

(2009) 11 MAD CK 0168**Madras High Court****Case No:** T.C. (Appeal) No. 1215 of 2009

Commissioner of Income Tax

APPELLANT

Vs

K.M. Ganesan

RESPONDENT

Date of Decision: Nov. 30, 2009**Acts Referred:**

- Income Tax Act, 1961 - Section 260A

Citation: (2011) 333 ITR 562**Hon'ble Judges:** M.M. Sundresh, J; K. Raviraja Pandian, J**Bench:** Division Bench**Advocate:** J. Naresh Kuma, for the Appellant;**Final Decision:** Dismissed

Judgement

K. Raviraja Pandian, J.

The correctness of the order of the income tax Appellate Tribunal, Madras "B" Bench dated June 12, 2009 made in I.T.A. No. 103/Mds/2007 is canvassed in this appeal at the instance of the Revenue by formulating the following question of law:

Whether on the facts and in the circumstances of the case, the income tax Appellate Tribunal was right in holding that, proceedings u/s 158BD are time barred when the assessment was completed within two years from the end of the month when the notice under the correct section was issued.

2. The facts:

(i) The Assessee is a real estate broker. During the course of search in the case of one Shri M. Mayan, the residential premises of the Assessee were searched u/s 132 on June 23, 1999. The Assessing Officer issued notice u/s 158BC on July 27, 1999, in the case of the Assessee. Later, the Assessing Officer on noticing that the warrant was not in the name of the Assessee, issued a fresh notice u/s 158BC read with Section 158BD on February 7, 2001. The Assessee filed a block return admitting nil

undisclosed income. The Assessing Officer completed the block assessment on February 27, 2003.

(ii) Aggrieved by the same, the Assessee filed an appeal before the Commissioner of income tax (Appeals). Before the first appellate authority, at the time of hearing, the Assessee raised a ground that the assessment was barred by the time prescribed under the statutory provision. As the said issue is a vital issue and a mixed question of law and fact, the Commissioner of income tax (Appeals) has taken up the issue as a primary issue and decided the matter in favour of the Assessee on the premise that the assessment order was passed on January 29, 2003, which is beyond the period of two years prescribed under the statute from the date of issuance of the notice on July 27, 1999.

(iii) The Revenue carried the matter on further appeal to the Tribunal. The Tribunal, by reason of the impugned order having found that the Revenue could not be able to substantiate their case by producing any material or evidence and failed to make out a case to take a different view than the one taken by the Commissioner of income tax (Appeals) dismissed the appeal filed at the instance of the Revenue.

(iv) Not satisfied with the concurrent orders of the authorities below, the Revenue filed the present appeal u/s 260A of the income tax Act, 1961, by formulating the above stated question of law.

3. We have heard Mr. Naresh Kumar, learned Counsel appearing for the Department and perused the materials available on record.

4. The facts are not much disputed. The dates of the relevant notices are as follows: The notice u/s 158BC was issued to the Assessee on July 27, 1999. After noticing that the warrant was not issued in the name of the Assessee, a fresh notice u/s 158BC read with Section 158BD was issued on the Assessee on February 7, 2001. The Assessee filed the block return on January 29, 2003 admitting "nil" undisclosed income. The assessment was made on February 27, 2003. In this factual situation, the question that arises for consideration is as to whether the second notice issued on February 7, 2001 can be regarded as an appropriate notice under the appropriate provision as contended by the learned Counsel for the Revenue so as to decide the case in favour of the Revenue. No format for notices which are required to be issued under Sections 158BC and 158BD is prescribed. Admittedly, in this case, the warrant was not issued in the name of the Assessee. Hence the notice could only be issued under the provision of Section 158BD and the notice issued on July 27, 1999 u/s 158BC is the appropriate notice. The statutory requirement for completion of block assessment u/s 158BE(2)(b) is two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the January 1, 1997. The Explanation to that section provides for exclusion of the time limit which are not germane to the facts of the case. That issuance of notice

by mere quoting of wrong provision could not vitiate the proceedings or effect of the notice is the trite and well settled principle of law which requires no authority to be cited.

5. In [Sakthivel Bankers, Rana Investments, Rana Cotton Yarn, Saraswathi and Co. and L. Saroja Vs. Assistant Commissioner](#), a search was conducted in the premises of one L and certain documents were recovered during that search, which included documents pertaining to eight firms in which L and his wife were partners and also certain documents concerning his wife. L gave a statement offering a sum of Rs. 125 lakhs as undisclosed income and pleaded inability to furnish the names of persons in whose favour credits had been entered in the books of account of those firms. An order was passed. On further appeal the Tribunal passed an order of remand. On further appeal to the High Court, the High Court held that L knew the purpose for which the notice was issued he being the person, who apparently was in control of the affairs of the firm of which he was a partner. The firms as also his wife were not in doubt as to the purpose for which the notice was issued or the source of the authority of the officer issuing the notice. In fact, in response to the notices returns were filed by all of them. Absence of mention of the provision in the notice was, therefore, not a circumstance which could be said to vitiate the ultimate order.

6. In the present case on hand also the Assessee knew very well the purpose for which the notice was issued on July 27, 1999. It is also an admitted case that the warrant was not issued in the name of the Assessee. In those circumstances, the notice issued u/s 158BC on July 27, 1999 is only in accordance with the requirement of Section 158BD. Even the notice issued u/s 158BD on February 7, 2001 is also a notice issued u/s 158BC read with Section 158BD. Non-mentioning of Section 158BD would not ipso facto invalidate the earlier notice dated July 27, 1999. If that be so, the assessment made against the Assessee is beyond the period prescribed u/s 158BE(2)(b). Hence we are of the considered view that the Commissioner as well as the Tribunal has taken a correct and appropriate view which requires no interference of this Court for entertainment of the appeal. Hence the appeal is dismissed by answering the question of law in the affirmative.