

HC justified deletion of additions as cost of jewellery found in search was disclosed income of assessee's wife

Summary – The High Court of Calcutta in a recent case of Dilip Singh, (the Assessee) held that where assessee explained that amount mentioned in receipts, found during search, in respect of purchase of jewellery in assessee's name actually related to disclosed income of assessee's wife, Tribunal was justified in deleting additions from assessee's income

Facts

- A search and seizure operation was conducted in the premises of the assessee (both residential as well as business). In the block assessment, the addition was made in respect of receipts of purchase of gold ornaments in the name of the assessee on different dates but the purchases were not entered in the relevant cash books of the assessee. The Assessing Officer also added amounts on account of cash payment's of Rs. 2 lakhs and Rs. 3 lakhs not reflected in the cash book of the assessee at the time of search and the assessee failed to explain the sources rather the assessee admitted that he had disclosed an amounts of Rs. 3 lakhs as income from other sources in Assessment Year 1995-96 and the balance had been adjusted in different years.
- On appeal, the Tribunal in dealing with issue of receipts for purchase of gold had accepted the explanation of the assessee that the amounts mentioned in the receipts found, which were in the name of the assessee, related to the disclosed income of his three wives. Thus, it deleted the addition made.
- On the revenue's appeal to the High Court:

Held

- Chapter XIV-B was a special provision enacted by the Legislature for the purpose of assessments in search cases. The Chapter was introduced with effect from 1-7-1995 and subsequently made inapplicable in cases of search initiated under section 132 or section 132A after 31-5-2003, with effect from 1-6-2003.
- The said Chapter comprises of sections 158B to 158BH. Section 158B provides for the definition of, *inter alia*, undisclosed income. Sections 158BC and 158BD provide for the procedure for block assessment of the assessee's undisclosed income. Section 158BD provides for assessment in the case of undisclosed income of any other person. It is clear that the provisions of the Chapter were enacted for the purpose of assessing undisclosed income. It follows that when an assessee seeks to explain a discovery in search as not being his undisclosed income, he necessarily has to prove to the satisfaction of the Assessing Officer that the discovery relates to disclosed income, disclosed by way of record, on or before the date of search or requisition, in the books of account or other documents maintained in the normal course relating to the block assessment period. It is only where the discovery relates to the income of the assessee that the provision regarding explanation about such

income, for it not to be included in the block period as undisclosed income, comes into play. A satisfactory explanation regarding a discovery as not being the income of the assessee and further that the sum is disclosed income of another, as in this case, cannot be ignored by the revenue on the contention that such an explanation is not possible under the chapter. The revenue's submission regarding the assessee's opportunity of being heard made expressly applicable by clause (b) in section 158BC and his reliance also on the proviso under clause (i) in sub-section (1) of section 132B, in the matter of an application made by a person concerned for release of seized assets, bear substance.

- The assessee urged that mere filing of return by the wives of the assessee subsequent to the search does not or did not give sanctity to the income declared by the wives as income earned. Therefore, such returns could not be relied upon to rebut the presumption, possible under the Chapter, that the receipts being in the name of the assessee, the amounts involved were his undisclosed income. The fact that the returns filed by the wives of the assessee were accepted by the revenue was relied upon by the Tribunal. There is no doubt that such acceptance could have been set aside as erroneous and prejudicial to the interests of revenue but such was not done. Furthermore, the assessee, in pursuing his line of argument regarding the scope of explanation possible under the Chapter, had submitted he was not relying either on sub-section (4A) of section 132 or section 292C. As such his reliance on this decision need detain us no further.
- The Tribunal in dealing with this issue had accepted the explanation of the assessee that the amounts mentioned in the receipts found, which were in the name of the assessee, related to the disclosed income of his wives. The view taken by the Tribunal, on the facts and circumstances before it, is a plausible view.
- On question of aggregate sum involved is Rs. 5 lakhs comprising of details of cash payments during financial year 1995-96 and also from 1-4-1996 to 7-8-1996 as per seized document. The Assessing Officer while adding back this sum as unexplained expenditure stated that in course of search no explanation was offered except saying this related to business expenditure of the assessee. The amounts found had not been entered in the respective cash books.
- The search having been conducted on 6th/7th August, 1996, the period 1-4-1996 to 7-8-1996 was included in the block assessment period. Return for financial year 1995-96 was due to be filed on 31-8-1996. The cash book of the assessee was made upto 30-4-1996 as on dates of search. The assessee had stated before the Tribunal that he filed copies of his regularly disclosed bank accounts which clearly showed huge cash withdrawals for making the payments. All such bank accounts were stated to be old accounts and were part of the regular accounts of the assessee for past years, the returns in respect of which had duly been submitted prior to the search.
- The Tribunal was of the view, *inter alia*, that if the recordings of the regular books of account be not upto date, that does not mean the entries, which can be verified from other primary books, would relate to undisclosed income of the assessee for the purpose of block assessment. The transactions, it appeared to the Tribunal, pertained to the regular business process of the assessee which stood

disclosed before the department. It held that simply because some transactions were recorded in some of the seized documents, *per se*, they do not become undisclosed transactions. The assessee had explained the expenditure as out of huge cash withdrawals made by him. On that basis the Tribunal was of the opinion the transactions under consideration formed part of the regular books of account of the assessee and therefore this addition was deleted. Revenue was unable to demonstrate that this opinion of the Tribunal, on the facts noted by it, was perverse. We accordingly answer this question and all others related to it in favour of the assessee.