

No sec. 158BFA interest if ITR was filed belatedly due to delay in obtaining copies of seized material from dept.

Summary – The High Court of Madras in a recent case of K. Balan, (the Assessee) held that Interest under section 158BFA(1) could not be levied from assessee for period of delay in filing return caused due to delay in obtaining copies of seized material from department, which was beyond control of assessee

Facts

- A search was conducted in the premises of the petitioner on 27-03-1998. A notice was issued by the Assistant Commissioner dated 20-07-1998 under section 158BC calling upon the assessee, to furnish the books of account, other documents or assets as mentioned in the said provision, within the stipulated time. The assessee requested for copies of the seized documents so as to enable him to submit a proper return. The photostat copies were furnished to the assessee between 18-6-1999 to 22-6-1999.
- The Deputy Commissioner issued notice dated 25-6-1999 under section 158BC. The assessee did not file the details/return within the time stipulated in the notice, but, filed the return of income on 04-05-2000. The same was considered and the assessment was completed on 31-05-2000, in which, the Assessing Officer levied interest under section 158BFA(1) for 11 months. *i.e.*, from 22-06-1999 to 04-05-2000.
- In appellate proceedings, the Tribunal remanded two issues to the Assessing Officer for consideration and rejected the ground raised in respect of levy of interest under section 158BFA(1). Pursuant thereto, an order was passed levying interest under section 158BFA(1) for 21 months *i.e.* from 20-7-1998 to 4-5-2000.
- The question came up for consideration was whether the levy of such interest for a period of 21 months was just and proper.
- The revenue's contention was that the assessee was first issued a notice dated 20-7-1998 under section 158BFA(1) and for all purposes the said date was to be taken into account for levying interest.
- The assessee, on the other hand, would contend that the period could commence only after 25-6-1999, when the notice was issued by the Deputy Commissioner.

Held

- The Court would have accepted the case of the revenue had the Assessing Officer upon transfer of the files in 1998 continued further with the matter as such, on the contrary, the Assessing Officer after furnishing the copies of the records sought for by the assessee, thought it appropriate to issue a fresh notice under section 158BC, dated 25-06-1999. Therefore, to fall back on the notice dated 20-07-1998, cannot be accepted.

- Precisely for such reason the Assessing Officer, while completing the assessment on 31-05-2000 levied interest only for 11 months. Assuming the stand taken by the revenue was justified, it was to be examined as to whether the assessee was liable for payment of interest from 20-07-1998.
- The issue has to be decided in favour of the assessee for the reason that the assessee was requesting for copies of the seized documents for nearly a year and the copies of those documents were furnished to the assessee between 18-06-1999 to 22-06-1999. Thus, the question would be as to how the interregnum period should be treated for the purpose of levying interest under section 158BFA(1).
- On a reading of statutory provision one gets an impression that no such plea is entertainable and limitation does not stop and continues to run upon issuing notice under section 158BC. However, one cannot ignore the principles of natural justice, which will have to be read into the provision, as the assessee without being supplied with the necessary documents, which were seized during the course of search, would not be in a position to file a proper return. Law does not compel a person to perform that which is impossible.
- Admittedly, the delay in not filing the return after the notice dated 20-07-1998 is not attributable to the assessee. No where, the revenue has taken a stand that the request made by the assessee for supply of seized documents was either unreasonable or uncalled for. Later, the department has furnished the photostat copies of the seized documents. Therefore, the period during which the assessee was waiting for the copies of the documents, which were seized, has to be necessarily excluded and if this is excluded, the period between 1998 to 22-06-1999 has to be necessarily excluded.
- Thus, for the above reasons, the appeal filed by the assessee is partly allowed it is held that the assessee is liable to pay interest only for a period of 11 months from 22-6-1999 to 4-5-2000.