

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 23rd May, 2011

% Judgment pronounced on: 30th May, 2011

+ 1. ITA No.582/2008

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr.Sanjeev Sabharwal, Adv.

versus

RADHEY SHYAM BANSAL Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr.Anikit Gupta, Adv.

2. ITA No.398/2008

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Sanjeev Sabharwal, Adv.

versus

ONE-UP SHARES & STOCK BROKING P. LTD... Respondent
Through: Ms. Kavita Jha, Adv.

3. ITA No.578/2008

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr.Sanjeev Sabharwal, Adv.

versus

MANOJ BANSAL Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

4. ITA No.583/2008

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

SUKESH KUMAR GUPTA Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

5. ITA No.287/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

SUDHIR DHINGRA Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

6. ITA No.355/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Adv.

versus

GULSHAN KUMAR LUTHRA Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

7. ITA No.402/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

SUKESH KUMAR GUPTA Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

8. ITA No.670/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

ANIL KUMAR BANSAL Respondent
Through: None.

9. ITA No.711/2009

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

SADHU RAM AGGARWAL Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

10. ITA No.857/2009

THE COMMISSIONER OF INCOME TAX VIII Appellant
Through: Mr. Chandramani Bhardwaj, Adv.
versus

H.P. GOEL Respondent
Through: None.

11. ITA No.1075/2009

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr. Chandramani Bhardwaj, Adv.
versus

BHARAT BHUSHAN JAIN Respondent
Through: None.

12. ITA No.1279/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Sanjeev Sabharwal, Adv.
versus

S.P. BHAGAT AND SONS HUF Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr.Anikit Gupta, Adv.

13. ITA No.149/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Sanjeev Sabharwal, Adv.
versus

SMT. BADAMI DEVI BAFNA Respondent
Through: Dr. Rakesh Gupta, Mr. Ashwani
Tanjeja, Ms. Poonam Ahuja & Mr.
Johnson Bora, ADvs.

14. ITA No.154/2010

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr. Abhishek Maratha, Adv.
versus

CHAMUNDA SECURITIES PVT. LTD. Respondent
Through: None.

15. ITA No.748/2010

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Mr. Abhishek Maratha, Adv.
versus

VEENA GUPTA Respondent
Through: None.

16. ITA No.279/2010

THE COMMISSIONER OF INCOME TAX XIII Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.
versus

SANJAY RAI CHOWDHARY Respondent
Through: Dr. Rakesh Gupta, Mr. Ashwani
Tanjeja, Ms. Poonam Ahuja & Mr.
Johnson Bora, ADvs.

17. ITA No.1145/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

RASHMI MONGA Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

18. ITA No.196/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

MS. ANU AGGARWAL Respondent
Through: None.

19. ITA No.655/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

GOLDEDGE ESTATES AND
INVESTMENTS LTD. Respondent
Through: Dr. Rakesh Gupta, Mr. Ashwani
Tanjeja, Ms. Poonam Ahuja & Mr.
Johnson Bora, ADvs.

20. ITA No.1420/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Adv.

versus

RAGHUBIR SINGH GARGH Respondent
Through: Dr. Rakesh Gupta, Mr. Ashwani
Tanjeja, Ms. Poonam Ahuja & Mr.
Johnson Bora, ADvs.

21. ITA No.1421/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Abhishek Maratha, Adv.

versus

SECURITIES BROKERS OF INDIA LTD. Respondent
Through: None.

22. ITA No.550/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

VYOM FINANCIAL SERVICES PVT. LTD. Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

23. ITA No.554/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

VYOM FINANCIAL SERVICE PVT. LTD. Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

24. ITA No.1313/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

MONIKA SAXENA Respondent
Through: None.

25. ITA No.1326/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

MONIKA SAXENA Respondent
Through: None.

26. ITA No.777/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

GALLRI DEVI Respondent
Through: None.

27. ITA No.75/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Abhishek Maratha, Adv.

versus

MADHU GUPTA Respondent
Through: Mr.Manu K. Giri and Mr.Rajesh
Mahna, Adv.

28. ITA No.198/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Sanjeev Sabharwal, Adv.

versus

GAURI SHANKAR AGGARWAL Respondent
Through: None.

29. ITA No.237/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Abhishek Maratha, Adv.

versus

PRASAD AND CO. PVT. LTD. Respondent
Through: None.

30. ITA No.374/2010

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr.Abhishek Maratha, Adv.

versus

M/S SHRI CHAMUNDA SECURITIES PVT. LTD..... Respondent
Through: None.

31. ITA No.212/2011

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

UDDHAN PROPERTIES LTD. Respondent
Through: None.

32. ITA No.53/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Adv.

versus

SMT. KULDEEP KAUR Respondent
Through: None.

33. ITA No.102/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Adv.

versus

LAKHBIR SINGH (HUF) Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Advs.

34. ITA No.477/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

LAJ BHAGAT Respondent
Through: Mr. Manu K. Giri and Mr. Rajesh
Mahna, Advs.

35. ITA No.483/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

NARENDER UPPAL Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Advs.

