

(17) In view of the above, there is no merit in this writ petition. It is, consequently, dismissed. No costs.

J.S.T.

Before Ashok Bhan and Iqbal Singh, JJ.

M/S RAJA RAM KULWANT RAI,—*Petitioner*

versus

ASSISTANT COMMISSIONER OF INCOME TAX,—*Respondent*

C.W.P. No. 3035 of 97

May 28, 1997

Income Tax Act, 1961—SS.143(2), 158—B and 158—BC—Undisclosed income of block period brought to tax—Assessment under section 158-BC(c) for block period 1985—95 after search and seizure operation—Assessing authority issuing notice under section 143(2) to assessee requiring information in connection with return of income for assessment years 1988-89 and 1989-90—Notice is without jurisdiction since the years assessed in block period cannot be re-assessed since the assessment stands merged in the collective assessment.

Held that once the assessment has been framed it can only be re-opened by issuing notice under sections 147/148 where income has escaped assessment or as a result of search and seizure under section 132. Notices issued under section 148 prior to the search were rendered infructuous after the framing of the assessment for the block period of ten years under Chapter XIVB. Department could not proceed on the basis of notices issued under section 148 prior to the framing of assessment under Chapter XIV.

(Para 17)

Further held that under section 143(2), Assessing Officer can issue notice in case he deems it necessary or expedient where a return has been filed under section 139 or in response to a notice under section 142(1) to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. The purpose of introducing of Chapter XIVB which provides for special procedure for framing of assessment orders for a block period of ten years

cases would be lost if the assessing officer is allowed to proceed under section 143 on a return filed under section 139 or in response to a notice under section 142(1). Certainly two assessments cannot be framed for the same assessment year on an assessee. Once an assessment has been framed for a block period under section 158-BC which includes the years in question, the Income Tax Officer stands debarred from framing an assessment under section 143 on the basis of returns already filed under section 139.

(Para 18)

Further held, that after framing of assessment under section 158-BC for a block period of ten years, income of any years covered by any block period could not be determined afresh as all pending assessment of those years stood merged in the collective assessment under section 158 BC(c) of the Act. The action taken by the respondent-authorities is indefensible and cannot be sustained. The assessee could not be assessed twice over for the same assessment year by framing two assessments, one under Chapter XIVB in case of search and the other under Chapter XIV in the course of assessment framed in ordinary course.

(Paras 19 and 20)

A.K. Mittal, Advocate, *for the petitioner*

B.S. Gupta, Senior Advocate with Sanjay Bansal,
Advocate, *for the Respondent*.

JUDGMENT

Ashok Bhan, J.

(1) Important question which falls for consideration in this petition is—“Whether the Income Tax Officer can issue notice under section 143(2) of the Income Tax Act, 1961 for an assessment year which is covered by the ‘block period’ under section 158-B regarding which assessment has already been framed under section 158 BC ?

(2) Facts giving rise to this question are :—

(3) Assessee-petitioner (hereinafter referred to as the petitioner) is a Commission Agent at mansa. Original assessment for the year 1988-89 was completed on taxable income of Rs. 1,78,040 on 28th February, 1989. In response to the notice dated 21st February, 1992 issued under section 148 of the Income Tax

Act, 1961 (hereinafter referred to as the Act) for the income escaping assessment, petitioner filed its return of income declaring net taxable income of Rs. 97,060. Assessing Authority assessed the taxable income at Rs. 10,00,070. Petitioner challenged the said assessment order in appeal before the Commissioner of Income Tax (Appeals), Bathinda who,—*vide* its order dated 23rd February, 1995 set aside the assessment order and remitted the case to the Assessing Officer with certain directions and to pass a fresh order in accordance with the directions issued.

(4) Assessing Authority did not pass any fresh order for the assessment year 1988-89. For the assessment year 1988-89, assessing authority had completed the assessment on an income of Rs. 1,11,350 which became final as no appeal was carried against that assessment order to the appellate authority.

(5) On 5th December, 1995, search and seizure operation in the case of the petitioner firm was conducted. As the provisions of Chapter XIV of the Act, were applicable to the search having been initiated after 30th June, 1995, notice under section 158 BC of the Act was issued on 12th February, 1996. Return in Form 2-B for the block period 1st April, 1985 to 5th December, 1995 was filed declaring undisclosed income at nil. Assessing Authority computed total income including undisclosed income for the block period from 1st April, 1985 to 5th December, 1995 as under :—

Previous year	Income already declared	Aggregation of total income including undisclosed income for the block period
1	2	3
1985-86	17,120	17,120
1986-87	72,410	72,410
1987-88	1,14,772	1,14,772
1988-89	1,13,720	1,13,720
1989-90	1,11,350	1,11,350
1990-91	88,040	88,040

Previous year	Income already declared	Aggregation of total income including undisclosed income for the block period
1	2	3
1991-92	1,38,030	1,38,030
1992-93	39,680	39,680
1993-94	45,368	45,368
1994-95	34,620	34,620
1995-96	—	—
Addition as discussed above in para No. 8	1,15,702	1,15,702
Aggregate of total income including undisclosed income for the block period.		8,90,804
Less : Income returned for the previous year		7,75,102
Undisclosed income for the Block period		1,15,702

