

**SUPREME COURT OF INDIA**

Tapan Kumar Dutta

Vs.

Commissioner of Income Tax, West Bengal

C.A.No.2014 of 2007

(R.K.Agrawal and Abhay Manohar Sapre, JJ.,)

24.04.2018

**JUDGMENT**

**R.K. Agrawal, J.,**

1. This appeal has been filed against the impugned final judgment and order dated 17.11.2005 passed by the High Court at Calcutta in Income Tax Appeal No. 174 of 2005 whereby a Division Bench of the High Court dismissed the appeal of the appellant herein while upholding the judgment and order dated 29.04.2005 passed by the Income Tax Appellate Tribunal (in short 'the Tribunal'): 'D' Bench, Kolkata in IT(SS) A No. 174/Kol/2003.

2. Brief facts:

“(a) The Appellant is a partner in a Partnership Firm by name “Nityakali Rice Mill” (in short ‘the Firm’). On 06.11.1998, a search was conducted at the business premises of the Firm by the Income Tax Department and several documents/books including a sum of Rs. 34 lakhs were seized.

(b) Thereafter, on 09.09.1999, a notice was issued to the Appellant by the Assessing Officer under Section 158BC of the Income Tax Act, 1961(in short ‘the IT Act’) to prepare and file a true and correct return of his total income including the undisclosed income in respect of which he was assessed for the block period 1989-90 to 1999-2000. On the very same day, a separate notice under Section 158BC was issued in the name of the said Firm by the very same Assessing Officer. Pursuant to the same, the Appellant filed his block return for the aforesaid period on 08.11.1999 declaring his aggregate undisclosed income at Rs 14 lakhs.

(c) Meanwhile, an application was filed by the Appellant before the Additional Commissioner of Income Tax, Asansol, praying for his intervention and issue of necessary direction to the Assessing Officer under Section 144A of the IT Act. On

14.08.2000, the Additional Commissioner perused the records and directed the Assessing Officer to take appropriate steps in order to determine the income of the assessee. The Additional Commissioner issued separate directions under Section 144A of the IT Act in the cases of M/s. Nitya Kali Rice Mill, Kartick Dutta, Shambhu Mondal and Tamal Mondal and the Draft Assessment Order under Section 158BC of the IT Act was sent to the Joint Commissioner of Income Tax, Burdwan, Range-2 for approval which was returned by the Joint Commissioner on 16.11.2000 stating that no warrant for authorization was issued in the names of the persons mentioned in the Draft Assessment Order.

(d) On 20.11.2000, Block Assessment Order was passed by the Deputy Commissioner of Income Tax stating that the return filed in the case of the Firm should be accepted as 'Nil' income and also directed to initiate proceedings against the Appellant for the assessment of undisclosed income for the block period under Section 158BD of the IT Act. Pursuant to the order dated 20.11.2000, a fresh notice under Section 158BC read with Section 158BD of the IT Act was issued to the Appellant to file the block return for the period 1989-90 to 1999-2000. Consequently, the Appellant intimated the Assessing Officer through a letter dated 21.10.2002 that the block return has already been filed for the aforesaid period on 08.11.1999. Further, the issue of fresh notice does not extend the time allowed for completion of the assessment under Chapter XIV of the IT Act.

(e) On 29.11.2002, the Assessing Officer passed the assessment order while assessing the undisclosed income of the Appellant to the tune of Rs. 3,48,56,430/-. Being aggrieved, the Appellant preferred an appeal being No. 133/CIT(A)/Bwn/02-03 before the Commissioner of Income Tax (Appeals). Vide order dated 18.09.2003, the Commissioner of Income Tax (Appeals) held that the undisclosed income of the block period in the instant case should be taken in the aggregate sum of Rs. 66,55,911/- as against Rs. 3,48,56,430/- as assessed by the Assessing Officer.

(f) Being aggrieved, the Appellant preferred an Appeal being No. IT(SS)/174/Kol/2003 before the Tribunal. At the same time, the Revenue also went in appeal by filing IT (SS) 178/K/2003 before the Tribunal. The Tribunal, vide order dated 29.04.2005, dismissed the appeal filed by the Appellant while partly allowing the appeal filed by the Revenue. Being aggrieved, the Appellant filed an appeal being No. ITA 174 of 2005 before the High Court. Vide judgment and order dated 17.11.2005, the Division Bench had dismissed the appeal filed by the assessee.

