Cit Vs. J.K. Narayanan

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Court : Chennai

Decided On : Apr-01-2004

Reported in : [2007]293ITR179(Mad)

Judge : A.S. Venkatachalamoorthy and ;P.K. Misra, JJ.

Appellant : Cit

Respondent : J.K. Narayanan

Judgement :

P.K. Misra, J.

1. The following question has been referred to under Section 256(1) of the Income Tax Act, 1961, to the High Court :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in setting aside the assessment tantamounting to its annulment on the ground that there is no existence of undisclosed income for the purpose of an assessment to be made under Chapter XTV-B, especially when no valid return has been filed and therefore the income earned should be brought to tax as undisclosed income ?

2. The facts are as follows :

3. The assessee is a Hindu undivided family (specified). A search was effected on 6-2-1996, and notice under Section 158BC of the Act was issued on July 25, 1996. Subsequently, the assessee filed a return showing 'nil' undisclosed income. The assessing officer while observing that investments were considered in the hands of the assessee in his individual capacity, the Hindu undivided family had failed to file the return of income for the assessment years 1988-89, 1989-90, 1990-91, 1992-93 and 1993-94, and therefore, the assessing officer observed that the total income for the five years was undisclosed income for the block period under Section 158BB(1)(c) of the Act. On appeal, the Tribunal (See J. K. Narayanan (HUF) v. Asst. CIT : [2000]242ITR45(Delhi) by majority opinion, held that there was no existence of any undisclosed income, and therefore, the impugned assessment under Chapter XIV-B for the block period was liable to be annulled.

4. Section 158BB defines undisclosed income as follows :

158BB(1). The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the assessing officer and relatable to such evidence, as reduced by the aggregate of the total income, or, as the case may be, as increased by the aggregate of the losses of such previous years, determined,

(a) where assessments under Section 143 or Section 144 or Section 147 have been concluded prior to the date of commencement of the search or the date of requisition, on the basis of such assessments ;

(b) where returns of income have been filed under Section 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns ;

(c) where the due date for filing a return of income has expired, but no return of income has been filed,

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such entries result in computation of loss for any previous year falling in the block period ; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period ;

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under Clause (c) ;

(d) to (f)

5. It is not the case of the revenue that in the present case, any undisclosed income had come to light as a result of search. On the other hand, the assessee had filed already a belated return disclosing such income.

6. Keeping in view the provisions contained in Section 158BB of the Act, in 6 the facts and circumstances of the case, it cannot be said that the assessment was required to be made under Chapter XIV-B. The belated returns, which had been filed, even though invalid, contained information showing the earning of the corresponding income and such information having been imparted by the assessee to the assessing officer long before the search, it would not be proper to hold that there was any undisclosed income requiring assessment under Chapter XIV-B.

7. For the aforesaid reasons, the question referred to is answered in the affirmative against the department and in favour of the assessee.