

Niti Wadhawan Vs. Dcit, Central Circle-10

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Court : Delhi

Decided On : Mar-31-2014

Judge : S.Ravindra Bhat

Appellant : Niti Wadhawan

Respondent : Dcit, Central Circle-10

Advocate for Pet/Ap. : Ms. Prem Lata Bansal, Mr. Ram Avtar Bansal, Mr. Naman Nayar, Ms. Niti Wadhawan. Mr. Sanjeev Sabharwal, Mr. Ruchir Bhatia

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

11. 03.2014 Pronounced on:

31. 03.2014 + ITA4832012, C.M. No.14602/2012 (for exemption) & 20240/2013 (for amendment of appeal) NITI WADHAWAN ..Appellant Versus DCIT, CENTRAL CIRCLE-10 + ITA2512013 THE COMMISSIONER OF INCOME TAX XV ..Respondent ..Appellant Versus M/S. NITI WADHAWAN ..Respondent Through: Ms. Prem Lata Bansal, Sr. Advocate with Mr. Ram Avtar Bansal and Mr. Naman Nayar, Advocates, for Ms. Niti Wadhawan. Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Ruchir Bhatia, Jr. Standing Counsel, for Revenue. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE R.V. EASWAR MR. JUSTICE S. RAVINDRA BHAT % 1. The following questions of law arise in the present cross appeals by the assessee and the Revenue against a

common order of the Income Appellate Tribunal (ITAT) dated 20.04.2012 in IT (SS) A. ITA48312 & ITA25113 Page 1 No 242/Del/2006 and IT (SS) A. No.8/Del/2007. The following questions of law arise for consideration: (a) Did the Tribunal fall into error in not holding that the addition made to the assessee's income was in a proceeding without jurisdiction on account of no satisfaction (and consequent notice) under Section 158BD of the Income Tax Act (ITA4832012); (b) Did the Tribunal fall into error in deleting a part of the amount added back by the AO as the assessee's undisclosed income on account of consideration received for property sold (ITA2512013).

2. On 27.05.2003, a search and seizure action under Section 132 of the Income Tax Act, 1961, (the Act) was carried out in the case of Mr. Y.C. Wadhawan, the assessee's husband. As a result of that search, carried out on Mr. Y.C. Wadhawan (a separate assessee), the evidence and material were seized in the form of a draft agreement to sell and the carbon copy of a receipt. Shri Wadhawan was proprietor of M/s R.R. Enterprises (India). The business premises of M/s R.R. Enterprises were covered under Section 133A of the Act. Notice under Section 158BC of the Income Tax Act was issued. These assessee's were served by affixure on two separate dates for filing a return of income for the Block Period within 15 days. A nil return of income was filed on 15.03.05. Notice under Sections 142(1) and 143(2) were issued. These remained unanswered. Even the final ITA48312 & ITA25113 Page 2 show cause notice dated 12.05.05 remained unanswered. Therefore, the AO completed the assessment on the basis of the material available on record.

3. The appellant is the wife of Shri Y.C. Wadhawan, proprietor of the said R.R. Enterprises and M/s R.R. Enterprise (India). These concerns manufacture a range of fire-fighting equipment for ocean going ships such as pull tugs, floats, survey ships, passenger ships etc. They also cater for salvage group for ships and special items such as tobacco smoke filter, smoke vessels, etc. The AO completed assessment, and brought to tax an amount in excess of ` 49 lakhs in the hands of the appellant. She appealed to the CIT (A), contending that a search warrant had been issued in respect of her assets, limited to the locker in her name and that the search operations in respect of that yielded nothing. Consequently, the

appellant/assessee argued that the search and assessment were without jurisdiction and the AO's order had to be set aside. It was argued that the warrant and panchnama were not issued in her name and consequently the entire assessment was without jurisdiction. The CIT (Appeals) was of the opinion that since the assessee had not urged the question of lack of jurisdiction on account of want of notice before the AO, that issue could not be raised in appeal. He was also of the opinion that the material, used by the AO to saddle the appellant with a tax demand, was obtained on the basis of a search of her husband. Since the material - in the form of ITA48312 & ITA25113 Page 3 documents - was also backed by her statements, the assessment of income in her hands was legal and valid.

