

THE GAUHATI HIGH COURT
**(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)**

ITA No. 01 OF 2010

COMMISSIONER OF INCOME TAX,
AAYAKAR BHAWAN, M.G. ROAD, SHILLONG - 793001.

..... *Petitioner*

-Versus-

SMTI. MAYA RANI DEY,
L/R OF LATE PARTHA SARATHI DEY,
SHIBBARI ROAD, DHARMA NAGAR, TRIPURA.

..... *Respondent*

BEFORE
THE HON'BLE MR. JUSTICE AMITAVA ROY
THE HON'BLE MR. JUSTICE S.R. SEN

For the Petitioner : Mr. GN Sahewalla, Senior Advocate.
MR. P Deka, Advocate.

For the Respondents : Mr. S Sarma, Advocate.

Date of Hearing : **31.08.2012.**

Date of Judgment : **31.08.2012.**

Judgment & Order

Amitava Roy, J

In challenge is the judgment and order dated 11.09.2009, passed by the learned Income Tax Appellate Tribunal, Guwahati Bench, Guwahati (for short hereafter referred to as the Tribunal) in ITA No. 75 (Gau)/2007, allowing the same and annulling the order dated 31.12.2003 of the Assessing Officer under section 158BD/143(3)/158BG of the Income Tax Act, 1961 (for short hereafter referred to as the Act) *vis-a-vis* the respondent herein.

02. We have heard Mr. S Sarma, learned Counsel for the Revenue and Mr. GN Sahewalla, Senior Advocate assisted by Mr. P Deka, Advocate for the respondent.

03. Following a search and seizure operation under section 132 of the Income Tax Act, 1961 (for short hereinafter referred to as the Act) conducted in the business and residential premises of the assessee, Partha Sarathi Dey (since deceased) and his successors in interest on 08.12.1999 a notice under section 158BC was issued on 07.06.2000 to the legal representatives of the deceased abovenamed, which was received by them, according to the Revenue, on 26.06.2000. Partha Sarathi Dey had expired on 18.08.1999. By the aforementioned notice dated 07.06.2000, addressed to his legal representatives, they were required to submit return as mentioned therein. Thereafter, a notice dated 27.11.2000 was issued to Sri Sunil Chandra Dey, also a legal representative of Lt. Partha Sarathi Dey, requiring him to produce the necessary documents pertaining to the block period from 01.04.1989 to 08.12.1999 in connection with the assessment of income. The records reveal that the respondent herein, the wife of Lt. Partha Sarathi Dey submitted her return on 06.12.2000 for the aforementioned block period. By a notice No. GIR-S-740/ACTT/SII/Block Asstt., dated 02.11.2001, issued by the Assistant Commissioner of Income Tax, Investigation Circle, Silchar, the respondent herein was required to furnish the informations as detailed in the list appended thereto. It was clearly indicated in the said list that the requisition for the informations as mentioned in the notice dated 27.11.2000 under section 142(1) had not been complied with till then. This was duly replied to on behalf of the respondent.

04. While the matter proceeded thus, the Assistant Commissioner of Income Tax, Investigation Circle, Silchar, by order dated 19.12.2001 taking note of the panchanama i.e. 08.12.1999, issued in the name of Partha Sarathi Dey, who was dead on the date of search & seizure, dropped the proceedings and initiated a fresh proceedings under section 158 BD. Thereby, a notice was

ordered to be issued to the respondent, as the legal representative of Lt. Partha Sarathi Dey. According to the revenue, this notice was received by the respondent-Assessee on 24.12.2001, whereupon, the assessment was validly made on 31.12.2003.

05. Being aggrieved by this assessment, the respondent unsuccessfully preferred an appeal before the Commissioner of Income Tax (Appeals) Shillong, which dismissed the same on 08.11.2006. The learned Tribunal, however, by the judgment and order impugned herein, interfered with the assessment order on the ground that in terms of section 158BE (2) (a) or (b), the block assessment in the case in hand ought to have been completed within 31.12.2002 and, thus, the assessment order dated 31.12.2003 was barred by time.

