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

Decided on: 8th January, 2015

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ITA 1064/2009

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Mr.Rohit Madan, Mr.Ruchir Bhatia
and Mr.Akash Vajpai, Advs.

versus

V.K.NARANG HUF

..... Respondent

Through: Mr.Monu Monga and Mr.P.N.Monga,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present appeal is directed against the order of ITAT dated 11.12.2008. The question of law raised is whether in the circumstances the ITAT was correct in its view that there was inordinate delay in issuing the notice under Section 158BD to the assessee i.e V.K.Narang HUF.

2. At the outset it needs to be noted that this appeal too is a part of the case heard and decided by a common judgment reported as *CIT vs. Radhey Shyam Bansal* 2011 337 ITR 217 (DLI). On that occasion the Court had accepted assessee's contention that in the circumstances of the case, the

notice under Section 158BD was unsustainable. The matter was carried in appeal to the Supreme Court which by the judgment reported as *CIT vs. Calcutta Knitwears, Ludhina* 362 ITR 673 (SC), *inter alia*, recorded as follows:

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

45. We are informed by Shri Santosh Krishan, who is appearing in seven of the appeals that the assessing officer had not recorded the satisfaction note as required under Section 158BD of the Act, therefore, the Tribunal and the High Court were justified in setting aside the orders of assessment and the orders passed by the first appellate authority. We do not intend to examine the aforesaid contention canvassed by the learned counsel since we are remanding the matters to the High Court for consideration of the individual cases herein in light of the observations made by us on the scope and possible interpretation of Section 158BD of the Act.”

3. In these circumstances, this Court has to decide the issue. The relevant facts are that the search operations were conducted on 17.12.1999 in the premises of Sh.V.K.Narang. Based upon the materials obtained, he was issued notice under Section 158BD. Subsequently, after considering the assessment returns for the period 01.04.1989 to 17.12.1999 filed by him, the block assessment was completed on 31.12.2001. In the present assessee's case a satisfaction note was recorded on 30.05.2002. The DCIT recorded undisclosed income in the case of present assessee, and further that the search proceedings of Sh.V.K.Narang reveal that present assessee had also invested in various properties which were undisclosed.

4. Having regard to the decision in *CIT vs. Manish Maheshwari* (2007) 289 ITR 341 (SC) this Court is of the opinion that the satisfaction note in the present case meets with the requirements of law. So far as the question of delay is concerned, the Court is of the opinion that in the facts and circumstances of the present case, it cannot be held that there was any delay in recording the satisfaction note. The assessment of the searched person was completed on 31.12.2001. The satisfaction note was recorded on 30.05.2002 i.e. just about five months after the date of completion of searched person. Notice was issued on 03.06.2002, immediately after the satisfaction note was recorded to the present assessee.

5. Having regard to the declaration of law made by the Supreme Court which specified three possible points in time when notice under Section 158BD can be issued to third party/assessee, on the basis of material found on the premises of the searched person, the period of five months spent by the AO of the searched person in finalizing the satisfaction note, can be said

to have been proximate to the assessment proceedings. We also recollect the decision of this Court in *Commissioner of Income Tax vs. Raghubir Singh Garg* ITA No. 1420/2010 decided on 27.08.2014. In that case, the search took place on 29.08.2002 and the satisfaction note was recorded on 16.01.2003 i.e. within a period of 4 ½ months. The Court was of the opinion that the satisfaction note could be upheld. Following the said decision it is held that there was no delay in issuance of notice under Section 158BD in the facts of the case. So far as the merits of the appeal are concerned, Court notices that the ITAT had not dealt with the merits of the assessee's contentions with regard to the various additions made, and grounds urged in that regard. This is especially reflected from a reading of the judgment which has solely proceeded on the question of delay in the issuance of notice under Section 158BD. In these circumstances, the matter is remitted to the ITAT to decide the contentions on merits, on the facts of the case, as to the correctness or otherwise of the addition made by the AO of the present assessee. Considering that the satisfaction note and notice were issued in 2003, the ITAT shall consider and decide this appeal expeditiously. The rights and contentions of the parties shall not be prejudiced. The ITA stands disposed of being partly allowed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 08, 2015

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