4. The assessee appealed to the ITAT, contending that the order under Section 158BC together with Section 144 was unsustainable and a nullity in the absence of neither a search warrant nor a panchnama ever having been drawn in her name. Given that these prerequisites for a valid assessment under Section 158BC had not been met, the proceedings were sought to be quashed. It was contended that the findings of the lower authorities that the notice under Section 158BC did not suffer from any illegality was erroneous. The submission on the merits of the addition was that the AO and CIT (Appeals) had drawn wrong inferences in holding that the balance sale consideration was ₹49,25,000/-, allegedly received in cash. It may be mentioned that the AO had directed addition of the entire amount. The reasoning of the AO had been affirmed but the CIT (Appeals) directed assessment of only half of the amount in the appellants hands.

5. The appellant contends - in the grounds of appeal before us and in the arguments - through her senior counsel, Ms. Prem Lata Bansal, that the Tribunal fell into error in overlooking that the subject assessments were without jurisdiction and nullity as no search was conducted as to trigger the power to make a block assessment. Elaborating on this, it was submitted that the only basis for conferring jurisdiction upon the assessee, relied by the Revenue, was ITA48312 & ITA25113 Page 4 the search of her locker. Admittedly, no material was found, no panchnama was drawn nor was she issued with any subsequent notice. In these circumstances, adding further amounts to her assessed income on the basis of material seized from another individual assessee, who happened to be her

husband, was illegal. Learned counsel also highlighted that the recourse made to Rule 29 of the Tribunal Rules to look into the pachnama and statements was unwarranted in the circumstances of the case. Learned counsel emphasized that the materials in the form of documents evidencing alleged undervaluation of the sale of immovable property, leading to alleged undisclosed income, was in fact recovered during the course of the search pursuant to the warrant issued in the case of Sh. Y.C. Wadhawan. That material could not be used to saddle her with tax liability established when no notice under Section 158BD was issued to her by the AO charged with her assessment.

6. Learned counsel argued that if at all the material, if deemed proper, could have been used to add to the husbands income under Section 64. Once that course was not adopted, the Revenue could not utilize that material to fasten additional tax liability on the appellant in this case. Learned counsel relied upon the judgment reported as C. Ramaiah Reddy v. ACIT, 339 ITR210(Kar) for the submission that there were no valid materials for the appellants assessment and that if the Revenue sought to utilize the materials seized in the course of search of Sh. Y.C. Wadhawan, it was ITA48312 & ITA25113 Page 5 incumbent upon the AO to issue separate notice after recording due satisfaction. Learned counsel again highlighted that no notice under Section 158BD was issued by the AO of Sh. Y.C. Wadhawan nor was any satisfaction recorded in that regard. In these circumstances, argued learned counsel, the entire assessments were vitiated. Learned counsel for the assessee also relied upon the judgments reported as Commissioner of Income Tax. v. Ms. Pushpa Rani, 289 ITR328 and V. Ramaiah v. CIT, 356 ITR646 7. Learned counsel for the Revenue, Sh. Sanjeev Sabharwal, resisted the appellants arguments and urged that the submission with respect to lack of jurisdiction was never urged during the assessment proceedings. It was argued that in the present case not only did the assessee sign on the warrants, but she even made admissions in the course of statements recorded during the search of her husbands residence, pointedly with reference to the documents seized at that stage which were ultimately used to assess her. Learned counsel submitted that having regard to the presumptive nature of Section 132(4) of the Act, the assessee could not get away from the proceedings and claim that the additions made in her hand were invalid or illegal. It was further submitted that the documents revealed

that the property was sold for a total consideration of `57,25,000/- whereas the valuation was shown to be `8 lakhs. In these circumstances, the addition made in the assessee's hand was justified and proper. ITA48312 & ITA25113 Page 6 8. For a proper appreciation of the merits, it would be appropriate to reproduce Sections 158BC and 158BD of the Income Tax Act. They read as follows:

158BC. Procedure for block assessment. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then (a) the assessing officer shall (i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days; (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1-1-1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice, a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period: Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter: ITA48312 & ITA25113 Page 7 Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return; (b) the assessing officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 and section 144 shall, so far as may be, apply; (c) the assessing officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment; (d) the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and the references to 'regular assessment' or reassessment' in section 132B shall be construed as references to 'block assessment'. 158BD. Undisclosed income of any other person. Where the assessing officer is satisfied that any undisclosed income

belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed against such other person and the provisions of this Chapter shall apply accordingly."