06. Mr. Sarma has urged that, as a fresh proceeding under section 158 BD, in the attendant facts and circumstances, had been initiated by the assessing officer on 19.12.2001 and the notice consequently issued was received by the respondent on 24.12.2001, the assessment order 31.12.2003 as per section 158BE (2) was within time and, thus the finding to the contrary is *per se*, illegal and is liable to be set aside. In support of his contentions, the learned counsel for the Revenue has placed reliance on the decision of the High Court of Delhi in ***C&C CONSTRUCTION (P) LTD. VS. COMMISSIONER OF INCOME TAX, (2012) 204 TAXMAN 363 (Del)*** and that of the High Court of Calcutta in ***SANJAY KUMAR MODI VS. DIRECTOR OF INCOME TAX (INVESTIGATION) & ORS., (2005) 199 CTR (Cal) 666***.

07. Per Contra, the learned Senior Counsel for the respondent has urged that following the search involved, a panchanama on the basis of the proceedings had been prepared in the name of Sri Sunil Chandra Dey, father of Partha Sarathi Dey, in whose name the warrant had been issued. Thereafter,

notices were issued on 07.06.2000, 17.11.2000 and 07.12.2000 under section 158 BC & 142(1) of the Act to the legal heirs of Lt. Partha Sarathi Dey requiring them to furnish necessary informations and documents for the assessment of income for the block period from 01.04.1989 to 08.12.1999. According to Mr. Sahewalla, the last date of receipt of the notices being 28.12.2000, the assessment ought to have been obligatorily completed by 31.12.2002 and in that view of the matter, the assessment order dated 31.12.2003 had been rightly held to be barred by time by the learned Tribunal. Without prejudice to this plea, the learned Senior Counsel has further insisted that in any view of the matter, the proceedings of the search and seizure conducted on the basis of a warrant issued against a dead man were *void ab initio* and, thus all consequential steps towards the assessment were *non est*.

08. The pleaded facts and the arguments advanced have been duly considered by us. That, at the first instance, the search for the aforementioned block period had been conducted on the basis of a warrant issued in the name of Sri Partha Sarathi Dey, who was dead on the date thereof, is a matter of record. Records reveal that Sri Partha Sarathi Dey was dead on 18.08.1999 and, thus, prior to the date of search i.e. 08.12.1999. The Assistant Commissioner of Income Tax (Investigation) Circle, Silchar, however, by notices dated 07.06.2000, 27.11.2000 and 07.12.2000 issued under section 158BC, 142 (1) and 148 (2) respectively, addressed to the legal representative of Lt. Partha Sarathi Dey proceeded with the assessment proceedings. The assessment order dated 31.12.2003 bears out as well the above view. The finding of the learned Tribunal that the search had been conducted and completed on 08.09.1999 is not disputed. The assessment order dated 31.12.2003 does not disclose, *inter alia*, that the assessment proceedings initially drawn on the basis of the search held on 08.09.1999 had, in fact, been dropped. To the contrary, the text thereof

demonstrates that the same was pursuant to, amongst others, the notice dated 07.06.2000 issued under section 158BC of the Act. The assertion of the respondent-assessee is that the last of the notices dated 07.06.2000, 17.11.2000 and 07.12.2000 had been received by her on 28.12.2000. In this view of the matter, in terms of section 158BE (2), the assessment ought to have been completed latest by 31.12.2002. We, thus, in the facts and circumstances of the case find ourselves in respectful agreement to the finding recorded to this effect by the learned Tribunal.

09. The decisions cited at the Bar are distinguishable on facts. Whereas, in *C&C Construction (P) Ltd. Vs. Commissioner of Income Tax* (Supra), the proposition of law is that an issue neither raised nor decided by the learned Tribunal cannot be a subject matter of appeal under section 260 A before the High Court, in *Sanjay Kumar Modi* (Supra), the search and seizure was admittedly conducted on the premises of a joint family. The contextual facts therein disclosed that the name of the petitioner was not in the search warrant and, therefore, the search *vis-a-vis* him was held to be invalid. In spite of this lacuna, the search *vis-a-vis* the other co-noticees residing in the premises were sustained with the conclusion that the entire proceedings of the search thus could not be held to be invalid. This decision, according to us, in the singular facts and circumstances of the case is of no avail to the Revenue. On a cumulative consideration as above we find no merit in this appeal, which is, accordingly, dismissed. No costs.

JUDGE

JUDGE

Beep/-