IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of Decision: 10.04.2015

1. **ITA No. 591 of 2009 (O&M)**

Commissioner of Income Tax-I, Ludhiana ..Appellant
versus
Mridula Prop. M/s Dhruv Fabrics, Ludhiana ..Respondent

2. **ITA No. 154 of 2010 (O&M)**

Commissioner of Income Tax-I, Ludhiana ..Appellant
versus
M/s Calcutta Knitwears, Ludhiana ..Respondent

3. **ITA No. 317 of 2010 (O&M)**

Commissioner of Income Tax-I, Ludhiana ..Appellant
versus
M/s Rajan Knit Fab.(P) Ltd. Ludhiana ..Respondent

4. **ITA No. 318 of 2010 (O&M) & Cross objections No.23-CII of 2015**

Commissioner of Income Tax-I, Ludhiana ..Appellant
versus
M/s Arora Fabrics (P) Ltd. Ludhiana ..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE.
HON'BLE MR. JUSTICE GURMIT RAM.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Rajesh Katoch, Advocate, for the appellants.
Mr. Pankaj Jain, Sr. Advocate with
Mr. Sachin Bhardwaj, Advocate, for the respondent in
ITA No. 318 of 2010 & in Cross Objections No. 23-CII of 2015.
None for the respondents in
ITA Nos. 317 of 2010 and 154 of 2010.
Mr. Alok Mittal, Advocate, for the respondent
in ITA No. 591 of 2009.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

These appeals raise common questions of law. The facts in these appeals are also similar. We, therefore, proceed to dispose of these appeals with this common order and judgment.

For convenience we will refer to the facts in ITA No. 591 of 2009.

2. The appeal is admitted on the following substantial question of law:-

> "*Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in holding the recording of satisfaction under section 158BD by the Assessing Officer of the person searched and consequent issuance of notice under section 158BD on02.09.2005 was belated and beyond the period prescribed by law when the section 158BD read with section 158BE does not specify that satisfaction has to be recorded by the Assessing Officer before completion of assessment under section 158BC of the Income Tax Act, 1961.*"

3. The appeal is against the order of the Income Tax Appellate Tribunal upholding the order of the C.I.T. (Appeals) pertaining to the block period 01.04.1998 to 05.02.2003. The challenge is to the decision of the CIT (Appeals) in deleting an addition of ₹ 91,96,083/- made by the Assessing Officer on account of certain transactions between the respondent and a group referred to as the Bhatia Group. These transactions were noticed during a search and seizure operation under section 132(1) of the Income Tax Act, 1961 (for short 'the Act'), conducted on the Bhatia Group.

4. The respondent carries on business as a manufacturer of hosiery goods in the firm name & style of M/s Dhruv Fabrics and as the sole proprietor thereof. The search operation was conducted under section 132(1) on 05.02.2003 on one S.K.Bhatia, a yarn dealer. The documents pertaining to the respondent were seized. The Assessing Officer issued a notice under section 158-BC dated 02.09.2005 which was served on the respondent on

08.09.2005. The respondent filed a return of income for the block period declaring undisclosed income as '*Nil*'. The Assessing Officer finalized the assessment under section 158-BD at ₹ 91,96,083/-. The Assessing Officer held that the sales referred to in the documents which were seized had not been recorded by the assessee in its books of account. He, therefore, brought the undisclosed income on account of the investment and profit elements in respect thereof to tax.

5. The C.I.T. (Appeals) upheld the respondent's contention that during the survey carried out under section 133-A at her premises on 19.02.2003, she had surrendered Rs. 2.75 crores and that the unaccounted transaction in question was covered by the same. The C.I.T. (Appeals) accordingly deleted the addition.

6. It was contended on behalf of the respondent before the Tribunal that the Assessing Officer lacked jurisdiction to make the impugned assessment as the department had not complied with the requirement of Section 158-BD of the Act. It was contended that before initiating proceedings under section 158-BD it was mandatory for the Assessing Officer making the block assessment in case of the person searched (i.e. S.K.Bhatia) to record the satisfaction that the undisclosed income detected belonged to the person other than the person searched i.e. the respondent in this case, before or at the time of making the assessment in respect of the person searched. The assessment in respect of the person searched (S.K.Bhatia) was made on 30.03.2005. The satisfaction was recorded only thereafter on 15.07.2005.

