*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 4th July, 2012
% *Date of Decision: 12th July, 2012*

\+ **ITA No.169/2012**

SHIBANI DUTTA .....Appellant
Through: Mr. M. P. Rastogi and Mr. K. N. Ahuja, Advocates.

Versus

CIT ....Respondent
Through: Mr. Anupam Tripathi, Sr. Standing Counsel.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.:

1. This is an appeal by the assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). By order dated 13.03.2012, the following substantial question of law was framed: -

> "Whether the Income Tax Appellate Tribunal is right in holding that the block assessment order passed on 30th July, 2002 is not barred by limitation as Section 129 read with proviso to Explanation 1 to Section 158 BE of the Income Tax Act, 1961 is applicable?"

2. The brief facts giving rise to the present appeal may be noticed. The assessee is an individual deriving income from house property, interest and dividend. On 28.04.2000 a search was conducted under Section 132 of the Act in her residential premises at Flat No.353, Block-A, Sarita Vihar, New Delhi. The search was concluded on 20.06.2000, when the last of the authorisations for the search was executed. On 15.05.2002, an order under Section 127 of the Act was passed which was to take effect from 15.05.2000. By this order the assessee's case was transferred from Income Tax Officer, Ward 7(2) Bangalore to DCIT, Central Circle 25, New Delhi. This officer

issued a notice on 11.06.2002, calling upon the assessee (under Section 158BC) to file a block return of income. The notice was served on the assessee on the same day and she filed a block return in Form No.2B declaring undisclosed income of ₹ nil. The return was filed on 26.04.2002. After hearing the assessee, the block assessment under Section 158BC was completed by the DCIT, Central Circle 25, New Delhi (hereinafter referred to as the 'Assessing Officer'), by order dated 30.07.2002. In this assessment order the undisclosed income of the assessee was determined at ₹13,62,730/-.

3. The assessee challenged the assessment in appeal before the CIT (Appeals). By order dated 27.03.2003 the CIT (Appeals) allowed the appeal and deleted the additions made in the block assessment order as the assessee's undisclosed income. In the appeal the assessee had also raised a plea that the assessment order was barred by limitation prescribed in Section 158BE (1) (b). This contention was dealt with by the CIT (Appeals) in para 3 of his order and the same is reproduced below: -

> "*3. In the preliminary grounds, the appellant has stated that the assessment framed by the Assessing Officer is without jurisdiction and barred by limitation, since the search was concluded on 20.06.2000, whereas the assessment has been framed on 30.07.2002. It is however noted from record that the assessee was earlier assessed with ITO Ward 7(2), Bangalore. The case was assigned from Bangalore to Central Circle-25, Delhi vide order dt. 15.05.2002. As such the provisions of sub clause-(iii) of Explanation-1 to section 158BE are applicable. Accordingly, these grounds taken by the appellant are not accepted.*"

4. It is evident from the above paragraph that the CIT (Appeals) did not accept the plea of limitation.

5. The Revenue preferred IT (SS) A.No.303/Del/2003 before the Income Tax Appellate Tribunal, Delhi Bench (hereinafter referred to as the 'Tribunal'). In this appeal the order of CIT (Appeals) deleting the additions was challenged. The assessee filed cross-objections before the Tribunal in CO No.28/Del/2008 in which the ground taken was that there was no valid search since the warrant of authorisation was issued by the Joint Director of Income Tax (Investigation) under Section 132 of the Act and therefore, the assessment framed under Section 158BC was bad in law. The Tribunal

passed a consolidated order on 03.07.2009 dismissing the appeal filed by the Revenue. So far as the assessee's cross-objection is concerned the Tribunal held that no valid warrant of authorisation had been issued under Section 132 in the assessee's case as the Joint Director of Income Tax (Investigation) was not competent to sign the warrant of search and since there was no valid search, the Assessing Officer was not empowered to frame the block assessment order under Section 158BC. On this ground assessment order was set-aside.