(g) Being aggrieved by the judgment and order dated 17.11.2005, the Appellant has preferred this appeal before this Court.

3. Heard Mr. Salman Khurshid, learned senior counsel for the appellant and Mr. K. Radhakrishna, learned senior counsel for the respondent and perused the records. Point(s) for consideration:-

4. The only point for consideration before this Court is whether in the facts and circumstances of the present case, the issue of Second (Fresh) Notice under Section 158BD of the IT Act is valid or not?

Rival contentions :-

5. Learned senior counsel for the appellant strenuously contended that the first notice issued under Section 158BC of the IT Act dated 09.09.1999 is the valid notice and the assessment has to be made in pursuance thereof and the AO has no authority to issue the second notice under Section 158BD. Learned senior counsel further contended that the Firm as well as the Appellant were assessed by the same Assessing Officer wherein Section 158BD has no application because it applies only in the case where the Assessing Officer assessing the Firm as well as the Appellant is different. The Assessing Officer rightly issued the notice under Section 158BC both upon the Firm as well as upon the Appellant which resulted in the draft assessment and the proceedings on the basis of the notice under Section 158BD are not valid. Learned senior counsel finally contended that the purported proceedings under Section 158BD are clearly invalid and without jurisdiction.

6. On the other hand, learned senior counsel for the respondent submitted that the Appellant has identified the seized documents in respect of his personal business and the bank accounts in the name of Kartick Dutta and Shambhu Mondal are also in respect of his personal business, hence, the undisclosed income earned during the block period belongs to the Appellant and not the Firm. Learned senior counsel further submitted that the notice under Section 158BD can be issued to a person with respect to whom search was not conducted but undisclosed income was found as belonging to such person from the material seized from the residence or business premises of the person with respect to whom search was made under Section 132. The Assessing Officer, after recording satisfaction to the effect, rightly issued the notice under Section 158BC read with Section 158BD to the Appellant and assessed the income to the tune of Rs. 3,48,56,430/-. Learned senior counsel further submitted that in the case at hand the satisfaction of the Assessing Officer is apparent and there is no infirmity in the issue of notice under Section 158BC read with Section 158BD of the IT Act to the Appellant. Learned senior counsel finally submitted that the High Court was right in rejecting the claim of the Appellant and no interference is sought for by this Court in the matter. Discussion:-

7. In the instant case, it is a matter of dispute that second notice issued on 20.11.2000 is not valid and competent since the first notice issued by the same Assessing Officer dated 09.09.1999 under Section 158BC was valid and the assessment ought to be made in pursuance of that notice and, therefore, the Assessing Officer has no authority to issue the second notice.

8. In this view of the matter, it is pertinent to mention Section 158BD of the IT Act which reads as under:-

“158BD. Undisclosed income of any other person.- Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158BC against such other person and the provisions of this Chapter shall apply accordingly.”

It can be seen that notice under Section 158BD can be issued to a person with respect to whom search was not conducted but undisclosed income was found as belonging to such person from the material seized from the residence or business premises of the person with respect to whom search was made under Section 132. Section 158BD speaks of the condition that “where the Assessing Officer is satisfied that any undisclosed income belongs to any person other than the searched person”, which means that the Assessing Officer must have to be satisfied that any undisclosed income belongs to any person other than the searched person. In the present case, it is not in dispute that the Assessing Officer, who is assessing the Firm as well as the Appellant, is the same person. In other words, the same Assessing Officer having jurisdiction over the searched person can proceed against the present Appellant. Therefore, the present Assessing Officer had jurisdiction to proceed against the present Appellant to make a block assessment under Chapter XIV-B of the IT Act, in case the Assessing Officer is prima facie satisfied that any undisclosed income belongs to the present Appellant.

