

**36 & 37#****% 27.07.2011**

Present: Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Advocate for the assessee/appellant.
Mr. Sanjeev Sabharwal, Sr. Standing Counsel for the respondent/revenue.

+ITA No. 979/10 & W.P.(C) 6761/2000

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A search and seizure operation was carried out at the premises of the appellant/assessee on 6th November, 1996. On that basis, a notice dated 5th August, 1997 under Section 158 BC of the Income-Tax Act (hereinafter referred to as 'the Act') was issued to the assessee. In compliance thereto, the assessee filed return of an undisclosed income declaring therein 'Nil' undisclosed income. The Assessing Officer carried out the assessment under Section 158BC of the Act and vide assessment order dated 28th November, 1997 computed the total undisclosed income at ₹ 50,04,822/-. The assessee filed appeal thereagainst before the Income-Tax Tribunal(hereinafter referred to as 'the Tribunal') which was partly allowed and it was held by the Tribunal that the undisclosed income would be



to the tune of ₹ 3,10,000/-. In respect of another figure of ₹4,50,000/- the matter was remitted back to the Assessing Officer. However, we are not concerned with this aspect in the present appeal. Though, we may mention that the Assessing Officer had passed revised order, on remand, assessing the undisclosed income at ₹7,65,000/-.

The controversy which is the subject matter of the present appeal was triggered by the issuance of notice dated 30th August, 2000 by the Assessing Officer under Section 154 of the Act. The assessee objected to the issuance of this notice contending that there was no mistake which could be discernable from the record. This was not accepted by the Assessing Officer who passed orders under Section 154 of the Act reassessing the income at ₹ 1,29,68,521/- against undisclosed income originally assessed at ₹ 50,04,822/-. The assessee preferred appeal thereagainst which was allowed by the CIT (A) holding that there was a jurisdictional error committed by the Assessing Officer invoking the provisions of Section 154 of the Act and thus set aside the order passed by



the Assessing Officer in exercise of his power under Section 154 of the Act. The Revenue now preferred appeal against the order of the CIT (A) which has been allowed by the Tribunal reversing the order of the CIT (A) and holding that since there was an error apparent on the face of record, the Assessing Officer was perfectly justified in correcting that order. The assessee moved another application under Section 254 (2) of the Act seeking correction of the order dated 12th December, 2008 passed by the Tribunal in the appeal. This application has been dismissed vide orders dated 2nd June, 2009. In these circumstances, the appellant has challenged the orders dated 12th December, 2008 by preferring appeal under Section 260-A of the Act. In so far as orders dated 2nd June, 2009 passed in Misc. Application preferred under Section 254 (2) of the Act is concerned, that order is challenged by filing Writ Petition (C) 6761/2010.

In the appeal following questions of law are sought to be raised:-

“(1) Whether the order of the Income Tax Appellate Tribunal in holding that there was mistake apparent from record in the order of



the Assessing Officer dated 09.11.2000 U/s 154 of the Income Tax Act, 1961 is correct and valid being in accordance with law?

(2) Whether the Income Tax Appellate Tribunal was correct in law in holding that the income computed and assessed by the Assessing Officer at Rs. 78,72,942/- for the Assessment Year 1994-95 & Rs. 1,30,617/- for the Assessment Year 1996-97 was undisclosed income despite the fact such income was assessed by the Assessing Officer himself under Chapter XIV of the Income Tax Act, 1961 and holding the same as income falling under Chapter XIV and not under Chapter XIV B of the Income Tax Act, 1961?

(3) Whether the Income Tax Appellate Tribunal was justified in law, (even if there was a mistake apparent from record), in not directing the Assessing Officer to substitute the figure of Rs. 4,57,250/- as income finally computed by the order of the Income Tax Appellate Tribunal for the Assessing Year 1994-95 as against Rs. 78,72,942/-, which itself was unwarranted addition?"

Mr. C.S. Aggarwal, learned Senior Counsel appearing for the appellant/assessee at the outset stated that he would not press the questions of law proposed at Sl. No.1 and 2. His



submission is that even if it is held that there was an error apparent on the face of record which the Assessing Officer wanted to correct by exercising his power under Section 154 of the Act, the Assessing Officer should have taken the substitute figure of ₹ 4,57,250/- which was the income finally computed by the Tribunal against the figure of ₹ 78,72,942/- taken by him. Thus, he basically pressed question of law no. 3 above and to justify his submission Mr. Aggarwal has brought to our notice following facts:-

In so far as assessment year 1994-95 is concerned, the assessee had filed the return disclosing the income at ₹17,32,655/- which included agricultural income of ₹ 16,92,795/- . In this manner excluding the agricultural income, further income which was offered for tax was ₹ 39,860/-. The assessment order was passed making various additions and computing the income of the assessee thereby at ₹78,72,942/-. Against this order passed in regular assessment for the assessment year 1994-95, the assessee preferred appeal. The



CIT (A) commented upon various additions made by the Assessing Officer which were not permissible and remitted the case back to the Assessing Officer for passing fresh orders on the basis of observations made by the CIT (A) in appeal. After remand, fresh assessment order was passed on 29th March, 2000 by the Assessing Officer computing the income at ₹40,41,090/-. Still dissatisfied with this outcome, the assessee preferred ^{an} appeal. The Tribunal ultimately decided this appeal of the assessee giving further relief to the assessee by deleting some of the additions which were sustained by the CIT (A) and assessing the income of the assessee finally at ₹ 4,57,250/-. The net outcome of the aforesaid proceedings was that in so far as regular assessment pertaining to assessment year 1994-95 is concerned, the income of the assessee was finally assessed at ₹ 4,57,250/-.

