Cit Vs. Smt. Usha Tripathi

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Court : Allahabad

Decided On : Jan-22-2001

Reported in : (2001)166CTR(All)77

Appeal No. : IT Appeal No. 168 of 1999 22 January 2001 Block Period 1-4-1986 to 2-7-1996

Appellant : Cit

Respondent : Smt. Usha Tripathi

Advocate for Pet/Ap. : Shambhu Chopra, *for the Revenue* S.K Garg, *for the Assessee*

Judgement :
ORDER

By the Court

The assessee, an individual, runs a proprietorship concern in the name and style of M/s Ved Pathology. It derives income from conducting pathological tests for diagnosis. Search operations under section 132 of the Income Tax Act, 1961 (hereinafter referred to as the Act) were carried on at the business and residential premises of the assessee on 2-7-1996. In the course of the search operations, cash of Rs. 9,24,750 and certain documents were seized.

The assessee was given a notice under section 158BC of the Act. He filed return of income for block assessment for the block period from 1-4-1986, to 2-7-1996. On return of income the assessee showed total undisclosed income of Rs. 10,97,652 for the block period from 1-4-1986 to 2-7-1996. The assessing officer determined the total undisclosed income of assessee for the block period ending 2-7-1996 at Rs. 35,43,720. The assessee challenged this addition in the first appeal before the Tribunal. The Tribunal allowed the assessee's claim and deleted the income of Rs. 2,73,283 made by the assessing officer. The appeal has been filed against this order.

2. We have heard Sri Shambhu Chopra, learned standing counsel for the appellant and Sri S.K. Garg, learned counsel for the assessee.

3. In the memo of the appeal, various substantial questions of law have been framed. Learned counsel for the appellant, however, stressed on the question Nos. 5, 6 and 8, as framed in the memo of appeal, which read as below :

(5) Whether, on the facts and in the circumstances of the case and material available on record, the Tribunal was correct in law in proceeding on the assumption that the assessee's undisclosed income for the period April, 1995 to December, 1995, worked out at Rs. 17,00,000 by the assessing officer was estimated by invoking the provisions of section 145 of the Income Tax Act, 1961, and that it was not open to the assessing officer to make any such estimation or addition without invoking the provisions of section 145 of the Act

(6) Whether, on the facts and in the circumstances of the case and the material available on record, the Tribunal was correct in law in holding that the provisions of section 145 of the Income Tax Act, 1961, are not applicable to the computation of undisclosed income under the provisions of chapter XIV-B of the Income Tax Act, 1961 ?

(8) Whether having regard to the facts and under the provisions of sub-section (1) of section 158BB of the Income Tax Act, 1961, the undisclosed income is required to be computed not only on the basis of the evidence found as a result of the search but also on the basis of such other material and information as are

available to the assessing officer, whether the Tribunal was legally justified in deleting the addition of Rs. 17,00,000 made by the assessing officer on account of the assessee's undisclosed income for the period April, 1995 to December, 1995 ?

4. The Tribunal has gone through the facts in appeal and it is not necessary to deal with all the facts again. As regards the applicability of section 145 of the Act, it may be stated that the Tribunal observed as under :

'Even otherwise, the provisions of section 145 can be applied only after rejecting the books of account or documents found during the search as unreliable or on the ground that the true income cannot be deducted therefrom and if the books of accounts or the documents found during the search are rejected, then there is no question of any income or undisclosed income on the basis of such books of account of documents which is a prerequisite and only condition for computation of undisclosed income.'

In view of this finding, provisions of section 145 of the Act even if applied, there is no question of any income or undisclosed income and it will not be applicable.

5. As regards the question No. 8 in reference to sub-section (1) of section 158BB of the Act, the Tribunal has recorded a finding and held that the assessing officer was not justified in estimating the undisclosed income from April to December, 1995, for which there was no detail in any of the seized documents. It has made the following observations :

'In view of the above facts and circumstances, we are of the opinion that so far as the computation of undisclosed income under the provisions of chapter XIV-B of the Act is concerned, the provisions of section 145 are not applicable and consequently the assessing officer, in the present case, was not justified in estimating the undisclosed income for the period April to December, 1995 for which there were no details in any of the seized documents. So far as the decision relied on by the revenue is concerned, we are of the opinion that the same may be applicable for computation of one's income under the regular assessment under section 143(3) but not to the assessment for block period. In the resultant, we direct the assessing officer to consider the appellant's undisclosed income on the basis of document Nos. A2, A3 and A5 to A8 as available in the documents, i.e., at Rs. 8,92,252 as already held while considering the addition on the basis of Annexure A2. The undisclosed income of Rs. 17,00,000 determined on this account is, therefore, deleted.'

In view of the facts-finding recorded by the Tribunal, we do not find any substantial question of law, which arises out of the order of the Tribunal.

The appeal is, accordingly, dismissed.