

**212 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

ITA-45-2003

Date of decision: 23.08.2022

M/s. Narula Filling Station

...Appellant

V/s

Commissioner of Income Tax, Jammu and Anr.

...Respondents

**CORUM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Akshay Bhan, Sr. Advocate
With Mr. Shantanu Bansal, Advocate for the appellant.

Mr. Vivek Sethi, Learned Senior Standing Counsel
for the respondents.

DEEPAK MANCHANDA J.

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act', for short) has been preferred by the assessee, which was admitted by a bench of this court vide order dated 22.04.2003 and the following substantial questions of law, have been claimed for determination of this court :

- i) Whether, in the facts and circumstances of the case, the impugned notice under Section-158BC is legally valid as such as it was not addressed to any of the partners of the assessee firm and did not mention the status?
- ii) Whether in the case's facts and circumstances, the Ld. ITAT was justified in levying a GP rate of 25.54%?
- iii) Whether in the facts and circumstances of the case, the

orders Annexures P-1, P-2, and P-3 legally sustainable?

The facts, in brief, necessary for adjudication as narrated in the appeal are that the assessee-appellant is a partnership firm consisting of three partners namely Jaspal Singh, Joginder Singh, and Narinder Singh, who were engaged in the business of purchasing and selling petroleum products. The search under section 132 of the Income Tax Act was carried out on 09.10.1997 at the business premises of the appellant, and a notice under Section-158BC dated 16.10.1998 under I.T. Act was also issued to file the return for the block period 01.04.1987 to 09.10.1997 within 30 days. The appellant filed its return of income tax for the block on 22.10.1998, declaring an undisclosed income of Rs. 58,000/- in the status of firm. Thereafter the revenue issued a notice under section 143(2)/142 (1) of the Act dated 18.05.1999 and another notice under section 143(2)/142(1) dated 24.06.1999, which were based upon the ceased material found during the course of search.

During the proceedings, the Assessing Officer, having jurisdiction, by its order dated 22.10.1999 assessed the total income of the assessee-appellant at Rs. 3,40,180/- in the status of firm and calculated tax payable at Rs.2,04,108/- and interest under Section-158BFA (1) alongwith penalty under Section-158BFA (2) of the Act was also levied. The Assessing Officer computed and made certain additions for the assessment year 1995–96 at Rs. 77,100/-, on account of salary paid to employees, at Rs. 66,200/- for the assessment year 1996-97, on account of excess car expenses and at Rs. 1,38,881/- for the assessment year 1997–98 on account of non-availability of cash memos, closing stock and applied GP(Gross Profit) rate of 33.64%.

Aggrieved by the said order passed by the Assessing Officer, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals) (for short 'the CIT(A)') which was partly allowed vide order dated 12.12.2000 giving a total relief of Rs. 76,200/- on account of salary paid to employees, while observing as under:-

“5.3 On a careful consideration of the facts of the case, I find no merit in the submissions made by the Ld. counsel. It is seen that the appellant firm had declared the gross profit rate of 33.65% in the year relevant to the assessment year 1995–96. This rate of profit has been taken into consideration by the assessing officer. The Ld. counsel has referred to the gross profit rate of 15.81% declared by the sister concern namely, M/s. Narula service station in the year under consideration that is Asst year; 1997–98. It is seen that measures Narula service station had surrendered a sum of Rs. 2,38,961/- in addition to the income declared in the return of income. If the surrendered income of Rs. 2,38,9061/- is added to the declared gross profit of Rs. 1,12,229/- (2,38,961+1,12,229= Rs.3,51,190/-), the gross profit rate on the sales of Rs. 70,9867/- would be 49.47%. This fact supported by the gross profit rate of 33.65% declared by the appellant firm in the assistant year 1995–96 justifies the application of the GP rate of 33.64% by the Assessing Officer. Accordingly, the addition made is sustained. The appellant fails.

6.1 The last 2 grounds of appeal are general in nature and do not call for any specific adjudication.

7.1 In the result, the appeal is partly allowed and the appellant would get relief of Rs. 76,200/- (Rs. 47,100+29,100), as indicated above.”

