



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on : 12.09.2024
Date of Pronouncement : 14.11.2024

1. ITA No. 51 of 2007 (O&M)

Mange Ram Mittal		... Appellant
	Versus	
Commissioner of Income Tax, Hisar		...Respondent

2. ITA No. 243 of 2008 (O&M)

Commissioner of Income-Tax, Hisar		... Appellant
	Versus	
Mange Ram Mittal		...Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Shantanu Bansal, Dr. Deepak Jindal,
Mr. Yugank Goyal, Advocates, for the appellant
in ITA No. 51 of 2007 and for the respondent
in ITA No. 243 of 2008.

Mr. Sanay Bansal, Senior Advocate assisted by
Mr. Gauri Neo Rampal, Senior Standing counsel for the
Appellant in ITA No. 243 of 2008 and for the respondent
In ITA No. 51 of 2007.

SANJEEV PRAKASH SHARMA, J.

These two appeals are preferred against the order dated 18.08.2006
passed by the Special Bench-B, comprising three Members of the Income
Tax Appellate Tribunal, New Delhi.

2. Brief facts of the case are that a search was conducted on
28.06.1996 at the residential premises of the assessee and undisclosed
income was found. The Assistant Commissioner of Income Tax, Hisar
Circle, Hisar, passed the additional assessment order under Section 132(1) of



the Income Tax Act, 1961 (for short, 'the Act') on 27.06.1997. The appeal filed by the assessee before the Income Tax Appellate Tribunal was referred to a three Judges Bench of the Tribunal. The learned Tribunal partly allowed the appeal on 18.08.2006 and many of the additions made by the assessing officer were not accepted. It is against that order that the Revenue and the Assessee are in appeals before this Court.

3. So far as ITA No. 51 of 2007 preferred by Mr. Mange Ram Mittal is concerned, we find the points raised by learned counsel for the appellant therein are that the assessment was made only on the basis of material uncovered during search. The Parliament had enacted a separate Chapter-XIV-B of the Act laying down the special procedure for assessment of search cases which is a self contained code. The amount to be subject to tax under the said chapter should have direct nexus with the material discovered during the course of such search operations alone. The assessment should be restricted only to the evidence found during the course of search. The words are relatable to such evidence, added with retrospective effect to Section 158-BB of the Act from 01.07.1995, and re-enforced with the legal position that was not relatable to the evidence found as a result of search ought not be included in the computation of undisclosed income. We find that the Tribunal has, therefore, examined the meaning and scope of phraseology "*such other materials or information as are available with the Assessing Officer and relatable to such evidence*".

4. For the purpose of considering the aforesaid aspect, it would be apposite to quote Section 158-BB (1) of the Act as it stood on 01.07.1995, which is as under:-

Computation of undisclosed income of the block period.



158BB. (1) *The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, "[in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence), as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined,-*

(a) where assessments under section 143 or section 144 or section 147 have been concluded "[prior to the date of commencement of the search or the date of requisition], on the basis of such assessments;

(b) where returns of income have been filed under section 139 Thor in response to a notice issued under subsection (1) of section 142 or section 148] but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

(c) where the due date for filing a return of income has expired, but no return of income has been filed,-

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not



chargeable to tax for any previous year falling in the block period;

- (ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling un under clause (c);]*
- (d) where the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 has not expired, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;*
- (e) where any order of settlement has been made under sub-section (4) of section 245D, on the basis of such order;*
- (f) where an assessment of undisclosed income had been made earlier under clause (c) of section 158BC, on the basis of such assessment.*

Explanation. For the purposes of determination of undisclosed income,-

- (a) the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of "[this Act] without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32:*
- [Provided that in computing deductions under Chapter VI-A for the purposes of the said aggregation, effect shall be given to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;]*



(b) of a firm, returned income and total income assessed for each of the previous years falling within the block period shall be the income determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called "[to any partner not being a working partner]:

Provided that undisclosed income of the firm so determined shall not be chargeable to tax in the hands of the partners, whether on allocation or on account of enhancement;]

(c) assessment under section 143 includes determination of income under sub-section (1) or sub-section (1B) of section 143."

