Shibani Dutta Vs CIT

ITA No. 169 of 2012

Court: Delhi High Court

Date of Decision: July 12, 2012

Acts Referred:
Income Tax Act, 1961 â€" Section 127, 129, 132, 132A, 143(3)

Citation: (2012) 253 CTR 263 : (2012) 211 TAXMAN 31

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: M.P. Rastogi and Mr. K.N. Ahuja, for the Appellant; Anupam Tripathi, Senior Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

R.V. Easwar, J.
This is an appeal by the assessee u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as the ""Act""). By order

dated 13.03.2012, the following substantial question of law was framed: -

Whether the Income Tax Appellate Tribunal is right in holding that the block assessment order passed on 30th July, 2002 is not barred by

limitation as Section 129 read with proviso to Explanation 1 to Section 158BE of the Income Tax Act, 1961 is applicable?

The brief facts giving rise to the present appeal may be noticed. The assessee is an individual deriving income from house property, interest and

dividend. On 28.04.2000 a search was conducted u/s 132 of the Act in her residential premises at Flat No. 353, Block-A, Sarita Vihar, New

Delhi. The search was concluded on 20.06.2000, when the last of the authorisations for the search was executed. On 15.05.2002, an order u/s

127 of the Act was passed which was to take effect from 15.05.2000. By this order the assessee''s case was transferred from Income Tax

Officer, Ward 7(2) Bangalore to DCIT, Central Circle 25, New Delhi. This officer issued a notice on 11.06.2002, calling upon the assessee

(under Section 158BC) to file a block return of income. The notice was served on the assessee on the same day and she filed a block return in

Form No. 2B declaring undisclosed income of Rs. nil. The return was filed on 26.04.2002. After hearing the assessee, the block assessment u/s

158BC was completed by the DCIT, Central Circle 25, New Delhi (hereinafter referred to as the ""Assessing Officer""), by order dated

30.07.2002. In this assessment order the undisclosed income of the assessee was determined at Rs. 13,62,730/- .

2. The assessee challenged the assessment in appeal before the CIT (Appeals). By order dated 27.03.2003 the CIT (Appeals) allowed the appeal

and deleted the additions made in the block assessment order as the assessee''s undisclosed income. In the appeal the assessee had also raised a

plea that the assessment order was barred by limitation prescribed in Section 158BE (1) (b). This contention was dealt with by the CIT (Appeals)

in para 3 of his order and the same is reproduced below: -

3. In the preliminary grounds, the appellant has stated that the assessment framed by the Assessing Officer is without jurisdiction and barred by

limitation, since the search was concluded on 20.06.2000, whereas the assessment has been framed on 30.07.2002. It is however noted from

record that the assessee was earlier assessed with ITO Ward 7(2), Bangalore. The case was assigned from Bangalore to Central Circle-25, Delhi

vide order dt. 15.05.2002. As such the provisions of sub clause-(iii) of Explanation-1 to section 158BE are applicable. Accordingly, these

grounds taken by the appellant are not accepted.

3. It is evident from the above paragraph that the CIT (Appeals) did not accept the plea of limitation.

4. The Revenue preferred IT (SS) A. No. 303/Del/2003 before the Income Tax Appellate Tribunal, Delhi Bench (hereinafter referred to as the

Tribunal""). In this appeal the order of CIT (Appeals) deleting the additions was challenged. The assessee filed cross-objections before the

Tribunal in CO No. 28/Del/2008 in which the ground taken was that there was no valid search since the warrant of authorisation was issued by the

Joint Director of Income Tax (Investigation) u/s 132 of the Act and therefore, the assessment framed u/s 158BC was bad in law. The Tribunal

passed a consolidated order on 03.07.2009 dismissing the appeal filed by the Revenue. So far as the assessee''s cross-objection is concerned the

Tribunal held that no valid warrant of authorisation had been issued u/s 132 in the assessee''s case as the Joint Director of Income Tax

(Investigation) was not competent to sign the warrant of search and since there was no valid search, the Assessing Officer was not empowered to

frame the block assessment order u/s 158BC. On this ground assessment order was set-aside.

5. Aggrieved by the order of the Tribunal allowing the assessee''s cross-objections, the Revenue preferred an appeal before this Court in ITA No.

