

Surendra Kumar Lahoti Vs. Assistant Commissioner of Income-tax

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Court : Madhya Pradesh

Decided On : Apr-18-2006

Reported in : [2008]300ITR124(MP)

Judge : S.K. Kulshrestha and ;Ashok Kumar Tiwari, JJ.

Appellant : Surendra Kumar Lahoti

Respondent : Assistant Commissioner of Income-tax

Disposition : Appeal allowed

Judgement :

S.K. Kulshrestha, J.

1. This appeal under Section 260A of the Income-tax Act, 1961, has been filed against the order dated July 5, 2002, of the Income-tax Appellate Tribunal, Indore Bench, Indore, in I.T. (SS) A. No. 8/Ind/98 which has been admitted by this court on the following substantial question of law:

Whether, on the facts and circumstances of the case, the Tribunal was right in law in adding the salaried income to the undisclosed income specified by the assessee in the return for the block period even when the appellant had in the past disclosed regularly his salaried income and also deducted the tax at source as and when the income was found taxable?

2. The assessee is an individual in the service of M/s. Vikram Cement, which is a unit of the company known as Grasim Industries Limited. The appellant is getting a monthly salary from the said company and during the period his income from salary had exceeded the taxable limits, tax was deducted at source by his employer. While the assessee was living jointly with his brother, Dr. R. Lahoti, a search under the provisions of Section 132 of the Income-tax Act was conducted in the residential premises of Dr. R. Lahoti on December 20, 1996. During the search, some cash and jewellery was found in the bedroom of the assessee but the same was returned to the assessee upon full satisfaction of the authority with regard to the explanation offered by the assessee.

3. The assessee had not filed his returns for the assessment years 1987-88 to 1996-97 but he furnished the details of the income that accrued to him during the said block period. The employer also issued to him Form No. 16 which he furnished to the Income-tax Department along with his return under Section 206 of the Act. The salary income of the assessee was below the taxable limits during the assessment years 1987-88 to 1991-92 and although no deduction was made towards tax, Form No. 16 were duly filed for these years as well.

4. A notice dated November 21, 1997, under Section 158BC was issued to the assessee asking him to file his return for the block period. The assessee complied with the requisition and also submitted copies of Form No. 16 issued by his employer. It was stated that the income having been disclosed, it was not a case of concealment. The assessing authority by his order dated December 29, 1997, did not accept the claim of the assessee and added the salary income to the undisclosed income specified by the assessee and charged tax on the entire income of Rs. 3,22,479 under Section 158BB(1)(c) of the Act. An appeal was filed before the Income-tax Appellate Tribunal. It was reiterated before the Tribunal that the salary income stood already disclosed and, therefore, ought to have been deducted from the total income and could not have been subjected to any tax. The Tribunal, however, did not accept the contention and upheld the decision of the Assessing Officer. It is in this context that the present appeal has been filed, which has been admitted on the question hereinabove stated.

5. Learned senior Counsel for the appellant submits that once it is demonstrated that in respect of the salary income during the financial year in which it exceeded the taxable limits the tax was deducted at source, then merely because the employer, according to the Department, failed in discharging his duty by apprising the Department by submission of information in Form No. 24, the employee could not be penalised and the income could not have been treated as income from undisclosed sources. His further contention is that an income which is exempt from income-tax being income below the taxable limit, cannot be charged to tax for any reason whatsoever. Learned senior Counsel for the Revenue, however, maintains that since this income was not disclosed and the return was filed only after the date of the search, there would be a bar of Section 158BB(1)(ca) and, therefore, this income is required to be added to the income from other sources.

