

Bombay High Court

Baby Samuel vs Assistant Commissioner Of ... on 29 January, 2002

Equivalent citations: (2003) 184 CTR Bom 140, 2003 262 ITR 385 Bom

Author: J Devadhar

Bench: V Daga, J Devadhar

JUDGMENT J.P. Devadhar, J.

1. Rule returnable forthwith. The respondent waives service. By consent of the parties, rule is taken up for final hearing.

2. The substantial question sought to be raised in this appeal is as to when an issue was vaguely taken in the grounds of appeal, but argued specifically at the time of the final hearing of the appeal, can the Tribunal refuse to adjudicate upon that issue on the merits on the ground that no such ground has been taken specifically in the grounds of appeal ?

3. The assessment year relevant for the purpose herein is the block period April 1, 1985, to March 20, 1996.

4. Some time in March, 1996, the assessee's premises were searched under Section 132(1) of the Income-tax Act ("Act" for short) and certain amount of cash and books of account were taken into custody by the income-tax authorities. On the basis of the seized material, the Assessing Officer issued a notice to the assessee under Section 158BC of the Act and after hearing the assessee, passed the assessment order dated March 31, 1997, making the assessment for the block period April 1, 1985, to March 20, 1996, determining the total undisclosed income at Rs. 1,88,16,506 and levied thereon tax at the rate of 60 per cent., which came to Rs. 1,12,89,904.

5. Being aggrieved by the aforesaid order, the assessee filed an appeal before the Income-tax Appellate Tribunal (the "ITAT" for short), Mumbai, raising several general grounds and in particular ground Nos. 26 and 27 relevant for the purpose are reproduced hereinbelow :

"26. The order of the learned Assessing Officer determining the total undisclosed income of the appellant at Rs. 2,17,41,506 is bad in law, against the facts and circumstances of the case and contrary to the evidence and material on record.

27. The learned Assessing Officer erred in going beyond the scope of the provisions of Chapter XIV-B in assessing the undisclosed income of the appellant."

6. At the final hearing of the appeal before the Tribunal, it appears that the assessee filed a chart in the form of notes of written submissions elaborating various grounds taken up in appeal and the said chart included objections of the assessee with regard to the addition made in the sum of Rs. 8,94,039 on account of unsecured advances taken by the assessee treating it as undisclosed income. The objection of the assessee to the said addition was on the grounds that the assessee had already offered the said amount of alleged undisclosed income in the regular assessment for the relevant years wherever the unsecured loans and advances taken had been and were computed under Section

143(3) for the assessment years 1989-90 to 1993-94. The Tribunal, by the impugned order dated October 8, 1998, declined to go into the merits of the said submission and refused to adjudicate on the merits the addition made in the sum of Rs. 8,94,039 on the grounds that the assessee has neither raised a specific ground in this behalf in the grounds of appeal or memorandum of appeal, nor the provisions of Rule 11 of the Appellate Tribunal Rules were invoked.

7. Having heard rival submissions, without going into the merits of the case, we are of the view that it would be just and proper to set aside the order of the Tribunal in so far as it pertains to the refusal on the part of the Tribunal to adjudicate on the issue with regard to the addition of Rs. 8,94,039 and direct the Tribunal to decide the said issue on the merits. We are of the opinion that when the issue was allowed to be debated by the Tribunal, it was not open for it to decline consideration thereof.

8. This is not a case where the issue was not at all raised. The Tribunal has fairly clarified that the omission to raise a specific ground in the grounds of appeal has escaped their attention when the arguments of both sides were heard. The Tribunal would have been right had there been complete absence of the ground in the grounds of appeal. There can be no dispute that it was obligatory on the part of the assessee to raise a specific ground in the memo of appeal while filing an appeal or to seek leave of the Tribunal to raise an additional ground at the time of the final hearing of the appeal. In the instant case, the assessee has raised the ground but vaguely. We are of the opinion that the assessee cannot be denied the right to claim adjudication of the issue on the merits when the said issue was specifically taken at the time of final hearing of the said appeal and the Revenue had occasion to deal with the submission made thereon.

9. In this view of the matter, we are of the opinion that it would be just and proper to permit the assessee to raise a specific plea regarding the addition of Rs. 8,94,039 as undisclosed income as an additional ground before the Tribunal and the Tribunal should decide the same issue on its own merits.

10. In this view of the matter, we set aside the judgment of the Tribunal in so far as it pertains to refusal on the part of the Tribunal to adjudicate the issue pertaining to the addition of Rs. 8,94,039 as undisclosed income and remit the matter back with a direction to the Tribunal to decide the issue in accordance with law on the merits after giving reasonable opportunity to the assessee to carry out the necessary amendment to the memo of appeal.

11. The appeal is accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.