



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 06.03.2014
 + **ITA 902/2007**
RAGHAV BAHL ... Appellant
 versus
COMMISSIONER OF INCOME TAX CENTRAL REVENUE
BUILDING ... Respondent

Advocates who appeared in this case:

For the Appellant : Mr M.S. Syali, Sr. Adv. with Mr Maayank Nagi,
 Ms Husnal Syali Nagi.
 For the Respondent : Mr Rohit Madan, Adv. with
 Mr P.Roy Choudhry, Mr Akash Vajpai.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This is an appeal under section 260A of the Income-tax Act, 1961 which has been preferred by the assessee against the order passed by the Income Tax Appellate Tribunal in IT (SS) Appeal No. 106/2006 decided on 31.10.2006 in respect of the block period 1.4.1991 to 03.08.2000. The only question of law which arises for our consideration in this appeal is as under:-

“Whether the assessing officer is bound to record satisfaction within the meaning of section 158BD of the Income-tax Act, 1961 during the process of assessment of the person searched under section 158BC of the said Act?”

2. With the consent of the parties the above question of law is taken up for hearing straightway.



3. There was a search conducted in respect of one Mr Manoj Aggarwal on 03.08.2000. The block assessment pursuant to the said search was concluded in respect of the searched person (Mr Manoj Aggarwal) under section 158BC on 29.08.2002. It would be relevant to point out at this juncture itself that the terminal date for concluding the block assessment in respect of the searched person under section 158BE(1)(b) was 30.08.2002.

4. Insofar as the present assessee is concerned, the assessing officer of the searched person (i.e. Mr Manoj Aggarwal) recorded his satisfaction in terms of section 158BD on 07.10.2003 and a notice under section 158BC read with section 158BD was issued to the present assessee on the same date i.e. on 07.10.2003. That notice was however served on the assessee on 30.9.2004. The block assessment in respect of the appellant/assessee was concluded on 31.10.2005. The Commissioner of Income-tax (Appeals) rejected the appellant's appeal on 03.02.2006 and the Income Tax Appellate Tribunal rejected the appellant's further appeal on 31.10.2006. It is against that order that the present appeal under section 260A has been filed. It is evident from the above stated facts that the satisfaction under section 158BD was recorded on 07.10.2003 which was beyond the time stipulated for completing the block assessment of the searched person. We have already indicated above that the stipulated time under section 158BE (1) expired, in respect of the searched person, on 30.08.2002.

5. Mr Syali, the learned senior counsel appearing on behalf of the appellant/assessee drew our attention to a decision of the Punjab & Haryana High Court in ***CIT v. Mridula: (2011) 335 ITR 266 (P&H)***. In that



decision it was clearly held that the action contemplated under section 158BD of the said Act against a third party to a search, was necessarily to be initiated during the course of the block assessment proceedings under section 158BC of the searched person. If the ratio of that decision were to be applied to the facts of the present case, the initiation of action under section 158BC insofar as the present appeal is concerned ought to have been done latest by 29.08.2002 the date on which the block assessment in respect of the searched person was concluded under section 158BC.

6. The relevant observations of the Punjab & Haryana High Court in this regard are set out in paragraph 7 of the decision which reads as under:-

“7. Section 158BE of the Act prescribes the time limit for framing of assessments under sections 158BC and 158BD of the Act. The Assessing Officer of the person against whom action under section 132 or 132A of the Act has been taken, is the Assessing Officer who initiates the proceedings under section 158BD of the Act by recording satisfaction that any undisclosed income belongs to such other person so as to take action under section 158BD of the Act against that person. The Act nowhere specifically prescribes any time limit or limitation for initiation of proceedings under section 158BD of the Act or for recording of satisfaction before taking action under that provision. The plain and reasonable construction that can be placed on the aforesaid provision would be that the recording of satisfaction for taking action against any other person under section 158BD of the Act has to be between initiation of proceedings under section 158BC and before



completion of block assessment under section 158BC of the Act in the case of the person searched. It would, thus, mean that the action contemplated under section 158BD of the Act against a third party to a search, is necessarily to be during the course of block assessment proceedings under section 158BC of the searched person. It cannot be after the conclusion of the same as there is no occasion for an Assessing Officer to examine the seized material or documents of the searched person when the block assessment proceedings have concluded and no other proceedings are pending before him. If any other time limit is read in the provisions/statute, it shall lead to anomaly and would be arbitrary and unreasonable. It could not be read in the provision that where block assessment under section 158BC of the Act in the case of an assessee against whom action under section 132 or 132A of the Act had been carried out is finalized, the Revenue can take action at any time in the absence of any specific limitation prescribed in the statute. A construction which leads to such an anomaly should be avoided.”

