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

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RESERVED ON: 07.01.2015
PRONOUNCED ON: 30.01.2015

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ITA 287/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. Rohit Madan, Sr. Standing Counsel
with Ruchir Bhatia, Advocates.

versus

SUDHIR DHINGRA Respondent
Through: Mr. Salil Aggarwal with Mr. Ravi
Pratap, Advocates.

ITA 1329/2009

COMMISSIONER OF INCOME TAX Appellant
Through: Mr. N.P. Sahni, Sr. Standing Counsel
with Mr. Nitin Gulati and Mr. Judy James, Jr.
Standing Counsel.

versus

RENU VERMA Respondent
Through: Mr. Vikas Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

MR. JUSTICE S.RAVINDRA BHAT

1. These appeals under Section 260A of the Income Tax Act, 1961 (hereafter "the Act") impugn an order dated 04.04.2008 of the Income Tax Appellate Tribunal (hereafter "the ITAT") in case of the

respondent/assessee No.1 [in IT(SS)A No. 216/Del/2006 and CO. No.408/Del/2007 for the block period from 01.04.1990 to 20.08.2000] & the order dated 17.04.2009 of the ITAT in case of the respondent/assessee No. 2, [in IT(SS)A No. 84/Del/2007 for block period 01.04.1990 to 03.08.2000]. The question of law urged before this Court is whether the ITAT was correct in holding that a notice must be issued by the Assessing Officer (“the A.O” in short) within a reasonable period of time in relation to assessment proceedings under sections 158BC and 158BD of the Act.

2. The facts which give rise to the present appeal are that the Respondent/Assessee are individuals. On 03.08.2000 a search was conducted under Section 132 of the Act at the business premises of M/s Friends Portfolio Pvt. Ltd. and at the residential premises of its Director, Shri Manoj Aggarwal. During the search and the course of investigation and assessment proceedings before the Deputy Commissioner of Income Tax (hereafter “the DCIT”), Central Circle-3, New Delhi, it was found that that Sh. Manoj Aggarwal provided bogus accommodation entries to various individuals. The beneficiaries included the present respondent-assessee who received accommodation entries *in lieu* of cash. The assessment u/s 158BC of M/s Friends Portfolio Ltd. was completed on 29.08.2002. The AO, after considering the materials, recorded to his satisfaction and issued a letter to the respective A.O.’s of the respective assessee No. 1 & 2. Thereafter, the case of the assessee was taken up for scrutiny as per the provisions of section 158BD and statutory notices u/s 143(2) and 142(1) were issued and served upon them.

3. The Relevant dates in the present appeals are as follows:-

Assessee	Sudhir Dhingra	Renu Verma
Present Appeals	IT(SS) A No.	IT(SS)A No.

Arising from	216/Del/2006	84/Del/2007
Date of Search of M/s Friends Portfolio Ltd.	03.08.2000	03.08.2000
Date of Completion of Assessment	29.08.2002	29.08.2002
Recording of Satisfaction by the A.O. of the aforementioned company	13.02.2003	13.02.2003
Date of Issue of Notice by the A.O. of the relevant assessee	10.07.2003	18.07.2003
Assessment Order	28.07.2005	31.08.2005
Undisclosed Income of the Assessed (so assessed)	1,16,36,360/-	12,50,981/-
Date of the Order of the CIT(A)	07.07.2006	04.10.2006
Date of the Order of the ITAT	04.04.2008	17.04.2009

4. RELEVANT FACTS: ASSESSEE NO.1

On 10.07.2003 the A.O. of Assessee No. 1 issued a notice under Section 158BC read with Section 158BD of the Act to Assessee No. 1 in the present appeal. On 21.08.2003 the assessee no. 1 filed a return declaring undisclosed income at “Nil” for the block period. Subsequently, after discussing the case with the Assessee no.1, the A.O. framed the block assessment at an undisclosed income of Rs.1,16,36,360/- after making additions on the account of unaccounted cash received/paid under the cover of bogus transactions of purchase/sale of shares. Aggrieved, assessee no. 1 preferred appeal before the Commissioner of Income Tax (Appeals) (‘the CIT (A)’) who by order dated 07/07/2006 deleted all the amounts brought to tax made by the AO. The revenue appealed this

order of the CIT (A's) order before the ITAT. Simultaneously the assessee no. 1 filed a cross objection urging the ground that the order passed by the A.O. was bad and liable to be quashed as the same was barred by limitation.

