

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.07.2016

CORAM

**THE HONOURABLE MR. JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR**

Tax Case (Appeal) No.600 of 2007

Ashok Kumar Sethi

Vs.

.. Appellant

The Deputy Commissioner of Income Tax,
Central Circle III (4),
Chennai.

.. Respondent

PRAYER: Appeal filed under Section 260A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Bench "A", Chennai in I.T.SSA.No.95/MDS/2003 for the assessment year : Block period 1.4.1990 to 11.1.2001 dated 29.5.2006, received on 22.6.2006.

* * *

For Appellant : Mr.A.S.Sri Raman
for Mr.S.Sridhar

For Respondent : Mr.T.R.Senthilkumar
Standing Counsel for
Income Tax Department

JUDGMENT

D.KRISHNAKUMAR, J

This Appeal has been filed under Section 260A of the Income Tax Act 1961 against the order of the Income Tax Appellate Tribunal, Bench "A", Chennai in I.T.SSA.No.95/MDS/2003 for the assessment year : Block period 1.4.1990 to 11.1.2001 , dated 29.5.2006.

2. A search under Section 132 of the Act was conducted at the residential and business premises of the appellant on 10.1.2001 and the same was concluded on 16.4.2001. During the search operation, cash of Rs.2,51,75,309/- forming part of Fixed Deposit Certificates worth Rs.5,98,75,340/- and 3031.5gms of jewellery were seized. In response to the notice dated 1.6.2001 issued under section 158BC of the Act to file the Block Return within 16 days, the assessee filed the return on 8.1.2002 admitting total undisclosed income of Rs.1,41,50,975/-. In the course of the Block Assessment Proceedings, the assessee admitted further undisclosed income of Rs.3,95,632/-. Based on the materials made available, the assessing authority determined the tax liability as Rs.1,20,55,160/- which included Surcharge @ 17% amounting to Rs.15,36,495/- and Interest u/s.158BFA for the period from 22.6.2001 to 08.1.2002 (for 7 months) Rs. 14,80,458/-. Challenging the levy of surcharge and interest, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals) - II, Coimbatore.

3. The Commissioner of Income Tax (Appeals) - II, Coimbatore / the first appellate authority after considering the submissions of the parties concerned came to the conclusion that the levy of interest under Section 158BFA of the Income Tax Act is not justified and accordingly, it was held by order dated 26.2.2003 in ITA No.189-C/2002-03.

4. Aggrieved against the order of the Commissioner of Income tax, the appellant/assessee preferred an Appeal in IT (SS) A No.68 (Mds)/2003 questioning the levy of surcharge whereas the revenue has filed an Appeal in IT (SS)A No.95(Mds)/2003 questioning the waiver of interest by the lower appellate authority vide order dated 26.2.2003 in ITA No.189-C/2002-03, before the Income Tax Tribunal, Chennai Bench "Ä", Chennai. By order dated 29.5.2006, the Appellate Tribunal allowed the appeal filed by the appellant, viz., IT (SS) A No.68(Mds)/2003 holding that levy of surcharge was not in accordance with law whereas the Tribunal remanded the appeal filed by the revenue, viz., IT (SS) A. No.95(Mds)/2003 to the Commissioner (Appeals)/appellate authority to decide the issue of interest *de novo* after providing adequate opportunity to the assessee of being heard. It is against this order, the present appeal in Tax Case (Appeal) No.600 of 2013 has been preferred by the assessee/appellant, before this Court.

5. Heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.T.R.Senthilkumar, learned Standing Counsel for the respondent and perused the available materials.

6. A search under Section 132 of the Income Tax Act was conducted in the residential and business premises of the appellant on 10.1.2001 and the search was concluded on 16.4.2001. As a result of the search, cash of Rs.2,51,735,309/- forming part of fixed deposit certificates worth Rs.5,98,75,340/- and 3031.5 gms of jewellery were

seized. In response to the notice dated 1.6.2001 issued u/s.158BC of the Act to file Block Return within 16 days, the appellant filed the return on 8.1.2002 admitting total undisclosed income of Rs.1,41,50,975/-. The year-wise particulars of undisclosed income for the block period is as under:-