511/2010. By order passed on 26.05.2010, this Court held that in view of the amendment made to the Act with retrospective effect, the warrant

of authorisation issued by the Joint/ Additional Director of Income Tax (Investigation) was valid and therefore the Tribunal was in error in holding

that there was no valid search u/s 132 in the assessee''s case. This Court therefore set-aside the order passed by the Tribunal and remitted the

Revenue''s appeal for fresh adjudication. As regards the assessee''s cross-objections, it was pointed out before the Court that several other issues

had been urged therein which required to be dealt with by the Tribunal, other than the issue relating to inherent lack of jurisdiction. Considering this

the Court permitted the assessee to take up all other issues against the validity of the block assessment before the Tribunal in the cross-objections.

Thus both the Revenue''s appeal as well as assessee''s cross-objections were remitted to the Tribunal for fresh consideration.

6. In the fresh round of proceedings before the Tribunal the assessee in support of its cross-objections took up the contention that the block

assessment order was barred by limitation. It was submitted that the said order ought to have been passed on or before 30.06.2002 and since it

was passed on 30.07.2002, it was barred by limitation u/s 158BE (1) (b). The contention did not find acceptance in the hands of the Tribunal. The

reasoning of the Tribunal is contained in the following paragraph: -

6. We have considered the facts of the case and submissions made before us. Proviso to section 129 deals with change of an incumbent of an

office. This provision is applicable to the assessee as the jurisdiction has been transferred from an Assessing Officer in Bangalore to an Assessing

Officer in Delhi. In such a case, the assessee can demand that proceedings taken by the earlier officer may be taken up again by the subsequent

officer or any part thereof may be reopened. In this case, no such demand has been made by the assessee. Further, the provision contained in

section 158BC contemplates a notice to be issued requiring the assessee to file a return in prescribed form and verified in prescribed manner

setting forth his total income including the undisclosed income for the block period. The first proviso to this section states that notice u/s 148 is not

required to be issued for such proceedings. This clearly means that notice u/s 158BC is analogous to a notice u/s 148, which is issued for

reopening the assessment already completed. It is also clear from the legislative history that before introduction of chapter XIVB, a notice u/s 148

had to be issued in respect of the years for which the concealed income was detected in the course of search. Such income is known under

chapter XIVB as ""undisclosed income"", which has been defined in section 158B(b). This brings us to the provision contained in clause (iii) of

Explanation 1 of section 158BE. This provision inter-alia deals with the time taken for reopening the whole or any part of the proceeding. This time

has to be added while computing the limitation date u/s 158BE (b). However, the time cannot exceed the period of 60 days under the proviso to

Explanation 1 of section 158BE. If this time of 60 days is reckoned from 01.06.2002, the order is in time as it was passed on 30.07.2002.

Accordingly, the plea of limitation is not found to be in conformity with the aforesaid provision. This means that the appeal of the revenue is to be

heard on merits. This appeal is fixed for hearing on 03.01.2012 by treating the case as part-heard.

7. The cross objection of the assessee stands dismissed.

7. Section 158BE. (1) reads as follows: -

The order u/s 158BC shall be passed -

(a) within one year from the end of the month in which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may

be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the eighth day of

June, 1995, but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case

may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the

1st day of January, 1997.

8. In this case since the search was conducted on 28.04.2000, clause (b) is applicable. Under this clause the block assessment ought to have

completed within 2 years from the end of the month in which the last of the authorisations for search u/s 132 was executed. It is admitted by both

the sides that last execution of the warrant of search was on 26.06.2000. If that is so, the period of 2 years from the end of June, 2002 would

expire on 30.06.2002. Since, the assessment has been completed on 30.07.2002 it would be barred by limitation.

9. The Revenue however contends, (which was accepted by the Tribunal) that Explanation 1(iii) to Section 158BE is applicable and in computing

the period of limitation for the purpose of the Section ""the time taken in reopening the whole or any part of the proceeding or giving an opportunity

to the assessee to be reheard under the proviso to Section 129"" shall be excluded. In our opinion the contention of the Revenue is misconceived.

The period of limitation gets extended under clause (iii) of Explanation 1 only by the time taken to reopen the whole or any part of the proceeding

or giving an opportunity to the assessee (to be reheard) under the proviso to Section 129. If we turn to Section 129 of the Act we find that it

provides for the procedure to be followed when there is a ""change of incumbent of an office"". The Section is as under: -

Change of incumbent of an office.

129. Whenever in respect of any proceeding under this Act an income tax authority ceases to exercise jurisdiction and is succeeded by another

who has and exercises jurisdiction, the income tax authority so succeeding may continue the proceeding from the stage at which the proceeding

was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be

reopened or that before any order of assessment is passed against him, he be reheard.

