

D.D. Industries Ltd. Vs. Assistant Commissioner of Income

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Aug-31-2000

Appellant : D.D. Industries Ltd.

Respondent : Assistant Commissioner of Income

Judgement :

1. This is an appeal filed by the assessee against the block assessment order passed on 29th April, 1998, covering the previous years 1986-87 to 1996-97.
2. Briefly stated the facts of the case are that search under s. 132 took place on 29th August, 1996, at the business premises of the company and also at the residential premises of the directors. Notice under s. 158BC was served on 24th February, 1997, in response to which the assessee filed its return for the block period on 30th August, 1997, showing undisclosed income for the block period on 30th August, 1997, showing undisclosed income for the block period at Nil. Looking to the nature of business and complexity of the accounts, the assessee was ordered to get its accounts audited under s. 142(2A) on 31st October, 1997. The AO noted that under s. 158BE the time-limit available for completing the block assessment was upto 29th April, 1998, and the audit report was received in the late hours of 27th April, 1998. Considering the voluminous report and the availability of only one day at the disposal of the AO. The AO completed the assessment without confronting the assessee with the report and worked out the undisclosed income accordingly.

3. At the outset the learned counsel for the assessee contended that the block assessment made by the AO on 29th April, 1998, was barred by limitation as it could have been completed only upto 27th April, 1998.

It was pointed out that last search warrant was executed on 22nd October, 1996, and on 31st October, 1997, the CIT directed the assessee to get its accounts audited under s. 142(2A) and submit the report by 31st January, 1998. After some extensions the learned counsel pointed out that the AO extended the time for submission of audit report upto 25th April, 1998, in response to its letter dated 16th March, 1998. It was pleaded that the said report was received by the assessee from the auditors on 23rd April, 1998, at 8.40 P.M. and on 24th April, 1998, the representative of the assessee went to the office of the AO at around 5 p.m. to file the report personally but the room of the AO and staff was found closed. Immediately thereafter the report was despatched to the AO by courier. Since 25th April, 1998, and 26th April, 1998, were holidays, the report was handed over personally to the AO at 11.00 A.M. on 27th April, 1998. The learned counsel pointed out that since the time-limit to complete the assessment expired on 27th April, 1998, in accordance with the provisions of s. 158BE, the order passed by the AO on 29th April, 1998, was barred by limitation and be annulled.

4. As against this, the learned Departmental Representative contended that the time available with the AO was upto 29th April, 1998, and not 27th April, 1998. It was pointed out that the assessee as well as M/s D. M. Gears (P) Ltd. simultaneously approached the AO for the extension of time as the audit report under s. 142(2A) was also required to be obtained in the case of M/s D. M. Gears (P) Ltd., and other concerns of the assessee group by the same auditor. It was further pointed out that along with the letter of the assessee dated 16th March, 1998, for extension of time for furnishing the audit report under s. 142(2A), M/s D. M. Gears (P) Ltd. also moved application on the same date and for both the concerns time was extended upto 25th April, 1998, and it was duly noted by the auditor, which was apparent from the copy of the letter dated 25th April, 1998. Since the auditor was facing difficulty in completing the audit, he appeared before the AO on 20th April, 1998, and requested for extension of time in both the cases. However, the AO on the letter of M/s D. M. Gears (P) Ltd., dated 16th March,

1998, extended the time upto 29th April,1998, by specifically mentioning the names of the assessee and of M/s D. M. Gears (P) Ltd. which were taken note of by the same auditor. The learned Departmental Representative pointed out that in the case of M/s D. M. Gears (P) Ltd. the Tribunal in its order dated 24th March, 2000 in IT (SS) A. No. 68/Del/1998, after considering the submissions of both the sides had held that limitation period was upto 29th April, 1998 and set aside the order of the AO with a direction to decide the matter afresh.

5. In the rejoinder the learned counsel for the assessee contended that this letter had no validity since the same was not filed by the Department before the Tribunal in its paper book and the assessee had no knowledge about this letter.

6. We have considered the rival submissions and perused the relevant records. As per prescription of s. 158BE an order under s. 158BE(2) has to be passed within one year from the end of the month in which the last authorisation for search under s. 132 was executed. Explanation to this section provides that in computing the period of limitation, the period commencing from the date on which the AO directs the assessee to get the accounts audited under s. 142(2A) and ending on the date for which the assessee was required to furnish the report shall be excluded. It thus boils down that the time for getting the accounts audited is to be excluded while computing the limitation period. Since the last search warrant was executed on 22nd September, 1996, the last date for completing the assessment expired on 31st October, 1997, on which date the assessee was directed to get its accounts audited under s. 142(2A) and submit report by 31st January, 1998. After some extensions, the AO extended the time for submission of audit report upto 25th April, 1998, in the case of the assessee as well as the sister concern of the assessee, M/s D. M. Gears (P) Ltd., for which concern also the same auditor was appointed. A further extension upto 29th April, 1998, was granted by way of consolidated order in respect of both the concerns on the letter dated 16th March, 1998, of M/s D. M. Gears (P) Ltd. and the auditor noted the same for which the signature of partners are there on record confirming that he has noted the extension upto 29th April, 1998, in respect of both the concerns. As the time was extended upto 29th April, 1998, and block assessment order was passed on that very day itself, we are of the considered view that the same was not barred by

limitation.

