

Jhaveri Trading And Investment Pvt Ltd ... vs Asst. Commissioner Of Income Tax ... on 21 January, 2019

Author: Harsha Devani

Bench: Harsha Devani, A. P. Thaker

C/SCA/951/2019

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 951 of 2019

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JHAVERI TRADING AND INVESTMENT PVT LTD RAJESH NANUBHAI
JHAVERI (DIRECTOR)

Versus

ASST. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 1(1)

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Appearance:

MR RK PATEL, ADVOCATE for MR DARSHAN R PATEL(8486) for the
PETITIONER(s) No. 1
for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MS.JUSTICE HARSHA DEVANI
and
HONOURABLE DR.JUSTICE A. P. THAKER

Date : 21/01/2019

ORAL ORDER

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. Mr. R.K. Patel, learned advocate for the petitioner, submitted that in this case, in case of the searched person, assessment order came to be passed on 31.12.2016 whereas, the Assessing Officer of the searched person has recorded satisfaction, as required under section 153C of the Income Tax Act, 1961 on 16.03.2018, i.e. after a period of more than one year from the date of the assessment order.

2. Reference was made to the decision of the Supreme Court in case of Commissioner of Income Tax-III v. Calcutta Knitwears, 362 ITR 673 wherein, the Court has held that for the purpose of section 158BD a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other

person. The satisfaction note could be prepared at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC; (b) along with the assessment proceedings under section 158BC; and (c) immediately after the assessment proceedings are completed under section 158BC of the searched person. It was submitted that based upon the above judgment, the Central Board of Direct Taxes has issued Circular No.24 of 2015 dated 31.12.2015 stating that several High Courts held that the provisions of section 153C of the Act are substantially similar / *pari materia* to the provisions of section 158BC of the Act and therefore, the guidelines of the Supreme Court in Calcutta Knitweaves's case (*supra*) apply to proceedings under section 153C of the Act for the purposes of assessment of income of the person other than the searched person. It was submitted that in this case there is an inordinate delay from the date when the assessment proceedings have been completed under section 153A of the Act of the searched person, and therefore, the initiation of proceedings under section 153C of the Act is contrary to the CBDT Circular.

3. The attention of the Court was invited to the first proviso of section 153C of the Act to submit that in the case of the person other than the searched person, reference to the date of initiation of search has to be construed as the date of receiving the books of account or documents seized or requisitioned by the Assessing Officer having jurisdiction over such other person. It was submitted that in this case, since the date of receipt of books of account, etc. is 16.03.2018, the Assessing Officer can proceed to assess the petitioner for six years prior to such date, which would be from the Assessment Year 2013-14 to Assessment Year 2018-19 whereas, in the facts of the present case, the Assessing Officer has issued notice under section 153C of the Act for six years, i.e. from Assessment Year 2009-10 to Assessment Year 2014-15. It was submitted that the fact that such notices have been issued even for Assessment Year 2009-10 to Assessment Year 2012- 13 shows non-application of mind to the provisions of the first proviso to section 153C of the Act.

4. Lastly, it was submitted that in this case the search took place on 04.12.2014 and the Assessing Officer has recorded satisfaction that the material found during the course of search pertains to the petitioner. It was submitted that the search, having been carried out prior to the amendment in section 153C of the Act, the proceedings under section 153C of the Act are invalid.

5. It was submitted that upon receipt of the satisfaction note, the petitioner had raised objections in respect of the same and requested the respondent to pass a reasoned order disposing of the same. However, the respondent instead of deciding the objections, has straightaway proceeded to pass assessment order under section 143(3) read with section 153C read with section 153A(1)(b) of the Income Tax Act, 1961.

6. Having regard to the submissions advanced by the learned advocate for the petitioner, Issue Notice returnable on 04.02.2019. By way of ad-interim relief, the impugned assessment orders dated 22.12.2018 (Annexure "G" collectively to the petition) for Assessment Years 2009-10 to 2014-15 are hereby stayed.

Direct service is permitted.

(HARSHA DEVANI, J) (A. P. THAKER, J) B.U. PARMAR