

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2014

CORAM

THE HON'BLE MR.JUSTICE R.SUDHAKAR
AND
THE HON'BLE MR.JUSTICE R.KARUPPIAH

T.C.(A).Nos.247, 248, 502, 651 and 652 of 2014

Commissioner of Income Tax, Central-I
108, Mahatma Gandhi Road
Chennai – 600 034.

.. Appellant

Vs.

V.D.Muralidharan

.. Respondent
in TC(A) Nos.247
and 248 of 2014

K.Venugopal

.. Respondent
in TC(A) No.502 of 2014

V.P.Ullas

.. Respondent
in TC(A) Nos.651
and 652 of 2014

PRAYER in T.C.(A) Nos.247 and 248 of 2014: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 19.11.2013 made in I.T.(SS) A.Nos.14/Mds/2012 and 14/Mds/2013 for the block assessment years 1991-1992 to 2000-2001 and 2001-2002 (part).

PRAYER in T.C.(A) No.502 of 2014: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 13.3.2013 made in I.T.(SS) A.No.16/Mds/2012 for block assessment years 1991-1992 to 2001-2002.

PRAYER in T.C.(A) Nos.651 and 652 of 2014: Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 21.3.2013 made in I.T.(SS) A.Nos.10/Mds/2012 and 19/Mds/2012 for the block assessment years 1991-1992 to 2001-2002.

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For Appellant : Mr.T.R.Senthil Kumar
in all appeals Standing Counsel

For Respondent : Mr.N.V.Balaji
in TC(A) Nos.247
and 248 of 2014

For Respondent : Mr.Jesus Moris Ravi
in TC(A) No.502
of 2014

For Respondent : Mrs.Mallika Srinivasan
in TC(A) Nos.651
and 652 of 2014

J U D G M E N T
(Delivered by *R.SUDHAKAR, J.*)

T.C.(A) Nos.247 and 248 of 2014 are filed challenging the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 19.11.2013 made in I.T.(SS) A.Nos.14/Mds/2012 and 14/Mds/2013 for the block assessment years 1991-1992 to 2000-2001 and 2001-2002 (part), raising the following questions of law:

T.C.(A) No.247 of 2014:

- (i) Whether, on the facts and circumstances of the case, the Tribunal was right in quashing the revision order passed under Section 263 of the Act on the ground that the original assessment order made under Section 144 read with Section 158BD of the Act itself was quashed as ab initio void?
- (ii) Whether, on the facts and circumstances of the case, the Tribunal was right in quashing the revision order passed under Section 263 of the Act, when the assessee has not produced any evidence for

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claiming 50% of commission receipt as expenditure to earn such commission income?

T.C.(A) No.248 of 2014:

- (i) Whether, on the facts and circumstances of the case, the Tribunal was right in quashing the block assessment as time barred, when there is no time limit prescribed in the Income Tax Act either for recording of satisfaction note or issuing notice under Section 158BD of the Act?
- (ii) Whether, on the facts and circumstances of the case, the Tribunal was right in following Special Bench judgment in the case of Manoj Aggarwal v. DCIT, 113 ITR 377, which is not applicable to the facts of the present case and clearly distinguishable?
- (iii) Whether, on the facts and circumstances of the case, the Tribunal was right in cancelling the block assessment without adjudicating the grounds of appeal raised before it which is contrary to the ratio of the judgment of the Madras High Court in the case of South India Surgical Cotton Ltd, 263 ITR 5?

2. T.C.(A) No.502 of 2014 is filed by the Revenue challenging the order of the Income Tax Appellate Tribunal 'A' Bench, Chennai, dated 13.3.2013 made in I.T.(SS) A.No.16/Mds/2012 for block assessment years 1991-1992 to 2001-2002, raising the following question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in quashing the order under

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Section 263 of the Act when the assessee has not produced any evidence for claiming 50% of commission receipt as expenditure to earn such commission income?

3. T.C.(A) Nos.651 and 652 of 2014 are filed calling in question the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai, dated 21.3.2013 made in I.T.(SS) A.Nos.10/Mds/2012 and 19/Mds/2012 for the block assessment years 1991-1992 to 2001-2002, raising the following questions of law:

T.C.(A) No.651 of 2014:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in quashing the order under Section 263 of the Act when the assessee has not produced any evidence for claiming 50% of commission receipt as expenditure to earn such commission income?