36. ITA No.611/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

RAJAT BHANDARI Respondent
Through: Mr.Manu K. Giri and Mr.Rajesh
Mahna, Advs.

37. ITA No.822/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

PARAMJIT SINGH Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr.Anikit Gupta, Advs.

38. ITA No.996/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

ALKA BHANDARI Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr.Anikit Gupta, Advs.

39. ITA No.1064/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

V.K. NARANG HUF Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

40. ITA No.1098/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchi Aggarwal, Adv.

versus

S.S. DHANJAL Respondent
Through: Mr. Manu K. Giri and Mr. Rajesh
Mahna, Adv.

41. ITA No.1119/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Sanjeev Sabharwal, Adv.

versus

ANITA AGGARWAL Respondent
Through: Mr. Salil Kapoor, Mr. Sanat Kapoor
and Mr. Anikit Gupta, Adv.

42. ITA No.1163/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Prem Lata Bansal, Sr. Adv. with
Mr. Ruchir Bhatia, Adv.

versus

ASHOK KUMAR AND SONS HUF Respondent
Through: None.

43. ITA No.1318/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

SUNIL JAIN Respondent
Through: None.

44. ITA No.1329/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: None.

versus

RENU VERMA Respondent
Through: None.

45. ITA No.1373/2009

THE COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Chandramani Bhardwaj, Adv.

versus

SUNIL JAIN

..... Respondent

Through: None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJIV KHANNA

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| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

In this batch of appeals under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') preferred by the revenue. ITA No.582/2008, Commissioner of Income Tax v. Radhey Shyam Bansal has been treated as the lead case. It is stated that the relevant facts in all appeals are identical/similar, though details and particulars may be different. Four questions have been set out as substantial questions of law, but in the course of hearing, learned counsel appearing for the revenue have stated that the real questions that emerge for consideration are as follows:

- “A. Whether the Assessing Officer is bound to record satisfaction within the meaning of Section 158BD of the Act, during the process of Assessment of the person searched under Section 158BC of the Act?
- B. Whether satisfaction as contemplated in Section 158BD of the Act has been duly recorded regard being had to be letter dated 15.7.2003 or in the assessment order, wherein undisclosed income of the respondent-assessee has been reflected and negation of such satisfaction by the Income Tax Appellate Tribunal is erroneous and perverse for not accepting such satisfaction?”

2. At the very outset, we may set out the facts from ITA No.582/2008 for the sake of clarity and convenience. As is evincible from the narration, there was a search under Section 132 of the Act in the premises of one Manoj Aggarwal of Baldev Park, Delhi on 30.8.2000. In the course of the search, several materials were seized on the basis of which a block assessment was completed in the case of Manoj Aggarwal under Section

158BC of the Act on 29.8.2002. On 15.7.2003, a letter was sent by the assessing officer of Manoj Aggarwal to the assessing officer of the respondent – assessee, namely, Radhey Shyam Bansal to the effect that the said assessee was acting as a mediator in transactions involving substantial tax evasion by giving bogus accommodation entries to various persons.

3. After receipt of the communication from the assessing officer of Manoj Aggarwal, the assessing officer of the respondent sent a notice on 22.3.2004 purportedly under Section 158B of the Act. The respondent was called upon to file a block return within 30 days of the receipt of the notice. The respondent, as is evident, filed the requisite return for the period from the assessment year 1991-92 to the assessment year 2001-02 (upto the 30.8.2000, the date of search) in the prescribed form declaring the income at Rs. Nil as undisclosed income. The assessing officer framed an order of assessment and determined that there was undisclosed income earned by way of commission of Rs.50,85,315/-. In addition, he also included Rs.9,81,29,575/- as unexplained investment under Section 69 of the Act on protective basis on the footing that the assessee had paid cash to Manoj Aggarwal.

4. Being dissatisfied with the order of assessment, the respondent preferred an appeal before CIT (Appeals) putting forth number of contentions including the submission that the notice under Section 158B was barred by limitation; that the assessing officer assessing the searched person (Manoj Aggarwal) had not recorded any satisfaction under Section 158BD; that no opportunity to cross-examine the person on the basis of whose statement allegations were made against him; that no opportunity was afforded to him to rebut the material collected and utilized against him; and that the rate of commission adopted by the assessing officer was totally exaggerated and not based on any material evidence on record.

5. The CIT (A) did not accept the contentions of the respondent – assessee that no satisfaction was recorded by the assessing officer in the case of the searched person. The first appellate authority took note of the fact that the assessing officer assessing Manoj Aggarwal had communicated vide letter dated 15.7.2003 to the assessing officer having jurisdiction over the assessee, in which he had mentioned that the diaries seized from the possession of Manoj Aggarwal which established that the assessee Radhey Shyam Bansal was a mediator who had provided book entries to various

beneficiaries; and that there was evidence of cash amounts were received by Manoj Aggawal from Radhey Shyam Bansal. On the aforesaid basis, the CIT(A) came to the conclusion that the communication dated 15.7.2003 amounted to the satisfaction of the assessing officer assessing the searched person as required by Section 158BD. Be it noted, the other contentions raised by the respondent were also negated.

