

Reserved on 02-9-2009  
Delivered on 18-9-2009  
(Court Number 37)

**CIVIL MISC. WRIT PETITION NO. 1688(Tax) of 2002**

**M/s Kamdhenu Sweets, Palace  
Cinema, building, Civil Lines,  
allahabad----- PETITIONER**

**Versus**

**Assistant Commissioner of Income  
Tax, Central Circle, Allahabad ----- RESPONDENTS**

Connected with

**CIVIL MISC. WRIT PETITION NO. 1607(Tax) of 2002  
Kamdhenu Sweets Vs. Assistant Commissioner of  
Income Tax, Central Circle, Allahabad**

**Hon'ble R.K.Agarwal, J.**

**Hon'ble S.K.Gupta, J**

**(Delivered by Hon'ble S.K.Gupta, J.)**

01- In Writ Petition No.1688 of 2002 the petitioner inter- alia seeks following reliefs:

(i) to issue a writ, order or direction in the nature of writ of certiorari, quashing the notice dated 12-2-2002 issued under section 158BD by the respondent.

(ii) to issue a writ, order or direction in the nature of writ of mandamus restraining the respondent to proceed against the petitioner under section 158BD in pursuance of the notice dated 12-2-2002.

02- Writ Petition No.1607 of 2002 has been filed by the petitioner, inter alia for the following relief:

"(i) to issue a writ, order or direction in the nature of writ of mandamus directing the respondent to release the seized books of account and documents as per Inventory annexed to the Panchanama (Annexure-1 to the writ petition) forthwith.

03- As the point involved and parties in these two writ petitions are one and same they are taken up together for disposal by this common judgement and order.

04- The petitioner is a registered partnership firm engaged in the business of manufacture and sale of sweets. It has been alleged in the writ petition that a search was made by Income Tax authorities under section 131(1) of the Income Tax Act ( hereinafter referred to as the act) on 27-4-2000 at the business premises(shop) of the petitioner situate at 37 M.G.Marg, Palace Cinema Building, Civil Lines, Allahabad.

05- The search was also made at the residential premises of the partners of petitioner at 122- Lookerganj, Allahabad. At the time of search books of accounts documents some loose papers etc. belonging to petitioner were seized. panchnama was prepared by search authority on 27-4-2000 and the Inventory in respect of the seizure of the books of account, documents, cash and goods were also prepared. The respondent issued notices under section 158 BD of the Income Tax Act on 12-2-2002 to the petitioner. By the said notice dated 12-2-2002 the petitioner was required to prepare true and correct return of income in respect of which the petitioner is assessable for the block period as defined in section 158 -B(a) of the Act. Hence the present writ petition.

06- In Writ petition no.1607 of 2002 a prayer has been made to direct the respondent to release the seized books of account and documents as per inventory (Annexure-1 to the petition) forthwith.

07- Learned counsel for the petitioner has submitted that notice under section 158-BD has been illegally issued to the petitioner to file return of income in respect of which the petitioner is assessable for the block period as defined in section 158 -B(a) of the Act. It has further been submitted that in the present case Section 158 BD of the Act is not applicable.

08- On the other hand learned counsel for the respondent has

submitted that provisions of Section 158-BD has been rightly invoked by the department since no such search and seizure was conducted under section 132 of the Act at the business premises (shop) of the petitioner. Only survey was conducted at the business premises (shop) of the petitioner under section 133-A, however search and seizure under section 132 of the Act was conducted at the residence of partners of the petitioner's firm.

09- Heard Sri V.B.Upadhyaya, Senior Advocate assisted by Sri Shakeel Ahmad learned counsel for the petitioner and Sri Shambhu Chopra, learned counsel for the Revenue.

10- The short controversy involved in the matter is whether the provisions of Section 158-BD can be invoked against the petitioner and whether any direction to the respondents in the present matter can be given to release the seized books of accounts and other documents, as prayed in Writ Petition No.1602 of 2002.

