IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.239 of 2011

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Chand Bihari Agrawal, S/o Late Shankarlal Ji Agrawal, 802B, White House, Budh Marg, P.S. Kotwali, P.O.- G.P.O., Patna-800 001, Bihar.

... ... Assessee/Appellant/s

Versus

1. Commissioner Of Income Tax, Central, Patna.
2. Assistant Commissioner of Income-Tax, Central Circle-2, Patna

... ... Assessing Officer/Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Rastogi, Senior Advocate
Ms. Smriti Singh, Advocate

For the Respondent/s : Mrs. Arhana Sinha, Sr. S.C., Income Tax.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-07-2023

1. The questions of law arising for consideration from the order of the Tribunal are re-framed as follows:

(i) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the return filed by the appellant on 22.11.2004 is beyond the time limit prescribed under Section 158BC of the Income Tax Act and hence non-est; when there is no such time limit prescribed therein?

(ii) Whether in the facts and circumstances of the case, the Tribunal was correct in distinguishing the decision of the Hon'ble Supreme Court in ***Assistant Commissioner of Income-Tax v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]*** *and holding that since the return was not filed within the prescribed time, the notice under Section 143 (2) of the Income Tax Act is not required to be issued to complete the assessment under Section 158BC of the Income Tax Act?*

(iii) *Whether on the facts and in the circumstances of the case, the Tribunal was correct in holding that lack of notice under Section 143(2) of the Income Tax Act; which is very evident in the subject case, stands cured by the provisions of Section 292BB of the Income Tax Act; which, in any event stood inserted after the block assessment under Section 158BC of the Income Tax Act was completed?*

2. On the facts leading to the order of the Tribunal it has to be noticed that a search and seizure was conducted in the residential-cum-business premises of the appellant on 27.02.2003. On the basis of the alleged recovery made, a notice under Section 158BC of the Income Tax Act (for brevity, 'the Act') was issued on 09/10.12.2003. The appellant was directed to file a return within a period of one month. A further notice under Section 142 (1) of the Act was issued on 09.11.2004 wherein again the assessee was required to file a return in response to the notice issued under Section 158BC issued earlier. The appellant filed a return on 22.11.2004 declaring undisclosed income of Rs.2,25,000/-. An order was passed under Section 158BC of the Act determining undisclosed income of Rs.7,71,955/-.

3. The assessment was completed without any notice under section 143(2) of the Act, but noticing in the order, that the assessee had ultimately filed the return of income in the

prescribed form on 22.11.2004. The assessee took up the matter in first appeal before the first appellate authority which turned unsuccessful as is indicated from Annexure-2. A further appeal was taken to the Tribunal which also stood rejected. The Tribunal found that there is an outer limit of 45 days prescribed for a notice to the return to be filed under Section 158BC and any return filed after the said period would be *non-est*, thus enabling the assessing officer to proceed for assessment without any further notice under Section 143(2). The Tribunal also found that the absence of notice, if at all relevant would stand cured going by the provisions of Section 292BB, which though brought into the statute later to the assessment order, was merely a procedural clarification. It was further held that Section 292BB gave statutory effect to the principle of waiver and acquiescence; which would apply since the assessee appeared and co-operated in the enquiry relating to the assessment without demur.

4. Hotel Blue Moon (supra) raised a question whether the service of notice on the assessee under Section 143(2) of the Act within the prescribed period of time is a pre-requisite to frame the block assessment under Chapter XIV-B of the Act. Chapter XIV-B was argued to be providing a special procedure for search cases and was a complete code in itself dealing with both the substantive as well as procedural aspects of such cases; which distinguishes it from the procedure for regular assessment under Chapter XIV. After noticing the various provisions under Chapter XIV-B, the Hon'ble Supreme Court emphasized the prescription in Section 158BC(a)(ii); in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, for the purpose of assessment, mandating a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, a return in the prescribed form and verified in the same manner as provided under Section 142(1)(i). In addition, clause (b) of Section 158BC requires that the procedure for determination of undisclosed income for the block period shall be in the manner laid down in Section 158BB and the provisions of Sections 142, 143 (2) and (3), 144 and 145 shall so far as may be, apply. A circular of the Central Board of Direct Taxes bearing No.717 dated 14.08.1995 ([1995] 215 ITR (St.) 70, 98) was also noticed. Clause (e) of the Circular delineated the procedure for making block assessment; which mandated that the Assessing Officer shall serve a notice on such person requiring him to furnish within such time, not being less than fifteen days, as may be specified in the notice, a return in the prescribed form and verified and directs further procedure to determine the undisclosed income of the block period to be under the provisions of Sections 142, 143(2) & (3) and 144. Hence, though a block assessment under Chapter XIV-B, the procedure for regular assessment under Chapter XIV has to be followed. It was clarified that in the case of default in filing the return and not complying with the notice under Section 143(2)/142, the Assessing Officer is authorized to complete the assessment *ex parte* under Section 144. Clause (b) of Section 158BC excludes the application of Section 143(1), which provides for accepting the return as provided in Section 143 (1) (a). Section 143(2) becomes necessary only where it is required to check the return filed and in cases where block return conforms to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143 (2). However, if an assessment is to be completed under Section 143(3) read with Section 158BC, notice under Section 143(2) should be issued within the time provided and any omission on the part of the Assessing Officer to issue such a notice under Section 143(2) would be a procedural irregularity;

which is not possible to be dispensed with and also not curable. Though the block assessment under Chapter XIV-B of the Act is a complete code in itself, the procedure under Chapter XIV for regular assessment insofar as it is applicable to block assessments stands incorporated under clause (b) of Section 158BC; was the finding. The Circular referred to earlier also clarifies the requirement of law in respect of service of notice; under Section 142, 143(2) & (3) of the Act. It was declared that "*even for the purpose of Chapter XIV-B of the Act, for the determination of undisclosed income for a block period under the provisions of section 158BC, the provisions of section 142 and sub-sections (2) and (3) of section 143 are applicable and no assessment could be made without issuing notice under section 143(2) of the Act.*"