6. Grieved by the aforesaid order of the CIT(A), the respondent – assessee approached the tribunal in IT(SS) A.No.12/Del/2007 and in the appeal it was urged that the notice under Section 158BD was not issued within a reasonable period of time inasmuch as a period of nearly 19 months had elapsed from the date of completion of block assessment of Manoj Aggarwal before the notice under Section 158BD issued; that no satisfaction was recorded by the assessing officer assessing Manoj Aggarwal as required under Section 158BD of the Act; that the letter dated 15.7.2003 written by the said assessing officer to the assessing officer having jurisdiction over the respondent -assessee was written much after the block assessment was completed in the case of Manoj Aggarwal, which was against the statutory provision and in any case, no satisfaction was discernible from the said

letter; that the order of assessment was vitiated being violative of principle of natural justice since the assessing officer had collected material behind the back of the assessee without confronting the assessee with the same for rebuttal; and that the order of assessment had travelled beyond the seized materials.

7. The aforesaid contentions of the assessee-respondent before the tribunal was resisted by the revenue contending, inter alia, the recording of satisfaction was in accord with the stipulations enshrined in Section 158BD of the Act; that the initiation of the proceeding was done within a reasonable period of time; that the principles of natural justice had been religiously followed; and that the order of assessment did not suffer from any infirmity.

8. The tribunal, considering the contentions of the learned counsel for the parties and upon scrutiny of the documents brought on record, posed the question whether recording of satisfaction by the assessing officer assessing the person searched under Section 132 of the Act that any undisclosed income belongs to any person other than the searched person is mandatory or not. The tribunal relying on the decision in *Manish Maheshwari v.*

Assistant Commissioner of Income Tax & anr., (2007) 289 ITR 341 (SC), came to hold that no satisfaction had been recorded by the assessing officer assessing Manoj Aggarwal, as there is no reflection of satisfaction in the order of assessment, and further the notice dated 22.3.2004 issued under Section 158BC read with Section 158BD did not refer to any satisfaction of the assessing officer of Manoj Aggarwal. It is noteworthy that the tribunal referred to the satisfaction note dated 22.3.2004 which is a note recorded by the assessing officer of the assessee – respondent but not that of the assessing officer of Manoj Aggarwal who is the searched person. The tribunal also referred to the letter dated 15.7.2003 written by DCIT Central, New Delhi the assessing officer having jurisdiction on Manoj Aggarwal to the assessing officer of the respondent-assessee and came to hold that the assessing officer of Manoj Aggarwal could not have made such a communication after the assessment of the person searched was completed. Be it noted, to arrive at the said conclusion the tribunal placed reliance on the decision rendered by the Co-ordinate Bench at Chandigarh in the case of ***ACIT, Yamunanagar vs. Kishore Lal Balwant Rai, Jagdhari*** decided on 29.6.2007. In the view of the tribunal, the assessing officer of Manoj

Aggarwal had become functus officio on passing the assessment order and hence, could not have recorded any satisfaction. After so holding, the tribunal proceeded to enquire whether the notice under Section 158B required to be issued within a reasonable time and there was delay rendering the whole proceeding vulnerable in law. The tribunal took note of the fact that the block assessment of Manoj Aggarwal was completed on 29.8.2002 but the notice to the respondent-assessee under Section 158BD was issued only on 22.3.2004, i.e., after 19 months later. The tribunal placing reliance on the decision in *Khandubhai Vasanji Desai and others v. DCIT, (1999) 236 ITR 73 (Gujarat)* came to hold that notice was issued well beyond a reasonable period.

9. Being of the aforesaid view, the tribunal set aside the order of assessment, which had been concurred with by the first appellate authority, and allowed the appeal preferred by the assessee.

10. Regard being had to the questions framed, we are only required to address whether the recording of satisfaction of the assessing officer of Manoj Aggarwal is mandatory and further whether in the facts and

circumstances of the case the satisfaction has been recorded.

11. In the case of ***Manish Maheshwari*** (supra), a two-Judge Bench of the Apex Court dealt with invocation of provision of block assessment against a person other than the person whose premises were searched under Section 132 of the Act. Their Lordships referred to Section 132 and sub-section (1A) of Section 132, Rule 112 of the IT Rules, 1962 and came to hold as follows:

“6. Search and seizure is to be made in terms of r.112 of the IT Rules, 1962. For the purpose of invoking the said provision, special procedure for assessment is laid down in Chapter XIV-B, the conditions precedent where for as laid down must be satisfied. Secs.158BC and 158BD read as under:

“158BC. Procedure for block assessment. - Where any search has been conducted under s.132 or books of account, other documents or assets are requisitioned under s. 132A, in the case of any person, then:

(a) the AO shall -

(i) in respect of search initiated or books of accounts or other documents or any assets requisitioned after the 30th day of June, 1995 but before 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;

(ii) in respect of search initiated or books of accounts 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 cl. (1) of sub-s. (1) of s.142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under s. 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b) the AO shall proceed to determine the undisclosed income of the block period in the manner laid down in s.158BB and the provisions of s.142, sub-ss. (2) and (3) of s.143 and s.144 shall, so far as may be, apply;

(c) the AO, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

(d) the assets seized under s.132 or requisitioned under s. 132A shall be retained to the extent necessary and the provisions of s.132B shall apply subject to such modifications as may be

necessary and the references to 'regular assessment' or 'reassessment' in s.132B shall be construed as references to 'block assessment'."