6. Aggrieved by the order of the Tribunal allowing the assessee's cross-objections, the Revenue preferred an appeal before this Court in ITA No.511/2010. By order passed on 26.05.2010, this Court held that in view of the amendment made to the Act with retrospective effect, the warrant of authorisation issued by the Joint/ Additional Director of Income Tax (Investigation) was valid and therefore the Tribunal was in error in holding that there was no valid search under Section 132 in the assessee's case. This Court therefore set-aside the order passed by the Tribunal and remitted the Revenue's appeal for fresh adjudication. As regards the assessee's cross-objections, it was pointed out before the Court that several other issues had been urged therein which required to be dealt with by the Tribunal, other than the issue relating to inherent lack of jurisdiction. Considering this the Court permitted the assessee to take up all other issues against the validity of the block assessment before the Tribunal in the cross-objections. Thus both the Revenue's appeal as well as assessee's cross-objections were remitted to the Tribunal for fresh consideration.

7. In the fresh round of proceedings before the Tribunal the assessee in support of its cross-objections took up the contention that the block assessment order was barred by limitation. It was submitted that the said order ought to have been passed on or before 30.06.2002 and since it was passed on 30.07.2002, it was barred by limitation under Section 158BE (1) (b). The contention did not find acceptance in the hands of the Tribunal. The reasoning of the Tribunal is contained in the following paragraph: -

> "*6. We have considered the facts of the case and submissions made before us. Proviso to section 129 deals with change of an incumbent of an office. This provision is applicable to the assessee as the jurisdiction*

has been transferred from an Assessing Officer in Bangalore to an Assessing Officer in Delhi. In such a case, the assessee can demand that proceedings taken by the earlier officer may be taken up again by the subsequent officer or any part thereof may be reopened. In this case, no such demand has been made by the assessee. Further, the provision contained in section 158BC contemplates a notice to be issued requiring the assessee to file a return in prescribed form and verified in prescribed manner setting forth his total income including the undisclosed income for the block period. The first proviso to this section states that notice u/s 148 is not required to be issued for such proceedings. This clearly means that notice u/s 158BC is analogous to a notice u/s 148, which is issued for reopening the assessment already completed. It is also clear from the legislative history that before introduction of chapter XIVB, a notice u/s 148 had to be issued in respect of the years for which the concealed income was detected in the course of search. Such income is known under chapter XIVB as "undisclosed income", which has been defined in section 158B(b). This brings us to the provision contained in clause (iii) of Explanation 1 of section 158BE. This provision inter-alia deals with the time taken for reopening the whole or any part of the proceeding. This time has to be added while computing the limitation date u/s 158BE (b). However, the time cannot exceed the period of 60 days under the proviso to Explanation 1 of section 158BE. If this time of 60 days is reckoned from 01.06.2002, the order is in time as it was passed on 30.07.2002. Accordingly, the plea of limitation is not found to be in conformity with the aforesaid provision. This means that the appeal of the revenue is to be heard on merits. This appeal is fixed for hearing on 03.01.2012 by treating the case as part-heard.

7. The cross objection of the assessee stands dismissed."

8. Section 158BE. (1) reads as follows: -

"*The order under section 158BC shall be passed –*

(a) within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the eoth day of June, 1995, but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997."

9. In this case since the search was conducted on 28.04.2000, clause (b) is applicable. Under this clause the block assessment ought to have completed within 2 years from the end of the month in which the last of the authorisations for search under Section 132 was executed. It is admitted by both the sides that last execution of the warrant of search was on 26.06.2000. If that is so, the period of 2 years from the end of June, 2002 would expire on 30.06.2002. Since, the assessment has been completed on 30.07.2002 it would be barred by limitation.

10. The Revenue however contends, (which was accepted by the Tribunal) that Explanation 1(iii) to Section 158BE is applicable and in computing the period of limitation for the purpose of the Section "*the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be reheard under the proviso to Section 129*" shall be excluded. In our opinion the contention of the Revenue is misconceived. The period of limitation gets extended under clause (iii) of Explanation 1 only by the time taken to reopen the whole or any part of the proceeding or giving an opportunity to the assessee (to be reheard) under the proviso to Section 129. If we turn to Section 129 of the Act we find that it provides for the procedure to be followed when there is a "change of incumbent of an office". The Section is as under: -

> "*Change of incumbent of an office.*
> *129. Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:*
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> *Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.*"

