HIGH COURT OF KARNATAKA

Commissioner of Income-tax
v.
Micro Labs Ltd.

I.T. APPEAL NOS. 2303, 2784, 3060 & 3148 OF 2005 and 749 OF 2006†
AUGUST 26, 2011

JUDGMENT

Ravi Mulimath, J. – These appeals are by the revenue being aggrieved by the order passed by the Tribunal invalidating the assessment on the ground of an invalid notice issued under section 158BC.
2. The facts giving rise to these appeals are one and the same.

3. ITA No. 749/2006 was admitted on 16.02.2010 to consider the following two substantial questions of law:
(i) Whether the Appellate Authorities were correct holding that the notice issued under section 158 BC of the Act on 2.12.1997 giving the assessee 15 days time to file the return of income is invalid and consequently, the assessment stood annulled despite the Assessing Officer granting time?
(ii) Whether the notice issued under section 158BC(a)(I) of the Act cannot be treated as invalid since further time of more than 15 days time has been granted to the assessee to file the return of income which was in conformity with the intent and purpose of the Act as contemplated under section 292B of the Act?

4. ITA No. 2303/2005 was admitted on 05.06.2006 to consider the following three substantial questions of law:
(i) Whether the Appellate Authorities were correct holding that the notice issued under section 158 BC of the Act on 9.3.1999 giving the assessee 15 days time to file the return of income is invalid and consequently, the assessment stand annulled despite the Assessing Officer granting further time of six months by issuing fresh notices and thereafter the assessee filed the return on 24.11.99?
(ii) Whether the notice issued under section 158BC(a)(i) of the Act cannot be treated as invalid since further time of six months has been granted to the assessee to file the return of income which was in conformity with the intent and purpose of the Act as contemplated under section 292B of the Act?
(iii) It is submitted alternatively without conceding whether the Tribunal after treating the notice as invalid, should have directed the Assessing Officer to pass fresh order of assessment in accordance with the law by giving such time for the purpose of compliance?

5. By a common order dated 22.03.2006, ITA Nos. 2784/2005, 3060/2005 and 3148/2005 were admitted to consider the following five substantial questions of law:
(i) Whether the Appellate Authorities were correct in holding that the notice issued under section 158BC of the Income-tax Act on 15.12.1997 giving the assessee 15 days time to file the return of income is invalid and consequently the assessment stand annulled despite the Assessing Officer granting further time of seven months by issuing fresh notices and thereafter the assessee filed the return on 29.6.1999?
(ii) Whether the notice issued under section 158BC(a)(i) of the Act cannot be treated as invalid since further time of seven months has been granted to the assessee to file the return of income and the same stood confirmed in accordance with the intent and purpose of the Act as contemplated under section 292B of the Act.
(iii) Whether the Tribunal was correct in holding that section 240 of the Act is not applicable to Chapter XIV B of the Act and therefore, the taxes paid pursuant to the return filed in the block assessment is liable to be refunded by holding that the judgment of the Apex Court in CIT v. Shelly Products [2003] 261 ITR

367 is not applicable to the block assessment proceedings, especially in view of section 158BH of the Act?
(iv) Whether the Appellate Authorities, have jurisdiction to adjudicate the issue raised by the assessee for refund in appellate proceedings challenging the assessment order.
(v) It is submitted alternatively without conceding whether the Appellate Authorities after treating the notice as invalid should have directed the Assessing Officer to pass fresh order of assessment in accordance with the law by giving such time for the purpose of compliance.

6. All the questions raised in these appeals are similar. ITA Nos. 2784/2005, 3060/2005 and 3148/2005 have been admitted on five substantial questions of law. ITA Nos. 2303/2005 and 749/2006 have been admitted on different dates on the questions specified therein. Since the questions of law on which ITA Nos. 2303/2005 and 749/2006 are covered by the substantial questions of law as raised in ITA Nos. 2784/2005, 3060/2005 and 3148/2005, the appeals are considered on the questions of law raised in ITA Nos. 2784/2005, 3060/2005 and 3148/2005. For a clear consideration of the substantial questions of law, the facts in ITA No. 2784/2005 is considered.
The assessee is a company carrying on the business of the pharmaceuticals. On 10.9.1997, a search was conducted in the group of cases of the assessee under section 132 of the Act. A notice under Section 158BC was issued on 15.12.1997 requesting the assessee to file a return of income within a period of 15 days for the block period 1988-89 to 1998-99. By a letter dated 02.01.1998, the assessee sought time to file his return of income. On 16.06.1999, the assessee was once again requested to file his return of income for the block period, which was served on him on 17.06.1999. The assessee filed the return of income on 29.06.1999 declaring a sum of Rs. 200 lakhs as undisclosed income for the block period 01.04.1987 to 5.11.1997. The Assessing Officer took into consideration the seized material and the return of income filed and arrived at a net undisclosed income for the block period at Rs. 200 lakhs.