5. Relevant portions of the orders of the Assessment Order, Order of the CIT(A) and the ITAT in the case of Assessee No. 1 have been reproduced as under:

6. The AO's order dated 28.07.2005 *inter alia*, held that:

"10.Assessed at total undisclosed income of Rs. 1,16,36,360/- Charge tax @ 60% and interest u/s 158BFA(1) of the Income Tax Act. As it is apparent from the order that the assessee was in possession of undisclosed income, which was deleted as a result of search & seizure proceedings, therefore, penalty proceedings u/s 158BFA(2) have been initiated, separately..."

7. The relevant portion of the CIT (A's) order is as follows:

"....All these go to prove that not even an iota of evidence has been brought out on record to prove that the transaction of capital gain was bogus and that the amount of Rs.76,00,000/- and Rs.40,12,000/- for the purchase and sale of shares is hereby deleted. Similarly the addition of 24,360/- made by the AO on surmises, treating the payment of brokerage and service tax on purchase and sale of shares as unaccounted cash without bringing any evidence on record is also hereby deleted. As a result appeal is allowed."

8. The ITAT considered the merits of the revenue's appeal as well as the assessee's cross-objections, i.e., CO No.408/Del/2007. The ground raised by the assessee in his cross objection was on the issue of the assesment proceeding being time barred. Apart from the satisfaction being recorded by the AO on 13-02-2000, it was urged in the cross objection that that the notice under section 158BD was

issued by the assessee's A.O. on 10.07.2003. The assessee argued that this notice was unsustainable because the satisfaction was recorded belatedly and that impugned notice under Section 158BD was illegal because the satisfaction recorded by the A.O. of M/s Friends Portfolio was on 13.2.2003, notice under Section 158BD was issued only on 10.07.2003. The ITAT held that the satisfaction was recorded belatedly and that the notice was consequently bad. The assessee had relied on the judgment of the Gujarat High Court in *Khandubhai Vasanji Desai & Others v. DCIT 236 ITR 73*, where it was reasoned that a period of 60 days may be considered reasonable for issue of notice from the date of satisfaction recorded by the A.O. of searched persons. The ITAT's impugned order held that;

"6. ...In the present case, the satisfaction was recorded by the Assessing Officer of M/s Friends Portfolio Pvt. Ltd. on 13.02.2003 whereas notice under section 158BD was issued by the Assessing Officer of the present assessee after almost five months and hence following the tribunal judgment rendered in the case of Shri Radhey Mohan Bansal (supra), we hold that there was no effective notice to the assessee within a reasonable period and hence the assessment requires to be vacated. We order accordingly.

7. In the result, cross objection of the assessee is allowed.

8. In view of the fact that block assessment is vacated, the appeal of the revenue does not survive and the same is dismissed."

9. RELEVANT FACTS: ASSESSEE NO. 2

In light of the searches conducted of M/s Friends Portfolio Ltd. and the premises of Sh. Manoj Aggarwal and the recording of the satisfaction of the A.O. therein, proceedings u/s 158BD were initiated against Assessee no. 2 and notice for the same was issued on 18.07.2003. Assessee No. 2 aggrieved with the assessment order

dated 31.08.2005, filed an appeal before the Ld. CIT (A) which by order dated 04.10.2006 dismissed the appeal. Aggrieved with the order the assessee appealed to the ITAT which by its impugned order dated 17.04.2009 set aside the CIT (A's) order.

10. Relevant portions of the Assessment Order, Order of the CIT(A) and the Order of the ITAT in the case of Assessee No. 2 has been reproduced as under;

11. The Assessment Order dated 31.08.2005 *inter alia*, held that:

“With the remarks made as above, the total undisclosed income for the block period is assessed at Rs. 15,28,570/-. Penalty under Sec. 158BFA is being initiated separately. Assessed at Rs. 15,28,570/-. Charge interest u/s 158BFA for late filing of Return in Form 2B. Issue demand notice and challan.”

12. The order of the CIT(A) dated 04.10.2006 *inter alia*, held that:

“2.1 ...A perusal of the assessment order also shows that the provisions of Section 158BD were invoked on the basis of specific information received from D.C.I.T. Central-III, New Delhi. It is the satisfaction of the Assessing Officer of the person searched u/s 132 which is important for initiating proceedings u/s 158BD. As held by Gujarat High Court, the requirement for taking action u/s 158BD is only prima facie satisfaction of the Assessing Officer that in search operation there is material to show undisclosed income of a person, other than the one against whom the search was conducted (251 ITR 608). Hence, the argument of the appellant that the jurisdiction u/s 158BD had been invoked without any satisfaction on behalf of the Assessing Officer is not correct. The appeal on these grounds, therefore, fails.

