

## Commissioner of Income Tax Vs Kamala Devi Jain

**Court:** Gauhati High Court

**Date of Decision:** Aug. 24, 2010

**Acts Referred:** Income Tax Act, 1961 " Section 158BC, 260A

**Citation:** (2010) 6 GLR 5 : (2011) 330 ITR 153

**Hon'ble Judges:** Ranjan Gogoi, J; Arun Chandra Upadhyay, J

**Bench:** Division Bench

**Advocate:** U. Bhuyan, for the Appellant; J.C. Gaur, for the Respondent

**Final Decision:** Allowed

### Judgement

Ranjan Gogoi, J.

This appeal, by the Revenue, u/s 260A of the Income Tax Act, 1961, ("the Act"), is against the order dated 24.8.2007

passed by the Income Tax Appellate Tribunal, Guwahati Bench, Guwahati in ITA No. 55(Gau.)/2007. The Appellant is aggrieved by the findings

recorded in the aforesaid order of the learned Tribunal to the effect that ""the excess income disclosed in a particular assessment year falling in the

block assessment year can be available to the Assessee for set-off of undisclosed income in subsequent year of the same block period"". On the

basis of the aforesaid findings, consequential directions have been issued by the learned Tribunal to the Assessing Officer to allow set-off in favour

of the Assessee.

2. The facts that will be required to be noticed for the purpose of adjudication of the substantial questions of law framed in the present appeal may

be briefly noticed hereunder.

3. A search and seizure operation was conducted in the business and residential premises of the Assessee on 13.3.2003. Search and seizure

operations were also conducted in the locker of Andhra Bank, A.T. Road Branch, Guwahati on 24.3.2003 which was in the, joint names of the

Assessee and her son one Shri Ajoy Kumar Jain. Thereafter, notice u/s 158BC of the Act was issued and served on the Assessee on 13.8.2004.

The Assessee filed return of income for the block period 1.4.1996 to 13.3.2004 disclosing undisclosed income in the following manner:

4. The assessment of the block period was completed by the Assessing Officer u/s 158BC of the Act by order dated 13.3.2005. By the aforesaid

order, the Assessing Officer determined undisclosed income for the block period as hereunder:

A.Y. Total income determined in the Income in regular Undisclosed income

block assessment as per para 22.1 return (II-III)

I II III IV

1997-98 96291 96291 Nil

1998-99 112216 112216 Nil

1999-00 89344 89344 Nil

2000-01 88052 88052 Nil

2001-02 816582 252915 563667

2002-03 2019702 289844 1729858

2003-04 4296747 1851368 2445379

Total 4738904.

undisclosed

income

5. Aggrieved, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals). By order dated 11.12.2006, the learned

Commissioner allowed the appeal filed by the Assessee and set aside certain additions made by the Assessing Officer in the undisclosed income of

the Assessee for the block period. Insofar as the claim of set-off is concerned, the appellate authority took the view that ""there cannot be set-off of

one year"s undisclosed income shown in the block return with any other year"".

6. In respect of deletion of certain additions made by the Assessing Officer, the Revenue filed an appeal before the learned Tribunal. Insofar as the

finding with regard to set-off is concerned, the Assessee filed cross-objection contending that for the assessment years 2001-02; 2002-03 and

2003-04, the undisclosed income or part thereof, as disclosed by the Assessee, not being linked either with the undisclosed investment or

unexplained expenditure u/s 158B(b) of the Act, such amount should have been set-off against the undisclosed income of subsequent years falling

within the same block period. The learned Tribunal dismissed the appeal filed by the Revenue by holding the deletions made by the learned

Commissioner to be justified in law. Insofar as the cross-objection is concerned, the same was allowed by holding that ""the excess income

disclosed in a particular assessment year falling in the block assessment year can be available to the Assessee for set-off of undisclosed income in

subsequent year of the same block period"".

7. Aggrieved this appeal has been filed by the Revenue wherein the following substantial question of law had been framed by order dated

2.4.2008:

Whether on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in directing the Assessing Officer to allow

set-off of excess income disclosed in a particular year falling within the block period against the undisclosed income of subsequent year falling

within the same block period?

8. We have heard Mr. U. Bhuyan, learned Counsel for the Appellant and Shri J.C. Gaur, learned Counsel for the Respondent Assessee. We have

perused the orders of the primary authority as well as the first appellate authority. The impugned order passed by the learned Tribunal has also been

duly perused by us.

9. The plea raised by the Assessee with regard to the claim of set off is that certain amounts declared as undisclosed income by the Assessee were

not related to any undisclosed investment or unexplained expenditure by the Assessing Officer. Therefore, according to the Assessee, such

amount(s) could not have been added to the undisclosed income by the Assessing Officer and the same were liable to be set off against the

undisclosed income of subsequent years within the block period.

10. On the face of it, the contention of the Assessee appears to be untenable. In the present case, undisclosed income of the Assessee was found

to be more than what had been voluntarily declared in the return filed by the Assessee for the block period. Consequently, additions were made to

the undisclosed income declared by the Assessee in the return filed for the block period. If the undisclosed income determined by the Assessing

Officer exceeds the declared undisclosed income of the Assessee, there can be no set off of the declared undisclosed income as the same would

become a part of the undisclosed income determined by the Assessing Officer. Set off presupposes existence of a surplus, i.e., declared

undisclosed income is more than what has been determined by the Assessing Officer. Such a situation cannot be visualized under the Act as the

undisclosed income determined by the Assessing Officer cannot be less than what has been voluntarily declared by the Assessee. In the aforesaid

circumstances, the findings recorded by the learned Tribunal and the consequential direction issued, as noticed by us, are clearly erroneous. The

said directions are, therefore, set aside and the appeal of the Revenue is allowed.