

CIT Vs Bimbis Creams and Bakes

Court: High Court Of Kerala

Date of Decision: March 29, 2012

Acts Referred: Income Tax Act, 1961 – Section 158BC, 158BD, 158BE, 158BE(1), 158BE(2)

Hon'ble Judges: K. Vinod Chandran, J; C.N. Ramachandran Nair, J

Bench: Division Bench

Advocate: P.K.R. Menon and Jose Joseph, for the Appellant; T.M. Sreedharan with V.P. Narayanan, Smt. Bobby M. Sekhar and Smt. Nisha John, for the Respondent

Judgement

1. Both the appeals filed by the Revenue are against common order issued by the Tribunal cancelling a block assessment completed against the

respondent u/s 158BD of the IT Act (hereinafter called "the Act") on the ground that the AO before issuing notice for assessment did not record

reasons and that the assessment is also barred by limitation. We have heard senior counsel Sri P.K.R. Menon appearing for the Revenue and

senior counsel Sri T.M. Sreedharan appearing for the respondent. First question to be considered is whether the Tribunal was justified in cancelling

the block assessment confirmed in first appeal for the reason that AO has not recorded reasons for issuance of notice for assessment u/s 158BD of

the IT Act (hereinafter called "the Act"). We notice that the Tribunal held in favour of the assessee following their order in appeal in the case of

Panchajanyam Management Agencies wherein also similar issue arose for consideration. However, senior counsel appearing for the Revenue

referred to the judgment of this Court in Commissioner of Income Tax Vs. Panchajanyam Management Agencies and Services, wherein this Court

reversing the order of the Tribunal held that recording of reasons u/s 158BD is only for transferring file from one officer to another officer which

happens when the officer searching an assessee does not have jurisdiction over the other assessee in respect of whose undisclosed income,

particulars and evidence are found in the course of search justifying assessment u/s 158BD of the Act. Just going by our decision wherein we

reversed the Tribunal's order relied on by them in issuing the impugned order we should allow this appeal on this ground by vacating the order of

the Tribunal. However, for the sake of completeness, we proceed to consider the appeals with reference to the facts of these cases also.

2. Based on information received about unaccounted income earned by a group of concerns basically controlled by one Sri Abdul Gafoor, the

Department conducted search on 10-3-1999 by issuing separate search warrants in the name of Bimbis Group of concerns by specifically

authorising search in Bimbis Fast Food, Bimbis Ice Cream, Khayber Hayath (Sadya) and Lala Fast Food. Under separate search warrant the

residential premises of Sri Abdul Gafoor, the person controlling the group of business concerns, was also searched on the very same date.

However, it may be noticed that no search warrant was issued in the name of the respondent-assessee which is a partnership firm wherein 95 per

cent of the shares were held by Mrs. Souda Gafoor, wife of Sri Abdul Gafoor, who is the real owner of the entire business group. One Sri P.K.

Moideen, the only other partner, has only 5 per cent shares in the respondent-firm. No search warrant was issued in the name of the respondent or

in the name of both the partners namely, Mrs. Souda Gafoor and Sri P.K. Moideen. However, since evidence regarding business and earning of

unaccounted income by the respondent-firm were found in the course of search in the residential and business premises of Sri Abdul Gafoor, the

husband of Mrs. Souda Gafoor holding 95 per cent of the shares of the respondent-firm, notice was issued u/s 158BD against the respondent-firm

based on materials gathered in search in the business and residential premises of the respondent-firms managing partners husband. It so happened

that since the business premises and the residence of Sri Abdul Gafoor and his wife Mrs. Souda Gafoor who is the managing partner of the

respondent-assessee were one and the same, the AO who has jurisdiction to assess the searched assessee was the same officer who has

jurisdiction to assess the respondent-firm as well. So much so, there was no scope for transfer of file from one AO having jurisdiction over the

searched assessee to another AO for assessment u/s 158BD as both the searched assessee and the assessee in respect of whom details of

suppressed income were received, were assessable by the same AO. Under our orders, the CIT has filed a detailed statement explaining the

reason why there was no transfer of file and the assessments both u/s 158BC against the searched assessee and u/s 158BD against the

respondent were completed by the same officer having jurisdiction over both the assessee falling within same Circle. Going by our judgment,

when the same AO has jurisdiction to assess the searched assessee u/s 158BC and the other assessee u/s 158BD whose undisclosed income is

also found in the course of such search, there is no necessity for the AO to record satisfaction as required under s. 158BD because there is no

transfer of file from one officer to another. Following our above judgment, we allow the appeal on this issue by setting aside the order of the

Tribunal and uphold the assessment u/s 158BD.