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

7. Condition precedent for invoking a block assessment is that a search has been conducted under s.132, or documents or assets have been requisitioned under s.132A. The said provision would apply in the case of any person in respect of whom search has been carried out under s.132A or documents or assets have been requisitioned under s.132A. Sec. 158BD, however, provides for taking recourse to a block assessment in terms of s.158BC in respect of any other person, the conditions precedent where for are : (i) Satisfaction must be recorded by the AO that any undisclosed income belongs to any person, other than the person with respect to whom search was made under s.132 of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the AO having jurisdiction over such other person; and (iii) The AO has proceeded under s.158BC against such other person.

The conditions precedent for invoking the provisions of

s.158BD, thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under s.132A of the Act.

8. A taxing statute, as is well-known, must be construed strictly. In *Sneh Enterprises v. Commissioner of Customs*, (2006) 7 SCC 714, it was held:

“While dealing with a taxing provision, the principle of 'strict interpretation' should be applied. The Court shall not interpret the statutory provision in such a manner which would create an additional fiscal burden on a person. It would never be done by invoking the provisions of another Act, which are not attracted. It is also trite that while two interpretations are possible, the Court ordinarily would interpret the provisions in favour of a tax-payer and against the Revenue.”

9. Yet again in *J. Srinivasa Rao v. Govt. of A.P. and Anr.* 2006 (13) SCALE 27, it was held:

“In a case of doubt or dispute, it is well-settled, construction has to be made in favour of the taxpayer and against the Revenue.”

10. In *Ispat Industries Ltd. v. Commr. of Customs JT* 2006 (12) SC 379 : 2006 (9) SCALE 652, this Court opined:

"In our opinion if there are two possible interpretations of a rule, one which subserves the object of a provision in the parent statute and the other which does not, we have to adopt the former, because adopting the latter will make the rule ultra

vires the Act.”

11. Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of s.158BD of the Act. The said notice does not record any satisfaction on the part of the AO. Documents and other assets recovered during search had not been handed over to the AO having jurisdiction in the matter.

X X X X

16. As the AO has not recorded its satisfaction, which is mandatory; nor has it transferred the case to the AO having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.”

12. On a perusal of the aforesaid decision, it is graphically clear that the recording of satisfaction by the assessing officer of the searched person is a condition precedent. Satisfaction must be recorded by the said assessing officer that any undisclosed income belongs to any person, other than the person searched. Thereafter the assessing officer of the third person can proceed against his assessee under Section 158BC. The documents, books of accounts or assets seized or requisitioned have to be handed over to the assessing officer of the third person.

13. Once, it is held that the recording of satisfaction as per the ratio laid down in *Manish Maheshwari* (supra) is a condition precedent, it is to be seen whether any such satisfaction of the assessing officer of Manoj Aggarwal is perceivable from the record. Learned counsel for the revenue has invited our attention to the order of assessment order of Manoj Aggarwal, the letter issued by the assessing officer dated 15.7.2003 and the note appended to the assessment order to build the edifice that the satisfaction was recorded and the tribunal has erroneously come to hold that there was no satisfaction. Learned counsel for the revenue has criticized the finding of the tribunal that the assessing officer had become functus officio after a particular stage. Mr. Salil Kapoor, learned counsel for the respondent fairly stated that this Court may not address the issue whether the assessing officer of Manoj Aggarwal had become functus officio or not and may only dwell upon the issue whether there is recording of satisfaction on the basis of the material brought on record. It is contended by him that note dated 29.8.2002 which is purported to have been written by the assessing officer of Manoj Aggarwal was not relied before the tribunal or by the CIT(A). Additional/new evidence cannot be produced before the High

Court for the first time without any application under Order 41 Rule 27 of the Code of Civil Procedure, 1908. Further this note is an antedated one and such a finding has been recorded by the tribunal in ***SMC Share Brokers Ltd. v. Deputy Commissioner of Income Tax*** in ITA No.250/Del/2005, (2007) 109 TTJ (Del) 700. Learned counsel would contend that the said order passed by the tribunal was challenged before this Court, wherein the Division Bench had dismissed the appeal and the revenue had chosen not to challenge the finding recorded by the tribunal and, therefore, the said note cannot be placed reliance upon. This decision of the Division Bench is reported in ***Commissioner of Income Tax v. SMC Share Brokers Ltd.*** (2007) 288 ITR 345 (Del).

