

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2022

Coram:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

T.C.A. No. 1480 of 2010

Commissioner of Income Tax
(Central - I)
Chennai

...Appellant/Respondent

Versus

Golden Refineries P. Ltd.,
Karathupalayam,
Mulanur Road,
Vellakoil - 638 111

...Respondent/Appellant

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order passed by the Income Tax Appellate Tribunal Madras 'D' Bench in IT(SS)A.No.100/Mds/2004 dated 28.12.2006, against the order dated 16/06/2004 made in IT Appeal No.382-C/02-03 on the file of the Commissioner of Income Tax (Appeals)-II, Coimbatore for the Assessment year 1991-1992 to 2001-2002 and against the order dated 18/02/2003 made in AABCG1071F on the file of the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore.

For Appellant : Mr. M. Swaminathan,
Senior Standing Counsel
and Mrs. V. Pushpa,
Junior Standing Counsel

For Respondent : Mr. Niranjana
& Ms. Meghna Kumar
for M/s.G.R.Associates

JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This Tax Case Appeal has been preferred by the appellant/revenue against the order dated 28.12.2006, passed by the Income Tax Appellate Tribunal Madras 'D' Bench (for brevity, 'ITAT') in IT(SS)A.No.100/Mds/2004, for the block assessment period from 01.04.1991 to 06.02.2001.

2. The respondent/assessee is a company engaged in the business of refining and trading of edible oils. On 06.02.2001, a search under Section 132 of the Income Tax Act, 1961 (in short, "the Act") was conducted at the business

premises as well as residential premises of the respondent/assessee, as a result of which, action under section 133A was initiated. Consequently, notice dated 23.03.2001 under Section 158BC of the Act was issued, to which, the respondent/assessee filed its return of income in Form 2B, on 10.08.2001, declaring the undisclosed income of Rs.47.21 Lakhs. On the basis of the materials collected during the course of search, the Assessing Officer completed the block assessment for the period in question, relating to the assessment years 1991-92 to 2001-02 under section 143(3) read with section 158BC of the Act and worked out the undisclosed income at Rs.2,21,48,784/- vide assessment order dated 18.02.2003.

3. Aggrieved by the order dated 18.02.2003 passed by the Assessing Officer, the respondent/assessee preferred an Appeal in I.T.A.No.382-C/02-03 before the Appellate Authority/Commissioner of Income Tax (Appeals) - II, Coimbatore (in short, "CIT(A)"), who after hearing both sides, reduced the block assessment arrived at by the Assessing Office from Rs.2,21,48,784/- to Rs.48,54,803/- and accordingly, partly allowed the appeal.

4. Challenging the order of the CIT(A), the respondent/assessee went on further appeal before the Income Tax Appellate Tribunal. By order dated 26.12.2006, the Tribunal allowed the appeal by concluding that the materials gathered in the course of inspection are to be treated as disclosed for the purpose of the Income Tax Act and it cannot be used for computation of undisclosed income of the block period under section 158BB. Aggrieved against the same, the appellant/Revenue is before this court with this Tax Case Appeal.

5. On 22.02.2011, this Tax Case Appeal was admitted on the following substantial question of law:

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the material found in the course of survey which was converted to a search on the same day could not be used in the block assessment?"

6. According to the learned senior standing counsel appearing for the appellant/revenue, any material or evidence found / collected in a survey which has been simultaneously made at the premises of a connected person, can be utilized, while making block assessment in respect of an assessee under section 158 BB read with section 158 BH, in the light of the decision of the Hon'ble Supreme Court in CIT v. S.Ajit Kumar [(2018) 93 taxmann.com 294 (SC)]. However, the Tribunal erred in holding that the material gathered in the course of survey are to be treated as disclosed for the purpose of Income Tax Act and it cannot be used for computation of undisclosed income of block period under Section 158BB and allowed the appeal in favour of the respondent / assessee. Hence, the learned counsel prayed to set aside the impugned order of the Tribunal and remand the matter to the Tribunal for reconsideration.

7. Heard the learned counsel appearing for the respondent/ assessee, who fairly conceded the submission made on the side of the appellant / Revenue, in view of the ratio laid down in the decision of the Hon'ble Supreme court in S.Ajit Kumar case (supra).

