

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS.382-383 OF 2009
(Arising out of S.L.P.(C) Nos.19393-19394/2007)

E.K. Lingamurthy & Anr.

...Appellant(s)

Versus

Settlement Commissioner (IT&WT) & Anr.

...Respondent(s)

ORDER

Leave granted.

In these appeals, we are required to consider the scope of Section 158BB(4) of Chapter XIV-B of the Income Tax Act, 1961 (for short, 1961 Act).

We quote hereinbelow Section 158BB, which refers to 'Computation of undisclosed income of a block period':

“158BB. (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;

(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 earlier 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 of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;

(b) xxx xxx xxx

(c) xxx xxx xxx

(2) & (3) xxx xxx

(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.”

In these Civil Appeals, we are concerned with the block period commencing from 1.4.1986 to 11.10.1996, when the search took place.

It is the case of the appellants-assessee that there is a conceptual difference between current losses and carried forward losses. Similarly, assessee contends that there a conceptual difference between current depreciation and carried forward

unabsorbed depreciation. It is the case of the assessee that Explanation (a) to Section 158BB does not rule out current year's losses or current year's depreciation; it only rules out the brought forward losses or unabsorbed depreciation under Section 32(2). According to the appellant, this difference is lost sight of by the Settlement Commission in its impugned judgment.

In order to answer the contention raised on behalf of the assessee, one has to examine the scheme of Section 158BB of the 1961 Act. It is not in controversy that Chapter XIV-B constitutes a Code by itself.

In this case, we are concerned with the computation of “undisclosed income” under Section 158BB of the Act. Section 158BB, inter alia, states that 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. “Total income” is defined in Section 2(45) to mean the total amount of income referred to in section 5, computed in the manner laid down in the Act. In other words, Chapter XIV does not rule out Chapter IV of the Act in the matter of computation of undisclosed income under Chapter XIV-B. It may be mentioned that ordinarily, in the case of regular assessment, the unit of assessment is one year consisting of twelve months whereas in the case of block assessment, the unit of assessment consists of ten previous years and the period upto the date of the search. Section 158BB provides for aggregation of income/loss of each previous year comprised in the block period. The block period assessment under Chapter XIV-B is in addition to regular assessment.

Analysing Section 158BB(4) read with Explanation (a) thereto, one finds that only brought forward losses of the past years under Chapter VI and unabsorbed

depreciation under Section 32(2) are to be excluded while aggregating the total income or loss of each previous year in the block period but set off of the loss suffered in any of the previous year in the block period against the income assessed in other previous years in the block period is not prohibited. In our view, the Settlement Commission had erred in disallowing the application of the assessee for set off of inter se losses and depreciation accruing in any of the previous year in the block period against the income returned/assessed in any other previous year in the block period.

For the aforesaid reasons, we set aside the impugned judgment of the High Court as well as the decision of the Settlement Commission and we remit the matter to the Settlement Commission for fresh computation of the undisclosed income under Section 158BB of the Income Tax Act, 1961 for the block period in question.

Civil Appeals are allowed accordingly, with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(AFTAB ALAM)

New Delhi,
January 22, 2009.