

**HON'BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO**

ITTA No. 44 OF 2004

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JUDGMENT: (per the Hon'ble Sri Justice Dilip B. Bhosale)

This appeal under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') is directed against the order dated 18-11-2002 rendered by the Income Tax Appellate Tribunal, Visakhapatnam (for short, 'the Tribunal') in IT(SS)A No.26/Vizag/98 for the block period 01-04-1986 to 10-10-1996.

The appeal before the Tribunal was filed by the respondent – assessee against the block assessment order dated 28-08-1998, for the block period from 01-04-1986 to 10-10-1996, passed by the ACIT (Inv.), Circle-I, Vijayawada. The assessee is an individual and engaged in the business of transport. Search operations were conducted at the residential premises of one Kondapalli Satyanarayana Rao, a transport contractor of Vijayawada on 10-10-1996. Simultaneously, a search was also conducted at the residential premises of G. Nageswara Rao, the father-in-law of Satyanarayana Rao and the father of the assessee. In the course of search, an amount of Rs.11,725/- was found in the bed room of Nageswara Rao and an amount of Rs.5,50,000/- was found in the bed room of G. Mohana Rao (assessee). At the time of search operation, the assessee and his wife were not present at the residence and his father Nageswara Rao could not explain the source of income for which the same was seized and the proceedings under Section 158BC(a) read with Section 158BD were initiated by issue of notice on 14-08-1997. The notice was served on the assessee on 23-08-1997. In response to the notice, the assessee filed a return for the block period on 28-04-1998, admitting undisclosed income at Rs.6,46,420/-.

Along with the return, relevant computation statement and evidence in respect of the transactions of properties were also filed. During the assessment proceedings, a statement of the assessee on oath was also recorded on 03-08-1998. After hearing the case and examining the submissions made, the assessing officer completed the assessment determining the undisclosed income at Rs.1,02,08,942/- by his order dated 28-08-1998. After setting off, the total undisclosed income worked out to Rs.92,42,002/-. It is against this order, the respondent – assessee filed an appeal before the Tribunal. In the appeal, the assessee raised several grounds. However, in the present appeal, we are concerned only with the following question of law, as raised in the memorandum of appeal:

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the income in the block assessment cannot be determined on estimate basis, in the absence of materials found by the department during search?”

The appellant – Revenue did not raise any other question of law for our determination. Finding of cash during the search is also not the subject matter of this appeal.

The Tribunal after considering the entire material that was placed for consideration, in para 3.6, in respect of the question that falls for our consideration observed thus:

“We have carefully considered the submissions made by the rival parties, the facts of the case, the case laws relied upon and materials produced before us. **It is an un-disputed fact that no material was found by the Department regarding the transport contract business of the assessee. There was also no iota of any evidence regarding the extent of undisclosed income earned from the said source. There is no finding by the AO that estimate of income was made after consideration of material that came to light during the course of search and seizure operation.** It is only after the filing of the return by the assessee the Department verified the matter regarding the receipts received from the contractees i.e., Rasi Cements and Kesoram Cements. It

is also seen that no discrepancy was found between the figures shown by the assessee and the figures obtained by the AO as no much discrepancy has been pointed out. We have also perused the case laws relied upon by the assessee. **In all the cases it has been held that in a block assessment income cannot be determined on estimate basis in the absence of details found from seized documents. This can be done only on regular assessment. It has also been held that no roving enquiry can be made without fresh material in respect of completed assessments.** Under the circumstances the income arrived by the AO on estimate basis in the case of the assessee cannot be held to be correct. As pointed out above the search and seizure operation mainly started in the case of Kondapalle Satyanarayana Rao whose income was also estimated on estimate basis. Such income arrived on estimate basis has been deleted by the I.T.A.T., Hyderabad in their order dated 29-10-99. In view of these facts the income worked out on estimate basis in various years are directed to be deleted.

(Emphasis supplied)”

The observations made by the Tribunal in the above paragraph on factual matrix are not in dispute before this Court.

It is against this backdrop, learned counsel appearing for the appellant – Revenue at the outset invited our attention to Sections 145 and 144 of the Act to contend that it is open for the assessing officer to determine income, in case of block assessment, as provided for in Chapter XIV-B of the Act on estimate basis, if no material is available and or in the absence of evidence found in the search operation.

