

Harish Seth Vs. Dy. Cit

Harish Seth Vs. Dy. Cit

SooperKanoon Citation : sooperkanoon.com/73300

Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-29-2004

Reported in : (2004)1SOT77(Delhi)

Appellant : Harish Seth

Respondent : Dy. Cit

Judgement :

These two appeals have been preferred by the assesseees against the separate orders of the CIT (A) dated 30-11-1999. The common grievance in these appeals is against the inclusion of Rs. 2,50,000 as undisclosed income for the block assessment.

Brief facts are as follows. That the two assesseees are 1/3rd co-owners of a farm house in Chbatarpur. A part of the said farm house was leased out by the co-owners at a monthly rent of Rs. 1 lakh with effect from 1-9-1996. A search operation under section 132 was carried out on 6-11-1997 at the residential and business premises of the assesseees.

The assessee filed a return for the block period 1-4-1987 to 6-11-1997 in pursuance to notice under section 158BC.3. The assessee had disclosed Rs. 2,33,333 as undisclosed income in the said return. The said income was in relation to the assessment year 1997-98 comprised in the block period. A query was raised during the assessment proceedings with regard to the terms of agreement whereby he was entitled to get an amount of Rs. 1 lakh per month with effect from

1-1-1996 in relation to the leased portion of the farm house. The assessee submitted that in terms of the agreement, the assessee was to receive either the amount @ Rs. 1 lakh per month as rent or the cost of construction to be incurred by the tenant was to be adjusted against the rentals due to the assessee to the extent of Rs. 14.50 lakhs.

Meanwhile, a dispute arose with DESU and the tenants were not allowed to utilize the premises for their intended business and the premises were sealed. There was a dispute between the assessee and tenant even with regard to the recovery of rent. The matter was referred for arbitration and by way of award dated 25-9-1997, the arbitrator gave his award. In terms of the award, no further rent was payable by the tenant and neither the assessee was to repay the cost of by the tenant.

However, the cost of construction, estimated at Rs. 14 lakhs, was treated as discharge of the tenants liability towards the assessee landlord. The assessee, in his return of income for the assessment year 1997-98 filed under section 139(1) of the Act did not include any income from rent. Subsequent to the search, the assessee, on the basis of the arbitration award dated 25-9-1997 declared his share of rental income for the period 1-9-1996 to 31-3-1997 as undisclosed income for the assessment year 1997-98 in the return filed for the block period under section 158BC. However, income of rent for the period starting from 1-4-1997 till the date of search (i.e. 6-11-1997) was declared in the regular return filed under section 139(1) of the Act and not in the return filed in pursuance to section 148BC. Accordingly, it was contended that the income relating to the seized document, arbitration award, was duly shown by the assessee. This action of the assessee did not find favour with the assessing officer. According to the assessing officer, the assessee could not have bifurcated part of its income in relation to the impugned seized document as undisclosed and the other part being the disclosed income for a subsequent assessment year.

Accordingly, the differential of Rs. 2,50,000, being 1/3rd of the income by way of deemed rent, which was not disclosed in the return filed under section 158BC was brought to tax as undisclosed income for the assessment year 1998-99 comprised in the block period. Aggrieved, the matter was carried in appeal before the CIT (A).

On appeal, it was contended that the impugned income was a deemed income which did not accrue in the normal course and that the assessee did not maintain any books of account. On the strength of the aforesaid, it was contended that the rental income amounting to Rs. 2,50,000 from the period 1-4-1997 to 6-11-1997 is not liable to be treated as undisclosed income, having regard to the provisions of section 158BA(3). The CIT (A) has since negated the pleas of the assessee and has sustained the order of the assessing officer. The CIT (A) holds that there was no evidence to suggest that the assessee had intended to disclose the impugned income which was found during the search. Aggrieved, the assessee is in appeal before us.

Before us, the learned counsel Shri Pradeep Dinodia has reiterated similar submissions as made before the lower authorities. The counsel has referred to the provisions of section 158BA(3) to submit that the return for the period under consideration was not yet due in terms of section 139(1) and therefore, the said income was not to be included in the block period. The assessee did not maintain any, books of account as his sources of income were salaries, interest, capital gains etc. as there was no requirement for maintaining the books of account. It was further submitted that in the regular return filed for the assessment year 1998-99, the assessee had declared the impinged amount as income.

Our attention was drawn to the paper book filed wherein, inter alia, the evidence for the same was placed.

On the other hand, learned Departmental Representative has defended the orders of the lower authorities.