11- The original record containing the authorization of survey of the business premises (shop) of the petitioner under section 133-A was produced by the department before this Court which clearly indicates that merely survey was conducted at the business premises(shop) of the petitioner under section 133-A, however, search and seizure was conducted under section 132 of the Act at the residential premises of the partners of the petitioner's firm situate at 122- Lukerganj, Allahabad. Therefore, the contention of the petitioner that search and seizure was conducted under section 132 of the Act at the business premises (shop) of the petitioner on 27-4-2000 is not correct and is not borne out from the record.

12- In order to adjudicate upon the controversy whether the provision of Section 158-BD can be invoked in this case or not ,it will be useful at this stage to reproduce Section 158-BD of the Act, which

reads as under:

**"158BD- Undisclosed income of any other person:**

Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132-A, then the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under Section 158BC against such other person and the provisions of this Chapter shall apply accordingly."

13- The aforesaid provision as contained in Section 158-BD of the Act clearly provides that for taking action under section 158BD the assessing authority is merely required to be satisfied with the books of account or other documents or assets found in the search show undisclosed income of a person other than the one against whom search was conducted. The memo of the writ petition does not contain any averments about the lack of satisfaction of the assessing authority to issue notice under section 158BD of the Act nor it has been challenged by the learned counsel for the petitioner during the course of argument. It appears that the petitioner is labouring under the misconception that search and seizure was conducted under section 132 of the Act at the business premises (shop) of the petitioner, and therefore argued that the notice under section 158BD was unwarranted and could not have been issued. However, a bare perusal of the record (including the original record which was produced before us) clearly goes to show that search and seizure under Section 132 of the Act was conducted at the residential premises of the partners of the petitioner's firm and mere survey under Section 133-A was conducted at the business premises (shop) of the petitioner. Therefore, there was no occasion for the Income tax authorities to issue notice under section 158BC of the Act to the petitioner.

14- From the facts stated above it can be safely concluded that

notice under section 158BD of the Act was legally and rightly issued to the petitioner and no fault can be found with the procedure adopted by the concerned authority in issuing any notice under section 158BD to the petitioner. It may also be made clear that by mere mentioning "search and seizure" in the Panchnama, will not convert the survey under section 133-A into "search and seizure" under section 132 of the Act.

14- Learned counsel for the respondent has placed reliance upon the decision in the case of **Vinod Goel and others Vs. Union of India and others** (2001) 252 ITR- 29 and has also relied upon the decision in the case of **Premjibhai and sons Vs. Joint Commissioner of Income Tax**, (2001) 251 ITR- 625 wherein it has been held that initiation of proceedings under section 158BD of the Act against another person is not a separate and independent proceeding for which a separate jurisdictional fact has to be established. The proceedings under section 158-BD against a person other than the person raided are part of the proceedings which commence with search under section 132 and culminate in proceedings under Chapter XIVB of the Act and if at any stage the assessing officer is satisfied that any undisclosed income belongs to some other person, similar notice is to be issued to such person also. Hence it has been concluded that issuance of notice under section 158BD to a person other than the person raided need not wait till the completion of the proceedings under section 158BC against the person raided.

15- As far as the prayer made by the petitioner in Writ petition no.1607 of 2002 for a direction to the respondents to release the seized books of account and documents as per Inventory and Panchnama is concerned, it has been stated in the counter affidavit that in the case under consideration, approval for retention of books of account seized during search was obtained from the Director

(Investigation) Income Tax, Kanpur and the retention of books of account and other documents was sought upto 30-6-2002 and the Director (Investigation) Income Tax, Kanpur accorded his approval for retention of the seized books of accounts and other documents upto 30-6-2002 vide his order dated 29-9-2000. As such permission to retain the books of account was obtained much prior to the expiry of period of 180 days. This averment of the respondents has not been controverted by the petitioner . It has been further stated in the counter affidavit that on the basis of books of account found and seized from the residential premises of the partners of the petitioner's firm, proceeding under section 158BD were initiated separately against the petitioner and the proceedings are still pending, therefore retention of books of account seized during the course of search is very necessary for completing the assessment.

16- In view of the above we do not see any reason to issue any direction to the respondents as sought in Writ Petition No.1607 of 2002 to release the seized books of account and documents as per Inventory.

17- In the result we do not find any merit in these writ petitions. The writ petitions are accordingly dismissed.

Dt: 18-9-2009

**IA-WP- 117/06 & six others**