Previous year	Assessment year	Total Income including Undisclosed Income	Income returned assessed (Rs.)	Date of filing of the return
1990-91	1991-92	5,67,125	5,67,125	31.12.1991
1991-92	1992-93	6,18,743	6,18,743	28.12.1992
1992-93	1993-94	4,47,430	4,47,430	29.10.1993
1993-94	1994-95	4,44,677	4,44,677	30.01.1995
1994-95	1995-96	4,98,784	4,98,784	11.01.1996
1995-96	1996-97	5,59,714	5,59,714	28.11.1996
1996-97	1997-98	6,52,631	6,52,631	25.03.1998
1997-98	1998-99	6,38,157	5,13,257	28.02.1999
1998-99	1999-2000	44,06,158	6,25,641	30.12.1999
1999-00	2000-2001	39,33,903	--	--
2000-01	2001-2002	73,22,477	10,10,922	--
	Total	2,00,89,899	59,38,924	

7. The Assessing Officer, namely, Deputy Commissioner of Income Tax, Chennai Circle IIII(4), Chennai, has determined the liability of tax as under:-

Interest received on TNSC deposits, as admitted Rs.67,33,958/-

Interest accrued upto 11.1.2001, as admitted Rs.33,98,532/-

Normal income for the AY 2000-2001,

as admitted Rs.11,35,557/-

Income offered on adhoc basis as admitted Rs.30,00,000/-

Additional interest on deposits as admitted	Rs. 3,95,632/-
Additional Towards unexplained jewellery	Rs. 4,00,000/-
Total Undisclosed Income	Rs.1,50,63,679/-
Tax payable thereon	Rs. 90,38,207/-
Add : Surcharge @ 17%	Rs. 15,36,495 /-
	Rs. 1,05,74,702/-
Add: Interest u/s 158BFA	Rs. 14,80,458/-
	Rs.1,20,55,160/-
Less : PD A/c adjusted	Rs.1,08,03,210/-
Balance payable	Rs. 12,51,950/-

8. Being aggrieved by the order passed by the Assessing Officer, the appellant preferred an appeal before the Commissioner of Income Tax, Appeals - II, Coimbatore, challenging the order passed against the assessee for levy of surcharge @ 17% and levy of interest under section 158BFA of the Act passed by the Assessing Officer. The appellate authority, Commissioner of Income Tax, has rejected the first issue, namely, levy of surcharge. The second issue relates to the levy of interest under section 158BFA of the Act was decided in favour of the

assessee. It is stated that the issue of levy of interest is made to compensate the revenue for the delay in remittance of the tax. The appellant was deprived of use of the cash seized of Rs.2.51 Crores. The revenue was having possession of the above said amount. Therefore, the appellant was required to pay the tax of Rs.1,04,84,093 is not justified under Section 158 BFA.

9. Against the aforesaid order passed by the Commissioner of Income Tax, the appellant/assessee preferred an appeal in IT (SS) A No.68(Mds)/2003 questioning the liability of surcharge before the appellate Tribunal and the same was allowed.

10. On the other hand, the revenue filed appeal in IT (SS) A No.95(Mds)/2003 before the appellate Tribunal questioning the waiver of interest on the following grounds:-

(i) The learned Commissioner of Income Tax (Appeals) ought to have appreciated that interest u/s.158BFA(1) is clearly exigible on the facts and circumstances of the case. The block return of income was filed on 8.1.2002 after the expiry of the due date for filing the return of income.

(ii) The learned Commissioner of Income Tax (Appeals) ought to have appreciated that as per provisions of Sec.158BFA(1), the charging of interest is mandatory if the return of income is furnished after the expiry of the due date and the assessee is liable for interest @ 1¼% for

every month or part of the month of the tax on undisclosed income determined.

(iii) The learned Commissioner of Income Tax ought to have appreciated that waiver or reduction of interest u/s.158BFA(1) could be considered only if the assessee satisfies the conditions specified in the Board's letter in F.No.286/137/2002-IT(INB-II) dated 6.1.03 and the powers for reduction and waiver of interest is vested with CCIT/DGIT.