9. It is well settled that there must be prima facie satisfaction on the part of the Assessing Officer on the basis of searched books of accounts or other documents or assets that any undisclosed income belongs to any person other than the searched person. In support of the contention that there was prima facie satisfaction of the Assessing Officer, his order was based upon the material on record that undisclosed income belonged to the present Appellant, when he issued the notice under Section 158BC on 09.09.1999. The jurisdiction under Section 158BD is based on the satisfaction of the Assessing Officer that:-

“(a) there is undisclosed income;

(b) such undisclosed income does not belong to the person with respect to whom action under Section 132 was taken and;

(c) such undisclosed income belongs to some other person. Therefore, mere disclosure made by the present assessee before the authority cannot be the basis for reaching a satisfaction that any undisclosed income belongs to him unless the seized books of accounts or other documents or assets are perused, examined or verified by the concerned Assessing Officer. We are of the opinion that in the present case, only after being satisfied that the Appellant fell within the ambit of Section 158BD, a notice was issued by the Assessing Officer.

10. Further, on a conjoint reading of Sections 158BC and 158BD, it is clear that no satisfaction to the effect that undisclosed income belongs to the searched person is necessary before issuing the notice under Section 158BC against the searched person as Section 158BC speaks of a condition that where any search had been conducted under Section 132 or books of accounts or other documents or assets or requisition under Section 132A in case of any person, then, the Assessing Officer shall serve notice to such person requiring him to furnish within specified time a return in the prescribed form. Therefore, at the time when notice under Section 158BC was issued by the Assessing Officer to M/s Nitya Kali Rice Mill, it was not necessary for the Assessing Officer to arrive at a satisfaction that any undisclosed income belongs to M/s Nitya Kali Rice Mill. A search was conducted against M/s Nitya Kali Rice Mill under Section 132 of the IT Act. Since the notice under Section 158BC issued to M/s Nitya Kali Rice Mill and the notice under Section 158BC issued to the Appellant were on the same day i.e., on 09.09.1999, the question of coming to a satisfaction that any undisclosed income based on seized books of accounts or documents or assets belonged to the present Appellant did or could not arise inasmuch as no reasonable or prudent man can come to such satisfaction unless the seized books of accounts or documents or assets are perused, examined and verified. Therefore, the Assessing Officer was right in arriving at a decision that the notice under Section 158BC issued to the present Appellant on 09.09.1999 did not satisfy the requirement of Section 158BD of the IT Act. He, therefore, rightly proceeded to issue fresh notice (Second Notice) under Section 158BD on 20.11.2000 after recording a satisfaction that any undisclosed income based on seized books of account or document or assets or other materials may belong to the Appellant. In fact, in the present case, the AO has himself come to a conclusion that the notice issued under Section 158BC on 09.09.1999 to the assessee was not in conformity with the requirement of Section 158BD of the IT Act. The Assessing Officer proceeded under Section 158BD of the IT Act not in pursuance of any direction by the Joint Commissioner but after being satisfied that the case squarely fell within the ambit of Section 158BD of the IT Act.

11. A perusal of Section 158BD of the IT Act makes it clear that the Assessing Officer needs to satisfy himself that the undisclosed income belongs to any person other than the person with respect to whom the search was made under Section 132 or whose books of accounts or other documents or assets were requisitioned under Section 132A. The very object of the Section 158BD is to give jurisdiction to the Assessing Officer to proceed against any person other than the person against whom a search warrant is issued. Although Section 158BD does not speak of 'recording of reasons' as postulated in Section 148, but since proceedings under Section 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the Assessing Officer in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings under Section 158BD.

12. Pursuant to the above, we are of the opinion that the order dated 14.08.2000, passed by the Additional Commissioner of Income Tax (Appeals), under Section 144A of the IT Act whereby he, inter-alia, directed the Assessing Officer to take the undisclosed income of the Appellant including from the benami business in the name of two other persons at an

aggregate sum of Rs 17 lakhs as against Rs 14 lakhs declared by the Appellant in his block return was passed in contravention of law and is not sustainable in the eyes of law.

13. In view of the foregoing discussion, we are of the considered opinion that the High Court was right in passing the judgment and order dated 17.11.2005 and no interference is sought for by this Court. Hence, the appeal is dismissed with no order as to costs.