In the result, the appeal is dismissed.”

13. The relevant portion of the order of the ITAT dated 17.04.2009 is as follows:

“2. We have considered the rival submissions. It is noticed that it has been clearly held by the special bench of this Tribunal in the case of Bishen Chand referred to supra that the notice u/s 158BD has to be issued before the completion of the assessment in the case of the person searched. It has also been held that the satisfaction is to be record[ed] in the file of the person searched in regard to the evidence in respect of undisclosed income held to be belonging to the third party. It is notice[d] that in the present case the notice u/s 158BD had been issued much after the completion of the assessment in the case of Manoj Aggarwal. The revenue has also not been able to produce any evidence to show that satisfaction for initiation of proceedings u/s 158BD in the case of their assessee has been recorded in the file of either Shri Manoj Aggarwal or M/s. Friends Portfolio. In these circumstances, on both the grounds respectfully following decision of the Special Bench in the case of Bishan Chand Mukesh Kumar the assessment as completed u/s 158BD stands quashed.”

14. The decision in *Commissioner of Income Tax v Sh. Radhey Shyam Bansal* 2011 (337) ITR 217 (Del) dealt with the batch of cases decided by the impugned common order of the ITAT and upheld the latter's order. That common judgment of this court was carried in appeal by special leave to the Supreme Court, which decided all the appeals and other cases, on the question of law as to the reasonableness of the time limit within which a notice under Section 158BD was to be issued. The Supreme Court, in its 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.”

15. The revenue argues that applying the above principles, it is clear that the satisfaction note recorded on 13-02-2003 in the present case, was not delayed. It was submitted that *Calcutta Knitwears* is decisive in that the outer period of two years meant for completion of the searched person's assessment is inconclusive of the time period for issuance of notice to the third party and that the test of proximity indicated by the Supreme Court is flexible in that notice under Section 158BD is not conditional upon simultaneous completion of the searched individual or concern's assessment. Counsel for the respondent assessee did not dispute that the satisfaction note issued in this case met with the requirements of law, as to the adequacy or sufficiency of reasons recorded in the "satisfaction note". It was however urged that in addition to the delay in recording the satisfaction note, the delay in issuing the notice was also fatal to the block assessment proceedings drawn against the assessees in this case. To this end, counsel relied on the Gujarat High Court ruling in *Khandubhai Visanji Desai & Ors. v. Deputy Commissioner of*

Income Tax, [1999] 236 ITR 73 (Guj), the relevant portion of which has been reproduced as under:

“16.Once the satisfaction under s. 158BD is reached by the AO, there would be no valid reason for him to delay the issuance of the notice which ought to be issued soon after the satisfaction is reached and if the AO is different, he ought to immediately transmit the relevant material to the AO having jurisdiction to enable him to proceed against such other person by issuing notice under s. 158BC requiring him to file the return. Since the satisfaction that any undisclosed income belongs to any person other than the one with respect to whom search was made or books of account, documents or assets requisitioned, may, in many cases be reached after the AO starts the proceedings under s. 158BC against the person with respect to whom the search was made, the shift of the commencement point of the limitation to the date of the notice, which could be issued to such other person only after it comes to light leading to the satisfaction of the AO that any undisclosed income belongs to him, was fully justified and it was germane to the object of making block assessment of undisclosed income of such other person who is now known as a person to whom that undisclosed income belongs. The AO once he reaches the requisite satisfaction, it bound to act swiftly to proceed against such other person as soon as may be in reasonable time. The speed and despatch with which he should act is writ large on the connected provisions of s. 132(9A) of the Act under which the authorised officer who has no jurisdiction over the person referred to in cls. (a), (b) or (c) of sub-s. (1) of s. 132 has to hand over the books of account, documents and assets seized to the ITO having jurisdiction over such person within 15 days of such seizure and the AO is required to serve a notice to such person under s. 158BC(1) requiring him to furnish return in the prescribed Form 28 and to complete the block assessment in one year from the end of the month in which the last authorisation for search or requisition was executed. Thus, the apprehension that a notice can be issued under s. 158BD r/w s. 158BC (1) by the AO in the case of such “other person” at any time is ill-founded. There is no lifting of the limitation period for making the assessment order which is one year and the