14. To appreciate the controversy, first we shall refer to the order of assessment framed against the Manoj Aggarwal, the person who has searched. Learned counsel for the revenue has drawn our attention to paragraph 2.7 to 2.10 from the order of block assessment order in case of Manoj Aggarwal which was framed on 29.8.2008. The said paragraphs read as under:

“2.7 Apart from the admission of Sh. Manoj Aggarwal, the various documents seized during the course of search details of which are given below further established that he is a name lender involved in the business of giving accommodation entries. Sh. Manoj Aggarwal has accepted all these papers to be related to his business of accommodation book entries.

2.8 Annexures A-16, A-18 & A-36 seized from the premises at 5A/12, Ansari Road, Daryaganj, Delhi are cashbooks of the business of accommodation entries. These give details of the cash received on the receipts side and the utilization thereof on the payments side.

2.9 Annexure A-19, A-20 & A-21 seized from the premises at 5A/12, Ansari Road, Daryaganj, Delhi are ledger accounts of the mediators through whom the transactions of accommodation entries has been arranged. These ledgers give the details of the name of the mediator, the date on which the cheque is issued, the name of the beneficiary, the cheque no., the amount thereof and the bank and branch from which it is issued.

2.10 Various pages of Annexures A-1, A-8, A-10, A-11, A-12, A-15 & A-36 seized from the premises at 5A/12, Ansari Road, Daryaganj, Delhi, various pages of Annexure A-1 seized from the residence of Sh. Manoj Aggarwal at C-25/2, East Baldev Park, Delhi, Annexure A-2 seized from the office of Sh. Manoj Aggarwal at 7/22, Ansari Road, Daryaganj, Delhi are reconciliation accounts of the various mediators. These accounts give the details of the cash received from the mediators and the details of the cheques issued to the various beneficiaries.”

15. On a perusal of the aforesaid, we do not perceive any satisfaction by

the assessing officer of Manoj Aggarwal that any undisclosed income belongs to the respondent assessee. The said satisfaction is not reflected or stated in the said paragraphs.

16. Presently, we shall proceed to deal with the communication sent by the assessing officer of Manoj Aggarwal to the assessing officer of the respondent – assessee. The said letter is dated 15.7.2003. The said letter indicates that a communication was made by the assessing officer of Manoj Aggarwal to the assessing officer assessing the respondent-assessee to the effect that the assessee was acting as a mediator in the transactions involving substantial tax evasion by giving bogus accommodation entries to various persons. It is submitted by Mr.Kapoor, learned counsel for the assessee that the said letter does not remotely suggest any satisfaction. In fact the revenue has also not treated this letter as recording of satisfaction, but the letter is a mere communication.

17. The letter/communication dated 15.7.2003 by the assessing of Manoj Aggarwal to the assessing officer of the respondent assessee reads as follows:

“1) Various diaries have been seized from the possession of Sh. Manoj Aggarwal which establish that Radhey Shyam Bansal is a mediator for providing accommodation book entries by Sh. Manoj Aggarwal. The quantum of transaction done by him as per these documents is given in Annexure-A. Photocopies of these paper are enclosed in Annexure-B.

2) There are evidences of cash having been received by Mr. Manoj Aggarwal from Radhey Shyam Bansal. The summary of the amounts so received as per various seized documents is given in Annexure-C. The photocopies of these documents are provided as per Annexure-D.”

18. Before we advert to and analyse whether the letter dated 15.7.2003 really conveys satisfaction as is understood in the anatomical base of the provision and also under the backdrop of terms satisfaction mean in law we think it appropriate to refer to Section 158BD of the Act. The said provision has already been reproduced in the decision in ***Manish Maheshwari*** (supra).

19. On a plain reading of the aforesaid provision, it is vivid that for the purpose of initiation of block assessment proceeding against a third person in respect of whom search has not been conducted certain conditions precedents are to be followed and they are mandatory. They have to be

construed and complied absolutely strictly. The first pre-condition as the provision envisages is that the assessing officer of the person searched has to be satisfied that some undisclosed income belongs to a third person. Thus, the relevant expressions pertaining to condition precedent are “undisclosed income” and “which belongs to a person other than the person searched”. As in the case at hand, we are actually concerned with the satisfaction we think it appropriate to refer to the said terms, namely, “undisclosed income” which have been defined in Section 158-B(b) which reads as follows:

“158-B. Definitions.—In this Chapter, unless the context otherwise requires,—

(b) “undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act [, or any expense, deduction or allowance claimed under this Act which is found to be false].”

20. The aforesaid definition is on a broad canvass. It not only includes income which has not been disclosed but income which would not have been disclosed by a third person. It must be income and can be money, bullion, jewellery or valuable articles or thing which has not been disclosed by the third person and would not have been disclosed by the third person under the Act. It can include entry in the books of account or document or transaction which represents wholly or partly income or profit which has not been disclosed or would not have been disclosed under the Act by the third person. After amendment of Section 158B(b) by Finance Act 2002 with retrospective effect from 1st July, 1995, it can also include an expense, deduction or allowance which is found to be false.

