

(2006) 06 KL CK 0074

High Court Of Kerala

Case No: IT Ref. No. 31 of 2000

Commissioner of Income Tax

APPELLANT

Vs

Don Bosco Card Centre

RESPONDENT

Date of Decision: June 27, 2006

Acts Referred:

- Income Tax Act, 1961 - Section 132, 132A, 133A, 158B, 158BC

Citation: (2006) 205 CTR 500 : (2007) 289 ITR 329

Hon'ble Judges: V. Ramkumar, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: P.K.R. Menon and George K. George, for the Appellant; C. Kochunny Nair, for the Respondent

Judgement

K.S. Radhakrishnan, J.

Tribunal, Cochin Bench in compliance with the direction of this Court in OP No. 18508 of 1999 has referred the following question of law for opinion of this Court u/s 256(2) of the IT Act, 1961:

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that Section 158BC r/w Section 158BD of the IT Act, 1961 had no application to the facts of the case ?

2. Assessee is a partnership firm doing business in purchase and sale of greeting cards and other stationery items under the name and style of "Don Bosco Card Centre". The firm is a sister-concern of Don Bosco Industries, whose premises were searched u/s 132 of the IT Act, 1961 on 4th Jan., 1996. Business premises of the assessee was also surveyed u/s 133A of the Act along with the search in the business premises of Don Bosco Industries. During the course of the survey, the value of closing stock available with the assessee was quantified at Rs. 87,203. Later, the AO issued a notice u/s 158BC r/w Section 158BD calling upon the assessee to furnish a return of income for the block period 1st April, 1985 to 4th Jan., 1996 as

the books of account of the assessee for the asst. yrs. 1984-85 to 1995-96 had been seized from the premises of M/s Don Bosco Industries during the course of search and seizure proceedings. Assessee in response to the above notice filed a return of income for the block period declaring "nil" undisclosed income. AO accepted the contention of the assessee regarding valuation of closing stock at cost price and revalued the value of closing stock at Rs. 68,040. Value of closing stock as per books of account was Rs. 40,881. AO therefore made an addition of Rs. 27,160 being the value of unaccounted stock for the block period 1st April, 1985 to 4th Feb., 1996. Aggrieved by the order of the AO, assessee took up the matter in appeal before the Tribunal. Tribunal took the view that provisions of Section 158BC r/w Section 158BD are not applicable to the facts of the case as the assessee was yet to file the return of income within the prescribed time-limit under the provisions of the Act since that was the current year of the assessee and the accounts were not closed. Tribunal therefore expressed the view that the provisions of Section 158BC r/w Section 158BD are not applicable to the facts of this case. It was further ordered that the search and seizure operations conducted by the Department are not proper and legal. Consequently, Tribunal cancelled the assessment made by the AO for the block period from 1st April, 1985 to 4th Jan., 1996.

3. Matter is placed before us for opinion on a reference made by the Tribunal. Counsel appearing for the Revenue Sri George K. George submitted that the Tribunal has committed a grave error in not properly appreciating the provisions of Sections 158BC and 158BD of the IT Act, 1961. Counsel made specific reference to the definition of block period which appears in Section 158B(a) of the Act and that definition would take in the period upto the date of commencement of search. Counsel appearing for the assessee supported the findings of the Tribunal that the provisions of Section 158BC r/w Section 158BD would not apply to the facts of this case since the accounts of the assessee were not closed during the current year and that the assessee was yet to file the return of income within the prescribed time-limit under the provisions of the Act. This Court pertaining to the very same search conducted on 1st April, 1996 in the premises of Don Bosco Industries in [Commissioner of Income Tax Vs. Deep Arts](#), held that even if no search is conducted at the premises of the assessee, the AO has jurisdiction to make assessment u/s 158BC r/w Section 158BD on the basis of materials unearthed in a search conducted at another's premises. So far as this case is concerned the search was conducted in the premises of Don Bosco Industries, of which the assessee is a sister-concern, u/s 132 of the IT Act on 4th Jan., 1996. The business premises of the assessee was also surveyed u/s 133A of the Act along with the search on the premises of the Don Bosco Industries. During the course of survey, the value of closing stock available with the assessee was quantified at Rs. 87,203. Later the AO noticed that the value of closing stock was Rs. 40,881. AO had later issued notice u/s 158BC r/w Section 158BD calling upon the assessee to furnish a return of income for the block period 1st April, 1985 to 4th Jan., 1996 as the books of account of the assessee for the asst.

yr. 1984-85 to 1995-96 had been seized from the premises of M/s Don Bosco Industries during the course of search and seizure proceedings.

4. Question to be examined is as to whether the provisions of Section 158BC r/w Section 158BD of the IT Act would apply to the facts of this case. Chapter XIV-B deals with the special procedure for assessment of search cases. Provisions of this chapter will not apply to assessments pursuant to searches or requisitions made after 31st May, 2003. Indisputedly, during the period in question the provisions of Chapter XIV-B were applicable. Definition of "block period" mentioned in Section 158B reads as follows:

158B. Definitions.-In this chapter, unless the context otherwise requires,-

(a) "block period" means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted u/s 132 or any requisition was made u/s 132A and also includes the period upto the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made:

Provided that where the search is initiated or the requisition is made before the 1st day of June, 2001, the provisions of this clause shall have effect as if for the words "six assessment years", the words "ten assessment years" had been substituted;

(emphasis, italicised in print, added)

Definition clause has used the expression "means and includes". Definition clause is therefore exhaustive. See *Jagir Singh v. State of Bihar* 1976 SCC 204. The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute. When it is so used these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import but also those things which the interpretation clause declares that they shall include. If we apply the above principle of interpretation to the definition of "block period" we have to attribute a wider meaning to the expression "block period". Definition clause says that block period means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted u/s 132 or any requisition made u/s 132A and also includes the period upto the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made. The search in Don Bosco Industries was conducted u/s 132 of the Act on 4th Jan., 1996, the date of commencement of search, within the meaning of Sections 158BC and 158BD r/w Section 158B(a). Commencement of search in this cases is on 4th Jan., 1996. Therefore, upto that period it is block period as defined in Clause (a) of Section 158B of the IT Act.

5. Section 158BC deals with the procedure for block assessment. Section 158BD deals with computation of undisclosed income in the block period. Undisclosed income is defined under Clause (b) of Section 158B, which reads as follows:

(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false.

Section 158BC deals with the procedure for block assessment and Section 158BD deals with undisclosed income of any other person and it says that where the AO is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132 or whose books of account or other documents or any assets were requisitioned u/s 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO shall proceed u/s 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly.

6. We have already indicated that we have to read Sections 158BC and 158BD along with the definition clause "block period" under Clause (a) of Section 158B. If so read, the block period has to be reckoned so far as this case is concerned, to be the period from 1st April, 1985 to 4th Jan., 1996, 4th Jan., 1996 being the date of commencement of search. Under such circumstances we are inclined to answer the reference in favour of the Revenue. We hold that the Tribunal was not justified in holding that Section 158BC r/w Section 158BD of IT Act, 1961 would not apply to the facts of this case. The order of the Tribunal is accordingly set aside and the order of the assessing authority is restored. The question of law is answered in the negative and in favour of the Revenue.