

(2012) 05 CAL CK 0055

Calcutta High Court

Case No: Writ Petition No. 516 of 2010

Kishan Bhaniramka

APPELLANT

Vs

Asst. Commissioner of Income
Tax Central Circle XXIII Kolkata
and Another

RESPONDENT

Date of Decision: May 14, 2012

Acts Referred:

- Income Tax Act, 1961 - Section 132, 132A, 142, 143(2), 148

Citation: (2012) 2 CALLT 533

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: R.N. Dutta and Ms. Sutapa Roy Chowdhury, for the Appellant; P.K. Bhowmik, for the Respondent

Judgement

Sanjib Banerjee, J.

The Court: It is submitted on behalf of the petitioners in both writ petitions that the identical facts and legal position cover both matters and any order rendered on the one will automatically govern the other. It is in such circumstances that the matters pertaining to the writ petition appearing first in the list, WP No. 516 of 2010, is taken up for consideration. The case of the petitioning-assessee is that a second notice issued u/s 158BD of the Income Tax Act, 1961 is invalid. The grounds urged are that upon the previous similar notice having been dropped, the relevant assessing officer did not have the authority to issue the subsequent notice; that the conditions precedent for the issuance of a notice u/s 158BD of the Act were not complied with; and, that the notice was issued beyond the period of limitation.

2. In connection with the search conducted at the premises of or pertaining to the documents relating to another assessee u/s 132 of the Act, the relevant assessing officer may have been of the opinion that this petitioning-assessee may have not accurately disclosed his income whereupon the matter was referred to the

assessing officer exercising jurisdiction over this assessee. By a notice dated October 29, 2004, the assessing officer bearing the designation of Assistant Commissioner of Income Tax, Central Circle XXIII, Kolkata, called upon the petitioning-assessee to file the return for his total income, including the undisclosed income for the block period of April 1, 1996 to October 28, 2002. The assessee claims to have duly filed the return, following which a notice was issued u/s 143(2) of the Act by the assessing officer and a further notice u/s 142 of the Act followed in due course.

3. By a notice dated November 21, 2006, the relevant assessing officer, the Deputy Commissioner of Income Tax, Central Circle XXIII, Kolkata, informed the petitioner that the proceedings initiated u/s 158BD of the Act on October 29, 2004 "has been dropped since the jurisdiction over the case lies with I.T.O. Ward 38(1) Kolkata." The petitioner says that he heard nothing of the matter and did not think much of it since the entire proceedings appeared to have been dropped till he received a notice in March, 2010, calling upon him to file his return for the same block period for which he had already filed a return pursuant to the previous notice of 2004.

4. This subsequent notice of March 8, 2010 was issued by the assessing officer bearing the designation of Assistant Commissioner of Income Tax, Central Circle XXIII, Kolkata. The petitioner caused a letter to be written on his behalf challenging the validity of the notice of March 8, 2010 and suggesting that the relevant officer did not have any authority to either call for any return or initiate any proceedings.

5. The petitioner says that a notice u/s 158BD of the Act cannot be issued without the preconditions to the issuance of such notice being complied with. According to the petitioner, the assessing officer exercising jurisdiction over the assessee searched u/s 132 of the Act is required to form an opinion about the income of another person and forward such opinion to the assessing officer exercising jurisdiction over such other person and then for such assessing officer exercising jurisdiction over such other person to be satisfied that the circumstances exist for the initiation of proceedings u/s 158BD of the Act. The petitioner refers to a judgment reported at 320 ITR 349. *inter alia*, for such judgment having noticed the preconditions required to be fulfilled, as recognised by the Supreme Court, prior to an assessee being issued a notice u/s 158BD of the Act.

6. In fact, the said judgment reported at 320 ITR 349 has been cited for the several propositions laid down therein. The petitioner says that the matter pertains to the same family or the same group, and apart from the legal issues that have been answered in such previous matter, since the department has accepted such judgment, the department cannot take a dissimilar view or a contradictory stand on a similar matter governed by the same facts and the same position at law.

