

A COMMISSIONER OF INCOME TAX, CHENNAI

v.

S. AJIT KUMAR

(Civil Appeal No. 10164 of 2010)

B MAY 02, 2018

**[R. K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]**

C *Income Tax Act, 1961 – s. 158BB, 158 BH and 133A – Undisclosed income of the block period – Computation of – Search conducted in the premises of assessee by the Income Tax Department – Concurrently survey conducted in the premises of the builder who constructed the house of the assessee – Cash payment of Rs 95.16 lakhs found in the course of survey in the premises of the builder – If could be used in Block Assessment of the assessee – Held: It can be added under the head of the undisclosed income of the assessee*  
D *in block assessment – Assessing Officer was justified in taking the adverse material collected or found during the survey or any other method while making the Block Assessment – Thus, the orders passed by the Assessing Officer restored.*

E **Allowing the appeals, the Court**

**HELD: 1.1 On a perusal of Section 158BB of the Income Tax Act, 1961, it is evident that for the purpose of calculating the undisclosed income of the block period, it can be calculated only on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. Section 158BB has prescribed the boundary which has to be followed. No departure from this provision is allowed otherwise it may cause prejudice to the assessee. It is the cannon of tax law that it should be interpreted strictly. [Para 13] [717-A-B]**  
F  
G

**1.2 The power of survey has been provided under Section 133A of the IT Act. Therefore, any material or evidence found/ collected in a Survey which has been simultaneously made at the**  
H

premises of a connected person can be utilized while making the Block Assessment in respect of an assessee under Section 158BB read with Section 158 BH of the IT Act. The same would fall under the words “and such other materials or information as are available with the Assessing Officer and relatable to such evidence” occurring in Section 158BB of the Act. In the present case, the Assessing Officer was justified in taking the adverse material collected or found during the survey or any other method while making the Block Assessment. The impugned orders are set aside and the orders passed by the Assessing Officer making the Block Assessment are restored. [Paras 15, 17] [718-C-D, F]

*Assistant Commissioner of Income Tax and Another v. Hotel Blue Moon* (2010) 3 SCC 259 ; *Commissioner of Income Tax v. G.K. Senniappan* 284 ITR 220 ; *Commissioner of Income Tax v. S. Ajit Kumar* (2008) 300 ITR 152 (Mad.) ; *Commissioner of Income Tax v. N.K. Laminates Pvt. Ltd.* (2014) 365 ITR 211 (All.) ; *Commissioner of Income Tax v. Bimal Auto Agency* (2009) 314 ITR 191 (Gauhati) ; *Commissioner of Income Tax v. Khushlal Chand Nirmal Kumar* (2003) 263 ITR 77 (MP) ; *Commissioner of Income Tax v. Dr. Rattan Kumar Singh* (2013) 357 ITR 35 (All.) ; *Commissioner of Income Tax, Chennai v. S. V. Sreenivasan* (2017) SCC Online 17211 (Mad.) ; *Commissioner of Income Tax v. Pinaki Misra* (2017) 392 ITR 347 (Delhi) ; *Commissioner of Income Tax v. R.M.L. Mehrotra* (2010) 320 ITR 403 (All.) ; *Sree Meenakshi Mills Ltd. v. Commissioner of Income Tax, Madras* (1957) 21 ITR 28 (S.C.) ; *Commissioner of Income Tax v. P. V. Kalyanasundaram* (2007) 294 ITR 49 (S.C.) ; *Commissioner of Income Tax v. Smt. Anita Chouhan* (2008) 296 ITR 691 (M.P.) ; *Commissioner of Income Tax, Punjab v. Indian Wollen Textiles Mills* (1964) 51 ITR 291 – referred to.