11. We do not see how this provision helps the Revenue. It is applicable when in the same jurisdiction, there is a change of incumbent and one Assessing Officer is succeeded by another. In such a case, the main Section provides that the successor – officer is entitled to continue the proceeding from the stage at which it was left by his predecessor subject to the caveat, expressed in the proviso, that if the assessee demands

that before the proceeding is continued the previous proceedings or any part thereof shall be reopened or that before any assessment order is passed against him, he shall be reheard, such a demand has to be accepted. If as a result of accepting the assessee's demand under the proviso to Section 129 some time is taken and the assessment proceedings cannot be completed within the normal period of limitation, then the period of limitation gets extended by such time taken for giving the assessee an opportunity to reopen the earlier proceedings or for rehearing. Section 129 is applicable to normal assessments made under Section 143(3) of the Act as well as the block assessments made under Section 158BC of the Act. The question however is whether there was a change in the incumbent of the office in the assessee's case so as to attract Section 129. We are afraid that Section 129 is not attracted to the assessee's case. The case of the assessee is one of a transfer under Section 127 from one jurisdiction to another jurisdiction. By order passed under Section 127 of the Act on 15.05.2002, the jurisdiction to assess the assessee was transferred from the ITO, Ward 2(7), Bangalore to Central Circle-25, New Delhi. Apparently because of search several cases had to be centralised and that is the reason for passing the order under section 127 and this has been referred to in Para 3 of the order of the CIT (Appeals). After the assessee's case was transferred to Delhi the Assessing Officer at Delhi issued notice under Section 158BC on 11.06.2002 calling for the block return of income. Section 129 speaks of change of an incumbent of an office without any change of the jurisdiction. Explanation-1 (iii) to Section 158BE speaks only of the proviso to Section 129. There were no earlier proceedings against the assessee pursuant to the search in Bangalore which got transferred to Delhi. The notice under Section 158BC was itself issued only by the Assessing Officer at Delhi and it is by this notice that the proceedings were commenced. If the proceedings had been commenced by the Assessing Officer at Bangalore and during the pendency of the proceedings the case had been transferred to Delhi it would possibly be argued that the proviso to Section 129 would extend the time limit. We, however, express no opinion about the same because that is not the factual position in the present case. In the present case the assessment proceedings were commenced only by the Assessing Officer at Delhi by notice issued on 11.06.2002.

Thereafter there was no change in the incumbent of the office so as to attract the provisions of Section 129. In such a situation there is no scope for importing the proviso to Section 129 to extend the period of limitation. Even factually there is nothing on record to show that the assessee made any request or demand before the Assessing Officer in Delhi that the previous proceedings, if any, should be reopened or that before any order of assessment is passed against her, she should be reheard. Therefore, both factually and legally there is no scope for invoking Explanation-1(iii) to Section 158BE of the Act to extend the period of limitation. The assessment under section 158BC ought to have, therefore, been completed on or before 30.06.2002 as per Section 158BE (1) (b) of the Act. Since it was completed only on 30.07.2002, it is barred by limitation.

12. In our opinion and for the above reasons the Tribunal erred in relying on clause (iii) of the Explanation-1 to Section 158BE to hold that the block assessment order passed on 30.07.2002 is within the period of limitation. It failed to note that neither Section 129 nor its proviso is attracted to the case. Its further reasoning that the first proviso to Section 158BC (a) required no notice under Section 148 for making a block assessment, merely because the notice required to be issued under Section 158BC (a) calling for the block return is analogous to the notice under Section 148 to reopen an assessment, is without any basis, either on principle or on authority. The Tribunal has erroneously equated the notice issued under Section 158BC (a) to a notice issued under Section 148 to reopen an assessment and erred in further understanding the words "the time taken in reopening the whole or any part of the proceeding" appearing in clause (iii) of Explanation-1 to mean a reopening of the assessment under Section 148. With respect, the reasoning appears to be convoluted and untenable. The reopening of the proceeding referred to in clause (iii) of Explanation-1 is the reopening of the proceedings for the assessment which have been completed in part by an earlier incumbent of office, and not the reopening of the assessment under Section 148. This much should have been clear to the Tribunal since the said clause in the Explanation clearly refers to the proviso to Section 129. The logic embodied in the clause has been completely missed by the Tribunal.

13. For the above reasons, we answer the substantial question of law in the negative, in favour of the assessee and against the Revenue and allow the appeal of the assessee with no order as to costs.

R.V.EASWAR, J

S. RAVINDRA BHAT, J

JULY 12, 2012
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