

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

+ **ITA No.773 of 2007**

Judgment reserved on: January 29, 2008

% Judgment delivered on: February 22, 2008

New Delhi Auto Finance (P) Ltd.

D-1004, New Friends Colony

New Delhi - 110 065

...Appellant

Through Mr. Satish Khosla with
Mr. Manu K. Giri, Advocates

Versus

Jt. Commissioner of Income-tax

Special Range-15

New Delhi

...Respondent

Through Mrs. Prem Lata Bansal, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE S.L. BHAYANA

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| 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.

Admit.

2. After hearing learned counsel for the parties at length, in our view the following substantial question of law arises:

“Whether the Income Tax Appellate Tribunal was correct in law in holding that assumption of jurisdiction under Section 158 BD of the Income Tax Act, 1961 was not illegal, even though the mandatory requirement of recording “satisfaction” to the effect that undisclosed income belonged to the appellant was patently lacking on the face of record?”

3. The filing of paper books is dispensed with.

4. The Revenue is aggrieved by an order dated 15th February, 2007 passed by the Income Tax Appellate Tribunal Delhi Bench ‘A’ in I.T. (SS) A. No.26/Del/99 relevant for the block period 1st July, 1987 to 20th March, 1996.

5. A search was conducted on 20th March, 1996 under Section 132 of the Income Tax Act, 1961 (the Act) at various premises belonging to M/s Elora Mechanical Products (P) Ltd., the office of the Assessee and the residence of the Directors of the Assessee. In the search conducted in the premises of M/s Elora Mechanical Products (P) Ltd., various documents relating to the Assessee were found and were seized.

6. During the block assessment proceedings pertaining to M/s Elora Mechanical Products (P) Ltd., the Assessing Officer found some incriminating documents relating to the Assessee but since he did not

have jurisdiction in the matter, the Assessing Officer sent a letter dated 6th March, 1998 to the Assessing Officer having jurisdiction over the Assessee informing him to issue a notice to the Assessee under Section 142(1) of the Act to file its return and to assume jurisdiction of the case.

7. Subsequently, it appears that an order was passed under Section 127 of the Act transferring the jurisdiction over the Assessee to the Assessing Officer of M/s Elora Mechanical Products (P) Ltd.

8. Thereafter, a notice was issued to the Assessee on 29th October, 1998 under Section 158-BD of the Act requiring the Assessee to file its returns for the relevant block period. The Assessee filed its returns and during the assessment proceedings it raised the contention that the Assessing Officer did not record his satisfaction to the effect that proceedings against the Assessee should be initiated under Section 158-BD of the Act. It was submitted that only information was given to the effect that a notice should be issued to the Assessee under Section 142(1) of the Act.

9. The Assessing Officer rejected the objection raised by the Assessee but did not specifically deal with the contention urged that satisfaction ought to have been recorded in respect of initiating proceedings under Section 158-BD of the Act.

10. In the assessment order this contention raised by the Assessee has been specifically noted in the following words:

“During the Block Assessments proceedings of M/s Ellora Mechanical Product (P) Ltd. the assessing officer found various incriminating documents related to New Delhi Auto Finance but the jurisdiction on this case was not with JCIT Spl. Range-15. The A.O. having jurisdiction on the assessing company vide this office letter 6.3.98 was informed to issue notice u/s 142(1) to the assessee company to file return and assume jurisdiction over the case. This case was transferred to this Range by the Learned CIT II New Delhi vide order No. 9/98-99 dated 7.10.98.

.....

Assessee Company though its Director Sh. J.B. Aggarwal challenged the initiation of proceedings u/s 158 BD vide his letter dated 12.8.99. The assessee company has stated that it appears that a search was conducted premises of M/s Ellora Mechanical Product (P) ltd. and with the result of which the proceedings have been initiated. The A.O. having jurisdiction over the assessee who had been subjected to search must record a note of satisfaction & reasons thereof.”

11. Feeling aggrieved by the order passed by the Assessing Officer, the Assessee preferred an appeal before the Tribunal which unfortunately did not take notice of the substantive contention urged by the Assessee. In fact, the Tribunal generalized the submission but even then did not deal with the contention urged. The Tribunal discussed the matter as follows:

“With regards to the legal grounds taken regarding assumption of Jurisdiction under sec. 158.BD, the learned AR Shri Promod kumar contended that as search was conducted at the premises of M/s Ellora Mechanical

Product (P) Ltd. and with the result of which the proceedings have been initiated. The Assessing Officer having Jurisdiction over the assessee who had been subjected to search must record a note of satisfaction and reasons thereof. In the instant case it was submitted that no such note has been recorded. It was further submitted that such proceedings have not only to be initiated but also to be completed within a period of one year when search was conducted and in any case within a period of one year from the date of recording the reason of satisfaction. Thirdly, the jurisdiction over the assessee's case lies with ACIT Company Circle 26(5).

With regard to the legal issue regarding assumption of jurisdiction under sec. 158-BD, we do not find any merit in the contention of the learned AR as the Assessing officer having Jurisdiction over M/s Ellora Mechanical Product Pvt. Ltd. has intimated to ACIT 26 (5) regarding to take action in the matter as the jurisdiction lies with ACIT 2(5) Since the assessee company has never filed any return therefore the jurisdiction has been transferred to the present Special Range 15 by the CIT - II New Delhi under sec 127 of the Income Tax Act 1961 vide order 7.10.98 therefore, the present Assessing Officer has rightly issued notice under sec. 158BD of the Act."

