IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM

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

T.C.A. Nos.478 and 758 of 2010

The Commissioner of Income Tax
Trichy ... Appellant in both T.C.A's

Vs.

Shri Subashchand Jain
16B 10th Cross Thillai Nagar,
Trichy 620 018. ... Respondent in both T.C.A's

COMMON PRAYER : Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "D" Bench, Chennai, dated 31.05.2007 in I.T(SS) A.Nos.177/Mds/2006 and 158/Mds/2006, respectively.

Against the order of the Commissioner of Income Tax (Appeals II),Chennai 34. dated 05.05.2006 and made in ITA.NO.180/03-04 and ITA.NO.95/04-05 for the Block Period ending 27.09.2000 and Block period ending 28.09.2000.

Against the order of the Deputy Commissioner of Income Tax,Central Circle III(4),Chennai 34. dated 30.06.2003 and 29.01.2004 and made in PA.NO./GI NO.34713-S/AA D[K 8697H and AADFJ3401 D/34301-J for the Block Period ending 27.09.2000 and 28.09.2000 respectively.

For Appellant : Mr.M.Swaminathan, Senior standing counsel
& Mrs.V.Pushpa, Junior standing counsel

For Respondent : Mr.P.Senthilkumar for M/s.Philip George

COMMON JUDGMENT

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

Both the tax case appeals filed at the instance of the Revenue, are directed against the order dated 31.05.2007 passed by the Income Tax Appellate Tribunal, 'D' Bench, Chennai, in I.T (SS)A.Nos.177/Mds/2006 and 158/Mds/2006, respectively relating to the block period ending 27.09.2000 and 28.09.2000.

2.The case in brief is as follows:

Based on the information that the assessee / respondent was doing unaccounted business in jewellery, a search and seizure action under section 132 of the Income Tax Act was conducted in the residential as well as the business premises of the assessee on 28.09.2000 and the search was concluded on 01.06.2001 as per the last panchanama drawn, according to which, the warrant is shown to have been issued in the name of the assessee and his brother and father, while the premises searched were that of M/s.Kalyani Thanga Maligai and M/s.Sugali Bankers situated at No.115, Arcot Road, Virugambakkam, Chennai-600 092. Pursuant to the same, notice under section 158 BC of the Act was issued on 25.06.2001, to which, the assessee filed his return of income disclosing Rs.21,34,144/- as his undisclosed income acquiescing with the date of warrant with reference to which M/s.Kalyani Thanga Maligai and M/s.Sugali Brothers were searched. The assessing officer made various additions and determined the total undisclosed income of the assessee at Rs.5,28,08,070/- and accordingly, levied tax and completed the assessment on 30.06.2003. Challenging the same, the assesseee filed appeal before the CIT(A), who by order dated 05.05.2006, partly allowed the appeal and reduced the addition to the tune of Rs.7,09,279/-. Aggrieved over the same, both the Revenue and the assessee filed appeals before the Income Tax Appellate Tribunal. By order dated 31.05.2007, the Tribunal held that the assessment order is barred by limitation and accordingly, quashed the assessment order. Therefore, the Revenue is before this court with the present appeals.

3.By separate orders dated 22.06.2010 and 04.06.2013, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

> " (i) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in holding that the assessment order dated 30.06.2003 was barred by limitation, especially when the last of Panchanama was dated 01.06.2001?
>
> (ii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal

is right in quashing the block assessment as time barred especially when Section 158 BE(1) clearly holds that the limitation for completion of the assessment and the limitation is to start from the end of the month in which the last of the panchanama under Section 132 was drawn up and also when explanation 2 to Section 158 BE clearly provides that the last panchanama referred in Section 132 shall be deemed to have been executed in the case of search on the conclusion of search as recorded in the last panchanama?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Tribunal is right in law in going into issue relating to validity of the search conducted under Section 132 of the Income Tax Act while dealing with block assessment?

