(2003) 03 MP CK 0040

Madhya Pradesh High Court

Case No: IT Ref. No. 104 of 1999

Commissioner of Income Tax		APPELLANT
	Vs	
Purshottamlal Tamrakar Uchehra		RESPONDENT

Date of Decision: March 10, 2003

Acts Referred:

- Income Tax Act, 1961 - Section 158BB, 40A(3)

Citation: (2003) 184 CTR 349 : (2003) ILR (MP) 625 : (2004) 270 ITR 314

Hon'ble Judges: Dipak Misra, J; A.K.Shrivastava, J

Bench: Division Bench

Advocate: Rohit Arya, for the Appellant; G.N. Purohit, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.
This is a reference u/s 256(1) of the IT Act wherein the Tribunal has referred the following two questions for answer to this Court. They read as under :

"(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law to direct the AO to allow deduction u/s 158BB in respect of book profit for asst. yrs. 1988-89, 1989-90 and 1994-95, though no return of income has been filed u/s 139(1), 139(4) of the IT Act, 1961 ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that disallowance u/s 40A(3) of the Act were not called for once net profit rate has been applied to compute the income ?"

2. We need not to state the facts in detail except mentioning that the assessee carried on the business of manufacture and sale of metallic utensils, particularly of gillate as well as trading in stainless steel utensils on a small scale. A search and seizure was conducted on the residential and business premises of the assessee

within the period 10th Oct., 1995 to 12th Oct., 1995. The block period of which the assessment was made under Chapter XIV-B was for the assessment years, namely, 1986-87 to 1996-97. A notice u/s 158BC of the Act was issued and the assessee furnished a return of income on 8th July, 1996, declaring undisclosed income at Rs. 4,04,959. The assessee further furnished another return on 11th Oct., 1996, declaring additional undisclosed income of Rs. 2,85,766. When the matter travelled to the Tribunal, it was put forth by the assessee that the deduction u/s 158BB was not properly allowed by the AO, The Tribunal found that the assessee had maintained the books of account and the income as per the books of account and the income was below the taxable limit. In that factual backdrop, the Tribunal directed the AO to allow deduction u/s 158BB in respect of the income as per books of account. Being aggrieved by the aforesaid direction, the Revenue filed an application for referring four questions to this Court and the Tribunal has formulated two questions as stated earlier.

3. As far as the question No. 1 is concerned, it is pertinent to reproduce Clause (c) of Section 158BB as the aforesaid provision is relevant for our purpose.

"158BB. Computation of undisclosed income of the block period-

(1) xxx xxx
(a) xxx xxx
(b) xxx xxx

(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 not return of income has been filed, as nil, in cases not falling under Clause (c);"

4. It is pertinent to state here that the aforesaid provision came on the statute book by the Finance Act, 2002, w.e.f. 1st July, 1995. By virtue of this amendment, much confusion which had remained earlier really got cleared and the picture was frescoed without any kind of haze. If the provision which is plain and unambiguous is interpreted, it can be stated that once the books of account disclosed that the income of the assessee is below the taxable limit for some years and for certain

period, it is taxable as per the books of account, the liability would be fixed accordingly.

5. Section 158BB envisages that 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 the Act on the basis of evidence found as a result of search or requisition of books of account or other documents and such other material or information as are available with the AO 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. It is pertinent to state that the major part of this provision has been amended by the Finance Act, 2002, giving retrospective effect w.e.f. 1st July, 1995. If the provisions so inserted in main Sub-section (1) and Sub-section (c) are read conjointly it would be graphically clear that in respect of a block period assessment, even if no return is filed, the benefit would be given in respect of the period which would not come within the frame of tax liability as per the books of account but as far as the balance period is concerned, the tax liability would be treated as undisclosed income. Needless to emphasise if for some years which constitute the block period, the tax liability is not accruable on the foundation of the books of account then the assessee would also get the benefit and it will not be treated wholly or entirely as the undisclosed income. The undisclosed income is confined to the period for which tax liability is determined on the basis of the entries in the accounts book or on the basis of material found in course of search and seizure.

6. As far as the second question is concerned, it relates to grant of disallowance u/s 40A(3). It is submitted by Mr. Rohit Arya that the Tribunal has erred in granting the benefit to the assessee u/s 40A(3). To appreciate the aforesaid submission, it is appropriate to refer to the provision of Section 40A(3) without the proviso as the proviso is not relevant for the present purpose. The relevant portion of the provision is reproduced hereunder :

"40A. Expenses or payments not deductible in certain circumstances.-

(1) xxx xxx
(2) xxx xxx

(3) Where the assessee incurs any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1969) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding twenty thousand rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, twenty per cent of such expenditure shall not be allowed as a deduction :"

7. It is submitted by Mr. Arya that if the provision is scanned in proper perspective, it would be crystal clear that if there is transaction more than the permissible limit in

the aforesaid provision, the assessee would not be allowed any deduction. The Tribunal in the original appeal in paras 29 and 30 has held as under :

"29. The next ground of appeal is against the addition u/s 40A(3) for asst. yrs. 1995-96 and 1996-97 as under :

Asst. yr.	Addition (Rs.)
1995-96	82,435
1996-97	1,67,088
	2,49,523

30. We have considered this aspect in detail while deciding the ground No. 5 in the case of Shri Santosh Kumar Tamrakar. The facts are similar in the case of assessee also. In the case of the assessee also the income on sale of utensils has been assessed on estimated basis i.e., by applying a net profit rate. Once a net profit rate is applied, the expenses are deemed to be considered while applying the net profit rate. Therefore, no further deduction is to be allowed or to be disallowed. Accordingly, we delete the addition of Rs. 2,49,523 for asst. yrs. 1995-96 and 1996-97. Ground No. 5 of the assessee''s appeal is allowed."

8. It is submitted by Mr. Purohit that the AO has determined the income by applying the principle of net profit rate thereby taking into consideration the whole amount which was transacted below the permissible limit u/s 40A(3). It is contended by him that once the whole amount is computed on the formula of net rate income, there is no question of grant of deduction as envisaged u/s 40A(3). We are of the considered opinion that the submission of Mr. Purohit has substantial force and the Tribunal has rightly treated that Section 40A(3) is not applicable, when net profit rate is applied by the AO.

9. In view of the aforesaid analysis both the questions are answered in favour of the assessee and against the Revenue.