

Control Touch Electronics (Pune) Vs. Assistant Commissioner of

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Court : Income Tax Appellate Tribunal ITAT Pune

Decided On : Mar-06-2000

Reported in : (2001)77ITD522(Pune.)

Judge : B C Accountant, K S Judicial

Appellant : Control Touch Electronics (Pune)

Respondent : Assistant Commissioner of

Judgement :

1. This appeal is directed against the order of Block assessment dated 28th July, 1997 passed by the Asstt. CIT Inv. Cir. 1(2), Pune. The Block period comprises of assessment years 1987-88 to 1997-98.

2. The assessee is a private limited company engaged in the manufacture of membrane switches and silicon key pods for electronic components. It is a regular Income-tax assessee. A search and seizure action was carried out at the premises of the assessee on 31st July, 1996 in the course of which certain incriminating materials were found. In response to the notice under section 158BC, the assessee filed return for the Block period on 24th April, 1997 declaring undisclosed income of Rs. 91,82,094. In the course of assessment proceedings, it was found that the assessee had been claiming bogus purchases in respect of assessment years 1993-94 to 1996-97 aggregating to Rs. 1,09,62,450 out of which the assessee had offered only Rs. 78,10,531 in the return for the Block period. The assessee had also claimed deduction under section 80-I in respect of

total income computed for the purpose of Block assessment.

However, this claim has been rejected by the Assessing Officer on the ground that the total income for the Block period has to be computed only in the manner provided in Chapter IV as per the provisions of section 158BB(1). The contention of the assessee that provisions of Chapter VI-A were applicable by virtue of section 158BH was also rejected. The final assessment was completed on the total undisclosed income of Rs. 1,05,19,502. The said assessment is the subject-matter of appeal before the Tribunal.

3. The only ground raised in the Memorandum of Appeal relates to the claim of the assessee under section 80-I. However, in the course of hearing, the learned counsel for the assessee has raised certain additional grounds to which we will refer later on. The learned counsel for the assessee has contended before us that the scheme of the Act is to determine the total income which can be computed after allowing deductions under Chapter VI-A. He also referred to the provisions of section 158BH which provides that all the provisions of the Act shall be applicable except specifically excluded. According to him, the only exclusion relates to the set off of unabsorbed losses and depreciation as per the provisions of section 158BB(1). It was further submitted that computation under Chapter IV includes deductions under Chapters V, VI and VI-A. For this purpose, he relied on the decision of this Tribunal as *Aqua Alloys (P.) Ltd. v. Dy. CIT* [2000] 66 TTJ (Pune) 71 and the decision of the Amritsar Bench of the Tribunal as *Kashmir Steel Rolling Mills v. Dy. CIT* [1991] 55 Taxman 424. On the other hand, the learned D.R. has reiterated the reasonings given by the Assessing Officer. According to him, the total income including the undisclosed income is to be computed in accordance with the provisions of Chapter IV, as provided in sub-section (1) of section 158BB. Therefore, the question of allowing deduction under section 80-I does not arise.

4. Rival submissions of the parties have been considered carefully. No case law is available on this issue. After giving our deep thoughts to the arguments of the parties, we have come to the conclusion that interpretation of section 158BB, as suggested by the learned D.R. would lead to absurd results, inasmuch as it would amount to double taxation of a part of income which would not have been intended

by the Legislature. What is allowed to be deducted as per Clauses (a) to (f) of section 158BB(1) is the assessed income under section 143, 144 or 147 or the returned income where the assessment is not completed or the total income determined on the basis of entries in the books of account where the due date for filing of the Return has not expired on the date of search. Such income is to be computed in accordance with the provisions of the Act including the provisions of Chapter VI-A, while total income including undisclosed income under the main provisions of sub-section (1) of section 158BB, as per the contention of the learned D.R., should be computed as per the provisions of Chapter IV only, i.e.

without allowing deduction under Chapter VI-A. Such computations would amount to taxing part of income doubly which has already been allowed as deduction in the regular assessment under section 143, 144 or 147 or in the return filed. This can be illustrated by the following example: "An assessee shows profit of Rs. 2 lakhs in accordance with the provisions of Chapter IV on which he is entitled to deduction at the rate of 25% of such profits. Hence, total income in regular assessment is determined at Rs. 1.5 lakhs. However, as a result of search, total income under Chapter IV comes to Rs. 3 lakhs. If the deduction under section 80-I is not allowed as per the contention of the Revenue, then the undisclosed income would come to Rs. 1.5 lakhs (Rs. 3 lakhs - Rs. 1.5 lakhs) even though the undisclosed income was only Rs. 1 lakh as per the computation under Chapter IV." From the above example, it is clear that the interpretation as suggested on behalf of the Revenue would lead to absurd results which could not have been intended by the Legislature.

