IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR.

D.B. Income Tax Appeal No.43/2002

APPELLANT

Commissioner of Income Tax-I, Jaipur Central Revenue Building, Near Statue Circle, Bhagwan Das Road, Jaipur.

VERSUS

RESPONDENT

M/s Rashtradoot (HUF), "Sudharma" Chameliwala Market, M.I. Road Jaipur.

DATE OF ORDER ::: 25.10.2016

HON'BLE MR. JUSTICE K.S. JHAVERI
HON'BLE MR. JUSTICE MAHENDRA MAHESHWARI

Mr. Anuroop Singhi, for the appellant
Mr. Anant Kasliwal, for the respondent.

BY THE COURT (Per Hon'ble Jhaveri,J.)

1. By way of this appeal, the department has assailed the judgment & order of the ITAT whereby the Tribunal has allowed the appeal preferred by the assessee and dismissed the appeal preferred by the department.

2. The brief facts of the case are that the assessee/respondent is a publisher of a daily newspaper Rashtradoot and during the search which has taken place on 4/9/1997 for the block period from 1/4/1987 to 4/9/1997 i.e. assessment year 1987-88 to 1996-97 and assessment year 1997-98 upto 4/9/1997, number of documents were seized particulars of seized record are indicated as under:-

> "i) A bill book of M/s aggarwal & Co. showing the bogus purchases of paper for F.Ys.93-94 to 95-96, aggregating to Rs.1,36,09,438/-

> ii) One bill book of M/s Shyam Lal Raghunath Prasad showing the bogus purchases of paper for F.Ys. 94-95 and 95-96, aggregating to Rs.47,00,656/- and
>
> iii) Bogus payment vouchers for the purchase of paper aggregating to Rs. 1,24,06,983/- in F.Y.96-97. Through these vouchers, payments were shown to have been made through false demand drafts."

3. Counsel for the appellant Mr. Anuroop Singhi has taken us to the provision of the definition of undisclosed income given under Section 158B(b) of the Income Tax Act, 1961, which is under Chapter XIV-B, dealing with special procedure for assessment of search cases and also taken us through provisions u/s 155BC(1) & 158BC(b). The Assessing Officer directed the department to assess the undisclosed income. The income was clearly included u/s 145 which brought into effect retrospectively by Act of 2002 w.e.f. 1/7/1995 and therefore, this contention with regard to search on 4/9/1997 and amendment will have a retrospective effect on the date of search when the assessment was done and specific contention is that the Tribunal has considered law which was applicable on the date whereas the High Court should consider the law which is prevailing today for which he has strongly relied upon the decision of Supreme Court in the case of **Bakhtawar Trust & Ors. vs. M.D. Narayan & Ors.** reported in (2003) 5 SCC 298 in para 36, which reads as under:-

> "36.It is true that under Section 13, the method of framing of the Zonal Regulations is provided under which a maximum height of a building can be provided by the impugned Act. The legislature in its wisdom thought to provide a

maximum height of a new building in the statute itself and it is no longer left to the discretion of the authority to provide a maximum height of a new construction by framing the Zonal Regulations under the Act. Now, the outline development plan as prescribed in the Schedule appended to the new Act, cannot even be amended by the procedure prescribed under Chapter III of the Planning Act. The impugned Act substituted the existing Regulations with a statutory Zonal Regulations to the extent it provided maximum height of a new building. Further, this is done with retrospective effect i.e. for the entire period during which the outline development plan remained in force i.e. from 1972 to 1984. It is settled law that where a law is retrospectively amended, the consequences of such retrospective amendment are that all actions have to proceed on the premise that the law, as amended, was always the law in force. In that view of the matter there was neither any need for the legislature to modify the maximum height of a new building in the manner provided in the planning Act nor to amend the provisions of the Planning Act providing for method of framing the Zonal Regulations.”

4. He has also relied upon in the case of Tajender Singh Ghambhir vs. Gurpreet Singh (2014) 10 SCC 702, which reads as under:-

“11. The High Court was also in error in holding that the deficiency in court fee in respect of the plaint cannot be made good during the appellate stage. In this regard, the High Court, overlooked the well-known legal position that an appeal is continuation of the suit and the power of the appellate court is coextensive with that of the trial court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.

