



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

+ **ITA No.613 of 2009**

% Decision Delivered On: August 05, 2010

COMMISSIONER OF INCOME TAX . . . Appellant

through : Mr. N.P. Sahini, Advocate

VERSUS

KAPIL JAIN . . . Respondent

through: Mr. Santanu Kanngo, Advocate

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. This appeal was admitted on 2nd September, 2009 on the following substantial question of law: -

“Whether the ITAT, while deleting the additions, was correct in law and on facts in holding that the order of the AO was without jurisdiction though it has been passed after due compliance of the procedure envisaged u/s 158 BD?”

2. On 20th September, 2009, a search was conducted in the premises of Sh. Sumer Chand Jain, who is the father of the assessee herein. On the basis of certain documents seized in the said search, a



notice dated 19th April, 2004 under Section 158 BD read with Section 158 BC of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was served upon the assessee. The assessee thereafter moved an application dated 5th May, 2004 seeking extension of time to file the return for the block period comprising of the assessment year 1997-98 to 2003-04. Eventually, the return was filed on 24th May, 2004 declaring his income as 'Nil'. The Assessing Officer, however, made the assessment for the aforesaid block period by assessing the income at Rs.25,61,147/-. The assessee filed an appeal before the CIT (A), who allowed the same partly by deleting some of the additions made and confirmed some other additions made by the Assessing Officer. It is worthwhile to point out that before the CIT (A), the assessee had also raised the question of jurisdiction of the Assessing Officer. This objection was turned down by the CIT (A). The Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), however, has accepted the objection qua jurisdiction of the Assessing Officer and on that ground alone, the assessment made by the Assessing Officer is set aside vide impugned decision dated 29th August, 2008, without going into the merits of the case. Challenging that order, this appeal is preferred and the aforesaid facts would disclose that we are concerned with the issue as to whether the order passed by the concerned AO was without jurisdiction. In so far as this issue is concerned the following facts may be spelled out: -

The search was conducted at the premises of father of the assessee. The concerned Assessing Officer in the case of the



father of the assessee was ACIT Circle 36 (1), New Delhi where the Assessing Officer having jurisdiction over the assessee was the ITO, Ward 29 (1), at the time of the issue of notice under Section 158 BD. In the case of the assessee, however, the notice under Section 158 BC was issued by the ACIT, Circle 36 (1), New Delhi who had no jurisdiction over the assessee.

3. Subsequently, the case of the assessee was transferred to Circle 36 (1) and as such transfer order was passed by the CIT on 21st April, 2004. However, the fact remains that as on the date of the issue of the notice under Section 158 BD read with Section 158 BC of the Act on 19th April, 2004, the jurisdiction vested with ITO, Ward 29(1) in so far as the assessee is concerned. It is thus clear that ACIT, Circle 36 (1), New Delhi, on the date of issuance of notice, had no jurisdiction to issue such a notice.
4. Mr. Sahini accepts the aforesaid position. However, his submission is that no objection to the jurisdiction of the ACIT, Circle 36 (1) was taken by the assessee within one month from the date on which he was served with the notice under Section 158 BD of the Act and for this reason alone it was not competent on the part of the Tribunal to set aside the proceedings for want of jurisdiction. In support of this plea, Mr. Sahini, places reliance on the provisions of Section 124 of the Income Tax Act, 1961. Sub-section (3) of this Section provides that under certain circumstances the jurisdiction of the Assessing Officer would not be questioned. This is so stated in the following manner: -



“S.124 JURISDICTION OF ASSESSING OFFICERS

(1) XXX XXX XXX

(2) XXX XXX XXX

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer - (a) where he has made a return under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) Where he has made no such return, after the expiry of the time allowed by the notice under sub-section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.”

5. Though there is no specific mention of Section 158BD or Section 158 BC in clause (a) of the sub-section, Mr. Sahini submits that in Section 158 BC itself, provisions of Section 142 (1) are incorporated and because of this, proceedings under Section 158BC shall also be covered.
6. We are in quite agreement with the aforesaid submissions made by the learned counsel for the Revenue. Sub-Section (3) of Section 124 of the Act puts a specific embargo on the assessee from raising objection about the jurisdiction of an Assessing Officer after the expiry of one month from the date on which he was served with notice under sub-Section (1) of Section 142 of the Act or after completion of assessment whichever is earlier. It is not in doubt that the plea of the jurisdiction was not raised by the assessee at all within one month from the date on which he was served with the notice under Section 158BD of the Act. Chapter XIV-B of the Act provides ‘special procedure for assessment of



such cases'. Thus, where the search has taken place and as result thereof, the assessment for the 'block period' is required, specific procedure is provided under this Chapter for completing the assessment. If the A.O. is satisfied that the documents on material seized in the search reveals undisclosed income of any other person if premises are not even searched, notice can be issued to that person under Section 158BD for 'block period'.

7. It cannot be disputed that after service of the notice for 'block assessment' under these provisions, the assessment is to be carried out in the manner provided under Section 143 of the Act. Notice was duly served under Section 143 of the Act along with detailed questionnaire by the Deputy Commissioner of Income Tax, Circle 36(1), which was served upon the assessee on 21.04.2006 by when the jurisdiction stood transferred to him. Section 124(3) of the Act specifically provides for limitation of one month, *inter alia*, from the date of service of notice under Section 143(2).
8. In the present case, admittedly objection was not taken within one month. Therefore, for this reason, we are of opinion that the order of the Tribunal holding that the assessment proceeding for the block period was without jurisdiction is not correct. We, thus, decide the question in favour of the Revenue and against the assessee. As a result thereof, the impugned order passed by the Tribunal is set aside and the matter is remanded back to the Tribunal to decide the appeal on merits.



9. This appeal is disposed of in the aforesaid terms.

**(A.K. SIKRI)
JUDGE**

**(REVA KHETRAPAL)
JUDGE**

AUGUST 05, 2010.

sk/pmc