

THE HON’BLE SRI JUSTICE L.NARASIMHA REDDY

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and

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THE HON’BLE SRI JUSTICE CHALLA KODANDA RAM

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I.T.T.A. No.276 of 2003

% 11.11.2014

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Between:

Commissioner of Income Tax-3, Hyderabad.

... APPELLANT

Versus

\$ Sunny Liquors Pvt. Ltd.

...RESPONDENT

< Gist:

> Head Note:

! COUNSEL FOR THE APPELLANT :- Sri S.R.Ashok

^COUNSEL FOR RESPONDENT :- Smt.K.Neeraja

? Cases Referred:

1. 2010 (321) ITR 362 SC

2. (2014) 368 ITR 424

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HON'BLE SRI JUSTICE L. NARASIMHA REDDY

AND

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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I.T.T.A No.276 of 2003

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JUDGMENT:- (per the Hon'ble Sri Justice L.Narasimha Reddy)

This case provides an instance to demonstrate as to how sometimes the facility of making block assessments under Chapter XIVB of the Income Tax Act (for short 'the Act'), which are somewhat penal in nature, is resorted to indiscriminately.

The respondent was a dealer in liquor. For the year 1992-93, it posted income of Rs.4,490/- and for the subsequent year i.e. 1993-94, the income of Rs.20,540/- was shown. On 01.03.1995, orders of assessment for both the years were passed. The taxable income for the year 1992-93 was arrived at Rs.3,27,630/- and for 1993-94, it was shown as Rs.1,99,447/-. The respondent paid the tax and the matter ended at that.

On 14.09.1995, a search was conducted in the premises of M/s.Mahaveer Group of Companies. The books of account of those Companies revealed that gift articles worth Rs.49,90,175/- were sold to the respondent, during the assessment year 1992-93. Based upon that, a notice under Section 158BD of the Act was issued to the respondent on 02.09.1996. That was followed by a show cause notice, dated 24.07.1997. Taking into the explanation that was offered by the respondent, an order of block assessment, covering the period 1987-88 to 1997-98 was passed on 30.09.1997. The cost of the gift articles, being Rs.49,90,175/- was treated as undisclosed income of the respondent and tax at 60% thereon was levied.

The respondent filed I.T. (SS) A.No.237/Hyd/1997 before the Hyderabad Bench 'A' of the Income Tax Appellate Tribunal (for short 'the Tribunal'). The appeal was allowed by the Tribunal through order, dated 06.06.2002. Hence, this appeal under Section 260A of the Act by the Revenue.

Sri S.R.Ashok, learned Senior Standing Counsel for the appellant, submits that the Tribunal did not appreciate the matter from correct perspective and proceeded as though there was no violation on the part of the respondent.

He contends that the Tribunal did not understand the scope of Section 158B of the Act correctly. Learned Senior Counsel submits that once the purchase of gift articles by the assessee is found to be not true or actual, on verification from the supplier i.e. M/s.Mahaveer Group of Companies, the inevitable consequence was to initiate block assessment proceedings against the respondent. It is also pleaded that the Tribunal has taken hyper-technical view of the matter and has set aside the order of block assessment.

Smt.K.Neeraja, learned counsel for the respondent, on the other hand, submits that the basic ingredients provided for under Section 158B of the Act are conspicuously absent even on the undisputed facts. She contends that the purchase of the gift articles worth Rs.49,90,175/- was very much reflected in the books of account and the returns of the respondent. The Assessing Officer took the same into account, while passing the order of assessment, dated 01.03.1995, without any demour. She contends that even as regards M/s.Mahaveer Group of Companies, the allegation was that no such transaction has taken place, despite the fact that their books of account also reflected the said transactions. Learned counsel submits that just by terming the transaction as an accommodating sale and thereby, an act of suppression of income, the punitive proceedings under Chapter XIVB of the Act were initiated. She contends that the Tribunal has applied correct principle of law and that no interference is warranted.

