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

Decided on 18th February, 2015

+ ITA 857/2009

COMMISSIONER OF INCOME TAX-VIII Appellant

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

versus

H.P. GOEL Respondent

Through: Mr.Saubhagya Agarwal, Adv.

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 Revenue is aggrieved by the order of Income Tax Appellate Tribunal (ITAT) dated 27.06.2008 in ITA No. 248/D/05. It is held that the Satisfaction Note which preceded notice under Section 158BD dated 03.06.2002 served upon the respondent/assessee, in the circumstances, was invalid.

2. The brief facts are that one search and seizure operation was carried out in respect of Batra group on 17.12.1999. During the course of search, the Revenue came across certain documents which formed the basis of a Satisfaction Note recorded under Section 158BD on 30.05.2002. Soon thereafter, notice was issued on 03.06.2002 and served on the assessee. The

document forming basis of the Satisfaction Note was a receipt executed sometime in 1999. The receipt itself bore the signatures of the assessee and pertained to the transfer of terrace/roof and the ground floor of A-201, Shivalik, New Delhi. The receipt stated as follows:

“That the total deal has been settled/fixed between me and purchaser at ₹33,00,000/- (Rupees Thirty Three Lakhs only) and the balance payment of ₹16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) shall be paid by the above said purchaser to me, as per the terms and conditions of the agreement to sell dated 8.6.99”

3. The searched parties, i.e. the two Batra brothers, partner of M/s Om and S. Constructions had secured the roof rights and disclosed the consideration of ₹4 lacs as to the amounts indicated in the receipt. Mr.B.L.Goel, the assessee’s father was the Power of Attorney holder of the original owner Mr. B.B. Bhagat, on the basis of a document executed in 1991. The assessee contended that the amounts received by him were on behalf of his father and consequently another proceeding were followed as against him and the Satisfaction Note was, therefore, invalid. The Assessing Officer (AO) rejected the assessee’s contention and brought the said amount of ₹29 lakhs – determined by him to be undisclosed income – to tax. The assessee appealed; the CIT (Appeals) by her elaborate order of 21.02.2005 rejected the contentions. The CIT (Appeals) also outlined and dealt with the Satisfaction Note recorded by the AO. The assessee had contended that – in that instance – the Satisfaction Note clearly indicated that the Revenue was aware about the ownership of the property being that of his father and

consequently, the Satisfaction Note and the notice under Section 158 BD were illegal. The CIT(Appeals) however, was unimpressed with this submission and rejected the appeal. The ITAT by the impugned order, accepted the assessee's contention and concluded as follows:

“6. We have considered the rival contentions. A perusal of the satisfaction note as found at pages 17 & 18 of the paper book show that the assessing authority was satisfied that the issue had required further investigation. The assessing authority has not recorded any satisfaction that the moneys specified in the receipt as found in the course of search was the undisclosed income of Shri H.P.Goel, the assessee herein. In the satisfaction note also, the assessing authority has recognized the assessee's father Shri B.L.Goel as the owner of the property as also the seller of the property. Once the Assessing Officer has recognized the existence of Shri B.L.Goel to be the owner as well as the transferor of the property and the fact that the assessee herein has transacted on behalf of Shri B.L. Goel, then obviously the liability if any could rest only in the hands of the owner being Shri B.L.Goel. Thus, it is found that the satisfaction as recorded by the assessing authority did not specify that any undisclosed income belonged to the assessee herein but only specified that the issue needed further investigation. It is further noticed that the search in the Batra's case in the course of which the alleged receipt has been found was conducted on 17.12.1999 and consequently as per the provisions of section 158BE the time limit for completion of the block assessment, assuming that the last of the panchnama was drawn in December, 1999 would expire by 31st December, 2001. It is noticed that the satisfaction has been recorded only on

30.05.2002 and consequently this satisfaction note has been recorded much after the time limit for completion of the assessment under Chapter XIV-B in respect of the persons searched. In the circumstances on both these counts the assessment as made by the assessing authority in the case of the assessee u/s 158BD on 30.06.2004 would have to be held as bad in law in view of the fact that the satisfaction has been recorded much after the time limit for completion of the assessment in the case of the persons searched as provided under Chapter XIV-B as also on the ground that the satisfaction recorded does not indicate that the assessing authority was satisfied that any undisclosed income belonged to the assessee herein. In the circumstances respectfully following the law as laid down by the Hon'ble Supreme Court in the case of Manish Maheshwari referred to (supra) as also the view expressed by the Chandigarh bench of this Tribunal in the case of Kishore Lal Balwant Rai referred to (supra) the block assessment order for the block period 01.04.1989 to 17.12.1999 passed u/s 158BD on 30.06.2004 in the case of assessee is quashed. As we have decided this appeal on the preliminary ground itself and have held that the assessment is bad in law, we are not expressing any views on the other grounds as raised in the appeal."

4. Learned counsel for the Revenue urged that given the nature of the receipt which nowhere mentioned that the amount was received by the assessee on behalf of his father, the contentions made in the proceedings were unwarranted. It was urged that, in the answer to the queries put, at one stage, the assessee denied having executed the receipt, nonetheless he

admitted to the signatures and further voluntarily informed that he had received the amount on behalf of his father. Highlighting that the Revenue is not expected to make a detailed enquiry and investigation before issuing a Satisfaction Note forming the basis for a notice to the third party, learned counsel urged that there was material to indicate that the amount was actually received by the assessee even though the Satisfaction Note noticed that his father (the beneficiary) was the owner of the property.

5. The assessee's counsel, on the other hand, urged that once the AO became aware that the property was not owned by the assessee and that he had received the amount on someone else's behalf, notice could not have been issued under Section 158BD. He urged that this Court should not interfere with the ITAT's order on this ground alone. It is evident that it is precisely this dispute which this Court is called upon to decide. It was further submitted that the satisfaction note also indicated that the amount received by the assessee was on behalf of his father.

6. The question which this Court is to adjudicate upon is whether Satisfaction Note and the consequent notice under Section 158BD, issued to the assessee was valid. There is no dispute about the fact that the receipt was signed by the assessee which indicated that the total consideration was ₹33 lakhs. Even though it alluded to an agreement to sell dated 08.06.1999, the fact remains that no written agreement apparently was executed; what is a matter of fact, however, is that possession of the property was with the searched party, i.e. Batra brothers and their firm. Furthermore, the searched party had disclosed the consideration received at ₹4 lakh only. It is also not in dispute that the amount was in fact received by the assessee. Given these circumstances, that the Satisfaction Note, *prima facie*, recorded that the

owner of the property was B.L.Goel (assessee's father) and that the amount was received by the assessee on the father's behalf cannot be determinative in the facts of this case. Since the amount was received, as a matter of fact, and the books of the purchaser showed that a fraction of that sum was disclosed as sale consideration, the Revenue was entitled to issue notice to the respondent, ascertaining whether such amount was actually received by him and, if so, on whose behalf, and proceed further.

7. In the circumstance, this Court is of the opinion that the ITAT's order narrowly confirming the invalidity of the notice of the assessment, that the entire amount was received by the assessee on behalf of his father cannot be upheld. The property did not belong to Mr.B.L.Goel and the impugned order is not sustainable, it is accordingly set aside. The matter is remitted back to the ITAT to decide the assessee's appeal in accordance with law.

8. The appeal stands disposed of in the above terms.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 18, 2015

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