T.C.(A) No.652 of 2014:

- (i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in quashing the block assessment order on the ground that the block assessment notice under Section 158BD was issued beyond the time prescribed?
- (ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in quashing the block assessment order without noting that there is satisfaction note and the block assessment notice was issued and the assessment were completed within the time prescribed?

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4.1. The facts in a nutshell are as under: The respondents/assesseees are individuals engaged in the business of financing and commission agency with Sree Gokulam Chits and Finance Company Limited. There was a search action under Section 132 of the Income Tax Act, 1961 (for brevity, "*the Act*") in the business/office/branch/residential premises of one A.M.Gopalan and Sree Gokulam Chits and Finance Company Limited on 28.11.2000 seizing several incriminating materials. The investigation revealed that employees/agents of Sree Gokulam Chits and Finance Company Limited were in receipt of commission which was not admitted in their respective returns of income. After the search action, all the cases were notified to the Assessing Officer, Central Circle I(1), Chennai, for completing the block assessment.

4.2. The respondents/assesseees were found to be earning commission income from Sree Gokulam Chits and Finance Company Limited and hence, notices under Section 158BD of the Act were issued to the respondents on various dates. The respondents in T.C.(A) Nos. 247, 248, 651 and 652 of 2014 did not file return of income. The respondent in T.C.(A) No.502 of 2014 filed return of income on 4.7.2007 admitting undisclosed income at Rs.2,07,385/-.

4.3. Pursuant to the same, the Assessing Officer proceeded to

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complete the block assessment under Section 144 read with Section 158BD of the Act. The Assessing Officer treated the actual commission received by the respondents as undisclosed income and deducted 50% of it towards incidental expenditure incurred by them. Thus, the Assessing Officer determined the undisclosed income as under:

<u>T.C.(A) No.</u>	<u>Undisclosed Income</u>
247 and 248 of 2014	: Rs.5,13,880/-
502 of 2014	: Rs.2,07,390/-
651 and 652 of 2014	: Rs.6,38,779/-

4.4. Even though the proceedings till this stage dealt with similar facts and circumstances, the manner in which cases proceeded further varies and, therefore, they are set out separately for better understanding.

In T.C.(A) Nos.247 and 248 of 2014:

4.5.1. The assessee challenged the *ex parte* order dated 29.5.2009 by way of appeal before the Commissioner of Income Tax (Appeals) contending that notice under Section 158BD of the Act was issued beyond two years period of completion of assessment under Section 158BC of the Act in the case of Sree Gokulam Chits and Finance Company Limited and, therefore, the present proceedings are time barred.

4.5.2. Pending the said appeal, the appellant (*Commissioner of Income Tax, Central I, Chennai*) reviewed the assessment order dated

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29.5.2009 on the ground that deducting 50% of commission receipts as incidental expenditure incurred by the assessee is erroneous and prejudicial to the interest of the Revenue. By order dated 30.3.2012, the appellant set aside the assessment order dated 29.5.2009 and directed the Assessing Officer to redo the assessment after affording an opportunity to the assessee. Aggrieved by the order dated 30.3.2012 passed under Section 263 of the Act, the assessee filed an appeal before the Tribunal in I.T.(SS) A.No.14/Mds/2012.

4.5.3. In the appeal preferred by the assessee against the assessment order dated 29.5.2009, the Commissioner of Income Tax (Appeals), by order dated 22.2.2013, held that since the notice under Section 158BD of the Act was served beyond the time limit specified under Section 158BE of the Act, the block assessment order is *ab initio void*. Challenging the said order dated 22.2.2013, the revenue preferred an appeal before the Tribunal in I.T.(SS) A.No.14/Mds/2013.

4.5.4. The Tribunal dismissed the appeal filed by the revenue and held that the block assessment is *void ab initio* as notice under Section 158BD of the Act was served beyond the time limit specified under Section 158BE of the Act. As a consequence, the appeal filed by the assessee was dismissed by the Tribunal as infructuous.

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4.5.5. Aggrieved by the said order, the revenue has filed T.C.(A) Nos.247 and 248 of 2014, raising the questions of law, referred supra.