21. The word ‘satisfaction’ has not been defined in the Act. The ‘satisfaction’ by its very nature must precede before the papers/documents are sent by the Assessing Officer of the person searched to the Assessing Officer of the third person. Mere use or mention of the word ‘satisfaction’ in the order/note will not meet the requirement of concept of satisfaction as used in Section 158BD. The satisfaction has to be in writing and can be gathered from the assessment order, if it is so mentioned/recorded, or from

any other order, note or record maintained by the Assessing Officer of the person searched. The word “satisfaction” refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/form when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available. The word ‘satisfied’ occurs in many a statute and has its connotation. The term “is satisfied” means simply makes up its mind [per Lord Pearson in *Blyth v. Bivth* (1966) 1 ALL E.R. 524 (541)]. Dixon J. has defined it as ‘actual persuasion’. It fundamentally means a mind not troubled by doubt or to adopt the language of Smith J. ‘a mind which has reached a clear conclusion’ (see *Angland v. Payne* (1944) N.Z.L.R. 610 (626)). The Assessing Officer is satisfied when he makes his mind or reaches a clear conclusion when he takes a prima facie view that the material available establishes ‘undisclosed income’ of a third party. Assessing Officer must reach a clear conclusion that good ground exists for the Assessing Officer of the third person to initiate proceedings as material before him shows or would establish ‘undisclosed income’ of a third person. At this stage, as the proceedings are at the very initial state, the ‘satisfaction’ neither is required

to be firm or conclusive. The 'satisfaction' required is to decide whether or not block assessment proceedings are required to be initiated. But 'satisfaction' has to be founded on reasonableness. It cannot be capricious satisfaction. Though, it is a subjective satisfaction, it must be capable of being tested on objective parameters. The opinion though tentative, however, cannot be a product of imagination or speculation. It cannot be spacious or mercurial. It should not be a mere pretence and should be made in good faith rather than suspicion. Reliability, credibility or for that matter what weight has to be attached to the material, depends upon the subjective satisfaction of the Assessing Officer but definitely it is subject to scrutiny whether the satisfaction has a rational nexus or a relevant bearing to the formation of satisfaction and is not extraneous or irrelevant. The satisfaction must reflect rational connection with or relevant bearing between the material available and undisclosed income of the third person. The rational connection postulates and requires satisfaction of the Assessing Officer that a third person has 'undisclosed income' on the basis of evidence or material before him. The material itself should not be vague, indefinite, distinct or remote. If there is no rational or intangible nexus between the

material and the satisfaction that a third person has ‘undisclosed income’, the conclusion would not deserve acceptance. Then the satisfaction is vitiated. It is to this limited extent that the satisfaction can be gone into and examined. The satisfaction though subjective, must meet the aforesaid criteria.

22. While defining the scope and ambit of Section 158BD of the Act, we have followed the rationale and judgments of the Supreme Court under Section 147 of the Act. Section 158BD uses the word ‘satisfaction’, while Section 147 uses the words ‘reason to believe’. But the underline role of the Assessing Officer and the principle, requirement or pre-conditions are the same.

23. In view of the aforesaid legal position we can now examine the letter dated 15th July, 2003 which was communicated by the Assessing Officer of the searched assessee to the assessing officer of the respondent. The question is whether the aforesaid letter can be regarded as “satisfaction” as required under Section 158BD, i.e. satisfaction of the Assessing Officer of Manoj Aggarwal that there is material that the respondent assessee had

undisclosed income. The first paragraph of the aforesaid letter states that the diary seized from the possession of Manoj Aggarwal establishes that the respondent assessee had acted as a mediator for providing accommodation book entries by Manoj Aggarwal. The second sentence in the first paragraph states that the quantum of transactions as shown in the documents were enclosed as Annexure-A and the photocopies of the papers were enclosed as Annexure-B. The second paragraph states that there was evidence that cash was received by Manoj Aggarwal from the respondent and the summary of the amounts received as per the seized documents was given in Annexure C and the photocopies of the documents were annexed as Annexure-D. It is accepted that Annexures A, B, C & D, referred to in this letter were not filed before the tribunal and have not been produced before us. It is conceded by the learned counsel for the revenue that they are also not available on the file of the Assessing Officer of the respondent. There is no explanation forthcoming with regard to the aforesaid annexures. It is well nigh impossible to know their content. The first paragraph of the letter dated 15th July, 2003 states that the respondent-assessee had acted as a mediator i.e. they had introduced Manoj Aggarwal with other persons to

whom accommodation book entries were provided by Manoj Aggarwal. There is no allegation in the first paragraph that the respondent assessee was provided with accommodation book entries or the amounts belong to the respondent assessee. Book entries were provided to third parties. It is not stated in this 'satisfaction note' that Manoj Aggarwal or third parties had paid any amount towards commission for acting as a mediator. There is no such allegation or statement in the 'satisfaction note'. The second paragraph does create some doubt but what is relevant and important is the fact that in the first paragraph, it is accepted by the Assessing Officer of Manoj Aggarwal that the respondent assessee was merely acting as a mediator and nothing more. The second paragraph of the letter states that there was evidence that cash was received by Manoj Aggarwal from the respondent assessee. What was the evidence and material was not brought on record before the tribunal or even before us. The said material is not mentioned in the assessment order. It cannot be 'ipse dixit' without material or evidence to satisfy the concept of requirement as engrafted under Section 158BD. What was the material was neither highlighted before the tribunal nor before us. Thus, the appellant-revenue has not discharged the onus that there was

valid satisfaction as required under Section 158 BD. Therefore, the irresistible conclusion is the pre-requisite of “satisfaction” as engrafted under Section 158B for the purpose of initiation of block assessment proceeding is non-existent or absent.