11. The Tribunal, after considering the materials and provisions of law, has considered the case of revenue and held that there was no request made to adjust the tax dues against the seized amount and albeit the amount remains with the Government, the right of the amount remains with the assessee. Therefore, the seized amount cannot be equated with tax payment. Adjustment is possible only after the filing of the return. Therefore, the levy of interest is clearly attracted as per the prescription of statute. By recording the above said reasons, the order passed by the appellate authority, namely, the Commissioner of Income Tax – Appeals was reversed by the Tribunal. Further, the Tribunal has also directed the Commissioner/appellate authority to decide the issue insofar as levy of interest for the period of 30 days, the time sought for filing the return in Form 2B and to decide the issue after affording adequate opportunity for the appellant, and allowed the appeal filed by the revenue.

12. Being aggrieved by the order passed by the appellate Tribunal, the instant Appeal has been preferred before this Court by the assessee. The instant appeal was admitted and the following substantial questions of law were framed:-

1. Whether the Tribunal is correct in confirming the order of the respondent/assessing officer in imposing interest under section 158BFA (1) of the Act even though there was no loss of revenue on account of the belated filing of block return in view of seizure of cash in the search conducted by the department?

2. Whether the Tribunal is correct in concluding that the levy of interest under section 158BFA (1) of the Act was correct on the facts in spite of the binding decision of the Delhi High Court referred to and relied upon before them?

13. The appellant submitted that though the seized amount would belong to him, there was first charge on the same against the revenue for the tax payable inasmuch as in the said tax, the seized cash should be equated to the tax payment. The seized amount was already with the department in the form of seized cash with the first charge of adjusting the same against tax payable. Therefore, the belated filing of the income tax return with delay of 7 months was duly compensated by the assessee/appellant, cash effected at the time of search. Therefore,

the findings of the Tribunal was erroneous and is liable to be set aside. The appellant also prays for the alternative prayer to frame a new issue to remand the entire issue to the file of the respondent in order to consider the correctness of the circumstances especially the availability of the seized cash for the marginal delay in filing the block return of income so as to further consider the plea for condoning the delay of filing the said block return of income which in turn would lead to the correctness of the levy of consequential interest u/s.158BFA(1) of the Act in the computation of undisclosed income for the block period under consideration.

14. Per contra, the learned standing counsel for the respondent submitted that the provisions of section 132 (5) of the Act were completely overlooked and the appellant was not approaching the concerned authority for the adjustment of the seized cash for the tax leviable within 120 days could be fatal to the plea for waiving the interest under section 158 BFA(1) of the Act. He also relied on the decision in the case of ***Commissioner of Income Tax vs. J.P.Narayanaswamy reported in [2014] 41 Taxmann.com 52 (Karnataka)*** wherein it was held that the adjustment of liability as determined under Clause (c) of Section 158BC of the Act follows determination of tax liability and therefore, is not in any way providing for reducing tax liability before quantification of the tax liability. Application in terms of Section 132B is thereafter. Further, it was submitted that under the Income Tax Rule 112, Sub Rule 12(iii) provides the Commissioner of Income Tax to deposit the seized cash into the Personal Deposit account in any State Bank of

India or authorised bank. Such personal Deposit Account (PD A/c) does not carry any interest. Thus, the seized cash, during the course of such, remains the same, without earning interest when Commissioner deposits the same in the P.D.Account.

15. The provisions of Section 158BFA(1) of the Act is usefully extracted hereunder:-

Section 158BFA. (1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997, as required by a notice under clause (a) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of [one] per cent of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and— (a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return? or (b) where no return has been furnished, on the date of completion of assessment under clause (c) of section 158BC.

16. Statutory provision of section 158 BFA of the Act states

that the assessee is liable to pay simple interest on the undisclosed income where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return or where no return has been furnished on the date of completion of assessment under clause (c) of Section 158BC of the Act. Therefore, the language in the provision under Section 158 BFA of the Act is clear that after the expiry of the period specified in such notice or if it is not furnished, the assessee shall be liable to pay simple interest of the tax on the undisclosed income determined under clause (c) of Section 158 BC for every month or part of a month comprised for the period commencing on the date immediately following the expiry of the time specified in the notice. As a result of the search conducted on 10.1.2001, cash amount by forming part of fixed deposit certificates and jewellerys were seized and enquiry was conducted by the department. The assessing officer determined the undisclosed income, after the assessee belatedly filed the tax returns. The delay in filing the return is not disputed in the instant case.