7. A similar issue came up for consideration before a Division Bench of this court in the case of *CIT v. UmeshChandra Gupta*: ITA 2055/2010 which was decided on 06.02.2014. Paragraphs 4,5,6 and 7 of the said decision are relevant and they are as under:-

“4. It is urged on behalf of the revenue that the finding in the impugned order in effect mandates a period of limitation, and fetters the discretion of the AO who deals with their party’s case when in fact no such period of limitation was prescribed for. Learned counsel



relied upon Section 158BE to suggest that the period of limitation prescribed for completion of block assessment of such third parties commences only from the issuance of notice and ends two years from the end of the month from which such notice is served. So viewed, submitted counsel, the period of limitation in this case was in fact ended much after the assessment was actually completed in 2007.

5. Learned counsel also sought to make distinction between the time limit prescribed for completion of assessment in the case of searched persons – which he stated, is governed by Section 158BE(1) and contrasted the phraseology adopted by that provision with that in Section 158BE(2). He also relied upon Section 124 to argue that the jurisdiction of the AO can be questioned only in very limited circumstances and that the present case did not constitute one such exception.

6. This Court has considered the submissions. The assessment in this case, of the person searched, was completed on 29.08.2002. The drift of reasoning of the CIT (Appeals) and the Tribunal appears to be that if the AO – who deals with the assessment of third parties, like the assessee in this case – were to record his satisfaction, based upon the materials he goes by in the case of assessee over whom he has jurisdiction, such satisfaction is to be recorded during the course of assessment proceedings of the person searched. In other words, the jurisdiction to issue notice itself under Section 158BD and the consequent time period prescribed under Section 158BE in respect of third



parties would get defined within the two year time period given to the AO under Section 158BE(1).

7. This Court finds that such reasoning is sound for the simple reason that if the disjointed interpretation of Section 158BE suggested by the revenue were to be adopted, startling and perhaps unintended consequences would ensue. The period of limitation in respect of the primary individual, i.e. the searched person is controlled by Section 158BE(1) which is subject to well-defined exceptions under Explanation (1) to that provision. If the Revenue's logic were to prevail, while the authority to carry-out assessment in the case of third parties itself stems-out of a search conducted of the searched person, the AO (of the searched person) would be left free with untrammelled discretion to take-up the materials which he deems to be incriminating and forward to the concerned AO (of the third party) at his will and pleasure. Surely, such a startling and far-reaching consequence was not intended. The third reason why this Court rejects the Revenue is that the dissection of Section 158BE in the manner suggested would mean that Section 158BE(2) would stand on its own without any period of limitation. Instead of this, the approach of the Tribunal appears to have been to hold the AO (of the searched person) who primarily possessed jurisdiction over the subject matter, including the jurisdiction to record a satisfaction that the third party also had to file block assessment and was subject to such notice under Section 158BD, to complete the assessment and also to record satisfaction within the basic period of two years. This interpretation, in the opinion of the Court, not only furthers the intention of the Parliament, but also sub-



serves the larger public interest in that it places reasonable fetters upon the jurisdiction of the concerned AO who might otherwise be left with uncontrolled discretion in such matters. Fourthly, Section 158BE expressly states that the satisfaction is to be recorded by the AO with respect to the need to issue notice to the third party before he hands-over possession of books and assets seized or requisitioned, to the AO of such third party. This too clearly has a reference to the primary jurisdiction of the AO of the searched person and the consequential limitation placed upon him to complete assessment within the period of two years spelt-out under section 158BE.”

8. The sum and substance of the decision of the Division Bench of this court in *Umesh Chandra Gupta* (*supra*) is that the jurisdiction to issue the notice under section 158BD and the consequent time period prescribed under section 158BE in respect of third parties gets defined within the two years' time period given to the assessing officer of the searched person under section 158BE (1) of the said Act. The difference between the decision of the Division Bench of this court and the decision of the High Court of Punjab & Haryana is that the terminal date as per the decision of Division Bench of this Court would be the end of the two-year period prescribed in section 158BE (1) whereas the terminal date as contemplated by the Punjab & Haryana High Court would be the date on which the block assessment is completed in respect of the searched person and that date may be prior to the terminal date stipulated in section 158BE(1) of the said Act.



9. We have heard the learned counsel for the parties on these aspects and we find that the issues raised in the present case are entirely covered by the decision of Division Bench of this court by which we are bound. Consequently, following the decision in *Umesh Chandra Gupta (supra)* the question of law is answered in favour of the assessee by holding that the assessing officer is bound to record the satisfaction within the meaning of section 158BD of the Income-tax Act, 1961 within the two-year time period stipulated in section 158BE(1) of the said Act.

10. In the present case since the satisfaction was recorded beyond that period, the assessment proceedings are without jurisdiction. Consequently, the impugned order passed by the Income Tax Appellate Tribunal and, in fact, the assessment proceedings are quashed/set aside. We make it clear that, because of the view we have taken on the question of law, we have not examined the merits of the matter.

11. The appeal is allowed as above but, with no order as to costs.

BADAR DURREZ AHMED, ACJ

SIDDHARTH MRIDUL, J

MARCH 06, 2014

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