3. The next question to be considered is limitation claimed by the assessee and accepted by the Tribunal. Counsel for the assessee relied on

decision of the Punjab & Haryana High Court in Commissioner of Income Tax Vs. Parveen Fabrics (P.) Ltd., wherein the Punjab & Haryana High

Court held that simultaneous with section 158BC assessment initiated against the searched assessee, the Department should proceed against the

other assessee for assessment u/s 158BD. We are unable to accept this contention because the limitation provided u/s 158BE is for completion of

assessment both u/s 158BC and u/s 158BD. While section 158BE (1) deals with limitation for completion of assessment u/s 158BC, section

158BE(2) provides for limitation for completion of assessment u/s 158BD. Under clause (b) of section 158BE(2) time for completion of

assessment u/s 158BC is two years from the end of the month in which notice under this chapter was served on the person other than the searched

assessee. What is clear from section 158BD is that when a proceeding for assessment is initiated against any person other than the searched

assessee based on materials received during search, such assessment also has to be completed under Chapter XTV-B by issuing notice u/s

158BC. In this case admittedly the assessments of the searched assessee u/s 158BC were completed within time and though the assessments

were cancelled by the Tribunal on technical grounds, we have vide judgment in IT Appeal No. 1201 of 2009 and connected cases dated 10-1-

2012 allowed the Departmental appeals and restored the appeal back to the Tribunal to decide the matter on merit. The assessee in those cases

have no dispute that the assessments of the searched assessee completed u/s 158BC were barred by limitation. However, limitation is raised only

by the respondent-assessee which also forms part of group of concerns in as much as 95 per cent of the shares of the respondent-firm are held by

none other than the wife of the person controlling the business of all concerns within the group, on the ground that there is delay in initiation of

proceedings u/s 158BD.

4. We notice that the assessment of the searched assessee in the same group were completed on 29-3-2001 which was admittedly within the

period of limitation prescribed. However, only after completion of assessment of the said assessee, notice was issued u/s 158BD on the

respondent-assessee on 29-5-2001. The assessment was completed on the respondent-assessee on 29-5-2001 which is within two years from

the end of the month in which notice u/s 158BD was issued to the respondent-assessee as provided u/s 158BE(2)(b) of the Act. So much so, the

assessment u/s 158BD is well within the statutory period with reference to date of issuance of notice u/s 158BD. Relying on the decision in

Panchajanyam Management Agencies (sic-Parveen Fabrics (P) Ltd.) case senior counsel for the respondent-assessee submitted that the AO was

bound to initiate simultaneous proceedings under s. 158BD against the respondent-assessee i.e. along with section 158BC assessments initiated

against the group of concerns searched by the Department. Senior counsel for the Revenue submitted that there is no time limit prescribed under

the Act for issuance of notice u/s 158BD and according to him, the AO has to first complete the assessment that gets time barred first and then

proceed to make assessment u/s 158BD later. Besides finding force in this contention, we also feel that it is only on completion of assessment u/s

158BC on the searched assessee the AO can conclude that the remaining income in respect of which details were collected during search could be

assessed in the hands of other assessees. In fact, bifurcation of income relating to searched assessees and income relating to others will be clear

only after determining the income of the searched assessees. So much so, in our view, a prudent officer should first complete assessment u/s

158BC on searched assessees and thereafter based on the materials available, proceed for assessment u/s 158BD against other assessees about

whom details were obtained in the course of search. In the absence of any provision in the Act requiring the Department to issue notice u/s 158BD

within a time frame, we do not think the Court can prescribe any time limit. At the maximum we can declare an assessment arbitrary, if assessment

is not initiated within a reasonable time which is not the case here because assessment was initiated u/s 158BD within two months from completion

of assessment u/s 158BC against searched assessees which was made within time. So much so, we hold that the assessment u/s 158BD was

initiated within a reasonable time and the same was completed within the statutory period of 2 years as contemplated u/s 158BE(2)(b) of the Act.

We, therefore, allow the appeal on this issue as well by reversing the order of the Tribunal and by holding that the assessment completed on the

respondent u/s 158BD is well within time. In view of the findings above, we set aside the orders of the Tribunal and restore the appeals back to the

files of the Tribunal with direction to the Tribunal to hear and dispose of the appeals along with the appeals of the group of concerns remanded by

us vide judgment above-referred.