5. Therefore, he contended that the law which was applicable today should be made applicable.

6. Counsel for the assessee/respondent Mr. A. Kasliwal has taken us to the order of AO and also the order of the CIT(A) and Tribunal so as to bring to our notice the bogus purchase and books of account more particularly, question to the assessee during the search wherein the exact argument which has been canvassed by the respondent was argued. He has taken us to the assessment order and also the other material which come on record which clearly established that all the authorities have accepted that this arguments was made only for the purpose of getting better advertisement. He has taken us to the decision of the Supreme court in the case of Baburam vs. C.C. Jacob & Ors. reported in AIR 1999 Supreme Court 1845 more particularly para 5 wherein it was observed as under:-

> "5. The prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by this Court are also duty bound to apply such dictum to cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law. In the instant case, both decisions of the DPC as

> well as the appointing authority being prior to the judgment in Sabharwal's case (1995 AIR SCW 1371), we are of the opinion that the tribunal was in error in applying his decision. For this reason, these appeals succeed and are hereby allowed; setting aside the orders and directions made by the Tribunal in O.A. Nos. 186/94, and 961/95. C.A.No.10909/1996:"

7. Another judgment in the case of M.A Murthy vs. State of Karnataka & Ors. reported in (2003) 264 ITR 1 (SC) where while interpreting precedents, the Supreme Court has held as under:-

> "The doctrine of prospective overruling, a feature of American law, was imported by the Supreme court to India. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be restored to by the Supreme Court, whilc superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the declaration are validated in the larger public interest: the law declared would apply only to future cases. It is for the Supreme Court to indicate whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling unless it is so indicated in the particular decision."

8. He has also relied upon the other decision for the same value in the case of CIT vs. Schlumberger Sea Company; 264 ITR 331 Cal., in the case of ACE Investment Limited v. Settlement Commission; 264 ITR 571 Madras and other Allahabad High Court in review petition No. 10/2011 in Income Tax Appeal No. 127/2006 while relying upon in 1999 Supreme court 264 ITR 1 Allahabad High Court held as under:-

"In the instant case, the amendment under Section 260A(2A) has been introduced retrospectively w.e.f.1/10/1998 by the Finance Act, 2010. But fact remains that the cases already settled before the said amendment cannot be re-opened, as per the ratio laid down in the case of Babu Ram v. C.C. Jacob and others; AIR (1999) SC 1845, where it was observed that the prospective declaration of law is a devise innovated by the apex court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a devise adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to its date of declaration are validated. This is done in the larger public interest. In matters, where decisions opposed to the said principle have been taken prior to such declaration of law cannot be interfered with on the basis of such declaration of law.

The amendments is applicable to future cases to avoid uncertainty as per the ratio laid down in the case of M.A. Murthy v. State of Karnataka; 264 ITR 1 SC, where it was observed that prospective over-ruling is a part of the principles of constitutional canon of interpretation and can be restored to by this Court while superseding law declared by it earlier. It is a device innovated to avoid the reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest.

It is not possible to anticipate the decision of the highest court or an amendment and pass a correct order in anticipation as per the ratio laid down in the case of CIT v. Schlumberger Sea Company; 264 ITR 331 Cal. Therefore, the amendment introduced in Section 260-A(2A) has the effect only on pending and future cases, as observed in the case of ACE Investment Limited v. Settlement Commission;264 ITR 571 Madras."

9. He has also relied upon the decision of the Supreme Court in the case of 259 ITR 744 (Raj), where practice which has been followed by the assessee namely the income tax which has been shown for the bank loan cannot be taken into account for the purpose of assessment. Similar view is taken by Punjab and Haryana High Court in 296 ITR 101 and Madras High Court in 297 ITR 135.

10. We have heard Mr. Anuroop Singhi counsel for the appellant and Mr. A. Kasliwal counsel for the assessee-respondent.

11. In view of the observations made by the Supreme Court in AIR 1999 Supreme Court 1845 and 264 ITR 1, we are of the opinion that the substantive law which has been amended and 158BC(b) would have all prospective effect. In our view that will not be made applicable in the present case.

12. The Tribunal while considering the judgment on 24/5/2001 did not consider the amendments envisaged by the legislature, therefore, under Section 260-A when we are considering substantial law, we have to consider whether the Tribunal has committed an error.

13. In view of the above, the issue is answered in favour of the assessee and against the department. The view taken by this Court in a case of Relaxo Footwear (supra) will apply in the present case

and the view taken by the Tribunal is liable to be confirmed and the same is confirmed.

The appeal is dismissed.

(Mahendra Maheshwari), J. **(K.S. Jhaveri), J.**

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