

K.P. MOHAMMED SALIM.

A

v.

COMMISSIONER OF INCOME-TAX, COCHIN
(Civil Appeal Nos.2946-2956 of 2008)

APRIL 24, 2008

B

[S.B. SINHA AND LOKESHWAR SINGH PANTA, JJ.]

Income Tax Act, 1961 – s.127 – Power under – Held: Can be exercised in respect of block assessment.

Interpretation of Statutes – Purposive construction – Taxing statute – Held: To be construed in such manner so as to make it workable.

C

A search was conducted by the officers of the Income Tax Department in the residence as also in the business premises of the assessee, his sons and other associates, consequent whereupon, it was proposed to transfer the cases pertaining to the assessee to the Income Tax (Inv.) Circle, Calicut to facilitate effective and coordinate investigation. An order was passed to that effect by the Chief Commissioner of Income Tax, Bangalore under s.127(2) of the Income Tax Act. A notice was issued by the Assessing Officer under s.158BC of the Act to file a return setting forth the total income including the undisclosed income for the block period.

D

E

The assessee filed writ petition before High Court which was dismissed. Thereafter the return was filed. The assessment order was passed determining the purported undisclosed income of the assessee. The said order of the Assessing Officer, Calicut was challenged on the ground that he had no jurisdiction to make the block assessment as the authority remained with the Assessing Officer originally having the jurisdiction over the assessee. The High Court held that the provisions of s.127

F

G

H

A of the Act can also be resorted to for a block assessment.

In appeal to this Court, assessee contended that having regard to the definition of block assessment occurring in Chapter XIV-B of the Act, s. 127 thereof *ex facie* cannot have any application thereto.

B

Dismissing the appeal, the Court

HELD: 1. The power under s.127 of Income Tax Act, 1961 can be exercised in respect of a block assessment. [Para 12] [958-E]

C

2.1 In terms of Clause (a) of s.158B of the Act, a block period, not only includes ten years of assessment but also that portion of the assessment year in which assessment was to take place as on the date of the search. An order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest. Only because in s.127 the words "any case" has been mentioned, the same would not mean that an order of transfer cannot be passed in respect of cases involving more than one assessment year. [Paras 6, 9] [953-D; 954-A; 955-F, G]

D

E

2.2 It would not be correct to contend that only because explanation appended to s.127 refers to the word 'case' for the purpose of the said Section as also s.120, the source of power for transfer of the case involving block assessment is relatable only to s.120 of the Act. It is a well-settled principle of interpretation of statute that a provision must be construed in such a manner so as to make it workable. The word 'any' must be read in the context of the statute and for the said purpose, it may in a situation of this nature, means all. The principles of purposive construction for the said purpose may be resorted to. Thus, in the context of a statute, the word 'any' may be read as all in the context of the Income Tax Act for which the power of transfer has been conferred upon the

F

G

H

authorities specified under s.127. [Paras 9, 11] [956-A, B; 958-C, D] A

New India Insurance v. Nusli Neville Wadia (2007) 13 S.C.R. 598 – relied on.

2.3. The power of transfer is in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even s.127 of the Act is a machinery provision. It should be construed to effectuate a charging Section so as to allow the authorities concerned to do so in a manner wherefor the statute was enacted. [Para 10] [956-C, D] B C

3. S.127 and Chapter XIVB are supplemental to each other and the provisions of s.127 fill in the gap between the stage of ss.158BD and 158BG. The provisions of s.127(1) apply when the transfer is contemplated not only between the officers of the subordinate rank but also officers either with or without concurrent jurisdiction. Hence, even when the records are to be transmitted to the officer not higher in rank than the officer to whom the papers are handed over in the first instance under s.158BD, the provisions of s.127 are to be complied with to give notice. The provisions of s.158BH categorically states that all other provisions of the Act shall apply to assessment made under the said Chapter. S.127 of the Act, which falls under Chapter XIII would therefore mutatis mutandis apply to Chapter XIVB particularly when the jurisdiction of the Income Tax Authorities relates to passing an order of assessment. [Para 11] [957-B-D, F-H; 958-A, B] D E F

Mukutla Lalita v. Commissioner of Income Tax & Ors. (1997) ITR 226 23 – affirmed. G

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2946-2956 of 2008.