In T.C.(A) No.502 of 2014

4.6.1. Pursuant to the assessment order passed, the appellant reviewed the assessment order dated 29.5.2009 on the ground that deducting 50% of commission receipts as incidental expenditure incurred by the assessee is erroneous and prejudicial to the interest of the Revenue. By order dated 30.3.2012, the appellant set aside the assessment order dated 29.5.2009 and directed the Assessing Officer to redo the assessment after affording an opportunity to the assessee. Aggrieved by the order dated 30.3.2012 passed under Section 263 of the Act, the assessee filed an appeal before the Tribunal in I.T.(SS) A.No.16/Mds/2012.

4.6.2. The Tribunal set aside the revision order passed by the Commissioner of Income Tax, Centra-I, Chennai under Section 263 of the Act and allowed the appeal filed by the assessee.

4.6.3. Aggrieved by the said order, the assessee filed T.C.(A) No.502 of 2014 raising the question of law, referred supra.

In T.C.(A) Nos.651 and 652 of 2014:

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4.7.1. The assessee in these appeals challenged the block assessment order dated 29.5.2009 before the Commissioner of Income Tax (Appeals), who, by order dated 9.3.2012, set aside the block assessment order and held that since the notice under Section 158BD of the Act was served beyond the time limit specified under Section 158BE of the Act, the block assessment order is *ab initio void*.

4.7.2. However, by order dated 30.3.2012, the appellant (*Commissioner of Income Tax, Central-I, Chennai*) reviewed the assessment order dated 29.5.2009 on the ground that deducting 50% of commission receipts as incidental expenditure incurred by the assessee is erroneous and prejudicial to the interest of the Revenue. By order dated 30.3.2012, the appellant set aside the assessment order dated 29.5.2009 and directed the Assessing Officer to redo the assessment after affording an opportunity to the assessee.

4.7.3. Pursuant to the said order passed by the Commissioner of Income Tax on 30.3.2012, the Assessing Officer, by order dated 20.3.2013, passed an assessment order under Sections 263 and 158BD read with Section 144 of the Act treating the entire amount of commission received by the assessee as undisclosed income.

4.7.4. Aggrieved by the order dated 30.3.2012 passed under Section

263 of the Act, the assessee filed an appeal before the Tribunal in I.T.(SS) A.No.10/Mds/2012 and challenging the order dated 9.3.2012 passed by the Commissioner of Income Tax (Appeals), the revenue filed I.T.(SS) A.No.19/Mds/2012.

4.7.5. The Tribunal, by order dated 21.3.2013, allowed the appeal of the assessee and dismissed the appeal filed by the revenue.

4.7.6. Challenging the said order, the revenue has filed appeals in T.C.(A) Nos.651 and 652 of 2014 on the questions of law, referred supra.

5. We have heard the learned counsel on either side and perused the orders passed by the Tribunal and the authorities below.

6. Concededly, in all these cases, the proceedings initiated under Section 158BD of the Act by issuance of notice to the assesseees was beyond the period of two years of completion of assessment under Section 158BC of the Act in the case of Sree Gokulam Chits and Finance Company Limited.

7. It is the plea of the department that there is no time limit prescribed in the statute for completion of block assessment in respect of persons other than the person on whom search was made and, therefore,

the notices issued under Section 158BD of the Act by the Assessing Officer are valid.

8. It is trite law that where limitation is not prescribed, action must be taken within reasonable period. However, the reasonable period would depend upon the facts of each case and it would be open to the assessee to contend that it is bad on the ground of delay. In this regard, it would be apposite to refer to a decision of the Supreme Court in *Government of India v. Citedal Fine Pharmaceuticals, Madras and others*, (1989) 3 SCC 483, wherein it was held as under:

"6. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period, would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice of demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case."

(emphasis supplied)

9. In the case on hand, block assessment in respect of the Sree Gokulam Chits and Finance Company Limited was proceeded under Section 158BC of the Act. It is only on the basis of the block assessment

of the person with respect to whom search was made under Section 132 of the Act, proceedings under Section 158BD of the Act in respect of any other person can be initiated. Therefore, the provisions of Sections 158BD and 158BC are intertwined. In other words, the jurisdiction to issue notice under Section 158BD of the Act to any person, other than the person with respect to whom search was made, and the consequent time limit prescribed under Section 158BE of the Act in respect of third parties, would certainly be included within the two years period given to the Assessing Officer for completion of block assessment under section 158BE(1) of the Act. When such an inference can be drawn from a bare reading of the provisions which are explicit, it does not lie in the mouth of the Revenue to state that there is no time limit prescribed in the statute for initiation of proceedings under Section 158BD of the Act.