7. The assessee being aggrieved by this order preferred an appeal to the Commissioner of Income-tax (Appeals). The Appellate Commissioner held that the notice issued under section 158BC was invalid and, consequently, he annulled the assessment. It was further held that since the amount of tax computed by the Assessing Officer was the exact amount, on which the assessment order came to be passed, there was no question of making any refund. Consequently, the appeal was allowed in part. Aggrieved by the same, the revenue preferred an appeal to the Tribunal. The assessee filed cross-objection contending that the provision of section 240(b) was not applicable to the block assessment proceedings. That the taxes had not been paid voluntarily and the same had been adjusted pursuant to the VDIS return filed pursuant to the consequence of the court order. The Tribunal rejected the appeal of the revenue and allowed the cross-objection filed by the assessee. Aggrieved by the same, the revenue is in appeal.

8. The learned Counsel appearing for the appellant-revenue contends that the Tribunal committed an error in annulling the assessment on the ground of limitation. That there is no prejudice caused to the assessee. Hence, the annulment of assessment proceedings is bad. That the Tribunal committed an error in holding that section 240 of the Act is not applicable to the block assessment proceedings initiated under Chapter XIV-B of the Act and therefore, taxes paid pursuant to the return filed in block assessment proceedings is not liable to be refunded.

9. He placed reliance on the judgment in the case of Shrish Madhukar Dalvi v. Asstt. CIT [2006] 287 ITR 242 to contend that technical defects are not sufficient to invalidate the block assessment and since the same did not cause prejudice to the assessee, the validity of the block proceedings require to be upheld.

10. In the cited judgment, the notice under section 158 BC, which was issued to the assessee did not mention the correct provisions of the Act, it did not mention the correct block period for which the return was required to be filed nor was there mention of the period of a 15 days notice. Realising the error, another notice was immediately issued mentioning the block period for which the return was required to

be filed incorporating the correct reference to the sections applicable to the case and also by granting 45 days for filing the return. Under these circumstances, the Hon'ble High Court of Bombay held that the first notice suffered from only technical defects and did not cause any prejudice to the assessee and more importantly, the second notice was issued containing all the statutorily required information. Hence, they held that the proceedings were valid. The facts of the present case are different. By the notice issued to the assessee under section 158 BC, a period less than 15 days has been granted to furnish the return. There is no second notice issued to the assessee rectifying the first notice.
Therefore, the cited judgment would not be applicable to the facts of the present case.

11. The learned counsel appearing for the assessee submits that there is no error committed by the authorities that calls for any interference. That the statutory time in terms of section 158BC has not been complied with and hence, the entire assessment proceedings is bad in law. That the Tribunal has rightly held that section 240 is not applicable to the block assessment proceedings under Chapter XIV B of the Act and consequently the tax paid is liable to be refunded.

12. He placed reliance on the judgment of the Gujarat High Court in the case of P.V. Doshi v. CIT [1978] 113 ITR 22 to contend that no jurisdiction can be vested with the authority on the ground of waiver nor on consent. Therefore, only because time was sought to submit the return, would not grant any jurisdiction to the authority.

13. Reliance was also placed by the assessee on the judgment in the case of Asstt. CIT v. Hotel Blue Moon [2010] 321 ITR 362 to contend that the notice under section 158BC dealing with the block assessment makes such a notice the very foundation for jurisdiction. That such a notice is required to be served on the person who is found to have undisclosed income. Reliance was also placed on the unreported judgment of this Court in ITA No. 21/2003 c/w ITA No. 22/2003 disposed of on 03.04.2008, wherein it was held that when once the notice is held to be invalid, the entire proceedings would become void for want of jurisdiction. Further reliance was also placed on the unreported judgment of this Court in the case of Winter Care (P.) Ltd., v. Dy. CIT 15.02.1993 passed in W.P.No.33832/1992, wherein it was held that when the notice did not conform with the requirements of provisions of the Act, the proceeding requires to be quashed.

