Vls Finacne Ltd. & Anr vs Commissioner F Income Tax & Anr on 28 April, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2073, 2016 (12) SCC 32, 2016 (4) ADR 237, AIR 2016 SC (CIVIL) 2133, (2016) 4 SCALE 403

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Bench: Rohinton Fali Nariman, A.K. Sikri

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2667 OF 2007

VLS FINANCE LTD. & ANR.	.....APPELLANT(S)	
VERSUS		
COMMISSIONER OF INCOME TAX & ANR.	.....RESPONDENT(S)	

J U D G M E N T

A.K. SIKRI, J.

In this appeal, challenge is laid to that part of the judgment of High Court of Delhi dated 15th December, 2006 whereby High Court has held that the block assessment proceedings initiated by the respondent-Department against the appellants herein have not become time barred, by giving the respondents benefit of the period during which proceedings were pending in the High Court, in view of some interim orders passed in those proceedings which remained operative till the writ petition filed by the appellants were decided finally. Factual background leading to the present appeal is as under:

> Search and seizure took place in the business premises of the appellant companies on 22nd June, 1998 on the strength of warrant of autorization dated 19th June, 1998 which went upto in the morning hours of 23rd June, 1998. It was followed by further searches from time to time which went on till 5th August.
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> Notice under Section 158BC(c) of the Income Tax Act, 1961 (hereinafter referred to as the “Act') was issued on 28th June, 1999 requiring the appellants to furnish return for the block period from April 1, 1988 to 22nd June, 1998. This notice was withdrawn and another notice was issued on 26.07.1999. In response thereto, the

appellants filed return for the aforesaid block period on 10th September, 1999. As per Section 158BE of the Act, assessment is to be completed within two years from the end of the month in which the last of the authorisation for search under Section 132 or for requisition under Section 132A, as the case may be. However, the assessing officer could not do so because of certain developments which took place and are narrated hereinafter.

A direction under Section 142(2A) was issued on 29.06.2000, which was served to the appellants on 19th July, 2000 for conducting special audit for the aforesaid block period.

A Writ Petition (Civil) No. 4685 of 2000 was filed by the appellants, wherein a challenge was laid to the aforesaid order dated 29th June, 2000 issued by respondent no. 2 directing a special audit in respect of appellants under Section 142(2A) of the Act. In the said writ petition, the appellants also challenged the clarificatory order dated 10th August, 2000 issued by respondent no. 2 with regard to special audit in respect of appellant no. 1 for the period from the Assessment Year 1994-95 to Assessment Year 1998-99 and insofar as appellant no. 2-the period for Assessment Year 1994-95 to Assessment Year 1996-97.

During the pendency of the writ petition, as amendment application was filed being CM No. 9305/2006, seeking to add additional ground that the Block Assessment Proceedings under Section 158BC(c) of the Act were time barred. The appellants submitted that the time limit for completion of Block Assessment expired on 30th June, 2000 in terms of Section 158BE of the Act, since 2 years period expired on that date. It was further submitted that the authorization executed on 22nd June, 1998 could not have been utilized for conducting further search till August, 1998. it was also contended that the order under Section 142(2A) of the Act was issued in violation of principles of natural justice as there was no complexity in the accounts of the appellants and, therefore, there was no justification in law to order special audit under Section 142(2A) of the Act.

The respondents filed their affidavit in reply to the show cause explaining that the order for special audit under Section 142(2A) of the Act was issued with proper authorization made by Commissioner of Income Tax after due deliberation and on the basis of the report of the Assessing Officer viz. Assistant Commissioner of Income Tax, New Delhi. It was further submitted that the period of completion of block assessment was to expire on 31st August, 2000 and not on 30th June, 2000 as claimed by the appellants. As per the respondents, since seizure operation were conducted from 22nd June, 1998 and these operations concluded only on 5th August, 1998, the time limit of two years for completion of “Block Assessment” was to expire only on 31st August, 2000.

In Writ Petition (Civil) No. 4685 of 2000, interim order dated 24th August, 2000 was passed, which reads as under:

Notice to the respondents to show cause as to why petition by not admitted, returnable on 14th September, 2000.