10. The above said view of this Court is fortified by a decision of the Delhi High Court in *Commissioner of Income Tax v. Umesh Chandra Gupta*, [2014] 362 ITR 1, wherein it is held as under:

“... 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 Assessing Officer (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 Assessing Officer (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 Assessing Officer (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 Parliament, but also subserves the larger public interest in that it places reasonable fetters upon the jurisdiction of the concerned Assessing Officer 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 Assessing Officer 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 Assessing Officer of such third party. This too clearly has a reference to the primary jurisdiction of the Assessing Officer 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."

(emphasis supplied)

11. The reliance placed on a decision of the Kerala High Court in *Commissioner of Income Tax, Cochin v. Bimbis Creams and Bakes*, [2012] 24 Taxmann.com 143 (Ker.) by the learned Standing Counsel for the

Revenue is not applicable to the facts of the present case, as in the said decision assessment under Section 158BD of the Act was well within the statutory period. The relevant portion of the said decision reads as under:

"Relying on the decision in CIT v. PANCHAJANYAM MANAGEMENT AGENCIES, (2011) 333 ITR 281, Senior counsel for the respondent-assessee submitted that the Assessing Officer was bound to initiate simultaneous proceedings under Section 158BD against the respondent-assessee i.e. along with Section 158BC assessments initiated against the group of concerns searched by the department. Senior counsel for the Revenue submitted that there is no time limit prescribed under the Act for issuance of notice under Section 158BD and according to him, the Assessing Officer has to first complete the assessment that gets time barred first and then proceed to make assessment under Section 158BD later. Besides finding force in this contention, we also feel that it is only on completion of assessment under Section 158BC on the searched assessee the Assessing Officer can conclude that the remaining income in respect of which details were collected during search could be assessed in the hands of other assessees. In fact, bifurcation of income relating to searched assesses and income relating to others will be clear only after determining the income of the searched assessees. So much so, in our view, a prudent officer should first complete assessment under Section 158BC on searched assessees and thereafter based on the materials available, proceed for assessment under Section 158BD against other assesses about whom details were obtained in the course of search. In the absence of any provision in the Act requiring the department to issue notice under Section 158BD within a time frame, we do not think the court can prescribe any time limit. At the maximum we can declare an assessment arbitrary, if assessment is not initiated within a reasonable time which is

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not the case here because assessment was initiated under Section 158BD within two months from completion of assessment under Section 158BC against searched assesseees which was made within time. So much so, we hold that the assessment under Section 158BD was initiated within a reasonable time and the same was completed within the statutory period of 2 years as contemplated under Section 158BE(2)(b) of the Act. We, therefore, allow the appeal on this issue as well by reversing the order of the Tribunal and by holding that the assessment completed on the respondent under Section 158BD is well within time. In view of the findings above, we set aside the orders of the Tribunal and restore the appeals back to the files of the Tribunal with direction to the Tribunal to hear and dispose of the appeals along with the appeals of the group of concerns remanded by us vide judgment above referred."

(emphasis supplied)

For the foregoing reasons, we find no question of law, much less substantial question of law, arising for consideration in these appeals. Accordingly, these appeals are dismissed. No costs. Consequently, M.P.No.1 of 2014 in T.C.(A) No.248 of 2014 and M.P.No.1 of 2014 in T.C.(A) No.652 of 2014 are closed.

(R.S.J.) (R.K.J.)
11.11.2014

Index : Yes
Internet : Yes

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To:

1. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "A", Chennai.
2. The Assistant Registrar,
Income Tax Appellate Tribunal
Chennai Bench "C", Chennai.
3. The Secretary, Central Board
of Direct Taxes, New Delhi.
4. The Commissioner of Income Tax
(Appeals)-I, Chennai – 34.
4. The Assistant Commissioner of Income Tax
Central Circle I(1), Chennai.

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R.SUDHAKAR,J.
and
R.KARUPPIAH,J.

(sasi)

T.C.(A).Nos.247, 248, 502, 651 and 652 of 2014

11.11.2014