14. The proceedings under Chapter XIV-B and the provisions of section 139 are different. A return filed under section 139 is a voluntary return. A return under Chapter XIV-B cannot be filed voluntarily. It is only when a notice under section 158BC is validly issued, only then a return could be filed. It is not in every case that a notice under section 158BC would be issued by the revenue. However, as and when validly issued, it is only then that a return could be filed. When any search has been conducted under Section 132 or books of account, other document or assets are requisitioned under section 132A, it is only then, the Assessing Officer shall proceed to assess the undisclosed income. Therefore, section 158 BA provides for jurisdiction to the Assessing Officer to assess the undisclosed income in accordance with Chapter XIV-B. Section 158BA(2) is a charging section, 158BB provides for computation of undisclosed income for the block period and 158BC provides for procedure for block assessment. Therefore, a notice under section 158BC cannot be equated with that of notice under section 148. A notice under section 158BC provides for a procedure to be adopted for block assessment. Under this procedure envisaged, the Assessing Officer shall serve a notice requiring the assessee to furnish his return within such time not being less than 15 days but not more than 45 days as specified in the notice. Therefore, the time to be granted to the assessee in terms of section 158BC is a minimum of 15 days and a maximum of 45 days. If the said period of time is not granted, the notice is invalid rendering the entire proceedings as without jurisdiction. Admittedly in this case, the notice under section 158BC calls upon the assessee to submit its return of income "within a period of 15 days". Within a period of 15 days is less than 15 days. Therefore, the mandatory period of time as stipulated under section 158 BC has not been complied with. The notice

therefore is invalid. An invalid notice cannot confer any jurisdiction on the authority. Hence, the entire proceedings are bad in law. The notice is ab initio void.

15. It was contended by the Revenue that a letter seeking extension of time was made and in the said letter, there is no mention whatsoever questioning the validity or otherwise of the notice under section 158BC. It is therefore contended that in the said reply dated 02.01.1998 the validity of the notice has not been questioned. Moreover the said letter has to be read as accepting the notice dated 15.12.1997 as a valid notice.

16. Consent or waiver does not confer jurisdiction. Jurisdiction is conferred by statute. An authority cannot assume jurisdiction only because the same has been consented to or the lack of jurisdiction has been waived by the assessee. Therefore notwithstanding the letter dated 02.01.1998, the proceedings are wholly without jurisdiction and lack of authority. When the initiation of the proceedings in terms of the notice does not conform with the provisions of law, the authority cannot assume jurisdiction. The revenue is granted authority by statute. The waiver or the consent cannot override the provisions of statue. What is mandated cannot be diluted. An inherent lack of jurisdiction as a result of an invalid notice cannot transcribe into a jurisdiction, which is sought to be validated on the grounds of waiver or consent. Hence, question No. 1 is answered in favour of the assessee and against the revenue.

17. The second question is as to whether the notice under section 158BC cannot be treated as invalid since further time of seven months has been granted to the assessee and the same stood confirmed in accordance with section 292B of the Act.

18. It was contended by the revenue that the notice under Section 158 BC cannot be treated as invalid in view of the provisions as contained in section 292B of the Act. Section 292 B of the Act reads as follows: "292B No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

19. The purport of section 292 B is that in the event of any mistake, defect or omission in the notice or other proceedings, if the same is in conformity with or according to the intent and purpose of the Act, the notice cannot be termed as invalid. The notice should be in conformity with and in accordance with the intent and purpose of the Act. The intent and purport as provided under section 158 BC is to serve a notice on the assessee by providing a time of not less than 15 days arid not more than 45 days. This is the purport and intent of the section. No extra time can be granted subsequently. Time to be granted is a minimum of 15 and maximum of 45 days. The same has to be specified in the notice. Hence grant of extra time is without authority of law. It cannot validate an invalid notice. Moreover, it is relevant to note that the notice issued is on a printed form wherein the details are required to be filled up. At the bottom of the notice, is a printed matter, which reads that the time to be granted shall not be less than 15 days. In spite of this, the time granted to the assessee is less than 15 days. Therefore, it is apparent that there has been a violation of law. Therefore, when the sum and substance of the notice issued to the assessee is not in conformity with the purpose of the Act, section 292 B has no application. Hence, question No. 2 is answered in favour of the assessee and against the revenue.

