2010:DHC:4880-DB

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

\+ ITA 1492/2010

SUNIL DUA ..... Appellant
Through Mr. Mukesh Chand, Advocate

versus

THE COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr. Deepak Chopra, Advocate

Reserved on: 24th September, 2010

% Date of Decision : 29th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers 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?

J U D G M E N T

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act") challenging the order dated 12th March, 2010 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in IT (SS) No. 84/Del/2009 for the Block Assessment Period from 1st April, 1987 to 16th January, 1998.

2. Mr Mukesh Chand, learned counsel for appellant submitted that as the additions to income on account of jewellery were based on estimates, neither the additions to the income nor the penalty could be levied. He pointed out that in the present case the Assessing Officer (in

short "AO") himself was not sure as to whom the jewellery belonged as he had made the additions on account of jewellery in the hands of the appellant as well as in hands of his wife. Mr. Mukesh Chand further submitted that as no notice was issued during the course of the Block Assessment proceedings for initiation of penalty under Section 158BFA(2) of the Act, penalty proceedings were time barred. In this connection, he referred to the assessment order dated 31st January, 2000 for the aforesaid Block Assessment Period passed by the Joint Commissioner of Income Tax.

3. Having heard the learned counsel for appellant and having perused the appeal papers, we are of the opinion that the quantum proceedings having attained finality, the appellant cannot challenge either additions to the income or issuance of the show cause notice for levy of penalty under Section 158BFA(2) of the Act.

4. Moreover, upon a perusal of the record, we find that the Joint Commissioner in his order dated 31st January, 2000 had not only completed the assessment but had also stated that penalty proceedings under Section 158BFA of the Act had already been separately initiated. In fact, the same Joint Commissioner had on 9th July, 1999, issued a show cause notice under Section 158BFA of the Act as to why the penalty should not be imposed upon the appellant-assessee. The said notice reads as under :-

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"To,

Shri Sunil Kumar Dua,
A-100/5 Wazirpur Indl. Area
Delhi

A notice u/s 158BC of the IT Act 1961 was served upon you on 20.5.1998 requiring you to furnish a return in the prescribed form and verified in the same manner as a return under clause (i) of the sub section (1) of sec. 142, setting forth your total income including the undisclosed income for the block period.

The return of income which should have been filed by you on or before 6.6.98 in response to above notice has not so far been received in this office.

You are hereby requested to appear before me at 11.30 AM on 16.7.99 and show cause why an order imposing a penalty on you should not be made u/s 158BFA of the Act, 1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorised representative, you may show cause in writing on or before the said date which will be considered before any such order is made u/s 158BFA."

(emphasis supplied)

5. From the aforesaid notice, it is apparent that the same is a composite notice issued under Sub-Sections (1) and (2) of the Section 158BFA of the Act. The relevant portion of the Section 158BFA of the Act reads as under :-

"158BFA. LEVY OF INTEREST AND PENALTY IN CERTAIN CASES. *(1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997 as required by a notice under clause (a) of section 158BC, is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one per cent of the tax on undisclosed income, determined under clause (c) of section 158BC, for every month or part of a month comprised in the period commencing on the day immediately following the expiry of*

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, on the date of completion of assessment under clause (c) of section 158BC.

(2) <u>The Assessing Officer or the Commissioner (Appeals), in the course of any proceedings under this Chapter, may direct that a person shall pay by way of penalty</u> a sum which shall not be less than the amount of tax leviable but which shall not exceed three times the amount of tax so leviable in respect of the undisclosed income determined by the Assessing Officer under clause (c) of section 158BC :

Provided that no order imposing penalty shall be made in respect of a person if –

(i) such person has furnished a return under clause (a) of section 158BC;

(ii) the tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable;

(iii) evidence of tax paid is furnished along with the return; and

(iv) an appeal is not filed against the assessment of that part of income which is shown in the return :

Provided further that the provisions of the preceding proviso shall not apply where the undisclosed income determined by the Assessing Officer is in excess of the income shown in the return and in such cases the penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of undisclosed income shown in the return.

(3) No order imposing a penalty under sub-section (2) shall be made-

(a) unless an assessee has been given a reasonable opportunity of being heard;

(b) by the Assistant Commissioner or Deputy Commissioner or the Assistant Director or Deputy Director, as the case may be, where the amount of penalty exceeds twenty thousand rupees except with the previous approval of the Joint Commissioner or the Joint Director, as the case may be;

(c) ……………………………………

(d) ……………………………………

(e) ……………………………………

(f) ……………………………………

Explanation

(4) ……………………………………"

(emphasis supplied)

6. In any event, in our opinion, the Tribunal has rightly concluded that it is not mandatory in law that a notice regarding levy of penalty needs to be issued along with the assessment order. In fact, the Supreme Court in ***D.M. Manasvi Vs. CIT, 86 ITR 557*** and ***Commissioner of Income-Tax Vs. Angidi Chettiar, 44 ITR 739*** has held that issuance of a notice under Section 158BFA of the Act is a consequence of the satisfaction of the authority levying the penalty and it would be sufficient compliance with the provisions of Statute if the authority is satisfied about the material referred in the section during the course of the proceedings under the Act, even though notice to the person proceeding against, in pursuance of that satisfaction, is issued subsequently.

7. Consequently, in our opinion, no substantial question of law arises in the present case. Accordingly, the present appeal, being bereft of merit, is dismissed but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 29 , 2010
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