Alok Todi and Another Vs Commissioner of Income Tax

Court: Calcutta High Court

Date of Decision: July 13, 2011

Acts Referred: Income Tax Act, 1961 â€" Section 132(4), 142(1), 158BB, 158BC, 158C

Citation: (2012) 247 CTR 345 : (2011) 339 ITR 102 : (2012) 204 TAXMAN 21

Hon'ble Judges: Sambuddha Chakrabarti, J; Bhaskar Bhattacharya, J

Bench: Division Bench

Advocate: Rajshree Kajaria, for the Appellant;Dipak Shome and Md. Nizamuddin, for the Respondent

Final Decision: Dismissed

Judgement

Bhaskar Bhattacharya, J.
This appeal u/s 260A of the income tax (""Act""), 1961 is at the instance of an Assessee, represented by two of

its erstwhile partners, and is directed against an order dated December 17, 2003 passed by the income tax Appellate Tribunal, ""A"" Bench,

Kolkata in income tax (SS) Appeal No. 34 (Kol) of 1998 for the Block Period 1987-88 to 1996-97 up to 2nd July, 1996.

2. Being dissatisfied, two of the partners of the erstwhile partnership firm, the assesse, have come up with the present appeal.

3. The facts giving rise to filing of this appeal may be summed up thus:

a) In course of search on July 2, 1996 in the residential premises of one Bijay Kumr Gutgutia, some papers relating to the firm, M/s. Shree Krishna

Arvind Hatcheries, along with other books of accounts and a bunch of papers with identification mark BKG/5 were seized. There were some

entries which related to the firm M/s. Shree Krishna Arvind Hatcheires indicating that the firm had undisclosed income for the Assessment Year

1990-91.

b) Proceedings u/s 158BB were drawn up and notice u/s 158C was issued on January 22, 1997 asking the firm to furnish the return for the block

period.

c) No return was filed as it was contended that the erstwhile firm was taken over by the newly floated company with effect from July 31, 1990 by

virtue of a deed executed on July 21, 1990 and the firm discontinued its activities.

d) The Assessing Officer proceeded to make the assessment u/s 158BC by holding that by virtue of Section 189(1) where any business or

profession carried on by a firm had been discontinued or where the firm was dissolved, the Assessing Officer should frame the assessment on the

total income of the firm as if no such discontinuance or dissolution had taken place.

e) From the seized bunch of papers, it was found that the Assessee firm had earned actual profit of Rs. 14.19 lac during the accounting period

relating to the Assessment Year 1990-91 whereas in the books Rs. 8.87 lac was declared.

f) In the deposition u/s 132(4) on 29th August, 1996 Sri Bijay Kumar Gutgutia, a partner of the erstwhile firm, had confirmed the actual income of

the firm vis-Ã¯Â¿Â½-vis the disclosed income.

g) Sri H.C. Poddar, husband of Smt. Gayatri Poddar another partner, also confirmed in his deposition u/s 132(4) on 26th August, 1996 the

undisclosed income of the firm for the Assessment Year 1990-91 on the basis of the information noted in the seized papers.

h) It may not out of place to mention here that no return was filed by the dissolved firm and the notice u/s 158BC read with Section 158BD and

Section 189(1) was issued to all the partners of the dissolved firm on June 6, 1997 asking them to give the return for the block period in respect of

the firm of which they were partners. But in spite of that no return was filed by any of the partners. Subsequently, a show cause notice was issued

to all the partners asking them why an order as per best judgment assessment should not be passed on the basis of the materials gathered at the

instance of the Assessing Officer and a notice u/s 142(1) was issued.

i) In the absence of compliance to the notice issued u/s 158BC read with Section 159BD of the Act and in the absence of any compliance to the

show cause notice issued along with notice u/s 142(1), the Assessing Officer proceeded to complete the assessment as per best judgment

assessment and ultimately, reassessed the amount of tax which came to Rs. 3,76,180/-.

j) Being dissatisfied, only the present Appellants, two of the partners, preferred an appeal before the Tribunal below and by the order impugned

herein, the said Tribunal has affirmed the order of the Assessing Officer.

4. Being dissatisfied, two of the partners, who preferred the appeal before the Tribunal, have preferred the present appeal.

5. At the time of admission of the appeal, a Division Bench of this Court formulated the following substantial questions of law:

(i) Whether the assessing officer is under an obligation under the Act of 1961 to furnish necessary document relied upon by him in an assessment

proceeding and intimate the date of personal hearing to enable the Assessee to represent his case and meet the allegations made against him by

cross examining the persons whose statement have been relied upon before the passing of an assessment order?

(ii) Whether on the facts and in the circumstances of the instant case the Assessing Officer had reasons to treat the entries contained in the books

of account bearing identification mark BKG/5 as the undisclosed income of SKAH and further as to whether the assessment order as well as the

order of the Tribunal is based on no evidence?

6. Mr. Shome, the learned Senior Advocate appearing on behalf of the Revenue, at the very outset, has pointed out that the above two grounds

formulated by the Division Bench did not come within the purview of Section 260A of the Act inasmuch as no such point was taken before the

Tribunal below. Mr. Shome has drawn our attention to the grounds of appeal taken by the Appellants before the Tribunal below which are quoted

blow:

1. In the facts and under the circumstances of the case the learned Assessing officer erred in adding a sum of Rs. 532000/- in the assessment year

1990-91 and Rs. 94966/- in the assessment year 1991-92.

2. In the facts and under the circumstances of the case the learned Assessing officer erred in not allowed deduction u/s 80I and 80JJ and other

deduction as per law for both the assessment years.

3. In the facts and under the circumstances of the case the learned Assessing officer erred in adding the income in the hands of the Appellant.

4. In the facts and under the circumstances, the assessment is bad in law as on the facts of the case.

5. That the Appellant craves leave to adduce further grounds at the time of hearing.

7. By relying upon the aforesaid grounds, Mr. Shome contends that the Division Bench should not have formulated the new points which do not

come within the scope of the appeal against the order of the Tribunal.

8. After going through the materials on record, we agree with Mr. Shome, the learned Senior Advocate appearing on behalf of the Revenue, that

the plea now sought to be urged before this Court that the Assessing Officer should have furnished necessary documents and intimate the date of

personal hearing is not tenable in view of the fact that no such plea was taken either before the Assessing Officer or the Tribunal. We have already

pointed out that in spite of service of notice, nobody even submitted return or had shown cause as required. Such being the position, the two

grounds formulated by the Division Bench cannot be supported.

9. We, thus, find that on the basis of best judgment assessment made by the Assessing Officer, there is no scope of interference in this appeal u/s

260A of the Act and those two grounds raising new questions which are essentially questions of fact cannot be permitted to be raised for the first

time in this appeal and the Revenue in terms of Sub-Section 4 of Section 260A of the Act is entitled to raise the question that the ground

formulated by the Division Bench are not involved within the scope of this appeal. When no material has been produced dislodging the finding of

the Assessing Officer that in spite of service neither any return was submitted nor any cause shown pursuant to the notice, we are of the opinion

that in the facts of the present case, the best judgment assessment of the Assessing Officer cannot be said to be vitiated by any error of law.

10. This appeal is, consequently, thus dismissed being devoid of any substance as no substantial question of law is involved herein.

11. In the facts and circumstances, there will be, however, no order as to costs.

Sambuddha Chakrabarti, J.-

I agree.