

(2001) 03 DEL CK 0158

Delhi High Court

Case No: IT Appeal No. 106 of 2000 15 March 2001

Commissioner of Income Tax

APPELLANT

Vs

Ravi Kant Jain

RESPONDENT

Date of Decision: March 15, 2001**Citation:** (2001) 167 CTR 566**Hon'ble Judges:** Arijit Pasayat, C.J; D.K. Jain, J**Bench:** Full Bench**Advocate:** R.D. Jolly and Ms. Prem Lata Bansal, for the Revenue M.S. Syali and Satyen Sethi, for the assessee, for the Appellant;

Judgement

Arijit Pasayat, C.J.

This is an appeal u/s 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Challenge in the appeal is to the conclusions of the Income Tax Appellate Tribunal, New Delhi (hereinafter referred to as the "Tribunal") arrived at in ITA (SS) No. 70/Del/96 holding that provisions relating to block assessment in terms of section 158BA are not applicable to the facts of the case.

2. Factual scenario so far as relevant is as follows :

Search and seizure operations were conducted on a business group known as Kohli Group on 1-11-1996. As it was noticed that assessed was having close links with the said group, a search u/s 132 of the Act was also conducted at the residential premises of the assessed on 30-11-1996. assessed was found to be engaged in the business of property dealing, as his main source of income was found to be commission earned for making arrangements for hiring out or letting out properties and from purchase and sale of immovable properties. The assessing officer issued notice u/s 158BC of the Act on 10-6-1997, calling upon the assessed to file return for the block period ending on 30-11-1996. assessed filed return stating that there was no undisclosed income for the block period. The assessing officer issued a detailed questionnaire based on the materials, which were found during the search and were

seized. assessed filed his reply. During the block assessment proceedings, assessing officer was of the view that the seized materials and the books of account were of complex nature. Therefore, after getting approval from the Commissioner Delhi-II, New Delhi (hereinafter referred to as the "Commissioner"), assessing officer appointed a firm of chartered accountants as special auditors in terms of the order u/s 142(2A) of the Act. Special audit was completed and report was submitted on 14-5-1998. assessed was given opportunity to have his say as to why addition should not be made on the basis of views relating to issues referred to by the special auditors as well as on the seized material. assessed submitted his reply and took the stand that there was no scope for making any addition. The assessing officer was of the view that the income was to be taxed as business income and not as capital gains as claimed by assessed. Accordingly, block assessment was made. Matter was challenged in appeal before the Tribunal. On consideration of the factual background, Tribunal came to hold that the case was in the nature of mere change of opinion and is not relatable to any seized material. Such conclusion is the subject-matter of challenge in the appeal.

3. We have heard learned counsel for parties. In this appeal, it has been stated that Tribunal was not justified in deleting the additions made by the assessing officer undisclosed income on the ground that additions could not be termed as undisclosed income within the meaning of clause (b) of section 158B of the Act. Learned counsel for revenue with reference to the order passed by the assessing officer submitted that special auditor was appointed to indicate its views vis-a-vis the seized material and, Therefore, it cannot be said that the income as determined was not on the basis of any seized material but on the basis of change of opinion. Learned counsel for the assessed, on the other hand, submitted that assessing officer proceeded on the basis that the only question which needs to be decided was whether in the block assessment period as income which was hitherto being returned under a particular section of the Act could be brought to tax under different heads of income as contemplated in the Act.

4. Section 158B is a part of Chapter XIV-B dealing with special procedure for assessment of search cases. The Chapter contains sections 158B to section BH (sic). "Block period" and "undisclosed income" have been defined in clauses (a) and (b) to section 158B, for the purpose of the Chapter. We are concerned with the definition of "undisclosed income". The provision in its entirety reads as follows :

"(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, entry in the books of account or other documents or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Act."

5. Section 158BA deals with assessment of undisclosed income as a result of search. Said provision reads as follows :

"158BA(1) Notwithstanding anything contained in any other provisions of this Act, where after the 30-6-1995, a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A in the case of any person, then, the assessing officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

Explanation : For the removal of doubts, it is hereby declared that :

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period,

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

(3) Where the assessed proves to the satisfaction of the assessing officer that any part of income referred to in sub-section (1) relates to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 for any previous year has not expired, and such income or the transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income shall not be included in the block period."

6. The procedure for block assessment is indicated in section 158BC. The said provision reads as follows :

"158BC Where any search has been conducted u/s 132 or books of account, other documents or assets are requisitioned u/s 132A, in the case of any person, then :

(a) the assessing officer shall :

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30-6-1995, but before the 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form any verified in the same manner as a 158BA in Chapter XIV-B."

7. Sub-section (1) of section 158BA starts with a non obstinate clause. With effect from 1-7-1995, said section has overriding effect over other provisions of the Act. Clause (a) of the Explanation to section 158BA(2) postulates that assessment made under Chapter XIV-B shall be in addition to the regular assessment in respect of each previous year included in the block period. Clause (b) of the Explanation further clarifies the position that total undisclosed income relating to block period shall not include income assessed in any regular assessment as income of related block period. Clause (b) of the Explanation further clarifies the position that total undisclosed income relating to block period shall not include income assessed in any regular assessment as income of related block period. Clause (c) puts a ban on treating any income assessed under the "block assessment" so as to form part of regular assessment of any previous year included in the "block period".

8. Special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to regular assessment already done or to be done. Assessment for block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other materials or information as are available with the assessing officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A.

9. At this juncture, it would be relevant to tax note of the basis on which assessing officer proceeded. In para 9.1 of the order of assessment he has, inter alia, held as follows :

"The basic point revolves around the issue that whether in the block assessment period it could be considered about the income which has been hitherto being returned under particular section of the Income Tax Act could be brought to tax under different heads of income as contemplated under the Income Tax Act. Section 14 of the Income Tax Act enumerates the heads of income and inter alias provides that save as otherwise provided by the Act all income shall for the purpose of charge of Income Tax and computation of total income be classified under the heads "A" to "F". Part-B refers to profits and gains of business or profession and Part-E refers to the capital gains."

In other words, he was proceeding with the scope of the assessment and was not really addressing himself as to the scope of exercising jurisdiction under Chapter XIV-B and section 158BA. Tribunal, on analysis of the materials placed before it, has recorded the following finding :

"In the case in hand admittedly undisclosed income is not on the basis of any search material but on the basis of change of opinion, particularly on the basis of report of special auditors who had given different colour to the existing facts which stood assessed by the Income Tax authorities in the earlier assessment orders."

Admitted position before the Tribunal was that the undisclosed income was not determined on the basis of any search material. That being the position, Tribunal was justified in its view that section 158BA had no application to the facts of the case. Inevitable conclusion is that no substantial question of law arises out of the order of Tribunal which needs adjudication. The appeal is dismissed.