Mr. R.D. Jolly, Advocate accepts notice on behalf of respondents.

Notice for 14th September, 2000. Mr. Jolly accepts notice.

Counter be filed by 13th September, 2000.

Interim stay of the orders dated 29th June, 2000.

Annexure-A read with Annexure-B dated 10th August, 2000." This stay remained in operation during the pendency of the writ petition.

The matter was finally heard and decided by the Delhi High Court vide judgment dated 15th December, 2006. It has quashed the direction for special audit in view of the fact that no hearing was afforded to the appellant before issuing such direction, which was necessary as per the law laid down in the case of Rajesh Kumar and others Vs. Dy. Commissioner of Income Tax and others[1].

However, the High Court decided the question of limitation in favour of the Department holding that the period between 24th August, 2000, i.e, date on which interim order was passed staying special audit direction under Section 142(2A) dated 29th June, 2000 and 15th December, 2016, i.e., when the High Court has passed the order setting aside the direction for special audit, be excluded in counting limitation for concluding block assessment.

The appellants contended before the High Court that since there was no stay on block assessment proceedings in terms of interim order dated 24th August, 2000, the direction to exclude the period between 24th August, 2000 to 15th December, 2006 was beyond its jurisdiction. It was alternatively contended before the High Court that the limitation for passing the block assessment having expired on 30th June, 2000 in terms of Section 158BE(1) of the Act, the direction to exclude the limitation period between 24th August, 2000 to 15th December, 2006 would not, in any case, save limitation. While rejecting the aforesaid contentions raised by the appellants, the High Court held that since special audit was an important and integral step in the assessment proceedings, once the direction for special audit was stayed by the High Court, assessment proceedings ipso facto could not go on. The High Court rejected the assessee's second alternative argument holding that limitation period of two years was to be calculated from 5th August, 1998, on which date last panchnama was drawn.

In the instant appeal, impugning the decision of the High Court, following substantial questions of law are raised for consideration by this Court:

(a) Whether on the facts and circumstances of the case, the High Court having quashed the direction under Section 142(2A) of the Act was justified in law in directing to exclude the period between 24th August, 2000 to 15th December, 2006 in counting the period of limitation for passing the block assessment order?

(b) Whether on the facts and circumstances of the case, the interim order dated 24th August, 2000 staying the direction for special audit contained in order dated 29th June, 2000, could be construed as amounting to stay of assessment proceedings?

(c) Whether on the facts and circumstances of the case, the High Court erred in law in holding that the period of limitation expired on 31st August, 2000, instead of 30th June, 2000, in terms of Section 158BE(1) read with Explanation 2 thereto?

(d) Whether on the facts and in the circumstances of the case, it is permissible under Section 132 of the Act that the same warrant of authorization be executed 16 times and be revalidated again and again instead of issuing fresh authorization for each visit and whether such revalidation can be done without recording any reasons justifying the revalidation as in the present case.

In effect the central issue is one of limitation, which has the following two facets, viz.;

(a) Whether the period of limitation expired on 31st August, 2000 or the last date for completing block assessment was 30th June, 2000?

(b) Whether the period between 24th August, 2000 to 15th December, 2006, when interim stay was in operation, required to be excluded for the purposes of counting limitation period?

First, we shall take up the second issue for discussion. It is not in dispute that the period during which interim stay of the order passed by the court is in operation has to be excluded while computing the period of two years as limitation period prescribed for completing the block assessment. The parties have, however, joined issue on the nature of stay order which qualify for such exclusion. For this, it would be necessary to scan through the language of Explanation 1 to Section 158BE(2) of the Act. This provision makes the following reading:

“Explanation 1. - In computing the period of limitation for the purposes of this section, -

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(iii) & (iv) xxx xxx xxx shall be excluded:

Provided xxx xxx xxx" The plea of the appellants is that only that period can be excluded in computing the period of limitation, during which assessment proceedings were stayed. A certain distinction was tried to be drawn in the instant case by referring to the interim order which was passed by the High Court on 24th August, 2000 which has stayed the order of the Department directing compulsory audit. It was, thus, argued that stay was limited only to conducting compulsory audit and there was no stay of the assessment proceedings.