**Case Law Reference**

(2010) 3 SCC 259      referred to      Para 6

- |   |  |                    |               |
|---|--|--------------------|---------------|
| A | <b>284 ITR 220</b>   | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2008) 300 ITR 152 (Mad.)</b>   | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2014) 365 ITR 211 (All.)</b>   | <b>referred to</b> | <b>Para 7</b> |
| B | <b>(2009) 314 ITR 191 (Gauhati)</b>  | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2003) 263 ITR 77 (MP)</b>  | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2013) 357 ITR 35 (All.)</b>  | <b>referred to</b> | <b>Para 7</b> |
| C | <b>(2017) 392 ITR 347 (Delhi)</b>  | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2010) 320 ITR 403 (All.)</b>   | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(1957) 21 ITR 28 (S.C.)(2007)</b>   | <b>referred to</b> | <b>Para 7</b> |
| D | <b>294 ITR 49 (S.C.)</b>   | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(2008) 296 ITR 691 (M.P.)</b>   | <b>referred to</b> | <b>Para 7</b> |
|   | <b>(1964) 51 ITR 291</b>   | <b>referred to</b> | <b>Para 7</b> |
| E | <b>CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10164 of 2010.</b>   |                    |               |
|   | From the Judgment and Order dated 22.11.2006 of the High Court of Judicature at Madras in Tax Case (Appeal) No. 2620 of 2006   |                    |               |
| F | <b>WITH</b>  |                    |               |
|   | Civil Appeal No.10165 of 2010, Civil Appeal No. 10917 of 2013, Civil Appeal Nos.4449 and 5255 of 2015.   |                    |               |
| G | K. Radhakrishnan, Yashank Adhyaru, R.V. Easwar, Sr. Advs., Rupesh Kumar, Shekhar Vyas, Mrs. Anil Katiyar, B.V. Balaram Das, K.V. Mohan, R.K. Raghavan, K.V. Balakrishnan, Kunal Cheema, Apoorv Shukla, Rubal Bansal, Ranjit B. Raut, Mrs. Bina Gupta, Advs. for the appearing parties. |                    |               |
| H |  |                    |               |

The Judgment of the Court was delivered by

A

**R. K. AGRAWAL, J.** 1. This appeal has been filed against the impugned judgment and order dated 22.11.2006 passed by the High Court of Judicature at Madras in Tax Case (Appeal) No. 2620 of 2006 whereby the Division Bench dismissed the appeal filed by the appellant herein while upholding the decision passed by the Income Tax Appellate Tribunal (for short “the Tribunal”) dated 28.04.2006. Along with this appeal, other appeals are also tagged. Since the moot question in all these appeals is same, all these appeals would stand disposed off through this common judgment.

B

**Brief facts:-**

C

**Civil Appeal No. 10164 of 2010**

2. In order to appreciate the facts of the present case in the appropriate manner, purpose would be served if we mention the facts in a summarized way which is as under:-

D

a) The appellant herein is the Revenue whereas the respondent is the assessee.

b) A search was conducted by the officers of the Income Tax Department in the premises of the assessee on 17.07.2002 which was concluded on 21.08.2002. On the same date, there was a survey in the premises of Elegant Constructions and Interiors Ltd. (hereinafter referred to as ‘M/s. ECIL’) - the builder and interior decorator who constructed and decorated the house of the assessee at Valmiki Nagar.

E

c) Pursuant to the same, the fact that the assessee having engaged the above contractor for construction of the house came out. At the same time, from the survey in the builder’s premises, the fact of the assessee having paid Rs 95,16,000/- to M/s ECIL in cash was revealed which was not accounted for.

F

d) The Assessing Officer, vide order dated 31.08.2004, after having regard to the facts and circumstances of the case, completed the block assessment and, *inter alia*, held that the said amount is liable to tax as undisclosed income of the block period.

G

e) Being aggrieved with the order dated 31.08.2004, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). Learned CIT (Appeals), vide order dated 15.02.2005, held that it was

H

A due to the search action that the Department had found that the assessee had engaged the services of M/s. ECIL. Hence, the order of block assessment was upheld.

f) Being dissatisfied, the assessee brought the matter before the Tribunal by way of an appeal. The Tribunal, vide order dated 28.04.2006, set aside the decisions of the Assessing Officer and learned CIT (Appeals) and allowed the appeal.

g) Being aggrieved, the Revenue filed an appeal before the High Court. The High Court, vide order dated 22.11.2006, dismissed the appeal.