12. It is in the above circumstances that the Assessee has preferred this appeal before us under Section 260A of the Act.

13. Learned counsel for the Assessee has also drawn our attention to the notice sent to the Assessee on 26th October, 1998. This notice reads as follows:

"NOTICE UNDER SECTION 158 BC/D OF INCOME TAX
ACT 1961

PAN/GIR NO. BLOCK PERIOD: 1.4.85 to 20.3.1996

INCOME TAX OFFICE: Dy. Comm.
Of I. Tax
Special Range 15
New Delhi.
Dated: 26.10.98

To,
Principal Officer
New Delhi Auto Finance Pvt. Ltd
174, Katra Baryan,
Delhi-6

In pursuance of the provisions of section 158 BC/D of the Income Tax Act, 1961, you are required to prepare a true and correct return of your total income including the undisclosed income in respect of which you a Individual/HUF/firm/company/AOP/ body of individuals/ local authority are assessable for the block period mentioned in section 158B(a) of the I.T. Act, 1961.

The return should be in the prescribed form No. 2B and be delivered in this office within 16 days of service of this notice, duly verified and signed in accordance with the provisions of Section 140 of the I.T. Act, 1961.

-Sd/-
(D.V. SINGH)
JOINT COMMISSIONER OF INCOME TAX
SPECIAL RANGE-15, NEW DELHI.

Recd. on 29.10.98
By Sh. J.B. Aggarwal."

14. Reliance was placed by learned counsel for the Assessee on *Manish Maheshwari v. Assistant Commissioner of Income Tax, [2007] 289 ITR 341* in support of his contention that the Assessing Officer

must record his satisfaction that undisclosed income has been unearthed and also in support of his contention that the notice dated 26th October, 1998 issued was completely vague.

15. It was contended by learned counsel for the Assessee that the Supreme Court has held in *Manish Maheshwari* that there are certain conditions precedent that need to be satisfied before taking recourse to a block assessment in terms of Section 158BC and Section 158BD of the Act. In para 11 of the Report the Supreme Court observed as follows:

“Section 158BD, however, provides for taking recourse to a block assessment in terms of section 158BC in respect of any other person, the conditions precedent wherefor are : (i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) the Assessing Officer has proceeded under section 158BC against such other person.”

16. It is quite clear from the above passage that the Assessing Officer must record his satisfaction about the existence of undisclosed income before proceeding against a person other than the one searched. No such satisfaction has been recorded in the present case. On the contrary, the only thing recorded by the Assessing Officer is

that information was given that a notice should be issued to the Assessee under Section 142(1) of the Act. This hardly meets with the first condition precedent given in *Manish Maheshwari*.

17. In so far as the vagueness of the notice is concerned, we find that in *Manish Maheshwari* the notice issued the Assessee in that case was more or less similar to the notice dated 26th October, 1998 issued to the Assessee in the present case. In the case of *Manish Maheshwari* the additional fact mentioned in the notice sent to the Assessee was that a search was conducted in the month of November, 1995. In so far as the present case is concerned, the Assessee has not been informed when the search was conducted.

18. Dealing with the contention regarding the vagueness of the notice in *Manish Maheshwari* the Supreme Court held as follows:

“The only question which arises for our consideration is as to whether the notice dated February 6, 1996, satisfied the requirements of section 158BD of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.

No proceeding under section 158BC had been initiated. There is, thus, a patent non-application of mind. A prescribed form had been utilized. Even the status of the assessee had not been specified. It had only been mentioned that the search was conducted in the month of November 1995. No other information had been

furnished. The provisions contained in Chapter XIV-B are drastic in nature. It has draconian consequences. Such a proceeding can be initiated, it would bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden shifts on the assessee. Audited accounts for a period of ten years may have to be reopened."

19. We are of the opinion that the law laid down by the Supreme Court is clearly applicable to the facts of the present case regarding issuing of a proper notice to the Assessee for initiating block assessment proceedings. The notice dated 26th October, 1998 issued to the Assessee is as vague (if not more) than the notice issued in *Manish Maheshwari*. Such a vague notice, as held by the Supreme Court shows "a patent non-application of mind."

20. It has been pointed out by the Supreme Court that the consequences arising out of invoking the provisions of Chapter XIV-B of the Act are drastic and draconian. The accounts of the Assessee may be re-opened for ten years and not only a legal presumption is raised against the Assessee but the burden shifts on the Assessee to show that it did not have any undisclosed income. Under these circumstances it is quite clear that the Revenue should not exercise its powers in a mechanical power but should be circumspect while taking

action under the provisions of Chapter XIV-B of the Act. That has not happened in so far as the present case is concerned and, therefore, we have not hesitation in giving a finding in favour of the Assessee.

21. Learned counsel for the Revenue was unable to show any judgment of the Supreme Court which has taken a different view from that taken in *Manish Maheshwari* and in fact could not press her case very far in the face of the clear law laid down by the Supreme Court.

22. Under the circumstances, we have no option but to answer the substantial question of law in the negative, in favour of the Assessee and against the Revenue.

23. The appeal is disposed of accordingly.

MADAN B. LOKUR, J

February 22, 2008
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S.L. BHAYANA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.