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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITA/60/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS
M/S. MILIA TRACON (P) LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 3rd July, 2024

Appearance :
Smt. Smita Das De, Adv.
.. . for the appellant.

1. Heard Smt. Smita Das De, learned senior standing counsel for the appellant/revenue. None has appeared for the respondent/assessee.

2. This appeal was admitted by this Court by order dated 2.8.2022 on the following substantial question of law :

"*i) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in law in reversing the order of the CIT(A) & A.O., without looking into the facts that the satisfaction note for initiating proceedings under Section 158BD of the Income Tax Act, against the assessee was duly recorded* *by the A.O. of UIC Group and as such the said order suffers from perversity?*

3. Briefly stated facts of the present case are that a search in the premises of UIC Group was conducted by the income tax department on 7.5.2022 in which certain share certificates issued in the name of the respondent/assessee were found. There is nothing on record to show that any action by the assessing officer of the searched person was taken or any adverse inference was drawn by the assessing officer of the searched person against the respondent/assessee. However, the assessing officer of the respondent/assessee passed an assessment order under Section 158BD of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') dated 30.11.2006. Against the aforesaid assessment order, the respondent/assessee filed an appeal before the CIT(Appeals), Central -3, Kolkata which was dismissed on the point of challenge to the initiation of proceedings under Section 158BD. However, the appeal was allowed on ground nos.2 and 3 with respect to addition of a sum of Rs.1,39,50,000/-.

4. Aggrieved with the order of the CIT(Appeals), the respondent/assessee filed IT(SS)A No.68/Kol/2013 raising the question of validity of initiation of proceedings under Section 158BD of the Act, 1961 without any satisfaction note of the assessing officer of the searched person. The Income

Tax Appellate Tribunal Kolkata Bench 'A', Kolkata allowed the appeal of the respondent/assessee by the impugned order dated 27.4.2016.

5. Aggrieved with the order of the ITAT, the revenue has filed the present appeal.

6. Perusal of the assessment order dated 30.11.2006 passed under Section 158BD/144 of the Act, 1961 for the block period of 1.4.1996 to 7.5.2022 shows that the search and seizure operation was conducted in the UIC Group of cases on 7.5.2002. A notice under Section 158BD was issued by the assessing officer of the respondent/assessee which was served upon the respondent/assessee on 2.7.2004. In response, the respondent/assessee submitted a letter dated 20.1.2006 stating that he has no undisclosed income. On 6.3.2006 the assessing officer of the respondent/assessee issued summons to four persons under Section 131 of the Act, 1961. On 10.3.2006 the inspector submitted a report stating that he had visited the preemies of the four persons at their given addresses. Thus, the summons issued to four persons under Section 131, namely, Shankar Lal Godh, Surendra Kumar Hirawat, Sunil Kumar Jain and Rajendra Kumar Surana could not be served by the inspector who submitted a report to the assessing officer of the respondent/assessee. Thereafter, the assessing officer of the respondent/assessee communicated

reasons for initiation of proceedings under Section 158BD of the Act, 1961 to the respondent/assessee vide letter dated 4.5.2006. A notice under Section 142(1) of the Act, 1961 dated 22.8.2006 was issued which was served upon the respondent/assessee on 27.8.2006. In response, the respondent/assessee submitted block return for the period 1.4.1996 to 7.5.2002 on 2.11.2006 and appeared through his authorized representative before his assessing officer on 8.11.2006 and submitted two written representations contending that the proceedings under Section 158BD has been wrongly initiated and it deserves to be dropped. Thereafter, the assessing officer passed the assessment order dated 30.11.2006.

7. The satisfaction note reproduced in paragraph 3 of the assessment order refers to the issuance of summons under Section 131 of the Act which could not be served as per report of the inspector. The summons were admittedly issued by the Assessing Officer of the respondent/assessee on 6.3.2006 and the report of the inspector is dated 10.3.2006. Thus, the satisfaction note which has been reproduced by the assessing officer of the respondent/assessee in paragraph 3 of the assessment order is his note and not of the Assessing Officer of the searched person. He attempted to mislead by suppressing the dates of issuance of summon so as to give an

impression as if it is a satisfaction note of the Assessing Officer of the searched person so as to satisfy the provisions of Section 158BD of the Act, 1961. The CIT(Appeals) misguided itself to assume as if it was a satisfaction note recorded by the assessing officer of the searched person. The ITAT examined the entire matter and recorded findings of fact in paragraphs 5.1 and 7 of the impugned order that **"In the instant case satisfaction was to be recorded by the assessing officer of the UIC Group where the search was conducted but in the instant case in hand satisfaction has been recorded by the assessing officer having jurisdiction over the assessee"**.

8. It has also been found by the ITAT that the procedure as prescribed in Section 158BD i.e. for handing over of documents by the Assessing Officer of the searched person to the Assessing Officer of the respondent/assessee, were also not followed.

9. Under Section 158BD satisfaction has to be recorded by the assessing officer of the searched person and then to send it to the Assessing Officer of such other person. The facts of the present case clearly based on documentary evidences clearly reveals that the assessing officer of the searched person has neither recorded any satisfaction as required under Section 158BD nor handed over to the assessing officer

of the respondent/assessee seized documents etc. to enable the assessing officer of the respondent/assessee to proceed under Section 158BC. Under the circumstances, the initiation of proceedings by the assessing officer of the respondent/assessee under Section 158BD of the Act, 1961 was without jurisdiction and unauthorized. The finding recorded by the ITAT in the impugned order with regard to the satisfaction note as aforementioned, does not suffer from any perversity. The view being taken by us is also supported by the law laid down by Hon'ble Supreme Court in Manish Maheshwari Vs. Asst. Commissioner of Income-Tax And Another, [2007] 289 ITR 341 (SC).

10. For all the reasons afore-stated, we do not find any illegality in the impugned order of the ITAT. The appeal lacks merit and is, therefore, dismissed. The substantial question of law is answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(AJAY KUMAR GUPTA, J.)

S. Das /