8. Admittedly, in the present case, based on the materials collected during the course of inspection, the assessing officer made assessment for the block assessment period in question, by determining the undisclosed income at Rs.2,21,48,784/-, which was reduced to Rs.48,54,803/- by the CIT(A). However, the Tribunal set aside the order of the CIT(A) and decided the case in favour of the assessee, by holding that the material gathered in the course of survey are to be treated as disclosed for the purpose of Income Tax Act and it cannot be used for computation of undisclosed income of block period under section 158BB. This court is of the opinion that the finding so rendered by the Tribunal is erroneous and bad in law, in the light of the decision of the Hon'ble Supreme Court in S.Ajit Kumar case (supra), wherein, it was held as under:

"12) The method of calculating the undisclosed income of the block period is provided under Section 158BB of the IT Act. It would be appropriate to reproduce the relevant part of Sections 158BB and 158BH of the IT Act which is as follows:

"158BB. Computation of undisclosed income of the block period.-(1) The undisclosed income of the block period shall be the aggregate of the total income of the previous year failing within the block period computed, in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or, as the case may be, as increased by the aggregate of the losses of such previous year determined.....

158BH. Application of other provisions of this Act - Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter."

(Emphasis supplied by us)

13) On a perusal of the above provision, it is evident that for the purpose of calculating the undisclosed income of the block period, it can be calculated only on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. Section 158BB has prescribed the boundary which has to be followed. No departure from this provision is allowed otherwise

it may cause prejudice to the assessee. Needless to say that it is the cannon of tax law that it should be interpreted strictly.

14) However, Section 158BH of the IT Act has made all other provisions of the IT Act applicable to assessments made under Chapter XIVB except otherwise provided under this Chapter. Chapter XIV B of the IT Act, which relates to Block Assessment, came up for consideration before this Court in Hotel Blue Moon (supra) wherein it has been held as under:

"18. 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 a substitute 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 132-A of the Act.

28. Section 158-BH provides for application of the other provisions of the Act. It reads:

"158-BH. Application of other provisions of this Act.- Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter."

This is an enabling provision, which makes all the provisions of the Act, save as otherwise provided, applicable for proceedings for block assessment. The provisions which are specifically included are those which are available in Chapter XIV-B of the Act, which includes Section 142

and sub-sections (2) and (3) of Section 143."

15) The power of survey has been provided under Section 133A of the IT Act. Therefore, any material or evidence found/collected in a Survey which has been simultaneously made at the premises of a connected person can be utilized while making the Block Assessment in respect of an assessee under Section 158BB read with Section 158 BH of the IT Act. The same would fall under the words "and such other materials or information as are available with the Assessing Officer and relatable to such evidence" occurring in Section 158 BB of the Act. In the present case, the Assessing Officer was justified in taking the adverse material collected or found during the survey or any other method while making the Block Assessment.

16) In view of the foregoing discussions, we are of the considered opinion that the decisions relied upon by learned senior counsel for the assessee do not lay down the correct law."

9. Thus, considering the facts and circumstances of the case and having regard to the submissions so made by the learned counsel on either side and also following the decision of the Hon'ble Supreme Court referred to above, the substantial question of law raised herein is decided in favour of the appellant / Revenue and the order impugned herein is set aside. Consequently, the matter is remanded to the Tribunal for reconsideration, on merits and in accordance with law, after affording due opportunity of hearing to the respondent/assessee. Such an exercise shall be completed by the Tribunal, within a period of eight weeks from the date of receipt of a copy of this judgment. Accordingly, this Tax Case Appeal stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mrr/rsh

To

1. Income Tax Appellate Tribunal 'D' Bench,
Chennai.

2.The Commissioner of Income Tax
(Central - I), Chennai.

3.The Commissioner of Income Tax (Appeals)-II
Coimbatore.

4.The Asst. Commissioner of Income Tax,
Central Circle-I, Coimbatore.

+lcc to M/s.G.R.Associates, Advocates SR. No. 38100

TCA No.1480 of 2010

SR (CO)
PR (15/07/2022)