7. Sections 158-BC, BD and BE(2)(b) of the Act, in so far as they are relevant, read as under:-

Procedure for block assessment.—

158-BC. Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under Section 132-A, in the case of any person, then,—

[(*a*) the Assessing Officer shall—

(*i*) xx xx xx xx xx

(*ii*) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997 serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (*i*) of sub-section (1) of Section 142, setting forth his total income including the undisclosed income for the block period:

xx xx xx xx xx

xx xx xx xx xx

xx xx xx xx xx

Undisclosed income of any other person.

158-BD. —Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were requisitioned under Section 132-A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [2][under Section 158-BC] against such other person and the provisions of this Chapter shall apply accordingly.

Time limit for completion of block assessment.—

158-BE. [(1) The order under Section 158-BC shall be passed—

(a) xx xx xx

(b) xx xx xx

(2) The period of limitation for completion of block assessment in the case of the other person referred to in Section 158-BD shall be—

(a) xx xx xx

(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of

> search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997."

8. In the present case, the assessment in respect of the person with respect to whom the search was made under section 132 i.e. Bhatia Group was made on 30.03.2005. The Assessing Officer recorded his satisfaction that the undisclosed income belonged to the respondent i.e. the person other than the person with respect to whom the search was made under section 132 only thereafter on 15.07.2005.

9. The question before us is answered in favour of the appellant by an order and judgment of the Supreme Court dated 12.03.2014 in ***Commissioner of Income Tax v. M/s Calcutta Knitwears, Ludhiana***, ***2014(6) SCC 444*** and several other appeals. The respondent's appeal was also a part of the proceedings before the Supreme Court.

The issue that fell for consideration before the Supreme Court was: "at what stage of the proceedings under Chapter XIV-B does the Assessing Authority require to record his satisfaction for issuing a notice under Section 158BD of the Income Tax Act, 1961". The Supreme Court held as under:-

> **"41.** We would certainly say that before initiating proceedings under Section 158-BD of the Act, the assessing officer who has initiated proceedings for completion of the assessments under Section 158-BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a person was searched under Section 132 or the books of accounts were requisitioned under Section 132-A of the Act. This is in contrast to the provisions of Section 148 of the Act where recording of reasons in writing are a sine qua non. Under Section 158-BD the existence of cogent and demonstrative material is germane to the assessing officers' satisfaction in concluding that the seized documents belong to a person other than the searched person is necessary for initiation of action under Section 158-BD. The bare reading of the provision indicates that the satisfaction note could be prepared by the assessing officer either at the time of initiating proceedings for

completion of assessment of a searched person under Section 158-BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the assessing officer cannot prepare the satisfaction note to the effect that there exists income tax belonging to any person other than the searched person in respect of whom a search was made under Section 132 or requisition of books of accounts was made under Section 132-A of the Act. The language of the provision is clear and unambiguous. The legislature has not imposed any embargo on the assessing officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person.

42. Further, Section 158-BE(2)(*b*) only provides for the period of limitation for completion of block assessment under Section 158-BD in case of the person other than the searched person as two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search carried on after 1-1-1997. The said section thus, neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation of the satisfaction note under Section 158-BD and consequent issuance of notice to the other person.

43. In the lead case, the assessing officer had prepared a satisfaction note on 15-7-2005 though the assessment proceedings in the case of a searched person, namely, S.K. Bhatia were completed on 30-3-2005. As we have already noticed, the Tribunal and the High Court are of the opinion that since the satisfaction note was prepared after the proceedings were completed by the assessing officer under Section 158-BC of the Act which is contrary to the provisions of Section 158-BD read with Section 158-BE(2)(*b*) and therefore, have dismissed the case of the Revenue. In our considered opinion, the reasoning of the learned Judges of the High Court is contrary to the plain and simple language employed by the legislature under Section 158-BD of the Act which clearly provides adequate flexibility to the assessing officer for recording the satisfaction note after the completion of proceedings in respect of the searched person under Section 158-BC. Further, the interpretation placed by the courts below by reading into the plain language of Section 158-BE(2)(*b*) such as to extend the period of limitation to recording of satisfaction note would run counter to the avowed object of introduction of the Chapter to provide for cost-effective, efficient and expeditious completion of search assessments and avoiding or reducing long-drawn proceedings.