5. We find that the words which have been added are rightly interpreted by the Tribunal to include two types of material which may be considered by the assessing officer. First, the material found during search and relatable to such evidence and the second part is such other materials or information as are available with the Assessing Officer. Thus, apart from the evidence which may be collected and noticed during search, if the assessing officer has any other information and such other material with him, which is relatable to such evidence, the same can also be looked into for the purpose. Therefore, an assessment under Section 158-BC of the Act is required to be made both on the basis of result of search as well as post search enquiry and other proceedings which are in the nature of consequences of the evidence found as a result of search. The Tribunal has, therefore, succinctly and vividly observed as under:-

"Thus, at every point where any money, bullion, jewellery or other valuable articles or thing is found during the course of search the question is required to be answered, does it constitute what has not been or would not have been



disclosed for the purposes of the Income- tax Act. There is not much problem in arriving at what has not been disclosed in relation to the returns of income that have already been filed as on the date of the search in question. If any money, bullion, jewellery or other valuable article or thing or any income is required to be disclosed for the purposes of Income-tax Act in any return of income but not disclosed, they would constitute basis for "undisclosed income". More difficulty arises in cases where the returns of income have not been filed but the due date for filing the return of income has not expired or where the return of income itself has not fallen due. In such cases it is not a question is not of what has not been disclosed but of what would not have been disclosed for the purposes of the Act. Answer to that question would depend on the facts and circumstances of each case."

6. We, therefore, reject the submissions made by learned counsel for the assessee.

7. The next submission of learned counsel for the assessee that the affidavit of the employees have not been considered. It is argued that the assessee was not provided sufficient opportunity and fair hearing has not been provided to him.

8. We find that plethora of other material and partnership-deeds were found at the residence of the assessee during the search and written documents containing names and father's name of persons who are mentioned as partners in the partnership-deed relating to M/s Mittal and Company, M/s Shanker Lal & Company and original challans of license fee running into crores paid to Excise Department were also found. Large number of documents relating to correspondence with Excise Department, police cases, court cases relating to the firms carrying out liquor business,



which were not in the name of the assessee, have also been found from his premises.

9. Copies of number of maps of godowns and vends, which were operated by various companies were also recovered from his premises. There were 7+9+7 truck loads recovered from three different places. Stock position of various liquor vends was also found. During the courses of search, statements of number of persons were also recorded, who stated that they were salesmen working in those vends. The assessee was their employer and real owner of the vends. Merely because the license was issued by the Excise Department for various liquor vends, income from which the learned assessing officer has found to be undisclosed income of the assessee cannot absolve the concerned assessee. We agree with the Tribunal that the assessing officer is not flattered by the technical rule of evidence and if he reaches to the conclusion that the vends are all being owned and managed by the concerned person singularly through employees, merely because the licenses are not in the name of the concerned assessee, it would not make any difference to reach to the conclusion that there is undisclosed income.

10. We also find that there is cross-examination of almost all persons, whose statements were relied upon, was afforded to the assessee and after the cross-examination was conducted when nothing contrary to the earlier statements was emerged and in some cases the assessee did not even come forward to cross-examine, the inference could be drawn. There was also a document of rent agreement for premises taken on record in the name of one M/s Chander Bhan Om Parkarsh and Company, which was signed by the assessee as a contractor. Thus, the Tribunal has found that there was undisclosed income of the assessee which he was earning through ghost and



benami companies, which were running on the properties taken on rent by him. The assessment order was found to have been correctly re-assessed by the three Judges Bench of the Tribunal.

11. During the course of arguments, learned counsel for the appellant- Mange Ram Mittal does not press the issue relating to constitution of special bench of three Judges by the President of ITAT.

12. For the reasons recorded above, the appeal filed by the assessee is dismissed.

ITA No. 243 of 2008

13. ITA No. 243 of 2008 has been filed by the Commissioner of Income-Tax, Hisar, against the order of the ITAT dated 18.08.2006.

14. We find that the appeal filed by the Revenue also deserves to fail as we have already noticed that special bench of three Judges of the ITAT has examined the case on facts and there is no substantial question of law which emanates from the order passed by the Tribunal. Pure findings of fact are immune from challenge in appeals under Section 260A of the Income Tax Act as has been held by Hon'ble the Supreme Court in **Mangalore Ganesh Beedi Works vs Commissioner of Income-Tax, Mysore** (2015) 378 ITR 640. Therefore, the appeal filed by the Revenue is also dismissed.

15. Accordingly, both appeals are dismissed.

16. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

14.11.2024
vs

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No