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Ch. Mohan Vs The Assistant Commissioner of Income Tax

I.T.T.A. Nos. 48 and 153 of 2003

Court: Andhra Pradesh High Court

Date of Decision: Sept. 3, 2014

Acts Referred:
Income Tax Act, 1961 â€" Section 132, 158BB, 158BB(1), 158BB(4), 158BH

Citation: (2014) 369 ITR 189

Hon'ble Judges: L.N. Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: S. Ravi, Senior Counsel, Advocate for the Appellant; S.R. Ashok, Senior Counsel, Advocate for the Respondent

Judgement

L. Narasimha Reddy, J.
These two appeals are filed by the respective assessees feeling aggrieved by the common order dated 30-08-

2002 passed by the Hyderabad Bench A of the Income Tax Appellate Tribunal (for short, the Tribunal) in I.T. (S.S.) A. Nos. 50 and

51/Hyd/1997.

2. For the sake of convenience, the parties are referred as the 1st appellant and the 2nd appellant.

3. The facts, in brief, are as under:

The appellants are individual and independent assessees. Incidentally, both of them are the shareholders of a company by name M.K. Securities

Limited. They have been submitting returns year after year. A search was conducted on 24-01-1996 under Section 132 of the Income Tax Act,

1961 (for short, the Act) in the respective premises of the appellants. On the basis of the search, the block assessments for the period covering

1986-87 to 1996-97 were made. The 1st appellant admitted the undisclosed income of Rs. 26,0,9000/- and the 2nd appellant stated that he has

undisclosed income of Rs. 3,96,000/-. However, both of them have made an attempt to post losses either equivalent to or exceeding the income

so discovered for the assessment year 1996-97 on the ground that as on the date of search, they still have time to file the returns for that

assessment year. The assessing officer did not agree with the same and passed block assessment orders dated 31-01-1997 imposing tax on the

undisclosed income. The said orders were challenged before the Tribunal. The appeals were dismissed through common order dated 30-08-2002.

4. Sri S. Ravi, learned Senior Counsel for the appellants submits that the action of the respondent in refusing to take the losses for the

corresponding period is contrary to Section 158BB of the Act. He submits that the prohibition, if at all is only under Section 158BB(4) as regards

the setting of the unabsorbed loss within the block period. Learned counsel submits that any part of an assessment order preceding the date of

search needs to be treated as a unit in this regard and that there was no justification in disallowing the unabsorbed loss, posted by the appellants.

5. Sri S.R. Ashok, learned Senior Counsel for the Income Tax Department submits that through out the block period as regards which the returns

were filed, no loss whatever was posted by the appellants and the attempt to show the loss for the part of the assessment year, that too as regards

which no returns were filed was only to neutralise what has been unearthed in the course of search. He contends that the assessing officer and the

Tribunal have taken the correct view of the matter and no interference is warranted in the appeals.

6. The proceedings are the result of a search made in the premises of the appellants. The search is so perfunctory that what has come out is in the

form of declaration by the appellants themselves of certain amounts as undisclosed income viz., Rs. 26,00,900/- by the 1st appellant and Rs.

3,96,000/- by the 2nd appellant. Since the search was conducted on 24-01-1996, the block period is comprised of the assessment years 1986-

87 to 1996-97. A perusal of the block assessment discloses that there was no discrepancy or disparity of facts and figures in relation to all the

assessment years within the block, except the last year. Even for that year, the returns were not filed. It so happened that in the year of search, the

appellants still had time to file returns. Incidentally, the entire controversy is only with reference to the facts and figures of the year of search.

7. It is too well known that Section 158BB(1) prescribes the procedure to be followed to determine the undisclosed income for the purpose of the

proceedings under Chapter XIVB. That incidentally happens to be the first step in the process. Every caution is taken to ensure that only such of

the amounts as are actually covered by the assessment in the block period are added; and amounts not covered by that period are not permitted to

be added. Once the process of computation of undisclosed income under sub-section (1) is concluded, the manner in which the amount so arrived

at must be dealt with in the context of bringing it under the tax, is dealt with under the subsequent provisions. For example, sub-section (4) of

Section 158BB prohibits the setting off of carried forward losses under Chapter VI or unabsorbed depreciation under Chapter IV of the Act,

against the undisclosed income.