(6) Assessing Authority, thereafter issued notice under section 143(2) of the Act dated 20th Janaury, 1997 relating to the assessment year 1988-89 and 1989-90 calling upon the petitioner to attend the office of the assessing authority on 30th January, 1997 as the assessing authority required certain information in connection with the return of income of the said years. Copies of the said notices have been attached as Annexures P4 and P5. Petitioner filed detailed reply objecting to the issuance of notice under section 143(2) *inter alia* on the ground that assessment having already been completed under section 158 BC(c) of the Act for the block period of ten years which covers the years in question, the assessing authority had no jurisdiction to issue notice under section 143(2) of the Act. After framing of assessment, income of any of the years covered by the block period could not be determined afresh as all pending assessment of those years stood merged in the collective assessment under section 158 BC(c) of the Act. It was prayed that proceedings started with the issuance of notice

under section 143(2) be dropped. Objections filed by the petitioner were not accepted. Assessing Authority continued the proceedings and asked the petitioner to appear before it on 4th March, 1997. Copy of the communication dated 12th February, 1997 is attached as Annexure P8.

(7) Petitioner has challenged the impugned notices under section 143(2) Annexures P4 and P5 and the communication Annexure P8 requiring the petitioner to appear before the assessing authority on 4th March, 1997 in response to the notices Annexures P4 and P5.

(8) Case of the petitioner in nutshell is that after completion of assessment for a block period of ten years under section 158 BC of the newly introduced Chapter XIVB of the Act, which included the assessment years 1988-89 and 1989-90, the assessing authority had no jurisdiction to issue notice under section 143(2) of the Act in relation to the return filed earlier.

(9) Written statement has been filed. Facts as regards the search and seizure and framing of assessment for the block years including the years in question are admitted. Facts given in respect of assessment year 1988-89 are accepted to be correct. So far as assessment year 1989-90 is concerned, stand taken by the respondent is that assessment for the assessment year 1989-90 had not become final because as per assessment records notice under section 148 was issued and served upon the petitioner on 19th May, 1994 for filing of return. In compliance of the said notice, return was duly filed by the assessee on 17th June, 1994 and the assessment proceedings in pursuance of notice under section 148 were still pending. It has been denied that notices issued under section 143(2) for the assessment year 1988-89 and 1989-90, are without jurisdiction. It has been asserted that the same are validly issued because concealment of income was detected by the department before the date of search. Assessment order for the assessment year 1988-89 was passed on 15th March, 1994 while search took place on 5th December, 1995. Once the department has detected the concealment in the assessee's case, it cannot be covered under the block assessment as provisions applicable in two cases are entirely different.

(10) Counsel for the parties have been heard.

(11) Finance Bill of 1995 inserted a new Chapter XIVB in the Act. It provides a new concept for assessment in relation to searches conducted under section 132 of the Act or requisition made under section 132A after 30th June, 1995. The purpose of enactment of this Chapter was to make the procedure of assessment of search cases more effective. The purpose as given in clause 32 of Notes on Clauses of Finance Bill 1995(1995) 212 ITR (St.) 306 reads as under:—

“In order to make the procedure of assessment of search or requisition cases effective, it is proposed to introduce new provisions for assessment of undisclosed income detected as a result of search or requisition. Under the new provisions, the undisclosed income detected as a result of search initiated or requisition made after 30th June, 1995, shall be assessed separately as income of a block of ten previous years. Where the previous year has not ended or the due date for filing a return of income for any previous year has not expired, the income recorded on or before the date of search or requisition in the books of account or other documents maintained in the normal course relating to such previous years will not be included in that block.”

(12) The salient features of Chapter XIV-B is that the total undisclosed income of a person shall be assessed as the income of a block period consisting of previous years relevant to ten assessment years preceding the previous year in which the search was conducted or requisition was made and also the period of the current previous year upto the date of the search or the requisition. The undisclosed income of the block period was to be taxed at a flat rate of 60 per cent as given in section 113. The order of assessment for the block period was to be passed within one year from the end of the month in which the last authorisation for the search or the requisition was executed. Prior to insertion of Chapter XIV-B estimation of the undisclosed income was made in a summary manner under sections 132(5) and 132(7). Chapter XIV was in substitution of section 132(5) with an extension of scope.

(13) ‘Block period’ as defined in section 158B means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under section

132 or any requisition was made under section 132A, and includes, in the previous year in which such search was conducted or requisition made, the period upto the date of the commencement of such search or, as the case may be, the date of such requisition. Definition of 'undisclosed income' includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act. Section 158BA provides that notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B. The total undisclosed income relating to the block period was to be assessed at a flat rate of 60 per cent.