The Supreme Court in ***Assistant Commissioner of Income-tax v. Hotel Blue Moon***^[1] had an occasion to deal with all the relevant provisions in Chapter XIV-B of the Act. While dealing with the provisions contained in this chapter, the Supreme Court in paragraphs 12, 13, 14 and 15 observed thus:

“12) Chapter XIV-B provides for an assessment of the undisclosed income unearthed as a result of search without affecting the regular assessment made or to be

made. Search is the sine qua non for the Block assessment. The special provisions are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period. The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substituted for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other materials or information as are available with the Assessing Officer. Therefore, the income assessable in Block assessment under Chapter XIV-B is the income not disclosed but found and determined as the result of search under Section 132 or requisition under Section 132A of the Act.

13) Section 158 BC stipulates that the Chapter would have application where search has been effected under Section 132 or on requisition of books of accounts, other documents or assets under Section 132A. By making the notice issued under this Section mandatory, it makes such notice the very foundation for jurisdiction. Such notice under the Section is required to be served on the person who is found to be having undisclosed income. The Section itself prescribes the time limit of 15 days for compliance. In respect of searches on or after 1-1-1997, the time limit may be given up to 45 days instead of 15 days for compliance. Such notice is prescribed under Rule 12(1A) which in turn prescribes Form 2B for block return.

14) Section 158 BC(b) is a procedural provision for making a regular assessment applicable to Block assessment as well. Section 158 BC(c) would require the Assessing Officer to compute the income as well as tax on completion of the proceedings to be made. Section 158 BC(d) would authorise the Assessing Officer to apply the assets seized in the same manner as are applied under Section 132B.

15) We may now revert back to Section 158 BC(b) which is the material provision which requires our consideration. Section 158 BC(b) provides for enquiry and assessment. The said provision reads "that the assessing officer shall proceed to determine the undisclosed income of the Block period in the manner laid down in Section 158 BB and the

provisions of Section 142, sub-section (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply." An analysis of this sub section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under Sections 143(2)/142 and complete the assessment under Section 143(3). This Section does not provide for accepting the return as provided under Section 143(i)(a). The assessing officer has to complete the assessment under Section 143(3) only. In case of default in not filing the return or not complying with the notice under Sections 143(2)/142, the assessing officer is authorized to complete the assessment ex-parte under Section 144. Clause (b) of Section 158 BC by referring to Section 143(2) and (3) would appear to imply that the provisions of Section 143(1) are excluded. But Section 143(2) itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The other important feature that requires to be noticed is that the Section 158 BC(b) specifically refers to some of the provisions of the Act which requires to be followed by the assessing officer while completing the block assessments under Chapter XIV-B of the Act. This legislation is by incorporation. "

It is thus clear, the provisions contained in Chapter XIV-B are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessment covering the previous years falling in the block period. The special procedure contemplated by Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substituted for regular assessment. Its scope and

ambit is limited in that sense to materials unearthed during search. Insofar as Section 158BC (b), where the provisions contained in Sections 142, 143 (2) and (3), 144 and 145 are referred to and on analysis thereof, as observed by the Supreme Court in ***Hotel Blue Moon*** (supra) is concerned, it would indicate that, after the return is filed, this sub-section enables the assessing officer to complete the assessment by following the procedure like issue of notice under Section 143(2)/142 and complete the assessment under Section 143(3). The assessing officer has to complete the assessment under Section 143(3). In case of default in not filing return or not complying with the notice under Section 143(2)/142, the assessing officer is authorised to complete the assessment *ex parte* under Section 144. Even under Section 144, the assessing officer is expected to take into account all relevant material which he has gathered.

Having regard to the position of law settled by the Supreme Court in the aforementioned judgment, in the present case, determination of income on the basis of estimate and not on the basis of material found during search, in our opinion, is wrong. Admittedly, in the present case, no material was found by the department regarding the transport contract business of the assessee. In other words, there was no evidence regarding the extent of the alleged undisclosed income earned from the said source.

In the circumstances, we find no merit in the appeal and, hence, the appeal is dismissed answering the question of law against the Revenue and in favour of the assessee. No order as to costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

01-04-2015

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[\[1\]](#) [2010] 188 Taxman 113 (SC)