8. The very expression brought forward losses or unabsorbed depreciation under the relevant provisions discloses that the amounts have spilled

over or crossed the concerned assessment year. In other words, the income in the concerned assessment year was so inadequate that the loss that

was noticed or the depreciation which was deductable, could not be absorbed. Since the Act provides for the facility to be availed in the

subsequent assessment years, they partake the character of unabsorbed loss or carried forward depreciation.

9. The appellants pleaded that they have incurred losses in the assessment year 1996-97 in which the search was conducted and if the losses are

taken into account, the undisclosed income virtually gets neutralised. That however did not weigh with the assessing officer as well as the Tribunal.

10. Chapter XIVB, is virtually as a self-contained code. It prescribes the procedure to be followed whenever searches are conducted and the

undisclosed income is discovered or found. To be fair to the assessee, the chapter provides for allowing all the deductions etc., as is done in the

ordinary assessments. Section 158BH makes this aspect clear. Though in the process of reckoning the undisclosed income that is discernable from

the orders of assessment covering block period is to be deducted and the losses, if any, are to be added, in the ultimate processing of the block

assessment, the deductions or allowances covering that very period must be done as though it is a regular assessment. The substantial difference, if

at all, is the rate of tax which is at 60% on the undisclosed income as against 30% on the regular assessments.

11. The Parliament has taken every possible care to ensure that the result of the search is not watered down by pitting it against the unabsorbed

losses or carried forward depreciation, meaning thereby, the losses or depreciations which have crossed the block period. In B.D.A. Ltd., vs.

Assistant Commissioner of Income Tax, the Bombay High Court dealt with this aspect in detail, taking note of, not only the purport of section but

also the circulars issued by the department from time to time. In its application to the facts of the present case, the concept would be that in case

the appellants had to their credit, any unabsorbed losses within the block period, they shall be entitled to have the benefit thereof in accordance

with the procedure prescribed under sub-section (1) of Section 158BB. If on the other hand, the loss is referable to any period subsequent to the

block period notwithstanding its origin and assuming the character of the unabsorbed loss; it would not be available to them to be adjusted against

the undisclosed income. The relevant provision reads:

Section 158BB(4): For the purpose of assessment under this Chapter, losses brought forward from the previous year under Chapter VI or

unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block

assessment under this Chapter, but may be carried forward for being set off in the regular assessments.

12. Since the appellants did not file any returns for the assessment year 1996-97, it is difficult to straightaway conclude as to whether they had any

unabsorbed loss to their credit. Another fact which needs to be taken into account, is that they did not have any unabsorbed loss since such a loss

did not cross the assessment year 1995-96. Therefore, they have to fall back upon the losses, if any incurred in that part of the year 1996-97

which preceded the date of search. For this purpose, the verification of their books of accounts is necessary. It is only when the assessing officer is

satisfied on verification of the books, that the appellants incurred loss during the period preceding search, that an occasion may arise to adjust the

same. If in the course of verification it emerges that the appellants have incurred any losses during that period, such losses do not answer the

description of unabsorbed loss. In fact, it is yet to be absorbed. Therefore, even while upholding the view taken by the assessing officer as well as

the Tribunal, we find that the verification of the books of accounts for the assessment year 1996-97 preceding the date of search needs to be

undertaken.

13. We, therefore, partly allow the appeals directing that the respondent shall undertake verification of the books of accounts of the appellants for

the assessment year 1996-97 referable to the period, preceding the date of search and if the respondent is satisfied that the appellants have

incurred loss during that period, he shall take the same into account for determining the undisclosed income, as well as for passing the block

assessment order.

14. The miscellaneous petitions filed in these appeals shall also stand disposed of. There shall be no order as to costs.