



Reportable

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA No.745 of 2009
With
ITA No.186 of 2010**

% Date of Decision: 22nd July, 2010

+ **ITA 745/2009**

THE COMMISSIONER OF INCOME TAX Appellant

Through: Ms. Rashmi Chopra with Mr. Chandra
Mani Bharadwaj, Advocates

Versus

MESCO AIRLINES LTD. Respondent

Through: Mr. Salil Aggarwal with Mr. Prakash
Kumar, Advocates

+ **ITA 186/2010**

THE COMMISSIONER OF INCOME TAX CENTRAL Appellant

Through: Ms. Rashmi Chopra with Mr. Chandra
Mani Bharadwaj, Advocates

Versus

NATASHA SINGH Respondent

Through: Mr. Salil Aggarwal with Mr. Prakash
Kumar, Advocates

CORAM :-

**HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. Admit.



2. The following substantial question of law arises for consideration:

“Whether on the facts and in the circumstances of the case, the learned Income Tax Appellate Tribunal erred in deleting the levy of interest under Section 158BFA (1) of the Income Tax Act, 1961?”

3. With the consent of the parties, filing of paper book is dispensed with and the matter is heard finally at this stage itself.
4. This issue has arisen on the following factual background.

Search and seizure operation under Section 132 of the Income Tax Act (hereinafter referred to as ‘the Act’) was carried out at the premises of the assessee on 26.02.1997, 05.03.1997 and 20.03.1997. Whenever such search is conducted, the assessee has to necessarily file revised income tax return. For filing such a return, notice under Section 158BC of the Act is to be issued to the assessee and the assessee is required to file the return within 45 days thereafter. If the return is not filed within 45 days and more time is consumed, the assessee is liable to pay interest under Section 158BFA (1) for the delayed period. In the present case, notice dated 21.08.1997 was served upon the assessee on 22.08.1997 for the block period 1992-93 and 1993-94. Forty five days were to expire on 05.10.1997. However, after the expiry of the said period, the assessee requested the Department to supply certain documents. According to the assessee, the revised return for the aforesaid block period could not be filed for want of those documents, as the said documents were seized by the Department during the search. There is no



dispute about this fact, viz., it was not possible for the assessee file the return in absence of these documents. The Department took abnormally long period in supplying these documents and the same were supplied only on 20.11.1998. Thereafter, return was filed on 01.01.1999.

5. According to the Assessing Officer (AO), since the return was to be filed on 05.10.1997 and the assessee also failed to pay the tax on undisclosed income and the same was filed on 01.01.1999, the A.O. charged interest and initiation of penalty under Section 158BFA of the Act for a period from 06.10.1997 to 01.01.1999. The assessee filed an appeal against this order and the same was dismissed by the CIT(A).
6. On further appeal filed by the assessee, the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') has allowed the appeal and held that no such interest could be charged in the circumstances of this case. According to the Tribunal, the assessee had asked for the documents within 45 days. These documents were supplied only on 20.11.1998 and thereafter the return was filed within 45 days from that date. The discussion of the Tribunal while taking this view is as follows:

“....Under clause (a) the levy of interest under section 158BFA (1) terminates on the date of furnishing the return of income when such return has not been filed within the time prescribed under section 158BC. Under clause (b) the interest runs till the completion of the assessment under section 158BC(c) when a return as required under section 158BC has not been filed. In the present case the issue falls in clause (a). This is a case where return has been furnished after the expiry of the time prescribed under the provisions of section 158BC. It is further to be noticed that the word used in section 158BFA(1) is “shall”. Once it is held that there was a delay in filing the return, necessary



consequences enshrined under section 158BFA which mandates the charging of interest along with other consequences, if any, come into play. The language of the statute is very clear and unambiguous and gives no power to any of the authorities to exercise discretion and waive interest as contemplated under section 158BFA in appellate proceedings. Therefore, the moment there is a delay in filing the return and delay is attributable to the assessee's conduct the provisions of section 158BFA(a) come into operation. This proposition of ours find support from the decision of the Income-Tax Appellate Tribunal, Delhi Benches in the case of Rati Ram Gotewala reported in 89 ITD 14. Once it is held that the interest under section 158BFA is to be levied if the delay is attributable to the assessee, the issue of interest of justice would come into play to verify as to whether the delay is attributable to the assessee. In the present case, it is noticed that the search had been concluded on 27.3.1997 and the notice under section 158BC has been served on 22.8.97. The assessee has within reasonable time requested the AO to grant the assessee the copies of the seized material. In the letter dt. 1.11.97 the assessee has specifically also clarified that without the seized material the assessee would not be able to file the block return. Further, from the letter dt. 20.11.1998, which is the acknowledgement of having taken all the photocopies required, it is noticed that the group companies' details are in relation to 10 persons. It is further noticed that after obtaining the seized material on 20.11.1998 within 40 days on 1.12.1999 the assessee has filed its block return. This being so, it would have to be held that the delay in filing block return was not on reasons which are attributable to the assessee. Further, the Revenue has also not been able to place before us any evidence to show that the assessee had by its action delayed the obtaining of the copies of the seized material. This being so, the delay in filing block return was not on reasons which are attributable to the assessee. Further, the Revenue has also not been able to place before us any evidence to show that the assessee had by its action delayed the obtaining of the copies of the seized material. This being so, the delay in filing the return cannot be attributable to the assessee. The delay in filing the return having been held to be not attributable to the assessee, the levy of interest under section 158BFA (1) cannot be held to be leviable for such period, which was required by the assessee for the purpose of obtaining the seized material from the Revenue. Further, the assessee having filed its return of income within the reasonable time of 40 days of obtaining the seized material from the Revenue, it cannot be said that there is any delay attributable to the assessee to which interest under section 158BFA(1) could be levied. In the circumstances, the Assessing Officer is directed to delete the levy of interest under section 158BFA(1) levied. In the circumstances order of the Id. Commissioner of Income-Tax (Appeals) on this issue stands reversed."