starting point of limitation in cases falling under s. 158BD by the very nature of things can be fixed only after the AO is satisfied that any undisclosed income belongs to such other person and in cases where the AO is different after the relevant material is transmitted to him. As soon as the AO having jurisdiction receives the material in respect of the other person, he is in the same position as the AO who forwarded it to him and is expected to immediately proceed to issue notice to that other person who falls in his jurisdiction. This extra time for computing limitation is warranted by the fact that the requisite satisfaction about any undisclosed income belonging to such other person may be reached after the commencement of the assessment proceedings against the raided person and consideration of the evidence forwarded by the authorised officer and information that may be available to the AO and transmitted to the other AO in cases where the other person falls in the jurisdiction of that other AO which will necessarily take some time...”

“18.If in any particular case a notice is unduly delayed then that is a matter in which the validity of that notice can be considered but that surely will not invalidate the statutory provision which does not warrant any delay once the satisfaction is reached and enjoins a duty upon the AO to immediately proceed against such other person under the provisions of Chapter XIV-B.”

16. In *Calcutta Knitwears*, (supra), the Supreme Court *inter alia*, recorded as follows (apart from its conclusions in para 44 quoted above):

“39. Further, Section 158BE (2) (b) only provides for the period of limitation for completion of block assessment under section 158BD 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 01.01.1997. The said section does neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation the satisfaction note under Section 158BD and consequent issuance of notice to the other person.”

42. Further, Section 158BE(2)(b) only provides for the period of limitation for completion of block assessment under section 158BD 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 01.01.1997. The said section does neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation the satisfaction note under Section 158BD and consequent issuance of notice to the other person.

43. In the lead case, the assessing officer had prepared a satisfaction note on 15.07.2005 though the assessment proceedings in the case of a searched person, namely, S.K. Bhatia were completed on 30.03.2005. 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 158BC of the Act which is contrary to the provisions of Section 158BD read with Section 158BE(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 158BD 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 158BC. Further, the interpretation placed by the Courts below by reading into the plain language of Section 158BE(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 Chapter to provide for cost effective, efficient and expeditious completion of search assessments and avoiding or reducing long drawn proceedings.”

Earlier in the judgment the date on which notice was issued to the third party under Section 158 BD in that case was recorded:

“The jurisdictional assessing authority for the respondent-assessee had issued the show cause notice under Section 158BD for the block period 01.04.1996 to 05.02.2003, dated 10.02.2006 to the assessee inter alia directing the assessee to show cause as to why should the proceedings under Section 158BC not be completed.”

17. The application of *Calcutta Knitwears* was the subject matter of a recently decided case, i.e., *Commissioner of Income Tax v. V.K. Narang HUF*, ITA 1064/2009 (decided on 08.01.2015) where it was observed that:

“4. Having regard to the decision in CIT v. 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 placed due 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 v. 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.”*

18. In light of the aforementioned position of law this Court finds that the delay of 5 months in the issuing of notice by the A.O. in the present appeals cannot be unreasonable. Accordingly, the impugned orders of the ITAT dated 04.04.2008 & 17.04.2009 is set aside on this aspect. The satisfaction note is held to be validly issued and within a reasonable time. In the light of the above observations of the Supreme Court in *Calcutta Knitweaves*, particularly the contextual facts discussed (i.e. completion of the searched party's assessment on 31-03-2005, satisfaction note under Section 158BD issued on 15-07-2005 and notice issued on 10-02-2006) it cannot be said that the delay in issuing the notice (although the satisfaction note was recorded within reasonable time) was fatal to the block assessment against the present assessee.

19. The Court notices that the ITAT by its order dated 04.04.2008 in *CIT v. Sudhir Dhingra* has not dealt with the merits of the Revenue's contentions with regards to the challenge to the order of the Ld. CIT (A). 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 the same vein the court also finds that the order of the ITAT dated 17.04.2009 in *Renu Verma v. CIT* has also been decided on the similar issue of delay. In these circumstances, these two appeals are accordingly remitted to the ITAT to decide their respective contentions on merits, on the facts of the case, and as to the correctness or otherwise of the additions made by the AO of the present assesseees. Considering that the satisfaction note and notice were issued in 2003, the ITAT shall consider and decide these appeals expeditiously. The rights and contentions of the

parties shall not be prejudiced. The appeals are partly allowed in the above terms.

**S. RAVINDRA BHAT
(JUDGE)**

**R.K. GAUBA
(JUDGE)**

JANUARY 30, 2015