> **44.** In the result, we hold that for the purpose of Section 158-BD of the Act 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:-
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> (*a*) at the time of or along with the initiation of proceedings against the searched person under Section 158-BC of the Act;
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> (*b*) along with the assessment proceedings under Section 158-BC of the Act; and
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> (*c*) immediately after the assessment proceedings are completed under Section 158-BC of the Act of the searched person."
>
> ....(emphasis supplied)

10. Mr. Mittal and Mr. Jain, learned counsel appearing on behalf of the respondents in these appeals rightly agreed that in view of the judgment of the Supreme Court the Assessing Officer was entitled to record his satisfaction even after the assessment proceedings were completed under Section 158-BC of the Act of the searched person. They, however, contended that the satisfaction must be recorded not at any time after the assessment proceedings are completed under section 158-BC of the Act of the searched person but immediately thereafter.

11. The question that falls for our consideration, therefore, is the meaning of the words "immediately after" in the judgment. The Supreme Court did not specify any outer limit. In our view, the words indicate that the satisfaction note must be prepared as soon as practicably possible and without undue delay after the assessment proceedings are completed under section 158-BC of the Act of the searched person. This must necessarily depend upon the facts of each case. We do not read the words "immediately after" to mean something as drastic or rigid as the very next moment or even the very next day or even week after the completion of the assessment proceedings under

section 158 BC of the searched person. The error in the respondent's submission is in reading the words "immediately after" so rigidly arisen on account of considering them in isolation instead of reading the judgment as a whole. For instance, in paragraph 43, the Supreme Court observed:-

> "Section 158-BD of the Act which clearly provides adequate flexibility to the assessing officer for recording the satisfaction note after the completion of proceedings in respect of the searched person under Section 158-BC." (*emphasis supplied*).

12. It is neither possible nor necessary to have any strict formula in this regard. For instance, there may be cases where after the assessment proceedings are completed under section 158-BC of the Act of the searched person, the Assessing Officer is indisposed for some reason such as on the ground of health. It would not be unreasonable if the satisfaction is recorded soon after he recovers. The Assessing Officer may have enormous burden of work upon completing the assessment proceedings under Section 158-BC of the Act. It would be permissible if he took some time after completing such pending work to prepare the satisfaction note. Each case must be judged upon its own facts.

13. Our view is supported by the judgment of a Division Bench of this Court dated 14.02.2011 in Income Tax Appeal No. 147 of 2010 ***Commissioner of Income Tax, Faridabad v. M/s Om Parkash and sons.*** The Division Bench held as under::-

> *"17. ....As regards delay in issuing notice to the assessee, we find merit in the contention that it was a case which involved a huge fraud of tax evasion where business of searched person was to give accommodation entries resulting in tax evasion to the extent of Rs.132 Crores in total, spread over the cases of various assesses in all over*

India. The coordination by the assessing officer of the searched person was time consuming affair. In these circumstances, delay cannot be held to be unreasonable and cannot be held to vitiate the assessment. No doubt once satisfaction is formed during block assessment of searched person, action must be promptly taken as submitted on behalf of the assessee and as held by the Gujarat High Court in Khandubhai Vasanji Desai and others Vs. DCIT and another (1999) 236 ITR 73. Whether or not action was prompt depends upon circumstances of each case."

14. In the present case, the notices were issued to about 70 persons on the documents seized from the Bhatia Group. The Assessing Officer, therefore, had to take action against the 70 persons on account of the same search operation under Section 132 of the Act. He could not possibly do so the same day or even by the next day. The paperwork in such cases is itself enormous. Moreover, this presumably was not the only work that the Assessing Officer had. A period of three and a half months in the facts of this case was entirely reasonable. The respondent is in any event not prejudiced on account of the satisfaction having been prepared thereafter.

In these circumstances, the appellant having taken three and a half months to record his satisfaction cannot be held to be unreasonable.

15. The appellant contended that the satisfaction was recorded on 15.07.2005. If that is established, as held earlier, it is sufficient compliance with the provisions of Section 158-BD of the Act. The respondents, however, contended that there was never any satisfaction recorded at all. The orders of the Assessment Officer and of C.I.T. (Appeals) refer to the satisfaction note of 15.07.2005. The issue as to whether the same is genuine as contended by

the appellant or fabricated and false as contended by the respondents may be considered by the Tribunal.

16. All the appeals are accordingly allowed. The question of law is answered in favour of the appellant. The appeals are restored to the file of the ITAT and shall be decided on-merits by the Tribunal. There shall be no order as to costs.

17. The cross-objections filed in ITA No. 318 of 2010 are accordingly dismissed.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

(GURMIT RAM)
JUDGE

10.04.2015.
'ravinder'

Whether to be referred to the reporter or not.	**√Yes**	**No.**