

Participation in assessment proceedings ratified jurisdictional issue; block assessment held valid

Summary – The High Court of Madras in a recent case of Kailash Sarda, (the Assessee) held that where in pursuance of search conducted at premises of another person, a notice was issued calling upon assessee to file his return, in view of fact that assessee had responded to notice, filed return, participated in block assessment proceedings and suffered an assessment, he was not justified in raising a contention at later stage before Tribunal that block assessment not being in terms of section 158BD, failed for want of jurisdiction.

Facts

- The assessee carried on a proprietorship business. There was a search operation in the premises of 'S' and 'R'.
- The search operation resulted in recovery of materials relating to several transactions in stock and shares. Incidentally, the assessee was also residing in the same premises, where the search was conducted. Based on the materials recovered pertaining to the assessee, notice under section 158BC(a) was sent to the assessee calling upon the assessee to file returns within 15 days from the date of service of notice.
- In response to the details called for, the assessee's Chartered Accountant filed reply and based on the details thus furnished by the assessee, ultimately, the assessment was made on the assessee under section 143(3) read with section 158BC.
- In appellate proceedings, the assessee contended that there was no search operation in the premises of the assessee and that the search warrant not being in the name of the assessee, the assessment made under section 158BC was totally without jurisdiction.
- The Tribunal having rejected assessee's contention, remanded matter back to the Assessing Officer for recomputation of taxable income on merits of case.
- On appeal:

Held

- It is clear from records that the assessment was made consequent on the seizure of materials in the course of search operation under section 132, in the premises of 'S' and 'R', where the assessee was also residing. The search operation resulted in seizure of various documents pertaining to the assessee's transactions too. Thus, taking note of the information pertaining to the assessee, proceedings were initiated by the revenue by calling for particulars as well as to file returns for the block year.
- The notice was issued calling upon the assessee to file returns within 15 days from the date of service of notice on block assessment proposed consequent on the seizure of materials in the course of search operation on other two persons.

- Thus the assessee is clear in his understanding of the provisions, under which the block assessment was made and was quite aware of the fact that the assessment under chapter XIV-B was as a result of seizure of materials in the course of search operation in the premises, where the assessee lived along with two other persons on whom the search warrant was issued. In the light of the above said fact, there is no justifiable ground to accept the plea of the assessee that the assessment made is bad in law.
- As far as the contention of the assessee that the assessment made under section 158BC is bad in law, it is undisputed that section 158BC lays down the procedure for block assessment. The fact that the assessment was made on basis of materials seized in the course of the search operation of two other persons, did not, mean that the assessment was not under section 158BD.
- As pointed out earlier, since the procedure given under section 158BC is the only procedure given under Chapter XIV-B for making block assessment, the reference to section 143(3) notice read with proceedings under section 158BC does not make the assessment as the one not falling under section 158BD. To make things abundantly clear, the reference to section 158BC was specifically inserted under section 158BD under Finance Act, 2002, with effect from 1-6-2002. But even without this insertion, it is clear that if the Officer has to proceed for block assessment, the only Chapter that would apply in a given set of circumstances for block assessment is Chapter XIV-B.
- Thus, as per the procedure laid down under section 158BC there is no confusion in the mind of the Officer as to the provision it is proceeded against nor in the mind of the assessee that the assessment was made consequent on the seizure of materials in the course of search operation in the premises of 'S' and 'R'.
- In the light of the abovesaid fact and as evident from the documents available in the assessment records as well as in the assessment order itself, there is no hesitation in rejecting the contention made by the assessee that the block assessment fails in this case for want of jurisdiction.
- As already pointed out in the preceding paragraphs, notice was issued to the assessee consequent on the seizure of materials indicating the assessee's transaction in shares. The assessee had responded to the notice and accordingly, by entering into correspondence even as early as 23-12-1995 filed its return, participated in the assessment proceedings and suffered an assessment. In the circumstances, there is no hesitation in confirming the order of the Tribunal remanding the matter for adjudication on merits.