IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

T.C.A. No. 445 of 2012

Commissioner of Income Tax
Central Circle
108, M.G. Road
Chennai – 600 034. ... Appellant/Respondent

Versus

V.R. Senniappan
R.Ganesan & Others
1/218, North Street
Pallapatti Village
Paramathi, Velur Taluk
Namakkal District
PAN: ASE PS 6512 P ... Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 29.02.2012 passed by the Income Tax Appellate Tribunal, Chennai "C" Bench, in I.T. (SS).A.No.12/Mds/2009 for the Assessment Year 01/04/1996 to 12/12/2002,

against the order dated 20.01.2009 passed by the Commissioner of Income Tax (Appeals) Salem, made in ITA No.52/2007-2008 for the Assessment Year 01/04/1996 to 12/12/2002 against the order dated 14/03/2007 passed by the Commissioner of Income Tax (Appeals) Salem, made in PAN/GIR No/TAN No.AGDPG8009L/CC-PG007 for the Assessment Year Block Assessment for the block Period from 01/04/1996 to 12/12/2002 against the order dated 28/02/2007 passed by the Assistant Commissioner of Income Tax Central, Circle Salem, made in PAN/GIR No.CCAR-001 for the Assessment Year 01/04/1996 to 12/12/2002.

For Appellant : Mr.M.Swaminathan

For Respondent : No appearance

JUDGMENT

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

This appeal filed at the instance of the appellant / Revenue is directed against the order dated 29.12.2012 passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai, in I.T. (SS).A.No.12/Mds/2009, relating to the block assessment period 01.04.1996 to 12.12.2002.

2.The case in brief is as follows:

2.1. On 12.12.2002, there was a search and seizure in the premises of one R.Ganesan. During the course of the same, it was found that the said R.Ganesan along with 4 others was carrying on sand quarrying business and they made certain capital contributions. Based on the documents recovered, notice under section 158BD was issued on 17.02.2005 to the respondent / assessee viz., V.R.Senniappan and others in the status of 'Association of Persons' (AoP), requiring them to file return of income. In response to the same, the AoP filed their return on 23.03.2005 admitting an undisclosed income of Rs.1,04,00,010/- from sand quarrying business. After scrutiny of the same, the assessing officer completed the assessment under section 158BD r/w 143(3) of the Income-tax Act (in short, 'the Act') on 28.02.2007 making addition of Rs.1,70,00,010/- as income from sand quarrying business.

2.2. Challenging the aforesaid order of assessment, the respondent / assessee preferred an appeal before the CIT (A), Salem in ITA No.52/07-08. The first appellate authority by order dated 20.01.2009, confirmed the order of the assessing officer, on the premise that there exists an AoP for the sand quarrying business carried on by R.Ganesan and hence, the income of sand quarrying business is assessable in the hands of AoP.

2.3. Aggrieved against the order of the first appellate authority, the respondent / assessee went on second appeal before the Income Tax Appellate Tribunal. By order dated 29.02.2012, the Tribunal allowed the appeal on the ground that the notice under section 158BD was issued on 17.02.2005, after three years from the date of search and after completion of the assessment under section 158BC and hence, the same was barred by limitation as provided under section 158BE. Therefore, the appellant / Revenue is before this court with the present appeal.

3.This Court, by order dated 21.12.2012, admitted the present tax case appeal on the following substantial questions of law:

> "1.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in annulling the block assessment that the notice under Section 158BD issued on 17.02.2005 is barred by limitation when no such time limit is prescribed under Section 158BD of the Income Tax Act?
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> 2.Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that there is no satisfaction on the part of the A.O., when issuing the notice under Section 158 BD and hence the notice is invalid in law."

4.Heard the learned counsel for the appellant and perused the materials placed before this court. There is no representation on behalf of the respondent / assessee.

5.Admittedly, based on the search and seizure operation conducted in the premises of one R.Ganesan, on 12.12.2002, the respondent issued the notice under section 158BD to the respondent / assessee only on 17.02.2005, requiring them to file return of income in respect of the sand quarrying business carrying by them in the capacity as AoP. As such, the notice issued after three years from the date of search as well as after completion of the assessment under section 158BC, is certainly beyond the time limit of two years as provided under section 158BE. Taking note of the same, the Tribunal rightly allowed the appeal filed by the respondent / assessee on the ground that the notice issued under section 158BD is barred by limitation.