With this, now we turn to the assessment proceedings carried out under Section 158 BC of the Act. As mentioned above, after the issuance of notice to the assessee after search operation, the assessee had filed his undisclosed income ^{as} at 'Nil'.



In the assessment order dated 28th November, 1997 passed by the Assessing Officer under Section 158 BC of the Act, total undisclosed income was computed at ₹ 50,04,822/-. This ^{pertains} ~~pertain~~ to the block period from 1st April, 1986 to 6th September, 1996 and included the assessment year 1994-95 as well. The break-up of the various orders with total undisclosed income of ₹ 50,04,822/-, however, given by the Assessing Officer in the said assessment reads as under:-

Assessment year	Total income including undisclosed income (₹)	Returned/Assessed income (in ₹)	Undisclosed Income (in ₹)	Description of undisclosed income
	(A)	(B)	(A-B)	
1987-88	50000.00	Nil	50000.00	Unexplained agricultural expenses
1988-89	50000.00	Nil	50000.00	Unexplained agricultural expenses



1989-90	50000.00	Nil	50000.00	Unexplained agricultural expenses
1990-91	50000.00	Nil	50000.00	Unexplained agricultural expenses
1991-92	1621360.00	21360.00	1600000.00	Consideration received in the form of a Honda car and unexplained deposits in bank and unexplained agricultural expenses.
1992-93	316913.00	16913.00	300000.00	Unexplained deposit in bank and unexplained agricultural expenses.
1994-95	88,22,942.00	7872942.00	50000.00	Unexplained deposit in bank and unexplained agricultural expenses.
1995-96	545094.00	128913.00	416181.00	Income from other sources and unexplained agricultural expenses.



1996-97	900258.00	130617.00	769641.00	Income from other sources and unexplained agricultural expenses
1997-98	710994.00	141994.00	569000.00	250000/- unexplained expenditure on marriage of assessee's sister 250000/- unexplained receipts. 64000/- unexplained expenditure on household expenses.
Total			50,04,822.00	

The aforesaid table would demonstrate that insofar as assessment year 1994-95 is concerned, the total income including undisclosed income is shown as ₹88,22,942.00. The return/assessed income which is included therein is shown at ₹78,72,942.00. The reason was obvious, by that time, the original assessment order passed by the Assessing Officer for the assessment year 1994-95 was taken into consideration



whereby the Assessing Officer had assessed the income for this year was ₹ 78,72,942/-. It was because of the reason that the appeal of the assessee was still pending and had not been decided. Mr. Aggarwal has pointed out that undisclosed income assessed was only ₹9.5 lacs. In this year to which ₹78,72,942 was added thereby arriving at a figure of ₹88,22,942. In so far undisclosed income of ₹9.5 lacs is concerned that was deleted by the Tribunal in appeal.

As pointed out above, after the decision of the CIT (A) when fresh assessment order was passed, the Assessing Officer reduced the aforesaid income to ₹40,41,090/- against the amount of ₹78,72,942/-. Since this figure has been further reduced to 4,57,250/- as a result of the decision of appeal preferred by the assessee before the Tribunal, the submission of Mr. Aggarwal is that even the order under Section 154 of the Act, it was permissible for the AO to pass the order under Section 154 of the Act, the AO should have substituted the figure of ₹4,57,250/- in place of ₹78,72,942/-. This plea is predicated on the contention that while making the assessment



under Section 158 BC of the Act, the Assessing Officer had not assessed the income under the said provision at ₹ 88,22,942/-. In fact, the Assessing Officer had included the figure of ₹78,72,942/- while arriving at the aforesaid figure and once the figure of ₹ 78,72,942 itself stand reduced to the amount of ₹4,57,250, there was no reason to take into consideration the net income assessed originally by the Assessing Officer at ₹78,72,942 in respect of assessment year 1994-95.

Mr. Sanjeev Sabharwal could not dispute the factual mistake made by the Assessing Officer while passing an order under Section 154 of the Income Tax Act. Perusal of paragraph 01 of the said order shows that the Assessing Officer noted that the undisclosed income for the year 1994-95 were ₹50,04,822/- and a sum of ₹78,72,942/- was assessed. No doubt the chart extracted above gives such an impression.

However, it is clear from the above that there was an addition of ₹9,50,000/- which was treated as undisclosed income for the assessment year 1994-95. Since undisclosed income for this year was assessed ₹78,72,942/- and the assessee had filed



regular return for this year showing income of ₹17,32,655/- in the orders that was passed in Section 154 of the Act. From ₹9,50,000/- the aforesaid sum of ₹39,860/- is ought to be deducted thereby arriving at the figure of undisclosed income. The Assessing Officer took into consideration obviously wrong figure of ₹78,72,942/-.

Under these circumstances in so far as assessment year 1996-97 is concerned similar mistake is committed by the Assessing Officer while passing orders under Section 154 of the Act. In this year the undisclosed income was assessed ₹7,69,641/-. Since no regular return was filed by the assessee for that year at the time of search. Undisclosed income of this year was to be taken as ₹7,69,641/-. However, Assessing Officer wrongly took the figure of ₹9,00,258/-.

In the circumstances the appeal is partly allowed in the aforesaid terms. The Assessing Officer will pass the rectification order accordingly.



+ **WP (C) No. 6761/10**

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In view of the orders passed in ITA No. 979/2009 prayer made in this writ petition becomes infructuous and is disposed of accordingly.


A.K. SIKRI, J.


M.L. MEHTA, J.

JULY 27, 2011

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