5. It was also held that the words "*so far as may be, apply"* only mean that the specific provisions mentioned therein applies with all its force and not the other provisions of Chapter XIV, dealing with regular assessment. The said declaration of law was followed in **Commissioner of Income Tax v. Laxman Das Khandelwal, [(2019) 417 ITR 325 (SC)]**; and **Kiran Prakashan v. Department of Income-Tax, [(2017) 391 ITR 31 (Pat)]**.

6. On facts it has to be noticed that a notice of hearing under Section 142(1) was issued on 09.11.2004 requiring the assessee to file a return in response to Section 158BC and the assessee filed the return on 22.11.2004 declaring undisclosed income of Rs.2,25,000/- and an order under Section 158BC was passed on 24.02.2005 determining the undisclosed income of Rs.7,71,555/-. It is the admitted case of the parties that a return was filed, which was termed to be delayed on the ground that notice under Section 158BC of the Act was issued on 10.12.2003 requiring the assessee to file a block return within a month of service of the said notice. The ground on which the appeal was rejected by the Tribunal was also that the block return was not filed by the assessee within the statutory period laid down under Section 158BC.

7. We have to examine first whether there is any statutory period provided under Section 158BC and we extract Section 158BC (a)(i) & (ii) of the Act as under:-

> "**158BC. Procedure for block assessment.**— Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,—
>
> (a) the Assessing Officer shall—
>
> (i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such

> time not being less than fifteen days;
>
> (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,
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> as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

8. Notice under clause (a) (ii) of Section 158BC, as it stands, provides the assessee with a minimum period of fifteen days to file a return and also mandates that the authority shall not provide for a period in excess of forty-five days. It cannot, at all be said that there is a limitation provided by the above provision to file a return within 45 days. It incorporates the principle of a reasonable opportunity and also the need for expeditious conclusion of proceedings, with respect to the undisclosed income. Thus, ensuring least prejudice to assessee and the Revenue. The provision mandates that in a notice issued under Section 158 BC, the assessee shall be provided a minimum period of fifteen days; which is a reasonable period for the assessee to file a return or a maximum period of forty-five days; after which the Assessing Officer can proceed with the assessment.

9. In the present case, a notice, as we see from the

orders on record, provides a time of thirty days to file a return which is in accordance with the above quoted provisions. However, since there is no limitation for filing a return, the assessee cannot be faulted if a return is filed at any time before the completion of assessment. The Assessing Officer also, after the time provided in the notice, if it is within 15 to 45 days can proceed further if no return is filed. In the present case, a subsequent notice was issued under Section 142(1), which was responded with a return filed, within almost twelve days. The assessment was completed much after, but without issuing a notice under Section 143(2). This is not a case where there was no return filed, in which event it was also held by the High Court of Gujarat in **CIT v Devendranath G. Chaturvedi,** [(**2017) 249 Taxman 0049**], that a notice is required under Section 143(2). It was held that in the circumstances when there was no return filed pursuant to a notice under Section 142(1), there is a requirement for a further notice under Section 143(2), which provision has been made applicable to Section 158BC.

10. We answer the first two questions of law against the Revenue and in favour of the assessee. The assessment completed under Section 158BC without a notice under Section 143(2) cannot be sustained and the same has to be set aside.

However, we notice that the undisclosed income, as disclosed by the assessee, remains on record and is deemed to have been accepted by the Assessing Officer, since it has been held in **Hotel Blue Moon** (supra) that though Section 143(1) has not been made applicable to assessment under Section 158BC, a notice under Section 143(2) becomes necessary only when there is a need to check the return filed and not where the block return filed conforms to the undisclosed income inferred by the authorities. Though the facts herein, may not necessarily lead to an inference that the block return conforms with what was contemplated by the authorities; the absence of notice deems the assessment under Section 158BC to have been completed with the return filed.

11. So far as the third question of law, we need not labour much, since Section 292BB only speaks of a notice being deemed to be valid in certain circumstances, when the assessee has appeared in any proceeding and cooperated in any enquiry relating to assessment or re-assessment. It does not take in the circumstances of a complete absence of notice; which does not stand cured under Section 292BB, especially in the teeth of such notice being found to be mandatory under the Act. We need to only notice the decision of the Hon'ble Supreme Court in

Laxman Das Khandelwal (supra**)** to find the last question also in favour of the assessee and against the Revenue.

12. The questions of law framed having been answered against the Revenue and in favour of the assessee, the appeal stands allowed. The assessment order would stand set aside. The assessment is deemed to be completed on the basis of the block return filed by the assessee, in response to the notice under Section 142(1) of the Act.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	
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