5. It is a settled principle of interpretation that provisions of a statute should be construed reasonably and harmoniously. Further, if the literal interpretation leads to absurd results, then the Court can read down such provisions in consonance with the intention of the Legislature. The intention of the Legislature is to assess only the total income of the assessee which is to be computed in accordance with the provisions of the Act. Chapter XIV-B has been enacted to assess undisclosed income, i.e. that part of income which remained undisclosed. In the above example cited by us, the real total income was Rs. 3 lakhs on which he was entitled to deduction under section 80-I of Rs. 75,000 being 25% of such income.

So, the net total income assessable in his hands was only Rs. 2,25,000 against which he had disclosed Rs. 1,50,000.

Thus, in reality, the undisclosed income was Rs. 75,000 only. It is this income which is assessable as undisclosed income. This can be worked out only if the provisions of section 158BB(1) is not read in isolation but alongwith other provisions of this Chapter including section 158-BH. If so construed, it will result in computation of real undisclosed income.

6. Section 158BH specifically provides that all the provisions of this Act shall apply to the assessment made under this Chapter, except as otherwise provided in this Chapter. Perusal of Chapter XIV-B shows that the provisions of Chapter VI-A have not been excluded. Wherever any exclusion was intended, the Legislature has specifically provided so.

For example, sub-section (4) of section 158BB specifically excludes set off of unabsorbed losses brought forward from earlier years and unabsorbed depreciation under section 32(2). Similar provisions are provided in Explanation to section 158BB(1). Unabsorbed brought forward losses are dealt with in Chapter VI which itself goes counter to the argument of the learned D.R. Had the Legislature intended not to compute undisclosed income beyond Chapter IV, it would not have provided for exclusion of brought forward unabsorbed losses which are dealt with in Chapter VI Further section 158BB refers to computation of total income and not mere income or gross income. This also shows that the Legislature had intended to compute the total income which can only be computed in accordance with the provisions of the Act. Therefore, in our view, combined reading of all the provisions, particularly with reference to section 158BH clearly shows that total income under section 158BB(1) should be computed after allowing deduction under Chapter VI-A. We hold accordingly. Consequently, the order of the Assessing Officer is set aside on this issue and he is directed to recompute the income under section 158BB(1) after allowing deductions under Chapter VI-A and then determine the undisclosed income.

7. Now we come to the additional grounds. The learned counsel for the assessee has raised four additional grounds which are purely legal and, therefore, have

been admitted.

8. Ground Nos. 1 and 2 relate to the undisclosed income of Rs. 34,38,673 pertaining to the assessment year 1996-97. The addition has been challenged by raising two contentions - firstly, this income is beyond the scope of charging provisions of section 158BA by virtue of sub-section (3). Secondly, as an alternative plea, provisions of section 158BB(1)(d) are applicable. If such provision is applied, then the undisclosed income would come down to nil. According to the learned counsel for the assessee, the due date of filing of the return had not expired and the regular books of account were found at the time of search in which all relevant entries have been made. Income has been determined as per such books of account and no fault has been pointed out by the Assessing Officer. He drew our attention to pages 4 and 5 of the assessment order to show that all the purchases are duly debited in such books of account and the alleged bogus purchase vouchers, though found from the premises of the assessee, were not entered in such books of account. Since such books of account have been found to be correct, provisions of subsection (3) of section 158BA are applicable and accordingly, such income cannot be termed as undisclosed income of the assessee. At this stage of hearing, the Bench drew attention of the learned counsel for the assessee to the observations of the Assessing Officer at page 4 of the assessment order, wherein it has been observed by the Assessing Officer, "It is further submitted by the assessee that though the bogus bills to that extent were obtained from the various parties with the only intention of debiting the same in the books, but were only marked in the ledger account and have not been taken into the Purchase Registers." In response to the query of the Bench, it was submitted by him that these remarks are without any basis and the alleged bogus purchases were never entered in the books of account. It was also submitted by him that all the books of account are still in the possession of the Department and the same can be verified.

