IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM

THE HON'BLE MR. JUSTICE T.S.SIVAGNANAM

and

THE HON'BLE MR. JUSTICE N.SESHASAYEE

Tax Case (Appeal) No.764 of 2007

1.K.Balan (Deceased)
2.M.P.Narayanani
3.K.Sivakumar
4.K.Sasikumar
5.Shyma
(Appellants 2 to 5 are substituted as Legal Heirs of deceased sole appellant vide order dated 27.01.2016mfr in C.M.P.No.773 of 2016)

... Appellants

v.

The Deputy Commissioner of Income Tax
Central Circle - II(2)
Chennai

... Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 15.12.2006 made in IT(SS)A.No.9/Mds/2005 on the file of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai for the Block Assessment period from 01.04.1988 to 27.03.1998.

For Appellant : Mr.P.Senthil Kumar

For Respondent : Mr.T.R.Senthil Kumar
Senior standing Counsel

J U D G M E N T

(Judgement of the court was delivered by T.S.SIVAGNANAM, ,J)

Heard Mr.P.Senthil Kumar, learned counsel appearing for the appellant and Mr.T.R.Senthil Kumar, learned Senior standing Counsel appearing for the respondent.

2. This appeal is directed against the order passed by the Income Tax Appellate Tribunal in IT(SS)A.No.9/Mds/2005 in respect of the Block Assessment for the period 01.04.1988 to 27.03.1998.

3. The above tax case appeal has been admitted on the following substantial question of law :_

"1. Whether on the facts and in the circumstances of the case, the the Income Tax Appellate Tribunal was right in law in not considering the appeal on the legal issue of leviability of interest u/s. 158BFA(1) without

appreciating the legal issues could be raised at any stage?

2. Whether on the facts and in the circumstances of the case, the the Income Tax Appellate Tribunal was right in law in upholding the interest u/s. 158BFA(1) even for the period of delay in filing the return of income, caused due to delay in obtaining copies of the seized materials from the Income Tax Department, which was beyond the control of the appellant?"

4. The question which falls for consideration is as to whether from what date interest under section 158BFA(1) of the Income TAx Act, 1961 is leviable. A search was conducted in the premises of the petitioner on 27.03.1998. A notice was issued by the Assistant Commissioner of Income Tax, City Circle - II (Investigation), Chennai, dated 20.07.1998 under section 158 BC of the Act calling upon the assessee, to furnish the books of accounts, other documents or assets as mentioned in the said provision, within the stipulated time. Soon after the issuance of notice, the assessment file of the assessee stood transferred to the Central Circle. The assessee requested for copies of the seized documents so as to enable him to submit a proper return. The photostat copies were

furnished to the assessee between 18.06.1999 to 22.06.1999. The Deputy Commissioner of Income Tax, Central Circle - II(2), Chennai, issued notice dated 25.6.1999 under section 158 BC of the Act. The assessee did not file the details/return within the time stipulated in the notice, but, filed the return of income on 04.05.2000. The same was considered and the assessment was completed on 31.05.2000, in which, the Assessing Officer levied interest under section 158BFA(1) for 11 months. i.e., from 22.06.1999 to 04.05.2000.

5. Aggrieved by the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), which was dismissed by order dated 30.03.2001. Aggrieved by the same, the assessee filed an appeal before the Tribunal in June 2008. When the Assessing Officer gave effect to the order of Commissioner of Income Tax (Appeals), by order dated 18.05.2001, there was no levy of interest under section 158BFA(1).

6. The Tribunal, by order dated 28.02.2002, remanded two issues to the Assessing Officer for consideration and rejected the ground raised in respect of levy of interest under section 158BFA(1). Pursuant thereto,

an order under section 154 was passed levying interest under section 158BFA(1) for 21 months i.e. from 20.07.1998 to 04.05.2000.

7. The question would be whether the levy of such interest for a period of 21 months was just and proper.

8. Though the learned counsel for the Assessee argued that while giving effect to the order of Commissioner of Income Tax (Appeals) no interest was levied, while passing order dated 18.05.2001 and it would be debatable question. We are unable to accept the said submission in the facts and circumstances of the case. Therefore, we will consider as to whether the levy of interest has to be restricted for 11 months or Revenue was justified in demanding interest for 21 months.