20. Question No. 3 is as to whether the Tribunal was justified in holding that section 240 of the Act is not applicable to Chapter XIV-B of the Act and therefore, the taxes paid pursuant to the return filed in the block assessment is liable to be refunded since the judgment of the Apex Court reported in 261 ITR 367 is not applicable to the block assessment proceedings especially in view of the Section 158BH of the Act.

21. The revenue contends that in terms of the provisions of section 240 when an assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. In the assessment order for the block period, the income has been computed by the Assessing Officer exactly on the same amount as declared by the appellant in the return filed for the block period and no additions have been made. Pursuant to the decision of the Karnataka High Court in Writ Appeal Nos.6502 to 6506 of 1997, the amount paid by the appellant pursuant to VDIS has been adjusted by the Assessing Officer against the tax due pursuant to the returned income vide order dated 5.3.2001. As such the entire tax chargeable on the total income returned by the appellant stands collected by the revenue. Therefore, the provisions of section 240 makes it clear that when the assessment is annulled, the refund shall become due only in respect of the amount, if any, of the tax paid in excess of the tax chargeable on the total income returned by the assessee. The assessee has not paid the tax along with the income declared in the block return. It is only by way of adjustment of tax paid under the VDIS and the refund due to the assessee for the other assessment years, that are adjusted against the so-called demand raised. For Clause (b) of proviso to section 240 to apply, the taxes should have been paid by the assessee voluntarily. Therefore, the revenue cannot contend, that the refund adjusted is to be treated as tax paid, so as to deny the assessee the refund due, subsequently, due to annulment of assessment. Payment of taxes voluntarily is different from adjusting the refund without reference to the assessee. It cannot be held that the assessee has paid taxes and accordingly, in terms of proviso to section 240 to deny refund to the assessee. Therefore, the Commissioner of Income Tax (Appeals) exceeded his jurisdiction to deny the refund. In the facts of the present case, Clause (b) of proviso to section 240 is not applicable. The order of the Tribunal is just and proper. It is in conformity with law. Accordingly, question No. 3 is answered in favour of the assessee and against the revenue.

22. Question No. 4 is as to whether the Appellate Authorities have jurisdiction to adjudicate the issue with regard to refund.

23. The assessments have been annulled. The jurisdiction of the Appellate Authorities to adjudicate the issue of refund in the Appellate proceedings is consequential upon the validity of the assessment proceedings. Having recorded a finding by holding that the entire assessment proceedings are invalid, the question of the jurisdiction of the appellate authorities therefore would not arise for determination. It has now become academic. Question No. 4 is accordingly answered.

24. Question No. 5 is as to whether the Appellate Authorities should have directed the Assessing Officer to pass a fresh order of assessment in view of holding that the notice is invalid.

25. It was further contended by the revenue that if the notice was held to be invalid, the Assessing Officer should have been directed to pass a fresh order of assessment by complying with the limitation in terms of section 158BC.

26. The contention is unacceptable. The time to be granted in terms of section 158BC is mandatory. Having failed to comply with the same, granting another opportunity to the revenue is highly improper. If that were to be so, then each and every violation of law by the revenue would stand rectified by orders of remand. That is not the intent and purport of the Act. The period as specified in the Act requires to be strictly complied with. Therefore, the plea of the revenue for a direction to pass fresh orders of assessment after complying with the provisions of section 158BC requires to be rejected. Consequently, question No. 5 is answered in favour of the assessee and against the revenue.

27. The facts in all these appeals are identical wherein common questions of law have arisen. Since, the questions of law having been answered in the case of The CIT v. Micro Labs Ltd. [IT Appeal no. 2784 of 2005 the question of law in the other appeals being similar are accordingly answered.

28. For aforesaid reasons, the substantial questions of law are answered in favour of the assessee and against the revenue. Accordingly, the appeals are dismissed.