6.Though the learned counsel for the appellant /Revenue contended that there is no time limit prescribed in the statute for completion of block assessment in respect of persons other than the person on whom search was made and therefore, the notice issued under section 158BD of the Act by the Assessing Officer is valid, this court is not inclined to accept the same, as it is settled law that where limitation is not prescribed, action must be taken within reasonable period. In this context, it is worthwhile to refer to a decision of the Hon'ble Supreme Court in Government of India v. Citedal Fine Pharmaceuticals [(1989) 3 SCC 483], wherein it was held as under:

"6....In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

7.Further, it is to be noted that the issue involved herein has already been considered and answered in favour of the assessee, in the case of Commissioner of Income-tax, Central-I v. V.D.Muralidharan [(2015) 53 taxmann.com 140 (Madras)], the relevant passage of which is profitably extracted below:

"9. In the case on hand, block assessment in respect of the Sree Gokulam Chits and Finance Company Limited was proceeded under Section 158BC of the Act. It is only on the basis of the block assessment of the person with respect to whom search was made under Section 132 of the Act, proceedings under Section 158BD of the Act in respect of any other person can be initiated. Therefore, the provisions of Sections 158BD and 158BC are intertwined. In other words, the jurisdiction to issue notice under Section 158BD of the Act to any person, other than the person with respect to whom search was made, and the consequent time limit prescribed under Section 158BE of the Act in respect of third parties, would certainly be included within the two years period given to the Assessing Officer for completion of block assessment under section 158BE(1) of the Act. When such an inference can be drawn from a bare reading of the provisions which are explicit, it does not lie in the mouth of the Revenue to state that there is no time limit prescribed in the statute for initiation of proceedings under Section 158BD of the Act.

10. The above said view of this Court is fortified by a decision of the Delhi High Court in Commissioner of Income Tax v. Umesh Chandra Gupta, [2014] 362 ITR 1, wherein it is held as under:

"... The period of limitation in respect of the primary individual, i.e., the searched person is controlled by section 158BE(1) which is subject to well defined exceptions under Explanation (1) to that provision. If the Revenue's logic were to prevail, while the authority to carry out assessment in the case of third parties itself stems out of a search conducted of the searched person, the Assessing Officer (of the searched person) would be left free with untrammelled discretion to take up the materials which he deems to be incriminating and forward to the concerned Assessing Officer (of the third party) at his will and pleasure. Surely, such a startling and far-reaching consequence was not intended. The third reason why this court rejects the Revenue is that the dissection of section 158BE in the manner suggested would mean that section 158BE(2) would stand on its own without any period of limitation. Instead of this, the approach of the Tribunal appears to have been to hold the Assessing Officer (of the searched person) who primarily possessed jurisdiction over the subject matter, including the jurisdiction to record a satisfaction that the third party also had to file block assessment and was subject to such notice under section 158BD, to complete the assessment and also to record satisfaction within the basic period of two years. This interpretation, in the opinion of the court, not only furthers the intention of Parliament, but also subserves the larger public interest in that it places reasonable fetters upon the jurisdiction of the concerned Assessing Officer who might otherwise be left with uncontrolled discretion in such matters. Fourthly, section 158BE expressly states that the satisfaction is to be recorded by the Assessing Officer with respect to the need to issue notice to the third party before he hands over possession of books and assets seized or requisitioned, to the Assessing Officer of such third party. This too clearly has a reference to the primary jurisdiction of the Assessing Officer of the searched person

and the consequential limitation placed upon him to complete assessment within the period of two years spelt out under section 158BE."
(emphasis supplied)

For the foregoing reasons, we find no question of law, much less substantial question of law, arising for consideration in these appeals. Accordingly, these appeals are dismissed. No costs. Consequently, M.P.No.1 of 2014 in T.C.(A) No.248 of 2014 and M.P.No.1 of 2014 in T.C.(A) No.652 of 2014 are closed."

8.Following the aforesaid legal proposition laid down in the aforesaid decision, this court is of the opinion that there is no question of law, much less substantial question of law, arising for consideration in this appeal. Hence, the tax case appeal filed by the Revenue stands dismissed. No costs.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

av/rk
To

1. The Income Tax Appellate Tribunal,
Chennai "C" Bench, Chennai.

2. The Commissioner of Income Tax,
Central Circle,
108, M.G. Road,
Chennai - 600 034.

3. The Commissioner of Income - Tax (Appeals),
Salem.

4. The Assistant Commissioner of Income Tax,
Central Circle, Salem.

+1cc to Mr.M.Swaminathan, Advocate Sr.19012

T.C.A No. 445 of 2012

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srg 06/04/2022