We have considered the rival submissions. Admittedly, the search operation on the assessee resulted in the seizure of award of arbitration dated 25-9-1997 whereby certain income accrued to the assessee as deemed rent. On the date of search i.e. 6-11-1997, the return of income for the assessment year 1998-99 was not yet due as the previous year had not ended. The deemed income pertaining to the period upto 31-3-1997 was returned by the assessee as undisclosed income in the return filed in the block period in pursuance to notice under section 158BC. Till this stage, there is no dispute. The dispute starts from here. Insofar as the deemed

income for the period starting from 1-4-1997 is concerned, the assessee contended that since the previous year had yet to expire, he declared the same in his regular return. It is pertinent to note here that for the assessment year 1998-99, the regular return filed by the assessee on 30-10-1998 did not comprise the amount of Rs. 2,50,000 which was the deemed rental income for the said period. However, the said return was revised on 12-5-1999, inter alia, by including the said amount of deemed rent of Rs. 2,50,000.

The crux of the matter is as to whether the said amount of Rs. 2,50,000 was liable to be assessed in terms of Chapter XIV-B or not? clause (b) of section 158B defines undisclosed income assessable under Chapter XIVB. Undisclosed income refers to any money, bullion, jewellery or any income where such money, bullion, jewellery etc. or the income represents an income which has not been or would not have been disclosed for the purposes of this Act. It is abundantly clear that what is envisaged within the meaning of undisclosed income is not only income which has not been declared by the assessee as on the date of search but also such incomes as would not be disclosed by the assessee.

The presence of the words "or would not have been disclosed.." in section 158B(b) are relevant to arrive at the aforesaid premise. As far as the arbitration award is concerned, it cannot be disputed that it gave rise to certain deemed income to the assessee which he had failed to disclose in his regular returns. It is in this context that the action of the assessee in disclosing the income for the earlier period in its return filed in pursuance to notice under section 158BC is to be viewed. Insofar as the income for the previous year in which the search took place, the plea of the assessee is that the said income could not be said to be undisclosed so as to be included in Chapter XIV-B proceedings. The factum of the assessee not having disclosed the income flowing from the award, which was found during the search, is not in dispute. Therefore, in order to exclude the impugned income out of the purview of Chapter XIV-B, what we have to see is as to whether the assessee would have disclosed the said income for the purposes of the Act or not. To arrive at an answer to this, the action, or rather inaction, of the assessee in not disclosing the said income suo moto by revising the earlier years returns filed prior to search demonstrates that the assessee had no intention to disclose the income

embedded therein. This is further strengthened by the fact that even on a date subsequent to the search when the assessee filed its return of income for the assessment year 1998-99 under section 139(1) on 30-10-1998, the impugned income was not included. It was only subsequently, on 12-5-1999, that the said return of income was sought to be revised. All this, in our view leads us to the unhesitant conclusion that the assessee would not have disclosed the impugned income but for the search operation carried out by the department. Therefore, in our view, the impugned amount of income bears the character of the undisclosed income as envisaged in Chapter XIV-B. Insofar as the plea of the assessee in terms of section 158BA(3) is concerned, we do not find ample force in it. We have perused carefully sub-section 3 of section 158BA. Sub-section 3 of section 158BA provides that if the assessee proves to the satisfaction of the assessing officer that any part of the undisclosed income relating to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 for that previous year has not expired, and if such income is found recorded, before the date of search, in the books of account or other documents maintained in the normal course relating to such previous year, then such income shall be excluded from the block period. The claim of the assessee is that it was not required to maintain any books of account and thus, it cannot be called upon to demonstrate recording in its books of account for the assessment year 1998-99. It is submitted that the arbitration award by itself is construed a document which contained the impugned income and, therefore, in terms of section 158BA(3), the said income was liable to be excluded from the block period. We find that the conditions which are required to be complied with to exclude an income from the block period in terms of section 158BA(3) are : (i) That the income must relate to assessment year for which the previous year has either not ended or the date of filing of return under section 139(1) had not expired; (2) That such income or the transactions relating to such income are recorded in the books of account or other documents maintained in the normal course; (3) that such recording in the books or other documents maintained should be before the date of search. If all the aforesaid three ingredients are juxtaposed with the facts of the impugned case, we do not find that the assessee has complied with the same. Even if we appreciate the plea of assessee that it was not statutorily required to

maintain any books of account, yet the assessee does not get the benefit of the said provision. In situations of instant nature, it is the overall conduct of the assessee which comes to the fore. Indisputably, on the date of search, even for the assessment years for which the returns have been filed by assessee under the normal law, no action has been taken by the assessee to revise the same to include such income. Secondly, even the return filed under section 139(1) after the date of search initially did not contain the said income. Thus, the impugned income is includible in Chapter XIV-B and the assessing officer was right in not being satisfied for its exclusion in terms of section 158BA(3). Therefore, we are unable to uphold the contention of the assessee on the basis of facts and evidence as found.

In the result, we sustain the orders of the lower authorities and the assessee fails.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com