C 3. Consequently, the Revenue has filed this instant appeal before this Court.

4. Heard the arguments advanced by learned senior counsel for the parties and perused the relevant records of the case placed before us.

D **Point(s) for consideration:-**

5. The short point for consideration which arises in this appeal is as to whether in the light of present facts and circumstances of the instant case, the material found in the course of survey in the premises of the builder could be used in Block Assessment of the assessee?

E **Rival contentions:**

F 6. At the outset, learned senior counsel for the Revenue contended that the High Court failed to consider that the information gathered as a result of search is not the details of appointment of interior decorator rather it is information regarding the cash payments made over and above the cheques payments and not accounted by the assessee. Further, it was also contended that it is the standard practice in the Department that when a search takes place in the case of an assessee, many related business premises are simultaneously covered under survey. Learned senior counsel further contended that though it is called a survey, it is very much part of the search process and the inquiry and investigation is one process. This is to be distinguished from the surveys which are stand-alone surveys, totally unconnected to any search. In order to substantiate his claim, learned senior counsel has referred to a decision of this Court in *Assistant Commissioner of Income Tax and Another vs. Hotel Blue Moon* (2010) 3 SCC 259 and contended that the impugned decision of the High Court is liable to be set aside.

H

7. *Per contra*, it is submitted by learned senior counsel for the assessee that the High Court rightly dismissed the appeal of the appellant after placing reliance on the decision of the Madras High Court in **Commissioner of Income Tax vs. G.K. Senniappan** 284 ITR 220. It was also submitted that the fact of cash payment found in survey conducted at the premises of M/s ECIL does not fall within the ambit of Block Assessment. Learned senior Counsel has relied upon the following decisions, viz., **Commissioner of Income Tax vs. S. Ajit Kumar** (2008) 300 ITR 152 (Mad.), **Commissioner of Income Tax vs. N.K. Laminates Pvt. Ltd.** (2014) 365 ITR 211 (All.), **Commissioner of Income Tax vs. Bimal Auto Agency** (2009) 314 ITR 191 (Gauhati), **Commissioner of Income Tax vs. Khushlal Chand Nirmal Kumar** (2003) 263 ITR 77 (MP), **Commissioner of Income Tax vs. Dr. Rattan Kumar Singh** (2013) 357 ITR 35 (All.), **Commissioner of Income Tax, Chennai vs. S. V. Sreenivasan** (2017) SCC Online 17211 (Mad.), **Commissioner of Income Tax vs. Pinaki Misra** (2017) 392 ITR 347 (Delhi), **Commissioner of Income Tax vs. R.M.L. Mehrotra** (2010) 320 ITR 403 (All.), **Sree Meenakshi Mills Ltd. vs. Commissioner of Income Tax, Madras** (1957) 21 ITR 28 (S.C.), **Commissioner of Income Tax vs. P.V. Kalyanasundaram** (2007) 294 ITR 49 (S.C.), **Commissioner of Income Tax vs. Smt. Anita Chouhan** (2008) 296 ITR 691 (M.P.) and **Commissioner of Income Tax, Punjab vs. Indian Wollen Textiles Mills** (1964) 51 ITR 291. Learned senior counsel finally submitted that in view of the above decisions, this appeal deserves to be dismissed at the threshold.

**Discussion:-**

8. In the present case, the period for Block Assessment is 01.04.1996 to 17.07.2002. Section 153A of the Income Tax Act, 1961 (for brevity “the IT Act”) provides the procedure for completion of assessment where a search is initiated under Section 132 of the IT Act or books of account or other documents or any asset are requisitioned under Section 132A of the IT Act.

