

## Assessment of a person other than searched one could be made either under sec. 148 or sec. 158BD

**Summary –** The High Court of Karnataka in a recent case of Gudwill Housing Ltd., (the Assessee) held that chapter XIV-B does not preclude Assessing Officer to proceed against an assessee by issuing notice under section 148 and, therefore, pursuant to search proceedings carried out in case of another person, it is open to Assessing Officer to either proceed under Chapter XIV-B or under section 148 against assessee.

### Facts

- The assessee constructed a building, during the relevant assessment years and had filed return of income declaring *nil* income. In the building constructed by the assessee, one 'M' had purchased the premises for running their own office.
- A search was conducted of the premises of 'M' in the course of which a fax message was seized revealing some payment made by 'M' to the assessee.
- The amount that was disclosed in the fax was Rs. 12.52 lakhs. On the basis thereof, it was revealed that the amount disclosed by the assessee in his return, having received from 'M', was only Rs. 4.97 lakh.
- In this backdrop, the Assessing Officer issued notice under section 148, reopening the assessment. Thereupon, certain additions was made in reassessment proceedings.
- The Commissioner (Appeals) as well as the Tribunal confirmed said addition.
- The assessee filed instant appeal contending that having found the evidence regarding undisclosed income during search, the only option open to the Assessing Officer was to invoke block assessment under Chapter XIV-B and, thus, impugned addition made in course of reassessment proceedings was not sustainable.

### Held

- It is true that section 158BD states that 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, then the books of accounts, other documents or assets seized shall be handed over to the Assessing Officer having jurisdiction over such other person and that the Assessing Officer shall proceed under section 158BC against such other person and the provisions of these Chapter shall apply accordingly. This provision by itself, is not sufficient to hold that the Assessing Officer, on the facts and in the circumstances, could not have proceeded against the assessee under Section 147 by issuing notice under section 148.
- Section 147 contemplates that if the Assessing Officer has reasons to believe that there is escapement of income, then notice can be issued under section 148. Section 158BD of the Act provides that if 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 of the Act, upon such satisfaction, is required to forward the relevant documents, papers, etc. to the Assessing Officer having jurisdiction over such other person in respect of whom the undisclosed income has been disclosed for block assessment.

- Thus, it is open to the Assessing Officer to proceed against the assessee, if he has reason to believe that his income has either escaped the assessment or whose undisclosed income, is unearthed during the search conducted under section 132 of the Act of the premises of some other person.
- From plain reading of these provisions, one does not find any impediment in proceeding against such person by issuing notice under section 148 of the Act. In other words, Chapter XIV-B does not preclude the Assessing Officer to proceed against such assessee by issuing notice under section 148. The remedies, available to the Assessing Officer, under these provisions are independent of each other, and the provisions being analogous, it is for the Assessing Officer to opt for either of them in a situation, such as in the present case. The Legislature, has given choice to the Assessing Officer to either proceed under Chapter XIV-B or under section 148 against the assessee, such as the one in the present case.
- In the present case, the Assessing Officer reopened the case under section 147 by issuing notice under section 148 and completed the assessment. Till the assessment was completed and till the matter reached the Tribunal, the assessee did not make any grievance whatsoever. Even before the Tribunal, though the ground of jurisdiction was raised, it was not seriously pressed by the assessee and in this view of the matter, the Tribunal proceeded to consider merits of the case.
- In the present appeal, the appellant chose to confine its challenge only on the ground of jurisdiction and did not raise challenge on merits. In this backdrop, there is no reason to interfere with the order passed by the Tribunal. The Assessing Officer has option to proceed against the assessee by issuing notice under section 148 in a situation as occurred in the present case.
- In view of above, it is held that reassessment as made under section 147 for the relevant assessment years in the case of the assessee was valid and thus sustainable.