Making of block assessments is a rare phenomenon. It is only in respect of the assessees who are suspected to have withheld the important information and thereby, the income, that the searches are made. A comparison of what is disclosed in the search on the one hand and what has already been disclosed over the years in the returns on the other, is required to be made. It is only when something which did not form part of the assessments of the earlier years is unearthed or discovered in the search, that the occasion to initiate the proceedings under Chapter XIVB of the Act would arise.

Section 158BB of the Act reads as under:

158BB. Computation of undisclosed income of the block period

(1) The undisclosed income of the block period shall be the aggregate

of the total income of the previous years falling within the block period computed, (in accordance with the provisions of this Act on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with Assessing Officer and relatable to such evidence), as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined,-

[\(a\)](#) where assessments under section 143 or section 144 or section 147 (have been concluded prior to the date of commencement of the search or the date of requisition), on the basis of such assessments;

[\(b\)](#) where returns of income have been filed under section 139 (or in response to a notice issued under sub-section (1) of Section 142 or Section 148) but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

[\(c\)](#) where the due date for filing a return of income has expired but no return of income has been filed, __

- A. On the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period; or
- B. On the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under clause (c);

[\(d\)](#) where the previous year has not ended or the date of filing the return of income under sub- section (1) of section 139 has not expired, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;

[\(e\)](#) where any order of settlement has been made under sub-section (4) of section 245D, on the basis of such order;

[\(f\)](#) where an assessment of undisclosed income had been made earlier under clause (c) of section 158BC, on the basis of such

assessment.

(2) In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to "financial year" in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition.

(3) The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

(4) For the purpose of assessment under this Chapter, losses brought forward from the previous year under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block assessment under this Chapter, but may be carried forward for being set off in the regular assessments.

The provision has been interpreted by the Hon'ble Supreme Court in **ACIT Vs. HOTEL BLUE MOON** as well as several High Courts. This Court in **SRINIVASA FERRO ALLOYS LIMITED Vs. ASSISTANT COMMISSIEONER OF INCOME TAX** explained the scope of Section 158BB of the Act and in particular, the scope and ambit of the proceedings under the Chapter in general. It was observed that it is only when some material which did not form part of the books of account, the returns and the corresponding orders of assessment is unearthed in the course of search, that an order of block assessment can be passed.

In the instant case, no search as such was conducted against the respondent. The proceedings under Chapter XIVB of the Act were initiated against him on the basis of the alleged discoveries in the course of search, conducted in the premises of M/s.Mahaveer Group of Companies.

It is quite possible that if a search, conducted against one assessee

reflects some facts and figures referable to another assessee, proceedings can be initiated against the latter also. That, however, would be possible if only the item of income that is noticed in the search of the one assessee is not reflected in the returns of the other assessee, who is sought to be proceeded. Conversely or axiomatically if the so-called information that was discovered in the course of search has already been reflected in the returns or the assessment of the other assessee, the occasion to proceed against him does not arise at all.

Firstly, the finding that there was suppression of the sale of gift articles worth Rs.49,90,175/- by M/s.Mahaveer Group of Companies itself is not well-founded. In their books of account, the transactions were very much reflected. An inference was drawn to the effect that the transaction is fictitious, only on the ground that the sale was accommodative in nature. Secondly, the respondent has shown the purchase of the gift articles not only in their books of account, but also in the returns. On verification of the relevant records, the Assessing Officer passed an order on 01.03.1995 accepting the same. Hence, there did not exist any occasion or basis for the Department to initiate block assessment proceedings against the respondent. The Tribunal has taken correct view of the matter and we do not find any basis to interfere with the same.

The appeal is accordingly dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, filed in this appeal shall also stand disposed of.

L. NARASIMHA REDDY, J

CHALLA KODANDA RAM, J

Date:11.11.2014

Note: L.R. Copy to be marked.

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