4.When the matters were taken up for consideration, the learned counsel for the appellant as well as the respondent jointly submitted that the substantial questions of law involved herein were already decided and answered in favour of the assessee, in the case of A. Rakesh Kumar Jain v. Joint Commissioner of Income Tax [(2013) 31 taxmann.com 312 (Madras) / (2012) 254 CTR 576(Madras). The relevant paragraphs of the said decision are usefully extracted below:

"13. As reasoned out therein, there could be only one authorisation and a panchanama drawn as regards the conduct of the search, i.e., once when the search party concluded the search and leaves the premises after carrying with them the seized material, the authorisation for the search is fully implemented upon and execution completed. There afterwards , if the Department has to enter the premises again, as by way of search, certainly, one requires fresh authorisation ; however, as stated by the Karnataka High Court, no such authorisation is required to enter the premises to inspect the materials, which are the subject matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials, which are the subject matter of those orders. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for the purpose of the block assessment in pursuance of search under Section 132(1) of the Act. Thus, the panchanama evidencing such inspection and seizure would be the last panchanama in respect of the said premises. But for the purpose of limitation under Section 158BE, it would not be the last panchanama drawn in proof of conclusion of search, as defined in Explanation 2 to Section 158BE. For the purpose of limitation, there can be only one search and one panchnama as reasoned out by the Karnataka High Court.

14. Referring to the Kerala High Court decision in the case of Dr.C.Balakrishnan Nair Vs. CIT reported in (1999) 237 ITR 70 (Ker), the Karnataka High Court held that there is no provision in the Criminal Procedure Code or in the Income Tax Act therein, for postponing the search for such a long period. It is worthwhile to extract the decision of the Karnataka High Court, which in clear terms brings out the concept of search and validity of the authorisation issued for the search.

....

15. As already seen, merely because, more than one panchanama is drawn in the given case on one authorisation, one cannot construe that the subsequent and the last of the panchanama issued as one flowing out of the search as a last of the panchanama referrable to Explanation (2) to Section 158BE. Once the warrant of authorisation has been issued and the premises is searched and the search party leaves the premises, there is the end of the search and what could be postponed is only seizure of the articles and issuance of prohibitory order ; however, limitation for the completion of the block assessment begins on the conclusion of the search and issuance of panchanama and in case of single authorisation, the moment such party leaves the premises by drawing of the panchanama noting conclusion of the search, the limitation period begins.

16. Going by the facts herein, viz., as to the search completed on 13.12.2001 with drawing of the panchanama and the search party leaving the premises, the mere fact that the panchanama contain the observation that "search continues" per se would not enable the search party to keep the search in a suspended animation to carry on the search in future date to contend that the limitation has to be worked out on the last panchanama drawn ie. 15.02.2002, thus calculating the limitation from 15.02.2002. We have no hesitation in accepting the case of the assessee that

the limitation ends on 31.12.2003. The contention of the Revenue that the limitation has to be taken as 29.02.2004 does not go with the provisions of the Act. In such circumstances, the Tax Case Appeal is allowed. Accordingly, we set aside the order of the Income Tax Appellate Tribunal. No costs.”

5.In the present case, search was conducted on various dates from 28.09.2000 to 01.06.2001 and various panchanamas were issued, the last of which is dated 01.06.2001. There was no seizure on 18.01.2001, 29.01.2001, 16.03.2001, 14.05.2001 and 01.06.2001. The prohibitory order was lifted on 29.01.2001 and hence, the Tribunal was of the opinion that the subsequent panchanama from 29.01.2001 are irrelevant and the time shall be reckoned for the purpose of determining the time limit for the completion of the assessment under section 158BE from the end of the month of January 2001. Accordingly, the assessment order should be completed on or before 31.01.2003, whereas the assessing officer completed the assessment only on 30.06.2003, which is absolutely time barred. Thus, the Tribunal set aside the assessment order. We do not find any infirmity or illegality in the order so passed by the Tribunal, warranting interference.

6.Be it noted, in the decision referred to above, this court has categorically held that 'mere fact that the panchanama contains the observation that 'search continues' per se would not enable the search party to keep the search in a suspended animation to carry on the search in future date to contend that the limitation has to be worked out on the last panchanama drawn' and the same is squarely applicable to the facts of the present case. It is also brought to the notice of this court that the appeal filed by the Revenue by way of Civil Appeal No.5220 of 2013, was dismissed by the Hon'ble Supreme Court on 21.10.2019.

7.Therefore, we decide the substantial questions of law involved herein in favour of the assessee and accordingly, dismiss the tax case appeals filed by the Revenue. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mka/smn

To
1. The Commissioner of Income Tax
Trichy.

2. The Income Tax Appellate Tribunal, "D" Bench,
Chennai

3.The Commissioner of Income Tax (Appeals)
Central Circle -III (4), Chennai.

4.The Commissioner of Income Tax (Appeals II),Chennai 34.

5.The Deputy Commissioner of Income Tax,
Central Circle III(4),Chennai 34.

+2 ccs to Mr.P.Senthil Kumar, Advocate Sr.NO. 5462,5463

T.C.A. Nos.478 and 758 of 2010

SV(CO)
A.SK(09/03/2022)