IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.4.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A).No.385 of 2007

Commissioner of Income Tax
Central I, Chennai. .. Appellant

Vs.

R.M.Patel (HUF) .. Respondent

Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench dated 18.8.2006 in IT(SS)A No.55/Mds/2003 for the block period 1988-89 to 1997-98 and 1.4.1998 to 5.11.1998 and Lr.No.ITA.No.68/2002-2003 dated 24.12.2002 of the Commissioner of Income Tax (Appeals) Central - I, Chennai - 34, and the Assessment order 27.06.2002 in PA.No./GI.No.AAAHR 3390C from the Deputy Commissioner of Income Tax Central Circle I(1) Chennai - 34.

For Appellant : Mr.J.Narayanasamy, Jr.S.C.

J U D G M E N T

(Delivered by P.D. DINAKARAN, J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal in IT(SS)A No.55/Mds/2003 dated 18.8.2006.

2.1. The relevant assessment is block period of 1988-89 to 1997-98 and 1.4.1998 to 5.11.1998. The assessee is a Hindu Undivided Family (in short 'HUF'). A search under Section 132 of the Income Tax Act was carried out at the residential and business premises of the Karta of the HUF, viz. Ratanshi Patel and his brother Khimji M Patel between 5.11.1998 and 30.11.1998. During the search, it was found that HUF assessee had a timber trading business by name Ram Plylam during the assessment years 1996-97, 1997-98 and 1998-99. The materials seized indicated that the assessee had also undisclosed income from the business and therefore, notice under Section 158BD of the Act was issued to the assessee on 13.6.2000, as the proprietor of the concern Ram Plylam. In response to

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the notice, the assessee filed a return in Form 2B on 3.7.2000 declaring undisclosed income as nil.

2.2. Later, in response to the notice under Sections 142(1) and 143 (2), the assessee was heard and an explanation was offered that the material seized during the search were in no way connected to the assessee. But, the Assessing Officer, without appreciating the explanation offered by the assessee, passed an assessment order under Section 158BD read with 158BC and 143(3), computing the undisclosed income as under,

Asst.Year	1996-97	Rs.3,83,941/-
Asst.Year	1997-98	Rs. 82,365/-
Asst.Year	1998-99	Rs.1,51,603/-
Asst.Year	1999-2000	Rs. 29,951/-
Total undisclosed income		Rs.6,47,860/-

demanding income tax thereon at 60%, which worked out to

Rs.43,88,716/- and proposed to initiate penalty proceedings under Section 158BFA(2) of the Act.

2.3. Aggrieved by the said assessment order, the assessee preferred an appeal before the Commissioner of Income Tax, who, by order dated 24.12.2002, held that the seized materials referred to by the Assessing Officer related to Sri Raghuveer Timbers and Sri Muralikrishna & Co., as there was no indication in the seized materials about the suppression of sales by the business concern of the assessee, viz. Ram Plylam and that the Assessing Officer was not correct in invoking Section 158BD of the Act. It was further held that the Assessing Officer had not computed the undisclosed income based on the materials, but merely on the basis that the family members of the assessee had moved before the Settlement Commission disclosing additional income by offering gross profit at 8% and held that the same cannot be a valid reason for invoking Section 158BB of the Act, inasmuch as Section 158BB, as amended by Finance Act, 2002 with retrospective effect from 1.7.1995 contemplates that the undisclosed income shall be computed in accordance with the provisions of that Act on the basis of evidence found as a result of search and such other material or information as were available with the Assessing Officer and relatable to such evidence. Accordingly, the Commissioner has held that there was no basis for passing an order under

Section 158BD read with Sections 158BC and 143(3) of the Act for the alleged undisclosed income.

2.4. On further appeal by the Revenue, the Income Tax Appellate Tribunal, by order dated 18.8.2006, partly allowed the appeal. Hence, the above appeal raising the following substantial questions of law.

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(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the addition of gross profit could be made only in respect of one of the assessment years in the block?
(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the undisclosed income cannot be assessed as no material relating to the assessee was found during the search, even though information was arrived at during the block assessment of the related concerns?

3. Concededly, the seized materials did not relate to the assessee. On the other hand, what is contemplated under Section 158BB is that the undisclosed income shall be computed only in accordance with the provisions of the Act on the basis of evidence found as a result of search and such other material or information which are relating to such material. If the material seized do not, in any way, connects the assessee indicating that the assessee had any undisclosed income, it may not be proper to proceed against the assessee under Section 158BD read with Sections 158BC and 143(3) of the Act without any basis whatsoever, especially in the absence of any material indicating any suppression of sales or suppression of income by the assessee.

4. If that be so, we do not have any hesitation to hold that the undisclosed income cannot be assessed in the absence of any material collected during the search relating the assessee and that the Revenue cannot proceed on the basis of such material which is not related to the assessee invoking Section 158BD read with Sections 158BC and 143(3) of the Act for assessing the undisclosed income during the block period of 1988-89 to 1997-98 and 1.4.1998 to 5.11.1998. If the Revenue could able to substantiate that the return filed by the assessee for the assessment years 1996-97, 1997-98 and 1998-99 does not disclose the correct income, they are at liberty to take appropriate action only with respect to the relevant assessment years, as rightly held by the Tribunal.

Finding no substantial question of law, the appeal stands dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
Income-Tax Appellate Tribunal
Rajaji Bhavan, III Floor,
Besant Nagar, Chennai - 90.

2. The Income Tax Appellate Tribunal
'Bench B' Chennai.

3. The Commissioner of Income Tax (Appeals)
Central - I, Chennai - 34.

4. The Deputy Commissioner of Income Tax,
Central Circle I(1) Chennai - 34.

T.C.No.385 of 2007.

SSV(CO)
RVL 26.04.2007

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