M/s. Ganesh and Vohra, learned senior counsel appearing for the appellants made a fervent plea to the effect that in the absence of any stay of the assessment proceedings, there was no embargo on the part of the assessing authority to proceed with the assessment even when the order directing special audit was stayed, and therefore, benefit of the aforesaid explanation would not be available to the respondents. It was argued that the High Court had committed an error in giving the benefit of the exclusion of the said period on a wrong premise that special audit was an integral part of the assessment proceedings. It was also argued that Explanation 1, as it existed at the relevant time, did not make any provision for excluding the period from the date when assessing officer directs the assessee to get his accounts audited till the date when the assessee is required to furnish the report of such audit. Such an amendment, it was pointed out, is made in Clause (ii) of Explanation to Section 153B of the Finance Act, 2013, w.e.f. 1st June, 2013 to fill the lacunae that existed in the statutory framework and this would also fortify the submissions of the appellants that at the relevant time there was no such provision for exclusion of the time period during which there was a stay of special audit but no stay assessment proceedings. It was also argued that insofar as the provision relating to limitation is concerned it needs strict interpretation, and certain judgments were referred to, by the learned counsel, in this behalf.

Ms. Pinky Anand, learned ASG, on the other hand, supported the order of the High Court by arguing that with the passing of High Court order staying the orders dated 29th June, 2000 and 10th August, 2000 passed under Section 142(2A) of the Act which meant that the Department was prevented from carrying out special audit, it was not possible to proceed with the assessment as well as inasmuch as the assessing officer at the time of passing the order under Section 142(2A) of the Act recorded his satisfaction that in order to carry out the proper assessment, special audit was essential. She, thus, submitted that the High Court rightly held that special audit was integral part of the assessment.

We have already reproduced the language of Explanation 1. it is not in doubt that this explanation grants benefit of exclusion only for those cases where 'the assessment proceeding is stayed by an order or injunction' of the court. On literal construction, therefore, it becomes clear from the reading of this provision that the period that is to be excluded while computing the period of limitation for completion of Block Assessments is the period during which assessment proceedings are stayed by an order of a court and this provision shall not apply if the stay of some other kind, i.e, other than staying the assessment proceedings, is passed. The counsel for the appellants are justified in their contention that the provision relating to limitation need to be strictly construed. In the case of K.M. Sharma Vs. ITO[2], this principle is laid down in the following words: “13. Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality.” As a general rule, therefore, when there is no stay of the assessment proceedings passed by the Court, Explanation 1 to Section 158BE of the Act may not be attracted. However, this general statement of legal principle has to be read subject to an exception in order to interpret it rationally and practically. In those cases where stay of some other nature is granted than the stay of the assessment proceedings but the effect of such stay is to prevent the assessing officer from effectively passing assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the assessing officer to pass an assessment order thereby preventing the assessing officer to proceed with the assessment proceedings and carry out appropriate assessment. For an example, if the court passes an order injuncting the assessing officer from summoning certain records either from the assessee or even from a third party and without those records it is not possible to proceed with the assessment proceedings and pass the assessment order, even such type of order may amount to staying the assessment proceedings. In that context, we would like to comment that the High Court, in the impugned judgment has propounded the correct and relevant test, viz., whether the special audit is an integral part of the assessment proceedings, i.e., without special audit it is not possible for the assessing officer to carry out the assessment? If it is so, then stay of the special audit may qualify as stay of assessment proceedings and, therefore, would be covered by the said explanation.

The question, therefore, is as to whether, in the given case, the High Court was right in holding that the special audit was not only a step in the assessment proceedings, but an important and integral step, in the absence of which an assessment order could not be made. In support of the aforesaid conclusion, the High Court referred to the judgment in Auto and Metal Engineers and other Vs. Union of India and

Others[3] wherein this Court examined in detail as to what constitutes assessment proceedings. The Court in that case was interpreting Explanation 1 to Section 153 of the Act, which is pari materia to Explanation 1 of 158BE of the Act. The said provision was interpreted in the following manner:

"Sub-section (1) of section 153 prescribed the period of limitation within which an order of assessment could be passed. For the assessment years in question the last date for making the order of assessment under the said provision was March 31, 1972. By Explanation 1 to section 153 the period of limitation prescribed under sub-section (1) for making the order of assessment was extended by the period during which the assessment proceeding was stayed by an order or injunction of any court. The object of the Explanation seems to be that if the Assessing Officer was unable to complete the assessment on account of an order or injunction staying the assessment proceeding passed by a court the period during which such order or injunction was in operation should be excluded for the purpose of computing the period of limitation for making the assessment order. The process of assessment thus commences with the filing of the return or where the return is not filed, by the issuance by the Assessing Officer of notice to file the return under section 142 (1) and it culminates with the issuance of the notice of demand under section 156. The making of the order of assessment is, therefore, an integral part of the process of assessment. Having regard to the fact that the object underlying the Explanation is to extend the period prescribed for making the order of assessment, the expression "assessment proceeding" in the Explanation must be construed to comprehend the entire process of assessment starting from the stage of filing of the return under section 139 or issuance of notice under section 142(1) till the making of the order of assessment under section 143(3) or section 144. Since the making of the order of assessment under section 143 (3) or section 144 of the Act is an integral part of the assessment proceeding, it is not possible to split the assessment proceeding and confine it up to the stage of inquiry under sections 142 and 143 and exclude the making of the order of assessment from its ambit. An order staying the passing of the final order of assessment is nothing but an order staying the assessment proceeding. Since the passing of the final order of assessment had been stayed by the Delhi High Court by its order dated November 23, 1971, in the writ petitions, it must be held that there was a stay of assessment proceedings for the purpose of Explanation 1 to section 153." The aforesaid judgment applies on all force, as rightly held by the High Court. We may also refer to the judgment of the Madhya Pradesh High Court in Commissioner of Income Tax Vs. Dhariwal Sales Enterprises[4]. That was a case where special audit report under Section 142(2A) of the Act was called for but could not be submitted. The High Court held that time period spent for obtaining a copy of the report upto the time when intimation of non-submission was given by the assessee would be excluded.

We, therefore, agree with the High Court that the special audit was an integral step towards assessment proceedings. The argument of the appellants that the writ petition of the appellant was

ultimately allowed and the Court had quashed the order directing special audit would mean that no special audit was needed and, therefore, it was not open to the respondent to wait for special audit, may not be a valid argument to the issue that is being dealt with. The assessing officer had, after going through the matter, formed an opinion that there was a need for special audit and the report of special audit was necessary for carrying out the assessment. Once such an opinion was formed, naturally, the assessing officer would not proceed with the assessment till the time the special audit report is received, inasmuch as in his opinion, report of the special audit was necessary. Take a situation where the order of special audit is not challenged. The assessing officer would naturally wait for this report before proceeding further. Order of special audit followed by conducting special audit and report thereof, thus, become part of assessment proceedings. If the order directing special audit is challenged and an interim order is granted staying the making of a special report, the assessing officer would not proceed with the assessment in the absence of the audit as he thought, in his wisdom, that special audit report is needed. That would be the normal and natural approach of the assessing officer at that time. It is stated at the cost of repetition that in the estimation of the assessing officer special audit was essential for passing proper assessment order. If the court, while undertaking judicial review of such an order of the assessing officer directing special audit ultimately holds that such an order is wrong (for whatever reason) that event happens at a later date and would not mean that the benefit of exclusion of the period during which there was a stay order is not to be given to the Revenue. Explanation 1 which permits exclusion of such a time is not dependent upon the final outcome of the proceedings in which interim stay was granted.

We, therefore, answer this question in favour of Revenue.