10. We do not see how this provision helps the Revenue. It is applicable when in the same jurisdiction, there is a change of incumbent and one

Assessing Officer is succeeded by another. In such a case, the main Section provides that the successor - officer is entitled to continue the

proceeding from the stage at which it was left by his predecessor subject to the caveat, expressed in the proviso, that if the assessee demands that

before the proceeding is continued the previous proceedings or any part thereof shall be reopened or that before any assessment order is passed

against him, he shall be reheard, such a demand has to be accepted. If as a result of accepting the assessee''s demand under the proviso to Section

129 some time is taken and the assessment proceedings cannot be completed within the normal period of limitation, then the period of limitation

gets extended by such time taken for giving the assessee an opportunity to reopen the earlier proceedings or for rehearing. Section 129 is

applicable to normal assessments made u/s 143(3) of the Act as well as the block assessments made u/s 158BC of the Act. The question however

is whether there was a change in the incumbent of the office in the assessee''s case so as to attract Section 129. We are afraid that Section 129 is

not attracted to the assessee''s case. The case of the assessee is one of a transfer u/s 127 from one jurisdiction to another jurisdiction. By order

passed u/s 127 of the Act on 15.05.2002, the jurisdiction to assess the assessee was transferred from the ITO, Ward 2(7), Bangalore to Central

Circle-25, New Delhi. Apparently because of search several cases had to be centralised and that is the reason for passing the order u/s 127 and

this has been referred to in Para 3 of the order of the CIT (Appeals). After the assessee''s case was transferred to Delhi the Assessing Officer at

Delhi issued notice u/s 158BC on 11.06.2002 calling for the block return of income. Section 129 speaks of change of an incumbent of an office

without any change of the jurisdiction. Explanation-1 (iii) to Section 158BE speaks only of the proviso to Section 129. There were no earlier

proceedings against the assessee pursuant to the search in Bangalore which got transferred to Delhi. The notice u/s 158BC was itself issued only

by the Assessing Officer at Delhi and it is by this notice that the proceedings were commenced. If the proceedings had been commenced by the

Assessing Officer at Bangalore and during the pendency of the proceedings the case had been transferred to Delhi it would possibly be argued that

the proviso to Section 129 would extend the time limit. We, however, express no opinion about the same because that is not the factual position in

the present case. In the present case the assessment proceedings were commenced only by the Assessing Officer at Delhi by notice issued on

11.06.2002. Thereafter there was no change in the incumbent of the office so as to attract the provisions of Section 129. In such a situation there is

no scope for importing the proviso to Section 129 to extend the period of limitation. Even factually there is nothing on record to show that the

assessee made any request or demand before the Assessing Officer in Delhi that the previous proceedings, if any, should be reopened or that

before any order of assessment is passed against her, she should be reheard. Therefore, both factually and legally there is no scope for invoking

Explanation-1(iii) to Section 158BE of the Act to extend the period of limitation. The assessment u/s 158BC ought to have, therefore, been

completed on or before 30.06.2002 as per Section 158BE (1) (b) of the Act. Since it was completed only on 30.07.2002, it is barred by

limitation.

11. In our opinion and for the above reasons the Tribunal erred in relying on clause (iii) of the Explanation-1 to Section 158BE to hold that the

block assessment order passed on 30.07.2002 is within the period of limitation. It failed to note that neither Section 129 nor its proviso is attracted

to the case. Its further reasoning that the first proviso to Section 158BC (a) required no notice u/s 148 for making a block assessment, merely

because the notice required to be issued u/s 158BC (a) calling for the block return is analogous to the notice u/s 148 to reopen an assessment, is

without any basis, either on principle or on authority. The Tribunal has erroneously equated the notice issued u/s 158BC (a) to a notice issued u/s

148 to reopen an assessment and erred in further understanding the words ""the time taken in reopening the whole or any part of the proceeding

appearing in clause (iii) of Explanation-1 to mean a reopening of the assessment u/s 148. With respect, the reasoning appears to be convoluted and

untenable. The reopening of the proceeding referred to in clause (iii) of Explanation-1 is the reopening of the proceedings for the assessment which

have been completed in part by an earlier incumbent of office, and not the reopening of the assessment u/s 148. This much should have been clear

to the Tribunal since the said clause in the Explanation clearly refers to the proviso to Section 129. The logic embodied in the clause has been

completely missed by the Tribunal. For the above reasons, we answer the substantial question of law in the negative, in favour of the assessee and

against the Revenue and allow the appeal of the assessee with no order as to costs.