ITA48312 & ITA25113 Page 8 9. The main thrust of the argument advanced by the assessee has been that in the absence of an independent satisfaction note in respect of her case, and notice separately, after the search under Section 158BD, the AO could not have validly proceeded and completed the assessment, by using materials not found pursuant to the search of her locker. Facially, the argument is powerful and attractive. However, this ignores two vital aspects, which, in the opinion of this Court, distinguish the facts of the present case from all those cited on behalf of the assessee/appellant. The first is that a separate search warrant was issued in respect of the assessee. This cannot be disputed. No doubt, that was in respect of the locker, and not as regards the search conducted on the husband. However, this warrant brought the assessee within the ambit of Section 158BC. The other aspect is that the assessee was present when her husband's premises were searched, and had even signed the panchnama, which recorded the seizure of the documents which were ultimately used by the AO in her case. Neither is there is any escape from this aspect.

10. Crucially, the Court here notices that one of the clear distinguishing factors between the facts of this case and the judgments relied on behalf of the appellant is that a separate warrant was issued in respect of the appellant. V. Ramaiah (supra) was not a case where a separate warrant had been issued in respect of the assessee. The judgment in Pushpa Rani (supra) was a one of its kind order, premised on the understanding that the issuance of warrants in respect of jewellery did not justify an addition in respect of other items. This ITA48312 & ITA25113 Page 9 Court is of opinion that the observations in that case cannot be read as determinative of the law on that subject nor can such distinction sought to be drawn to nullify assessments where materials in respect of one assessee are

yielded in the search of another, and in respect of both, separate warrants are issued. Likewise, the decision in Commissioner of Income Tax v. Dawn View Farms Pvt. Ltd., 2009 (178) Taxman 15, the question was validity of the Section 158BD notice.

11. In Friends Overseas (P) Ltd v. CIT, 2004 (136) TAXMAN94(Delhi), this Court was called upon to decide a question similar to the present one. The Court pertinently held that:

Chapter XIV-B lays down special procedure for assessment of cases where a search is conducted under section 132 of the Act or books of account, other documents, etc., are requisitioned under section 132A of the Act after 30-5-1995. Section 158B is a definition section and gives definitions of the expressions "Block Period" and "undisclosed income"; section 158BA makes a provision with regard to assessment of undisclosed income as a result of search initiated or requisition made after 30-6-1995; section 158BB relates to computation of undisclosed income of the block period and section 158BC lays down the procedure for block assessment and section 158BD provides for assessment of undisclosed income of any other person. In the present case, we are not concerned with the other provisions contained in the chapter.

10. Section 158BA opens with a non obstante clause and, therefore, enacts a provision of overriding nature so as to prevail over any other provisions of the Act. It provides that where after 30-6-1995, a search is initiated under ITA48312 & ITA25113 Page 10 section 132 or books of account, other documents or any asset etc., are requisitioned under section 132A of the Act in the case of any person, the assessing officer shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B. Section 158BC, with which we are concerned in the instant case, lays down the procedure, which the assessing officer is required to follow, where any search has been conducted under section 132 or requisition of the documents etc., mentioned therein is made under section 132A. Therefore, the prerequisite for initiation of proceedings for assessment under the Chapter is a search under section 132 or requisition of books of account, etc., and not the quantification of the "undisclosed income". Section

158BD is an enabling provision for bringing to tax any undisclosed income belonging to any person, other than the person with respect to whom search was conducted under section 132.