With this, we revert to the other question, viz. from which date the period of limitation is to be counted, i.e. from 22nd June, 1998 when the respondent authorities visited the premises of the appellants on the basis of Warrant of Authorisation dated 19th June, 1998 or 5th August, 1998, on which date the Revenue authorities last visited the premises of the appellants on the basis of the same Warrant of Authorisation dated 19th June, 1998 and conducted the search of the appellants premises. If the period is to be counted from 19th June, 1998, the last date by which the assessment was to be carried would be 30th June, 2000. If it is to be counted from 5th August, 1998, then the limitation period was to expire on 31st August, 2000. In the event the last date for completing the block assessment is held to be 30th June, 2000, then the assessment became time barred even before the interim stay was granted by the High Court as it was granted on 24th August, 2000, i.e. after the supposed limitation period was over and, therefore, the conclusion which we have recorded in answering the other question, as above, would not come to the rescue of the Department. On the other hand, if the period of limitation was to expire on 31st August, 2000, then by virtue of our answer to the first issue, the period of limitation for block assessment has not expired inasmuch as this Court has passed an order dated 5th February, 2007 that audit may go on but no final assessment order be passed. Because of this reason, it becomes necessary to decide this aspect of the matter as well.

The argument of learned counsel for the appellants on this issue is that there was only one warrant of authorisation which empowered the Revenue authorities to carry out search and visit of the revenue officials on 22nd June, 1998 on the basis of said Warrant of Authorisation dated 19th June,

1998, would end in exhausting the said warrant of authorisation. It was argued that for subsequent visits, fresh authorisation was required and no such authorisation was taken and, therefore, subsequent searches are illegal and no benefit thereof should enure to be respondent.

We may point out that the appellants never challenged subsequent visits and searches of their premises by the respondents on the ground that in the absence of a fresh authorisation those searches were illegal, null and void. Notwithstanding the same, it was argued that at least for the purpose of limitation the subsequent searches could not be taken into consideration, as according to the learned counsel, the legal position was that the authorisation dated 19th June, 1998, was executed on 22nd June, 1998 and the search came to an end with that when the search party left the premises on 23rd June, 1998 after making seizure of certain documents etc and issuing restraint order under Section 132(3) of the Act in respect of certain items which they allegedly could not seize due to impracticability on that day. Some judgments of various High Courts are relied upon to support this proposition. It was also argued that there was no concept of 'revalidation of authorisation' provided under the Act, which has been applied by the High Court in the impugned judgment, which according to the learned counsel for the appellants, amounts to legislating a new concept which is contrary to law.

The learned Additional Solicitor General, refuting the aforesaid contention, submitted that as per explanation (2) to Section 158BE, when it is a case of search, period of limitation is to be counted 'on the conclusion of search as recorded in the last panchnama drawn.....' It was argued that last panchnama was admittedly drawn on 5th August, 1998 and, therefore, period of limitation is to be counted from that date.

After considering the respective submissions, we are of the opinion that on the facts of this case, the issue also has to be answered in favour of the Revenue without going into the legal niceties.

As noticed above, the revenue authorities visited and searched the premises of the appellants for the first time on 22nd June, 1998. In the panchnama drawn on that date, it was remarked 'temporarily concluded', meaning thereby, according to the revenue authorities, search had not been concluded. For this reason, the respondent authorities visited many times on subsequent occasions and every time panchnama was drawn with the same remarks, i.e. 'temporarily concluded'. It is only on 5th August, 1998 when the premises were searched last, the panchnama drawn on that date recorded the remarks that the search was 'finally concluded'. Thus, according to the respondents, the search had finally been completed only on 5th August, 1998 and panchnama was duly drawn on the said date as well. The appellants, in the writ petition filed, had no where challenged the validity of searches on the subsequent dates raising a plea that the same was illegal in the absence of any fresh and valid authorisation. On the contrary, the appellants proceeded on the basis that search was conduced from 22nd June, 1998 and finally concluded on 5th August, 1998.

On the aforesaid facts and in the absence of any challenge laid by the appellants to the subsequent searches, we cannot countenance the arguments of the appellants that limitation period is not to be counted from the last date of search when the search operation completed, i.e. 5th August, 1998. Therefore, this issue is also decided in favour of the respondents.

In view of the foregoing, this appeal is liable to be dismissed and is, accordingly, dismissed with costs.

.....J. (A.K. SIKRI) .....J. (ROHINTON FALI NARIMAN) NEW DELHI;

APRIL 28, 2016.

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[1] (2007) 2 SCC 181 [2] (2002) 254 ITR 772 (SC) [3] (1998) 229 ITR 399 [4] (1996) 221 ITR 240