9. It is a cardinal principle of law that in order to add any income in the block assessment, evidence of such must be found in the course of the search under Section 132 of the IT Act or in any proceedings simultaneously conducted in the premises of the assessee, relatives and/or persons who are connected with the assessee and are having transaction/dealings with such assessee. In the present case, the moot

A question is whether the fact of cash payment of Rs 95.16 lakhs can be added under the head of the undisclosed income of the assessee in block assessment.

10. In the instant case, the office and residential premises of the assessee searched on 17.07.2002 and finally concluded on 21.08.2002.

B During the course of search, certain evidence were found which showed that the assessee had indulged in understatement of his real income relating to the block period from 01.04.1996 to 17.07.2002. Consequently, a notice dated 25.02.2003, under Section 158BC of the IT Act, was issued to the assessee and he was asked to file block assessment. In reply to such notice, the assessee filed return on 11.08.2003, admitting the undisclosed income as “NIL”.

11. In the present case, it is admitted position that the cost of investment was disclosed to the Revenue in the course of return filed by the assessee. The assessee also disclosed the detail of transaction between the assessee and M/s ECIL in the assessment year 2001-2002.

D However, he had not disclosed the payment of Rs. 95,16,000/- in cash made to M/s. ECIL.

12. The method of calculating the undisclosed income of the block period is provided under Section 158BB of the IT Act. It would be appropriate to re-produce the relevant part of Sections 158BB and 158 BH of the IT Act which is as follows:

E **“158BB. Computation of undisclosed income of the block period.**-(1) The undisclosed income of the block period shall be the aggregate of the total income of the previous year failing 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 year determined.....

G **158BH. Application of other provisions of this Act** – Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter.”

H (Emphasis supplied by us)

13. On a perusal of the above provision, it is evident that for the purpose of calculating the undisclosed income of the block period, it can be calculated only on the basis of evidence found as a result of search or requisition of books of accounts or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. Section 158BB has prescribed the boundary which has to be followed. No departure from this provision is allowed otherwise it may cause prejudice to the assessee. Needless to say that it is the canon of tax law that it should be interpreted strictly.

14. However, Section 158BH of the IT Act has made all other provisions of the IT Act applicable to assessments made under Chapter XIVB except otherwise provided under this Chapter. Chapter XIV B of the IT Act, which relates to Block Assessment, came up for consideration before this Court in *Hotel Blue Moon (supra)* wherein it has been held as under:

“18. Chapter XIV-B provides for an assessment of the undisclosed income unearthed as a result of search without affecting the regular assessment made or to be made. Search is the sine qua non for the block assessment. The special provisions are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period. The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of accounts or documents and such other materials or information as are available with the assessing officer. Therefore, the income assessable in block assessment under Chapter XIV-B is the income not disclosed but found and determined as the result of search under Section 132 or requisition under Section 132-A of the Act.

28. Section 158-BH provides for application of the other provisions of the Act. It reads:

A “158-BH. Application of other provisions of this Act.- Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter.”

B This is an enabling provision, which makes all the provisions of the Act, save as otherwise provided, applicable for proceedings for block assessment. The provisions which are specifically included are those which are available in Chapter XIV-B of the Act, which includes Section 142 and sub-sections (2) and (3) of Section 143.”

C 15. The power of survey has been provided under Section 133A of the IT Act. Therefore, any material or evidence found/collected in a Survey which has been simultaneously made at the premises of a connected person can be utilized while making the Block Assessment in respect of an assessee under Section 158BB read with Section 158 BH of the IT Act. The same would fall under the words “and such other materials or information as are available with the Assessing Officer and D relatable to such evidence” occurring in Section 158BB of the Act. In the present case, the Assessing Officer was justified in taking the adverse material collected or found during the survey or any other method while making the Block Assessment.

E 16. In view of the foregoing discussions, we are of the considered opinion that the decisions relied upon by learned senior counsel for the assessee do not lay down the correct law.

F 17. In the result, all the appeals succeed and are allowed. The impugned orders are set aside and the orders passed by the Assessing Officer making the Block Assessment are restored. However, the parties shall bear their own cost.