Aggrieved by the said order dated 12.12.2000 passed by the CIT (A), the Appellant-Assessee carried the matter to the Income Tax, Appellate Tribunal(ITAT), which was partly allowed vide impugned order dated 27.08.2002.

Consequentially, the instant appeal under section 260–A of the Act, challenging the orders Annexures P–1, P–2, and P–3 is before us.

Learned counsel for the appellant has argued that the notice under Section-158BC was not addressed to any of the partners of the assessee's firm as provided under section 282 (2) of the Income Tax Act. Moreover, no status had been mentioned in the impugned notice, and the mistakes pointed out in the notice were not of procedural nature but were the irregularities of substance, and therefore, vitiate the assumption of jurisdiction by the Assessing Authority to pass block assessment order. Hence, the impugned notice under Section-158BC was vague, void ab initio, and illegal. Further, the order dated 27.08.2002 was not justified in levying a high GP rate of 25.54% since the Department had not found any sales outside the books of account and submitted that orders Annexure P–1, P–2, and P–3 are legally unsustainable.

No other assertion has been made.

We have heard learned counsel at length and have perused the record and find no force in the contentions raised by him.

In the impugned order dated 27.08.2002 passed by the Income Tax Appellate Tribunal at Annexure P–3, a finding has been returned that after examining the contents of the notice, the assessee cannot say it was prevented or misled to understand the real purpose and directives contained in the notice about the filing of the return as envisaged therein. The search under section 132 was conducted in the case of the assessee in its status of firm which fact was not challenged in any manner and 'such person' within the meaning of sub-section (1) of Section-158BC, who could be called upon to file the return would be the assessee only in its status of the firm.

Secondly, the assessee had filed a return of the prescribed form in its capacity as a firm as such it could not be presumed that the assessee did not understand the implications of the notice or that the notice in question was incapable of conveying what it had actually meant. An omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay to where such liabilities are created by distinct substantive provisions. Any such omission or defect may render the notice irregular depending upon the nature of the provision not complied with but certainly not void or illegal. Now this ground that the impugned notice under Section-158BC was not legally valid, is not available to the assessee, as the assessee attended multiple hearings held by the Assessing Officer and extensively participated in the assessment proceedings. In such circumstances, defect, if any in the notice under Section-158BC(a) was curable under section 292(b), and said plea of invalidity of notice was not raised by the assessee and, now raising the same in the present appeal has no meaning.

Further it has been the specific case of the appellant that ITAT was not justified in levying a GP(Gross Profit) rate of 25.54%,we find that the assessing officer did not give any basis for applying a GP rate of 33.64% and after perusing the chart submitted by the appellant itself reproduced in (para 9.3) of the ITAT order for the various assessment years, the GP rate declared by the assessee during the assessment year 1997–98 was at 25.54%. Accordingly, the ITAT directed the assessing officer to apply a GP rate of 25.54% as declared by the appellant for the assessment year 1997–98 because the period involved i.e period from 01.04.1987 to 09.10.1997 is subsequent to the assessment year 1997–98 that is immediately preceding

assessment year. Further, the assessing officer did not discuss in the assessment order how the GP rate of 33.64% was arrived at but CIT (A) while confirming the action of the Assessing Officer as mentioned in the impugned order that the GP rate declared by the assessee for the assessment years 1995 – 1996 was 33.65% so accordingly the ITAT observed that if the comparison has to be made that should be made for the immediately preceding year and not the year which was two years earlier, accordingly the order of the CIT (A) was set aside and the assessing officer was directed to apply the GP rate of 25.54% on the stock found short amounting to Rs. 3,64,163/-.

Given the preceding analysis, there is no merit in the present appeal and no substantial question of law arises for our determination in the facts of the present case.

We find that the order dated 27.08.2002 passed by the Income Tax Appellate Tribunal is a well reasoned order, which does not require any interference by this court.

Hence, the instant appeal, fails and is hereby dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

Whether speaking reasoned
Whether reportable

Yes/No
Yes/No

23.08.2022
Ajay Goswami