7. The learned counsel for the assessee raised objection to the order for getting accounts audited under s. 142(2A). Referring to these provisions the learned counsel urged that the AO had not referred to any complexity of the accounts of the assessee and also that sanction recorded by the CIT was mechanical without application of mind. He referred to the judgment of the Calcutta High Court in the case of Peerless General Finance & Investment Co. Ltd. & Anr. vs. Dy. CIT & Ors. (1999) 236 ITR 671 (Cal) for the proposition that the appointment of the auditor under s. 142(2A) without application of mind was not valid. He also referred to the case of Swadeshi Cotton Mills Co. Ltd. vs. CIT (1988) 171 ITR 634 (All) and Jay Prakash Singh vs. CIT (1978) 111 ITR 507 (Gau) for the same proposition. On the strength of these judgments and two other judgments to the same effect, the learned counsel argued that since conditions as prescribed under s. 142(2A) were not satisfied and the AO without application of mind and without pointing out any complexity in the accounts referred the matter to the CIT for appointment of auditor under s. 142(2A), the resulting block assessment order should be annulled.

8. As against this the learned Departmental Representative contended that the assessee had no basis to say that the AO had not confirmed his opinion as regards complexity of accounts and other conditions of s.

142(2A). He pointed out that the AO complied with all the requirements before approaching the CIT for approval. He placed before us a copy of the letter dated 22nd October, 1997, written by the AO to the CIT pointing out the complexity of accounts and also the letter of the CIT dated 31st October, 1997, according approval in this regard.

9. Having heard the rival submissions on this issue, in the light of materials placed before us and the precedents relied upon, we are satisfied that nothing was done mechanically either by the AO or by the CIT in regard to the appointment of the auditor for this purpose.

Insofar as the reliance of the learned counsel on the case of Peerless General Finance & Investment Co. Ltd. (supra) is concerned, we find that in that case the

auditor was appointed merely on the basis of assessee's litigation with the Reserve Bank of India and the IT Department. The Hon'ble High Court has held that the litigations did not mean that the accounts were complex or that the appointment was beneficial to the Revenue. In contrast, no such indications formed the basis for the appointment of auditor in the present case. It was only due to the complexity of the accounts that the auditor was appointed which is evident itself from the audit report under s. 142(2A), which is placed before us in two volumes of 513 and 602 pages respectively.

10. Now coming to the second authority relied upon by the learned counsel, of Swadeshi Cotton Mills Co. Ltd. (supra). In that case also there was a search in the business premises of the assessee-company.

Leading to the seizure of voluminous records and the IAC after scrutiny of accounts found that the accounts pertaining to the purchase of raw material from various cotton purchase centres and the despatch of cotton to various branches and other relevant factors were complicated and required special audit. The Hon'ble Allahabad High Court in that case held that the direction issued by the CIT for the special audit of the assessee's accounts under s. 142(2A) was valid. The facts of the present case are more or less like the one prevailing in the case of Swadeshi Cotton Mills Co. Ltd. wherein also the direction for special audit of accounts under s. 142(2A) was held to be valid. This case relied upon by the learned counsel is rather in favour of the Revenue.

11. The next authority relied upon by the learned counsel for the assessee is the case of Jai Prakash Singh vs. CIT (supra). In this case the Gauhati High Court dealt with the assessment of legal representatives, vis-a-vis, issuance of notice under s. 143(2). This authority is no more a good law in view of the fact that this judgment has been reversed by the Hon'ble Supreme Court in the case of CIT vs.

Jai Prakash Singh (1996) 219 ITR 737 (SC).

12. Taking into consideration the arguments of both the sides, we are satisfied that the conditions of s. 142(2A) are satisfied.

13. The learned counsel for the assessee raised another legal issue in the realm of s. 158BG by submitting that the order passed by the AO was bad in law for the reason that the CIT could not possibly give the previous approval to the order without applying his mind in the very short time of one day. He alleged that the audit report was not sent to the CIT and the AO passed the order without seeking the approval from the CIT.14. As against this the learned Departmental Representative contended that the issue of the approval of CIT under s. 158BG has been finally decided by the Special Bench in the case of Kailash Moudgil vs. Dy. CIT (2000) 67 TTJ (Del) (SB) 145 : (2000) 72 ITD 97 (Del) (SB) in favour of the Revenue.

15. Having heard both the sides we are of the view that in the light of order of the Special Bench in the case of Kailash Moudgil (supra) the contention of the assessee's counsel has no force on the issue of s.

158BG.16. The assessee has raised numerous grounds and challenged the action of the AO on different issues. The learned counsel contended that since block assessment was framed without confronting the assessee with the special audit report and also the assessment was framed without affording opportunity of being heard to the assessee within two days from the date of receipt of the audit report, it would be appropriate if the impugned order is set aside. After hearing the rival submissions and perusing the relevant records, it is obvious from the orders of the AO itself that the order was passed without confronting the assessee with the special audit report due to reasons beyond his control, as the necessary opportunity of hearing could not be given to the assessee, it would be in the interest of justice if the impugned order is set aside and the matter is restored to the file of the AO with direction to decide the case afresh after giving opportunity of being heard to the assessee in accordance with law.

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