(14) Section 158BB of the Act reads as under :—

“158BB Computation of undisclosed income of the block period—(1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of Chapter IV, on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with Assessing Officer, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined—

- (a) where assessments under section 143 or section 144 or section 147 have been concluded, on the basis of such assessments;
- (b) where returns of income have been filed under section 139 or section 147 but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

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- (c) where the due date for filing a return of income has expired but no return of income has been filed, as nil;
 - (d) where the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 has not expired, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;
 - (e) where any order of settlement has been made under sub-section (4) of section 245D, on the basis of such order;
 - (f) where an assessment of undisclosed income had been made either under clause(c) of section 158BC, on the basis of such assessment;

Explanation : For the purposes of determination of undisclosed income:—

- (a) the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set off brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;
- (b) of a firm, returned income and total income assessed for each of the previous years falling within the block period shall be income determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called :

Provided that undisclosed income of the firm so determined shall not be chargeable to tax in the hands of the partners, whether on allocation or on account of enhancement;

- (c) assessment under section 143 includes determination of income under sub-section (1) or sub-section (1B) of section 143.

- (2) In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B and 69C shall, so far as may be, apply and references to “financial year” in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition.
- (3) The burden of providing to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.
- (4) For the purpose of assessment under this chapter, losses brought forward from the previous year under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block assessment under this Chapter, but may be carried forward for being set off in the regular assessments.”

Procedure for block assessment is given under Section 158BC of the Act, which is reproduced below :—

“158BC. Procedure for block assessment:— Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then—

- (a) the Assessing Officer shall serve a notice to such person requiring him to furnish, within such time, not being less than fifteen days, as may be specified in the notice, a return in the prescribed form and verified in the same manner as a return under clause (I) of sub section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under section 148 is required to be issued for the purposes of proceeding under this chapter;

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- (b) The Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-section (2) and (3) of section 143 and section 144 shall, so far as may be, apply;
 - (c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;
 - (d) the assets seized under section 132 or requisitioned under section 132 A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and the references to "regular assessment" or "reassessment" in section 132B shall be construed as references to "block assessment."

(15) A perusal of this section would show that the Assessing Officer has to serve a notice to the concerned person requiring him to furnish within a specified time, (not less than fifteen days) in the notice, a return in the prescribed form setting forth his total income including the undisclosed income for the block period. No notice under section 148 is required to be issued for the purposes of proceeding under Chapter XIVB. Assessing Officer, thereafter shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158BB. Assessing Officer on determination of the undisclosed income of the block period in accordance with Chapter XIV-B then passes an order of assessment and determines the tax payable by the assessee on the basis of such assessment of the undisclosed income of the block period.

(16) The purpose of introduction of CH. XIVB is that the undisclosed income detected as a result of any search initiated or any requisition made after 30th June, 1995 shall be assessed separately as income of block years. Special procedure was introduced for framing of assessment of search cases. Section 158BA starts with a non abtente clause that notwithstanding anything contained in any other provisions of the Act after 30th June, 1995, cases arising out of search and seizure under section 132 shall be

assessed in accordance with the newly introduced Chapter XIVB. Once an assessment is framed qua a particular year falling within the block period of ten years then, no other assessment under any other provisions of the Act can be framed.

(17) Income of each of the ten years prior to the year of search, that is including the assessment year 1988-89 and 1989-90 had already been determined separately under two heads: (i) income already assessed, and (ii) concealed income of the assessment years 1988-89 and 1989-90 did not remain to be determined after determination of yearwise income of all pending assessments of those years which stood merged in the collective assessment under section 158 BC(c) of the Act. Once the income of the assessment year 1988-89, 1989-90 has been determined taking into account the income already assessed and concealed income which includes the years in question, no assessment remained to be framed. Once the assessment has been framed it can only be re-opened by issuing notice under sections 147, 148 where income has escaped assessment or as a result of search and seizure under section 132. Notices issued under section 148 prior to the search were rendered infructuous after the framing of the assessment for the block period of ten years under Chapter XIVB. Department could not proceed on the basis of notices issued under section 148 prior to the framing of assessment under Chapter XIVB.

(18) Under section 143(2), Assessing Officer can issue notice in case he deems it necessary or expedient where a return has been filed under section 139 or in response to a notice under section 142(1) to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him on a date to be specified therein either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return. The purpose of introducing of Chapter XIVB which provides for special procedure for framing of assessment orders for a block period of ten years cases would be lost if the assessing officer is allowed to proceed under section 143 on a return filed under section 139 or in response to a notice under section 142(1). Certainly two assessments cannot be framed for the same assessment year on an assessee. Once an assessment has been framed for a block period under section 158(BC) which includes the years in question, the Income tax Officer stands debarred from

framing an assessment under section 143 on the basis of returns already filed under section 139.

(19) After framing of assessment under section 158BC for a block period of ten years, income of any years covered by any block period could not be determined afresh as all pending assessment of those years stood merged in the collective assessment under section 158BC(c) of the Act.

(20) The action taken by the respondent authorities is indefensible and cannot be sustained. The assessee could not be assessed twice over for the same assessment year by framing two assessments, one under Chapter XIVB in case of search and the other under Chapter XIV in the course of assessment framed in ordinary course.

(21) For the reasons stated above, we accept this petition and quash the impugned notices Annexures P4, P5 and P8 being without jurisdiction and unsustainable in law. No costs.

R.N.R.