7. It is necessary to see the fundamental basis for the view expressed in the judgment referred to above, In that case, a notice was issued by an assessing officer

bearing the designation of Assistant Commissioner of Income Tax. Central Circle XXIII, Kolkata and after taking steps u/s 143(2) and section 142 of the Act, the proceedings were dropped on the similar lines as the previous notice issued in October, 2004 to this assessee was dropped. The assessing officer felt that he had no jurisdiction over the assessee as the relevant officer in seisin of Ward No. 38(1), Kolkata had the authority in such regard. A subsequent notice was issued in that reported case by the assessing officer who was the officer exercising jurisdiction over Ward No. 38(1). The factual position obtaining in the present case is quite otherwise.

8. The Court also noticed in that reported case that in the affidavit filed on behalf of the department, it was not evident as to whether the preconditions for issuing a notice u/s 158BD of the Act had been complied with. The Court held that since the preconditions had not been met and had not even been alluded to in the affidavit of the department, the notice was invalid.

9. The factual position in this case on such count is also at variance with the reported case. It would be evident from paragraph 5 of the affidavit used by the department that the search was conducted in respect of the father of the petitioner herein u/s 132 of the Act whereupon the petitioner made a suo motu statement on the basis of which the assessing officer exercising jurisdiction over the assessee subjected to the process u/s 132 of the Act forwarded the matter to the assessing officer exercising jurisdiction over the petitioning-assessee. It cannot be said, on a reading of the affidavit, that no grounds have been indicated as to whether the preconditions to the exercise of the authority u/s 158BD of the Act had been complied with. It must be remembered that where principles of judicial review are concerned, the Court in exercise of such authority is not concerned with the sufficiency of the reasons; but the Court applies its mind to see whether the statutory preconditions or the jurisdictional facts necessary are met, particularly if a challenge to a notice is to be accepted at the threshold.

10. Section 158BD of the Act postulates that where an assessing officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom a search was made u/s 132 of the Act or whose books of account or other documents or any assets were requisitioned u/s 132A thereof, the relevant material shall be handed over to the assessing officer having jurisdiction over such other person and such assessing officer shall proceed u/s 158BC of the Act for block assessment against such other person. The several prerequisites that are built in to the relevant provision are, inter alia, the discovery of any undisclosed income belonging to any person other than the person subjected to the procedure u/s 132 or 132A of the Act; the satisfaction of the assessing officer exercising jurisdiction over the assessee subjected to the procedure u/s 132 or 132A of the Act in such regard; the forwarding of the relevant material to the assessing officer having jurisdiction over such other person; and the assessing officer exercising jurisdiction

over such other person proceeding u/s 158BC of the Act. In judicial review, the Court will not sit in appeal over the sufficiency of the reasons for forming an opinion, but it will suffice if the ingredients for the formation of a possible opinion are indicated. If, in course of the process u/s 132 or 132A of the Act, a person other than the concerned assessee admits certain matters, the forwarding of the matter by the assessing officer exercising jurisdiction over the assessee subjected to the procedure u/s 132 or 132A of the Act to the assessing officer exercising jurisdiction over such other person is justified. The satisfaction of the assessing officer as to the possibility of any undisclosed income belonging to any person other than the person subjected to the procedure u/s 132 or 132A of the Act would, in such a case, be founded on the admission of such other person; and implicit in the forwarding of the matter to the assessing officer exercising jurisdiction over such other person is the credence given to the admission of such other person. It will then not be open to such other person who is said to have made the admission to challenge as invalid the notice issued to him u/s 158BD of the Act on the ground that the statutory preconditions for issuance of such notice had not been adhered to. Once the reasons or the fundamental elements going into the making of the opinion of the forwarding assessing officer comes on record, it is not for the Court exercising judicial review to assess the merits or the adequacy thereof, unless the reasons have no nexus with the matters relevant for the formation of the opinion or they appear, ex facie, to be absurd. If there is any possibility of the reasons proffered justifying the basis for forwarding the matter to the assessing officer exercising jurisdiction over such other person, it then becomes a dispute on merits and the validity of the notice u/s 158BD of the Act can no longer be questioned in this jurisdiction and the measures initiated stultified at the threshold.