7. Submission of the learned counsel for the Revenue is that the assessee knew it quite well that it was imperative upon the assessee to file the return once search was carried out under Section 132 of the Act and therefore, immediately after the search was concluded, i.e., 20.3.1997, the assessee could ask for the



aforesaid documents. According to the learned counsel for the department, it is the negligence on the part of the assessee in demanding the documents only after the service of notice under Section 158BC after the expiry of 40 days, when the assessee knew that the period of limitation prescribed is of 45 days for submitting the return.

She also referred to the order of the CIT(A) wherein the CIT(A) remarked that even for the subsequent period, i.e., from the date of making a request for supply of documents till the supply of the documents (which consumed 13 months) the assessee could not furnish any documentary evidence that photocopies of essential document was delayed by the Department solely upto 20.11.1998. On this basis, it is submitted that there is a delay and Section 158BFA(1) is mandatory in nature as per which the interest becomes payable and is liable to be paid by the assessee for the entire period from 06.10.1997 till the date of filing of the return.

8. Mr. Salil Aggarwal, on the other hand, submits that it was not a case where the assessee became liable to pay the interest and the approach of the Tribunal was perfectly justified.
9. After hearing the counsels for the parties and going through the record, we are of the opinion that the approach adopted by either the Assessing Officer or the Tribunal is not justified. Both have taken extreme view. Neither the conduct of the assessee is without blemish nor the revenue can claim that it has acted with



due diligence, inasmuch as, delay of substantial period attributable to the department as well. To demonstrate this, we are giving here some important dates:-

Date	Events
(i) 26.2.1997 05.3.1997 20.3.1997	Search conducted at the premises of the assessee.
(ii) 21.8.1997	Notice under Section 158BC of the Income Tax Act issued to the assessee.
(iii) 22.8.1997	Notice served upon the assessee. The assessee was required to file return for the block period within 45 days from this date i.e. by 5.10.1996.
(iv) 01.10.1997	The assessee asked for the documents to enable it to file the return as relevant documents were seized by the department during search.
(v) 20.11.1998	The documents as demanded by the assessee were supplied to it by the Department.
(vi) 01.1.1999	Return filed by the assessee.

The assessee knew fully well that once the search is conducted under Section 132 of the Act, it was compulsory to file the return. Though, such a return was to be filed within 45 days of service of notice under section 158BC of the Act. As a prudent person, he could have asked for the copies of documents. He did not do so and waited for service of notice upon it under Section 158BC of the Act. Still indulgence upto this period can be given to the assessee as the trigger point for filing the return is the service of



notice under Section 58BC of the Act. However, the assessee (not act with promptitude even after the service of that notice. When it knew that the return is to be filed within 45 days, there was no reason to wait for 41 days before making a request for supply of copies of the documents, which request was made on 1.10.1997 i.e. just 4 days before the service of notice. Even after the documents were supplied on 20th November, 1998, the assessee took further more than 40 days in filing the return.

10. On the other hand, the department also slept over the request of the assessee for furnishing the copies of the documents. It took more than one year in supplying the documents as the request was made on 1.10.1997 and documents were supplied on 20.11.1998. For this delay which is attributable to the department, the assessee cannot suffer and pay the interest. Thus, the approach of the Assessing Officer in directing the assessee to pay the interest for the entire period which included aforesaid 13 months consumed by the department in supplying the documents is clearly wrong. The Tribunal, on the other hand, ignored the fact that the assessee made a request for supply of copies of documents after waiting for 41 days and thereafter took another 41 days in filing the return. It counted the period of 45 days, as required under the law for filing the return, only from 20.11.1998 and absolved the assessee from liable to pay any interest. If such practice is allowed, any assessee on the last date of filing the return may ask for supply of copy of documents and thereafter



from the date when the documents are supplied, would c
another 45 days to file the return. This also has to be countered.

11. In this scenario, we are of the opinion, that the total time taken by the assessee from the date of service of notice under Section 158 BC of the Act till the filing of the return is to be taken into consideration and from this period, the time which is taken by the department in supplying the documents has to be excluded. In this manner, if the period exceeds 45 days, the assessee would be liable to pay the interest for the period beyond 45 days.
12. We answer the question of law by holding that the Income Tax Tribunal was not entirely right in dealing with the levy of interest under Section 158 BFA (1) of the Act. Instead, the period for which the liability to interest is to be fastened upon the assessee would be calculated in the manner mentioned above.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

JULY 22, 2010.
pmc/skb