24. The last plank of submission of learned counsel appearing for the revenue was a note that was recorded by the assessing officer of the Manoj Aggarwal on the date of assessment. It is contended by Ms. Prem Lata Bansal, learned senior counsel, Mr. Sanjeev Sabharwal, Ms. Suruchi Aggarwal, Mr. Chandramani Bhardwaj, learned counsel for the revenue that though the said note was not filed before the tribunal but the same should be treated as a part of evidence on record and dealt with it. Whether that could have been taken as an additional evidence under Order 41 Rule 27 of the Code of Civil Procedure though such an application has not been filed. The same is not necessary in view of the finding recorded by the tribunal in ***SMC Share Brokers Ltd.***(supra) in. In the said case, i.e., ITA No.250/Del/2005, the tribunal expressed the view that a satisfaction note by the assessing officer of the searched person recording undisclosed income of any person within the meaning of Section 158BD could be validly recorded

after completion of assessment of the searched person. In that context, the tribunal held the only requirement is that the satisfaction must be in writing. In the said case, the tribunal was dealing with the search carried out on the premises of Manoj Aggarwal on 3.8.2000. The present case also relates to the said search. It is noteworthy the departmental representative in the case of *SMC Share Brokers Ltd.* (supra) had pressed into service the note dated 29.8.2002 which has been sought to be pressed into service by the learned counsel for the revenue herein. The tribunal while dealing with the said note dated 29.8.2002 expressed their views as follows:

“14.3 As per the Departmental Representative, the satisfaction for initiating proceedings under Section 158BD was recorded by the AO making assessment in the case of Shri Manoj Aggarwal and M/s Friends Portfolio (P) Ltd. on 29th Aug., 2002 also i.e. on the date of passing assessment order dt. 29th Aug., 2002 itself. However, the learned Counsel for the assessee has seriously challenged the genuineness and the authenticity of this note. According to him, this note is antedated. He tried to substantiate his argument by demonstrating that if the satisfaction note was recorded on 29th Aug., 2002 then there would have been no necessity to further record the satisfaction again on 26th Nov., 2002. He also pointed out that from the contents and language of the alleged satisfaction note dt. 29th Aug., 2002, it is evident that this note is subsequently prepared. He submitted that if the satisfaction was recorded on 29th Aug., 2002, the

notice should also have been issued on that date itself or just thereafter.

14.4 The learned Departmental Representative, on the other hand, maintained that the AO had made this note on 29th Aug., 2002.

15. We have carefully considered the entire material on record and the rival submissions. With this note, a list of beneficiaries has been appended. The name of assessee appears at item No. 69, which is as under:

69	SMC Sharebrokers Ltd.	17, Netaji Subhash Marg, Daryaganj, New Delhi-02	Friends Portfolio (P) Ltd.	30000000	The assessee has taken bogus accommodation entry through M/s Friends Portfolio (P) Ltd. and hence satisfaction note in this regard has been recorded in the case of this company and proposal for centralization of this case in this circle has been approved for taking up proceedings u/s 158BD.
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The last sentence in the above note indicates that the proposal for centralization of this case in this circle has been approved for taking up proceedings under Section 158BD. The learned Counsel pointed out before us that no such approval was taken before 29th Aug., 2002. According to him, the proposal is dt. 19th Sept., 2002, i.e. after the date of the office note. The office note cannot, therefore, mention any event, which has occurred later on, i.e., after 29th Aug., 2002. The fact that the proposal itself is dt. 19th May, 2002 could not be controverted by the learned Departmental Representative.

16. On going through the alleged office note available on pp. 202 to 226, it is found that the office note has been allegedly signed on 29th Aug., 2002 that is the date on

which the assessment order in the case of M/s Friends Portfolio (P) Ltd. was completed. On closer scrutiny of the facts and circumstances mentioned above including the fact regarding the mention of satisfaction note in the case of "this company" and proposal for centralization of the case in the circle in which the cases of searched persons fell, as referred to above, and also in view of the circumstances relating to this issue, we find force in the submissions of the learned Counsel for the assessee made before us and conclude that no satisfaction note was prepared on 29th Aug., 2002 and this note has been prepared even after 26th Nov., 2002. Our reasons for holding so are as under:

(i) Had the satisfaction been recorded on 29th Aug., 2002, there would have been no necessity to record another satisfaction on 26th Nov., 2002. The note refers to the "satisfaction recorded in the case of this company" which reference is to the satisfaction dt. 26th Nov., 2002 and hence this note has been prepared subsequent to satisfaction note dt. 26th Nov., 2002.