From the Judgment and Order dated 2.4.2004 of the High Court of Kerala at Ernakulam in I.T.A. No. 172/2000. H

A T.L.V. Iyer, Subramonium Prasad, Jay Kishor Singh, M.S. Anant and Vivek Gupta for the Appellant.

Gopal Subramanian, Arijit Prasad, S. Balaji and B.V. Blaram Das for the Respondent.

B The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

C 2. Interpretation/ application of Section 127 of the Income Tax Act, 1961 (for short, "the Act") vis-à-vis the provision regarding Block Assessment is in question in this appeal which arises out of a judgment and order dated 2.4.2004 passed by the High Court of Kerala at Ernakulam in ITA No. 172 of 2000 and WPC No. 23449 of 2003.

D A search was conducted by the Officers of the Income Tax Department in the residence as also in the business premises of the assessee, his sons and other associates, consequent whereupon, it was proposed to transfer the cases pertaining to the assessee to the Income Tax (Inv.) Circle, Calicut to facilitate effective and coordinate investigation. An order was passed to E that effect by the Chief Commissioner of Income Tax, Bangalore under Section 127(2) of the Act. A notice was issued by the Assessing Officer under Section 158BC of the Act to file a return setting forth the total income including the undisclosed income for the block period.

F The assessee filed a writ petition in the High Court of Karnataka challenging the said order of transfer of cases passed by the Chief Commissioner of Income Tax. The said writ petition was dismissed. Writ Appeals preferred thereagainst were also dismissed.

G A notice was thereafter issued by the assessing authority asking the assessee to file a return setting forth the total income including the undisclosed income for the block period. Pursuant thereto, the return was filed. The purported undisclosed income H of the assessee was determined. The said order of the

Assessing Officer, Calicut was challenged on the ground that he had no jurisdiction to make the block assessment as the authority therefor remained with the Assessing Officer originally having the jurisdiction over the assessee. A

3. A Division Bench of the High Court by reason of the impugned judgment opined that the provisions of Section 127 of the Act can also be resorted to for a block assessment. B

4. Mr. TLV Iyer, learned Senior Counsel appearing on behalf of the petitioner would submit that having regard to the definition of block assessment occurring in Chapter XIV-B of the Act, Section 127 thereof ex facie cannot have any application thereto. C

5. Mr. Gopal Subramaniam, the learned Additional Solicitor General appearing on behalf of the Revenue, however, would support the impugned judgment. D

6. The power to conduct a search by the authorities of the Income Tax Department in terms of Section 132 of the Act is not in dispute. It is further not in dispute that Chapter XIV-B shall apply in a case of this nature. Clause (a) of Section 158 B defines 'block period', which reads as under: E

“(a) “block period” means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted under Section 132 or any requisition was made under Section 132A and also includes the period upto the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made: F

Provided that where the search is initiated or the requisition is made before the 1st day of June, 2001, the provisions of this clause shall have effect as if for the words “six assessment years”, the words “ten assessment years” had been substituted;” G

H

A A block period, therefore, not only would include ten years of assessment but also that portion of the assessment year in which assessment was to take place as on the date of the search.

B 7. Chapter XIV-B provides for special procedure. Section 158 BC lays down the procedure for block assessment. Section 158 BD provides for taking into consideration undisclosed income of any other person. Section 158 BE provides for the time limit for completion of block assessment. Section 158 BH of the Act reads as under:

C **“158BH. Application of other provisions of this Act.** Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to assessment made under this Chapter.”

D Chapter XIV-B only lays down special procedure for assessment but thereby the effect and purport for which the assessment of income tax is done does not stand obliterated.

E 8. An order of transfer as noticed hereinbefore can be passed by the appropriate authority in terms of Section 127 of the Act, which reads as under:

F **“127. Power to transfer cases—**(1) The Director General or Chief Commissioner or Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.

G (2) Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same Director General or Chief Commissioner or Commissioner,-

H

- (a) Where the Directors General or Chief Commissioners or Commissioners to whom such Assessing Officers are subordinate are in agreement, then the Director General or Chief Commissioner or Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order; A B
- (b) Where the Directors General or Chief Commissioners or Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such Director General or Chief Commissioner or Commissioner as the Board may, by notification in the Official Gazette, authorize in this behalf. C D

xxx

xxx

xxx

Explanation: In Section 120 and this Section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year. E F

9. An order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest. G

Only because in the said provision the words "any case" has been mentioned, the same, in our opinion, would not mean that an order of transfer cannot be passed in respect of cases involving more than one assessment year. H

A It would not be correct to contend that only because explanation appended to Section 127 refers to the word 'case' for the purpose of the said Section as also Section 120, the source of power for transfer of the case involving block assessment is relatable only to Section 120 of the Act. It is a well-settled principle of interpretation of statute that a provision must be construed in such a manner so as to make it workable. When the Income Tax Act was originally enacted, Chapter XIVB was not in the statute book. It was brought in the statute book only in the year 1996.