6. We have heard learned Counsel for the parties and perused the record.

7. There is no dispute between the parties that after the search was conducted and the jewellery and cash found in the room in occupation of the appellant was returned to him, the appellant had also filed return under Section 206 in which he had shown that income had substantially accrued to him from the salary which for a sufficiently long period during the block period was below the taxable limits. Contention of learned senior Counsel, therefore, is that such an income cannot be added to the income for charging tax. In this connection, reference has been made to the decision in CIT v. Purshottamlal Tamrakar of this court reported in : [2004]270ITR314(MP) . In the said decision, this court has observed that once the books of account disclosed that the income of the assessee is below the taxable limit for some years and for certain period, it is taxable as per the books of account, the liability would be fixed accordingly. The relevant portion in the report reads as under (page 317):

It is pertinent to state here that the aforesaid provision came on the statute book by the Finance Act, 2002, with effect from July 1, 1995. By virtue of this amendment, much confusion which had remained earlier really got cleared and the picture was frescoed without any kind of haze. If the provision which is plain and unambiguous is interpreted, it can be stated that once the books of account

disclosed that the income of the assessee is below the taxable limit for some years and for certain period, it is taxable as per the books of account, the liability would be fixed accordingly.

8. Therefore, there could be no two opinions that irrespective of the fact whether the return is filed before the search or after the search, once it is clear that the income shown by the assessee is the income far below the taxable limit, then merely because the income has been shown after the date of the search, it cannot be brought to tax and to the extent the income was below the taxable limit, tax cannot be charged. Learned Counsel for the Revenue has invited our attention to the decision of the hon'ble Madras High Court in *B. Noorsingh v. Union of India* : [2001]249ITR378(Mad) . In the said decision, his Lordship has observed that it is open to Parliament to classify taxpayers on any rational basis and treat different classes of taxpayers differently. Since Section 158BB deals with computation of undisclosed income, it provides that the undisclosed income of the block period would be aggregated to the total income of the previous years within the block period in accordance with Chapter IV of the Act on the basis of the evidence found. Learned senior Counsel for the appellant has, however, referred to the decision of the same High Court, of a Division Bench, in *Asst. CIT v. A.R. Enterprises* : [2005]274ITR110(Mad) . In the said decision, their Lordships have ruled that if advance tax has been paid in the relevant assessment year during the block period, the income during the said period cannot be treated as undisclosed. We may also refer to a recent judgment of this court in *I.T.A. No. 29/2002 Dr. Brijesh Lahoti v. CIT* : [2006]282ITR349(MP) in which this court has observed in paragraph 9 and paragraph 10 as extracted hereinbelow (page 354):

Mr. Chaphekar, learned senior Counsel appearing for the appellant, submitted that there may be cases outside Sub-section (3) of Section 158BA of the Act where it can be held that income of the assessee has been disclosed. In fact, he relied on the Division Bench judgment of the Madras High Court in the case of *A.R. Enterprises* : [2005]274ITR110(Mad) in support of his submission in which payment of advance tax before the date of search, even in a case where no return had been filed under Section 139(1) of the Act, has been held to be a case where income has been disclosed.

9. We agree with Mr. Chaphekar, learned senior Counsel for appellant, that where the assessee discloses his income to the Department before the date of search in some manner or the other, it may be difficult to hold that such income is to be treated as undisclosed income for the purpose of assessment in accordance with Chapter XIV-B of the Act. In A.R. Enterprises : [2005]274ITR110(Mad) , the Division Bench of the Madras High Court has found that search had taken place on February 23, 1996, but for the assessment year 1995-96 even though the assessee had not filed the return, it had paid advance tax of Rs. 4,80,000 in three instalments on September 15, 1994, December 12, 1994, and March 15, 1995, much before search and the Division Bench accordingly held that the income of the assessee in that case cannot be treated to be as 'undisclosed income' for the purpose of assessment under Chapter XIV-B of the Act.

10. From the above position it is luculent that once it is established that income-tax was deducted, the income cannot be treated as income from undisclosed sources.

11. Reference at this stage may also be made to the decision of the Rajasthan High Court in CIT v. Ashok Taksali . Their Lordships have observed that once the salary income of the block year has been taxed and tax has been deducted at source, there is no question of holding that income of the assessee as an undisclosed income of the block year.

12. In view of the several clear enunciations we are clear in our mind that the salary income disclosed by the assessee on which tax at source was deducted could not have been treated as undisclosed income. We may also pronounce upon the fact in view of the clear enunciations of this court in Purshottamlal Tamrakar : [2004]270ITR314(MP) that the income which is below the taxable limit cannot be taxed merely because the return has not been filed before the date of the search and seizure.

13. In the result, this appeal is allowed. The Tribunal's order shall stand modified, accordingly.