(ii) Had the satisfaction note been recorded on 29th Aug., 2002 then the record pertaining to the other person not searched should have been transferred to the AO of the present assessee who was a different officer at that time than the officer of the searched person.

(iii) The alleged satisfaction makes mention of the proposal and approval regarding centralization of the case. This proposal is dt. 19th Nov., 2002 and is subsequent to the alleged note which fact proves the contention of the learned Counsel for the assessee that the notice (sic-note) is antedated.

(iv) There is a detailed note by the AO, a copy of which has been filed at p. 33 of the paper book. The concluding observations of the AO in this note are as under:

“In view of the facts mentioned above and the block assessment orders of Sh. Manoj Aggarwal and M/s Friends Portfolio (P) Ltd., undisclosed income has arisen in the hands of M/s SMC Share Brokers Ltd. which has been found during the course of search and seizure operations in the case of Shri Manoj Aggarwal and his associate concerns. Thus, proceedings under Section 158BD are applicable in this case.”

The date below the signatures of the AO is not legible in this copy. Therefore, the learned Departmental Representative was asked during the course of hearing of the case to verify the date of this note. On verification from the record, she informed that the note is dt. 26th Nov., 2002. This fact has been recorded by the Bench on p. 33 itself.

17. In view of the above, it is clear that on or before 29th Aug., 2002, the AO of M/s Friends Portfolio (P) Limited and that of Shri Manoj Aggarwal did not record any satisfaction. The note dt. 29th Aug., 2002 is, therefore, not to be taken for recording satisfaction required under Section 158BC/158BD.”

25. We will be failing in our duty, if we do not take note of some more facts. In the said case, there was another satisfaction note dated 26.11.2002 and referring to the said note the tribunal in *SMC Share Brokers Ltd.* (supra) has held as follows:

“20.1 The next plea of the assessee is that the satisfaction note makes no reference to the seized material and thus the proceedings under Section 158BD judged from the satisfaction note cannot be justified. We do not find force in this submission also. The satisfaction note dt. 26th Nov., 2002, referred to above, is a detailed one. We have also reproduced the concluding observations of the AO, which indicate that he applied his mind before recording the satisfaction. It may be pointed out that the satisfaction note is not required to contain each and every minute detail and to refer to each and every material relevant for making assessment under Section 158BD. Thus, the argument that since, in the satisfaction note, there is no reference to seized material, the assessment made on the basis of such satisfaction note cannot be legally sustained, is not acceptable.”

26. Eventually, in the said case, as no cross-examination of Manoj Aggarwal was permitted, the appeal preferred by the assessee, apart from other grounds, was allowed.

27. The said order was assailed before this Court in ITA No.1221/2006 wherein this Court opined as follows:

“4. The Tribunal held that the Assessing Officer was functioning as a quasi judicial authority and was under an obligation to adhere to the principles of natural justice. Several requests were made by the assessed, but Manoj Aggarwal was not made available for cross-examination.

On this basis, the Tribunal set aside the block assessment and that is why the Revenue is before us in an appeal under Section 260A of the Act.

5. Learned Counsel for the Revenue relied upon *One-up Shares and Stock Brokers P. Ltd. vs. R. R. Singh*, CIT (2003) 183 CTR (Bom) 254 : (2003) 262 ITR 275 (Bom) to contend that the statement of Manoj Aggarwal had evidentiary value, as observed by the Bombay High Court. There is no doubt that the statement of Manoj Aggarwal had evidentiary value but weight could not be given to it in proceedings against the assessed without it being tested under cross-examination. In the absence of the statement being tested, it cannot be said that it should be believed completely to the prejudice of the assessed. Under the circumstances, we do not think that the judgment relied upon by learned Counsel carries him any further.

6. We are of the opinion that the Tribunal was right in its view that in the absence of Manoj Aggarwal being made available for cross-examination, despite repeated requests by the assessed, his statement could not be relied upon to his detriment.”

28. It is rightly submitted by learned counsel for the respondent-assessee that the said finding of the tribunal has been given the stamp of approval by the High Court. Learned counsel for the revenue would contend that the appeal was preferred on a limited scope. We need not delve into that inasmuch as the said finding of the tribunal has gone unchallenged and

hence, we cannot rely on the said note dated 29th August, 2002 to come to a conclusion that there was recording of satisfaction. The said note stands discredited in the case of *SMC Share Brokers Ltd.* (supra). The said finding is a finding of fact. We cannot, therefore, for the first time take the said note into consideration.

29. In view of the aforesaid analysis, while we do not find there is any substantial question of law involved in the present batch of appeals, however, conclusion of the tribunal that the forming of an opinion has to be along with the framing of assessment inasmuch as the assessing officer after said date becomes functus officio is kept open to be addressed in an appeal where the said issue is required to be dealt with.

30. Resultantly, the appeals, being devoid of merit, stand dismissed without any order as to costs.

CHIEF JUSTICE

SANJIV KHANNA, J.

MAY 30, 2011
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