11. In the present case, while rejecting the argument that the provisions of section 158BC of the Act were not applicable, the Tribunal has observed that it was never the case of the assessed that the document in question (Annexure A-11) was not recovered from its business premises or that it did not belong to it or that the entries regarding expenditure aggregating to Rs.14,88,754 were not made by its employee; vide letter dated 7-11-1996 the assessed had categorically accepted that the entries in question were made by its accountant, though for some other purpose; again on 15-11-1996 the assessed reiterated the same explanation and an affidavit of the accountant was filed stating that the figures mentioned on the document were imaginary figures; this explanation was again retracted and one Babulal Goenka was produced to own the said entries, which, according to Goenka were again typed by assessee's accountant. ITA48312 & ITA25113 Page 11 The Tribunal found that the assessee had knowingly and admittedly given different explanations in respect of the same document and, therefore, its yet another explanation that the subject transactions, though typed by its accountant, were made by the said Goenka lacked credence. It is pertinent to note that the assessed had not only owned up the document but had also explained the cheque transactions reflected in the lower portion of the same very document. In view of the factual scenario projected above, we unhesitatingly affirm the view taken by the Tribunal that section 158BC had been correctly invoked in the case of the assessed company and that section 158BD of the Act had no application in the matter.

12. For the foregoing reasons, we are of the view that this appeal by the assessed is wholly misconceived, as no question of law of general public importance arises or that the issue raised is such that it poses difficulty in answering it or that the issue is capable of an alternative view. As noted supra, the view of the Tribunal is based on clear provisions of law, causing no ambiguity. Thus, no substantial question of law, which is the sine qua non for the exercise of power under section 260A of the Act arises from the impugned order.

12. In the present case, the panchnama drawn pursuant to the warrant issued in respect of Shri. Y. C. Wadhawan on 27.05.2003 concededly contains the signature of the present appellant, his wife. The warrant in respect of her locker was issued subsequently. She was informed of the search and signed the panchnama on 29.05.2003. Therefore, she did not conform to the description of one other than the person with respect to whom search was made under section 132, ITA48312 & ITA25113 Page 12 for which a separate notice is required to be served, as is urged by her. Rather, the Court notes that a search was conducted in respect of her as well. The search conducted previously in respect of her husband no doubt formed the material which ultimately resulted in the addition and the impugned assessment. Such addition, however, cannot be considered unauthorized for not fulfilling the conditions prescribed under Section 158BD. On the peculiar facts of this case, we cannot consider this case as one in which no incriminating material was found pursuant to the search under Section 132; the search of the locker in the assessee's case is closely linked to the search in the husband's case where incriminating materials pertaining to the assessee were found. The close proximity of both the searches and the continuous course of events in the case rule out the acceptance of the argument that no incriminating material was found in the search of the locker and, therefore, the additions were invalid.

13. As to the merits, this Court is of the opinion that the findings of the lower authorities are based on a proper appreciation of the facts. The documents, in the form of the (unsigned) agreement to sell do disclose that the real - and undisclosed - consideration for sale of the property was far in excess of what was in fact reported in the assessment. The inferences drawn by the AO were consequently justified. However, the CIT (A) was of the opinion that since only a portion of the property had been gifted by the assessee's husband to her, the entire addition could not be made in her hands. This finding ITA48312 & ITA25113 Page 13 was affirmed by the ITAT. This being purely a question of fact, this Court does not propose to interfere with it.

14. The assessee sought leave to rely on additional grounds. We notice that various aspects were agitated before the ITAT, which proceeded with the appeal on all the questions urged. As regards jurisdiction too, the appellant had advanced

submissions before the ITAT. However, the question of lack of jurisdiction of the AO had never been agitated in the first instance at the time of assessment. This too, in the opinion of the Court, is an additional factor negating the complaint regarding lack of jurisdiction.

15. For the foregoing reasons, both questions are answered in the negative -the first question against the assessee and the second question against the revenue. Both appeals have to fail and are, therefore, dismissed along with pending applications without any order as to costs. S. RAVINDRA BHAT (JUDGE)
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