Accordingly, the D.R. was asked to comment on this aspect. On the next date of hearing, the learned D.R. has categorically stated that the alleged bogus purchases do not find any place in the books of account found and seized from the premises of the assessee. In view of these arguments, it was prayed by the learned

counsel for the assessee that such income should be excluded from the assessment of undisclosed income. Alternatively, he relied on the provisions of section 158BB(1)(d). On the other hand, the learned D.R. strongly objected to the contentions raised by the learned counsel for the assessee on the ground that the assessee itself has declared the sum of Rs. 34,38,670 as undisclosed income for the assessment year 1996-97 and, therefore, on the basis of admission of the assessee itself, it has to be assessed as undisclosed income. Besides this, he relied on the order of the Assessing Officer.

9. After hearing both the parties, we find sufficient force in the contention of the learned counsel for the assessee. Admittedly, some bogus purchase vouchers were found from the premises of the assessee, but these were not entered in the regular books of account maintained by the assessee. It is not the case of the Revenue that such books of account were not complete in itself. All the entries relevant to this year were duly posted. The Assessing Officer has himself accepted this factual position at pages 4 and 5 of the assessment order. Therefore, in our considered opinion, provisions of sub-section (3) of section 158BA are applicable, inasmuch as the due date for filing of the return had not expired and all the transactions relating to the income were duly recorded in the books of account maintained in normal course.

Accordingly, this income cannot be included in the Block period. Even otherwise, Clause (d) of section 158BB(1) becomes applicable by virtue of which such income has to be excluded. Considering from any angle, this income cannot be considered as undisclosed income. At this stage, it is mentioned that it is a settled legal position that there cannot be any estoppel against the statute. If any income is not taxable by virtue of any provision of the Act, then it cannot be taxed merely because it was offered by the assessee in his Return. Therefore, the contention of the learned D.R. in this regard is hereby rejected.

Accordingly, the order of the Assessing Officer is set aside on this issue and the sum of Rs. 34,38,673 pertaining to the assessment year 1996-97 is hereby deleted from the assessment of undisclosed income.

10. Additional ground No. 3 relates to double taxation of Rs. 15 lakhs pertaining to assessment year 1995-96. According to the learned counsel for the assessee, a sum of Rs. 15 lakhs was offered in the regular assessment proceedings and, therefore, same cannot be assessed again in the Block assessment. On the other hand, the learned D.R. has opposed this contention by contending that this credit has already been given while computing the undisclosed income.

11. After hearing both the parties, we do not find any force in this contention of the learned counsel for the assessee. The total income including undisclosed income has been assessed at Rs. 38,28,310 against which deduction of Rs. 20,39,780 has been allowed by the Assessing Officer which includes the sum of Rs. 15 lakhs. Therefore, this additional ground is mis-conceived and is therefore dismissed.

12. Additional ground No. 4 relates to the computation of undisclosed income under section 158BB(1). According to the learned counsel for the assessee, deduction to be allowed under clauses (a) to (f) should be the amount of income arrived at before allowing deduction under section 80-I in the regular assessment proceedings. This ground has become infructuous since the assessee succeeds on the main issue of section 80-I. If the total income under section 158BB(1) is to be computed after allowing deduction under section 80-I, then this ground will not survive. We have already allowed the claim of the assessee in this regard while disposing of the main issue. Accordingly, this ground is dismissed as infructuous.

13. Lastly, it was argued by the learned counsel for the assessee that losses of assessment years 1988-89 and 1989-90 should be taken into account for the purpose of aggregation. According to him, a sum of Rs. 2,52,080 pertaining to these two years should be reduced from the net undisclosed income. In our opinion, there is no force in the argument of the learned counsel for the assessee in this regard. If the sum of losses pertaining to the two years are set off against other income relating to assessment years 1990-91 to 1997-98, then the total income would come to Rs. 1,39,85,357. If similar exercise is made in respect of the returned/assessed income, then it will come to Rs. 34,65,855. If the difference is worked out of these two figures, then the net undisclosed income would be the

same as determined by the Assessing Officer. Accordingly, this ground of the assessee is dismissed.

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