B
C 10. The power of transfer is in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even Section 127 of the Act is a machinery provision. It should be construed to effectuate a charging Section so as to allow the authorities concerned to do so in a manner wherefor the statute was enacted.

D
E The question came up for consideration before a Division Bench of the Andhra Pradesh High Court in ***Mukutla Lalita vs. Commissioner of Income Tax & ors.*** Reported in [1997] ITR 226 23 wherein it was held:

F "Hence it can be imagined that an order has to be passed as to who shall be the Assessing Officer under Section 158BG in the case of a search. Such an order can be passed only by a higher officer who may be either the Commissioner or the Chief Commissioner, as the case may be. Hence, unless such an order has been passed, the Assessing Officer to whom the records have been handed over under section 158BD cannot ipso facto hand over the records to the Assistant Commissioner, until he has been chosen to act as the Assessing Officer under Section 158BG. For doing so, a procedure for transfer of the records and the passing of orders to that effect is necessary for the records to be transferred to the officer selected under section 158BG. It is in this context that the

H

provisions of Section 127 have to be resorted to. It is for such reason, we are unable to agree with learned standing counsel that Chapter XIV-B is a self-contained special provision relating to search procedures and assessments to which Section 127 has no application. The submission would have been correct if Section 127 and Chapter XIV-B were inconsistent with each other and it has to be held because of such reason that a specific provision like Chapter XIV-B would displace a general provision like section 127. But as we see it, both provisions are supplemental to each other and that the provisions of section 127 fill in the gap between the stage of sections 158BD and 158BG. The impugned order passed under Section 127 hence cannot be faulted by saying that the section was not applicable. It is also not correct, as has been contended, that giving a notice under Section 127 in the event of a proceeding under Chapter XIV-B would be a mere formality without any substance as records are to be compulsorily handed over to the officer under section 158BG. While in most of the cases the submission may be correct, yet it is conceivable that in some cases, reasonable opportunity being given as contemplated under Section 127(1) or (2) of the Act, the person concerned may be able to convince the authority giving the notice that he is actually unrelated or unconnected to the proceeding started under Chapter XIV-B. If such conclusion is reached, the authority at that stage may disassociate the person concerned from the specific proceeding in Chapter XIV-B and may not transfer the papers to the other officer. As has been fairly pointed out by learned standing counsel himself, the provisions of section 127(1) apply when the transfer is contemplated not only between the officers of the subordinate rank but also officers either with or without concurrent jurisdiction. Hence, even when the records are to be transmitted to the officer not higher in rank than the officer to whom the papers are handed over in the first instance under section 158BD,

A

B

C

D

E

F

G

H

A the provisions of section 127 are to be complied with to give notice.”

B 11. We agree with the opinion of the Division Bench, but we may also notice that the provisions of Section 158BH had not been brought to its notice, which categorically states that all other provisions of the Act shall apply to assessment made under the said Chapter. Section 127 of the Act, which falls under Chapter XIII would therefore mutatis mutandis apply to Chapter XIVB particularly when the jurisdiction of the Income Tax Authorities, inter alia, relates to passing an order of assessment.

C The word ‘any’ must be read in the context of the statute and for the said purpose, it may in a situation of this nature, means all. The principles of purposive construction for the said purpose may be resorted to. [See **New India Insurance vs. Nusli Neville Wadia** [(2007) 13 S.C.R. 598]. Thus, in the context of a statute, the word ‘any’ may be read as all in the context of the Income Tax Act for which the power of transfer has been conferred upon the authorities specified under Section 127.

D 12. We have no hesitation in arriving at the conclusion that E the power under Section 127 can also be exercised in respect of a block assessment. For the reasons aforementioned, we find no merit in these appeals. The appeals are dismissed accordingly with costs. Counsel’s fee assessed at Rs.25,000/- (Rupees twenty five thousand only).

F D.G.

Appeal dismissed.