals. The two different categories of persons are those in respect of whom a search is conducted and books of accounts, documents or assets are recovered (Section 153A of the Act) and other persons in respect of whom books of accounts, documents or assets are recovered (other than those persons referred to in Section 153A of the Act). According to learned counsel, both distinguishable categories of persons are treated the same for the purposes of assessing or reassessing their income.

5. The opening portion of Section 153A of the Act makes it clear that it applies to a person in respect of whom a search is initiated under Section 132 of the Act, or whose books of accounts, other documents or any assets are requisitioned under Section 132A after 31st May, 2003. Section 153C of the Act is with reference to a person in respect of whom any money, bullion, jewellery or other valuable

articles or things or books of account or documents seized or requisitioned belongs. The persons mentioned in Section 153A of the Act are specifically excluded from Section 153C of the Act. The procedure that is sought to be followed in respect of these two categories of persons has been provided for in Sections 153A and 153C of the Act. That the procedure in respect of both of them overlaps or is similar is hardly of any consequence, since both have to be treated in accordance with the principles of natural justice. We are of the opinion that the argument advanced is not adequate for declaring the provisions unconstitutional. There is nothing arbitrary in the procedure adopted. It must also be appreciated that essentially both categories of persons are the same in as much as their books of account, assets, documents etc. are seized or requisitioned, though from different locations. Moreover, the seizure or requisition must be of such a character as to persuade the Assessing Officer to even reopen closed assessments. In this sense, there is no hostile discrimination between the two categories of persons.

6. The second submission made by learned counsel is that the principles of natural justice appear to be excluded from the provisions of Section 153C of the Act. We do not agree with learned counsel. It is clearly mentioned in the substantive portion of Section 153C(1) of the Act that the Assessing Officer shall proceed against a person covered by the section by issuing a notice to him for the purpose of assessing or reassessing his income. The very fact that notice is required to be

issued clearly postulates that the principles of natural justice are incorporated in the provision.

7. We do not find any substance in the writ petition. It is accordingly dismissed.

MADAN B. LOKUR, J

FEBRUARY 27, 2008

vk

V.B. GUPTA, J