11. The petitioner says that the department's affidavit will reveal that the assessing officer did not apply his independent mind that is imperative in the exercise of any quasi judicial authority. The petitioner says that it appears from the affidavit that some superior officer of the assessing officer dictated the issuance of the notice under challenge to the assessing officer. The petitioner refers to a judgment reported at [Jeewanlal \(1929\) Ltd. Vs. Additional Commissioner of Income Tax and Others](#), where this Court did not take kindly to an order for revision of the assessment u/s 263 of the Act having been initiated without the commissioner exercising his own judgment. The petitioner also refers to a decision reported at [Commissioner of Income Tax, Shimla Vs. Greenworld Corporation, Parwanoo](#), where the Supreme Court, in considering a matter u/s 148 of the Act, opined that though the Commissioner or a superior officer may have supervisory jurisdiction over an assessing officer, it is fundamental to the scheme of the exercise of quasi judicial authority, that the authority vested with the jurisdiction applies his own mind to the matter and takes an independent decision.

12. It does not appear from the notice impugned that the officer concerned, the Assistant Commissioner of Income Tax, Central Circle XXIII, Kolkata was unduly

prevailed upon by any other authority to issue such notice. It may not be out of place to remember that the notice was initially issued in respect of the relevant block period in October, 2004 and it was dropped in 2006 for the assessing officer having realised that he did not exercise jurisdiction over the assessee. It transpires that by an order dated July 9, 2009, the matters pertaining to this assessee were transferred from the ITO Ward No. 38(1) to the Assistant Commissioner of Income Tax or Deputy Commissioner, Central Circle XXIII, Kolkata by the Commissioner of Income Tax.

13. Though the petitioner has attempted to gloss over such minor matter, everything falls into place once the purport of such order passed by the commissioner is appreciated. It would be evident therefrom that prior to the date of the order, the Assistant Commissioner or Deputy Commissioner of Income Tax, Central Circle XXIII had no authority over this assessee and the authority over this assessee emanated pursuant to such order of transfer by the commissioner. It is now perfectly plain to see why the proceedings were dropped in November, 2006. The relevant officer then did not have the jurisdiction over this assessee. It is equally elementary to appreciate how the subsequent notice, the one dated March 8, 2010 impugned in the present proceedings, came to be issued. It also does not appear either from the notice or from the affidavit that the assessing officer who issued the notice did not exercise his independent judgment in issuing the notice.

14. A superior officer exercising supervisory authority over an officer who has to exercise quasi judicial authority under the statute may nudge the junior officer to take a step; but the mere fact that the junior officer has taken a step at the prodding of a superior officer would not, ipso facto, render the decision taken by the junior officer void. For the principle to apply, it has to appear that the officer concerned did not apply his mind to the matter and merely acted as a rubber-stamp acting at the dictates of a superior officer. That does not appear to be so in this case. In any event, the relevant averments in the affidavit filed by the department may also be charitably read to imply that following the order of transfer made by the commissioner, the assessing officer in this case took steps to issue the notice of March 8, 2010.

15. The point of limitation is utterly baseless and misconceived. In support of such submission, section 158BE(2)(b) has been referred to. The provision provides the time for the completion of a block assessment and has nothing to do with the time when a notice u/s 158BD may be issued for the block assessment. Indeed, the clock begins to run, so to say, u/s 158BE(2)(b) of the Act from the time of the issuance of the notice u/s 158BD thereof. The petitioning-assessee has not referred to any other provision in support of the contention that the notice of March 8, 2010 is otherwise barred on the ground of delay.

16. There does not appear to be any infirmity in the notice issued u/s 158BD by the relevant officer on March 8, 2010 which has been impugned in the present

proceedings.

17. As a consequence, WP No. 516 of 2010 and WP No. 515 of 2010 stand dismissed. The subsisting interim orders are vacated.

18. There will be no order as to costs in either case. The petitioner prays for a stay of the operation of the order which is declined.

Urgent certified photocopies of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.