17. With regard to the contention of the revenue in the instant appeal that the appellant has to approach the Board to waive the levy of interest, in the case of ***New Punjab and Shivaraj v. Patil reported in [2002] 122 Taxman 117 (SC)***, it has been held as follows:-

“The Circular dated 23.5.1996 was issued by the Board under section 119(2)(a) which vests power in the Board to pass general or special order for

waiver of interest under the provisions specified therein including sections 234A, 234B and 234C. No such power is vested in the Board so far as the interest leviable under section 158BFA(1) is concerned. The order passed by the High Court dismissing the writ petition confirming the order passed by the Director General did not suffer from any serious illegality which warranted interference by the Supreme Court in exercise of jurisdiction under Article 136 of the Constitution."

Therefore, the contention of the revenue that the appellant has to approach the Board to waive the levy of interest cannot be sustained in the light of the decision rendered by the Hon'ble Supreme Court supra.

18. In the case of ***Commissioner of Income Tax v. J.P.Narayanaswamy*** held by the High Court of Karnataka reported in [2014] 41 Taxmann.com 52 (Karnataka), it was held that the levy of interest is as per statutory provision under section 158BFA(1) of the Act and does not link to the date of payment of tax in case of delay in filing of the return after receiving notice under section 158BC of the Act and only linked to the delay in filing the return. It has been held in Paragraph 17 as under:

"17. The adjustment of liability as determined under Clause (c) follows determination of tax liability and therefore is not in any way providing for reducing tax liability before quantification of the tax liability. Application in terms of Section 132B is thereafter. It is for this reason we cannot accept the contention of learned

counsel for the Assessee that before levying of interest the amount should have been adjusted from out of the tax liability amount as available from the seizure should have been reduced from the tax liability, then balance interest computed. Therefore, the provision under section 158BFA(1) of the Act is mandatory under the statute.

19. The decision, relied on by the assessee/appellant, rendered in ***Prannoy Roy and another vs. Commissioner of Income Tax and ... reported in (254 ITR 755) by the Delhi High Court***, relates to the case of interpretation under section 234A of the Income Tax Act, which is the subject matter in that Writ Petition, whereas the instant case relates to the interpretation under section 158BFA(1) of the Income Tax Act. Therefore, the aforesaid decision will not be applicable to the facts of the present case.

20 It has been pointed out by the learned standing counsel for the respondent that under that sub-rule 12 (iii) of Rule 112 of the Income Tax Rules, provides the Commissioner of Income Tax to deposit seized cash into the Personal Deposit Account in any State Bank of India or authorised Bank. Such Personal Deposit Account (PD A/c) does not carry any interest. Thus, the seized cash during the course of search remains the same without earning interest when Commissioner deposits the same in the P.D.Account. Therefore, we cannot accept the contention of learned counsel for the Assessee/Appellant that levy of interest should

have been adjusted from and out of the amount as available from the seizure amount.

21. The principles of law have been settled that the fiscal statute should be construed strictly as applicable only to taxing provisions such as surcharge provisions or a provision imposing penalty, any liberal construction of the statute cannot be permissible under law. It is well settled that in the matter of interpretation of tax statutes, courts should not be justified in interpreting some other expressions, which the legislation thought to omit. Causes omissus cannot be supplied by Court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature.

22. In ***Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc reported in (2012) 9 SCC 552 : (2012) 4 SCC (Civ) 810***, it has been held as follows:

"64. ... that it is not the function of the Court to supply the supposed omission, which can

only be done by Parliament. In our opinion, legislative surgery is not a judicial option, nor a compulsion, whilst interpreting an act or a provision in the Act."

23. We are unable to accept the contention of the appellant that levy of interest can be adjusted from the seized amount which was lying in the P.D.Account in the absence of any provision to grant such claim.

24. In the light of the above discussions and following the aforesaid decisions, we are not inclined to interfere with the order passed by the Appellate Tribunal. Hence, the substantial question of law framed in the instant appeal is answered against the appellant/assessee. Tax Appeal filed by the assessee is dismissed. However, there shall be no order as to costs.. No costs.

(S.M.K., J.) (D.K.K., J.)

26.07.2016

Index : Yes / No

Internet : Yes / No.
asvm

S.MANIKUMAR, J
AND
D.KRISHNAKUMAR, J

(asvm)

To
The Deputy Commissioner of Income Tax,
Central Circle III (4),
Chennai.

T.C.(A).No.600 of 2007

26.07.2016