9. The Revenue's contention is that the assessee was first issued a notice dated 20.07.1998 under section 158BFA(1) and for all purposes the said date is to be taken into account for levying interest.

10. The assessee, on the other hand, would contend that the period

can commence only after 25.06.1999, when the notice was issued by the Deputy Commissioner of Income Tax, Central Circle - II(2), Chennai .

11. We would have accepted the case of the Revenue had the Assessing Officer upon transfer of the files in 1998 continued further with the matter as such, on the contrary, the Assessing Officer after furnishing the copies of the records sought for by the petitioner, thought it appropriate to issue a fresh notice under section 158BC, dated 25.06.1999. Therefore, to fall back on the notice dated 20.07.1998, cannot be accepted.

12. Precisely for such reason the Assessing Officer, while completing the assessment on 31.05.2000 levied interest only for 11 months. Assuming the stand taken by the Revenue was justified, we will have to examine the facts of the case to see as to whether the assessee was liable for payment of interest from 20.07.1998.

13. We are convinced to take a stand in favour of the assessee for the reason that the assessee was requesting for copies of the seized

documents for nearly a year and the copies of those documents were furnished to the assessee between 18.06.1999 to 22.06.1999. Thus, the question would be as to how the interregnum period should be treated for the purpose of levying interest under section 158BFA(1).

14. On a reading of statutory provision one gets an impression that no such plea is entertainable and limitation does not stop and continues to run upon issuing notice under section 158BC. However, we cannot ignore the principles of natural justice, which will have to be read into the provision, as the assessee without being supplied with the necessary documents, which were seized during the course of search, would not be in a position to file a proper return. Law does not compel a person to perform that which is impossible. Admittedly, the delay in not filing the return after the notice dated 20.07.1998 is not attributable to the assessee. No where, the Revenue has taken a stand that the request made by the assessee for supply of seized documents was either unreasonable or uncalled for. Later, the department has furnished the photostat copies of the seized documents. Therefore, the period during which the assessee was waiting for the copies of the documents, which

were seized, has to be necessarily excluded and if this is excluded, the period between 1998 to 22.06.1999 has to be necessarily excluded. This reasoning is supported by the decision of the High Court of Karnataka in **(2014) 363 ITR 410 [Commissioner of Income Tax and another v. B.Nagendra Baliga]** and the decision of the High Court of Delhi in **(2010) 327 ITR 554 [Commissioner of Income Tax v. Mesco Airlines Ltd.]**.

15. Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, placed reliance on the decision of the High Court of Karnataka in the case of **Commissioner of Income Tax v. K.L.Srihari reported in [2011] 11 taxmann.com 188 (Kar)** and in paragraph No.48 it has been held that tribunal was in error in directing the deletion of the interest part on the tax amount as ultimately determined but for the period during which there is a delay in filing the return.

16. We have carefully perused the said decision and we find that the question which fell for consideration in the said decision was whether levy of interest under section 158BFA(1) is in any way linked to the provisions

of section 140A of the Act. Thus, the decision in the case of **Commissioner of Income Tax v. K.L.Srihari reported in [2011] 11 taxmann.com 188 (Kar)** is not applicable to the facts and circumstances of the present case

17. Thus, for the above reasons, the appeal filed by the assessee is partly allowed and the substantial question of law No.1 as mentioned above is answered against the assessee and in favour of the Revenue and the substantial question of law No.2 is answered in favour of the assessee and against the Revenue and it is held that the assessee is liable to pay interest only for a period of 11 months from 22.06.1999 to 04.05.2000. No costs.

(T.S.S.J.) (N.S.S.J.)
23.04.2018

Index: Yes/No

Rj

To
The Income Tax Appellate Tribunal,
Madras 'B' Bench
Chennai.

T.S.SIVAGNANAM,J

AND

N.SESHASAYEE,J

Rj

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