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

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\+ **ITA 537/2015**

HARYANA PANEER BHANDAR ..... Appellant
Through: Mr S. Krishnan, Advocate.

versus

COMMISSIONER OF INCOME-TAX ..... Respondent
Through: Ms Suruchi Aggarwal, Senior Standing Counsel, Ms Lakshmi Gurung, Junior Standing Counsel, Mr Abhishek Sharma and Ms Radhika Gupta, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **05.11.2015**

S. Muralidhar, J.:

1. This is an appeal by the Assessee against an order dated 21st July, 2014 passed by the Third Member and the consequential confirmatory order dated 8th December 2014 of the Income Tax Appellate Tribunal ('ITAT') in IT(SS) 26 & 33/Delhi/2010 for the block period 1st April, 1987 to 15th December, 1997.

2. Admit.

3. For the purposes of the present appeal, only the two following questions

are framed for consideration:

(a) Whether on the facts and in the circumstances of the present case, the notice under Section 158-BD is bad in law?

(b) Whether recording of satisfaction by the Assessing Officer of the person searched is a necessary ingredient to validate block assessment proceedings under Section 158-BD?

4. The brief facts are that the Assessee is a partnership firm engaged in the business of manufacture and sale of paneer and snack items at Fateh Puri, Delhi. A search and seizure operation under Section 132 of the Act was conducted on 15th December, 1997 at the premises of one Mr. Kamal Chand Jain, wherein certain *hundis* as stated to have been issued by him were seized. It appears that the some of the *hundis* which purportedly pertained to the Assessee were forwarded by the Assessing Officer ('AO') of Mr. Jain to his counterpart having jurisdiction over the Assessee herein. Subsequently, the AO having jurisdiction over the Assessee recorded the reasons for reopening of the assessment and proceeded to issue a notice to the Assessee under Section 148 of the Act on 29th January, 2001.

5. A re-assessment order was passed by the AO on 28th March, 2002 making an addition of a sum of Rs.65 lakhs to the income of the Assessee under Section 69D of the Act. In the appeal filed against the said order by the Assessee, the Commissioner of Income Tax (Appeals) by the order dated 12th December, 2002 held that the proceedings in the assessment could only be resorted to under Section 158 BA (1) of the Act and, therefore, the

proceedings under Section 147/143(3) of the Act was bad in law. The CIT (A) observed that the AO was free to initiate fresh proceedings under Section 158BD of the Act provided the requirement under Section 158 BE (2) (b) of the Act was followed.

6. Against the aforementioned order the Revenue filed an appeal before the ITAT on the limited question whether the addition made by the AO under Section 69D of the Act could have been directed to be deleted by the CIT(A). This question was answered against the Revenue by the ITAT by an order dated 10th March 2006.

7. In the meanwhile, on 25th September, 2006, a notice was issued to the Assessee under Section 158BD of the Act for the block period i.e. 1988-89 to 1998 to 1999. The Assessee filed its return for the said block period on 10th November, 2008 and asked for a copy of the satisfaction note in terms of Section 158 BD of the Act. No copy of such satisfaction note was provided to the Assessee. The AO nevertheless proceeded to complete the block assessment by an order dated 29th September, 2008 and made an addition of Rs.6,85,120/-.

8. In the appeal filed against the said order before the CIT(A) the Assessee again made a request for the copy of the satisfaction note. A remand report dated 10th June, 2009 was received from the AO and in respect of the satisfaction note it was stated that "satisfaction note on the basis of which notice under Section 158-BD of the Act dated 25th September, 2006 was issued had been supplied to the Assessee on 10th September, 2008."

9. The CIT(A) on 25th March, 2010 upheld the order of the AO. The Assessee then preferred an appeal before the ITAT. While the Accountant Member (AM) of the ITAT by an order dated Nil March 2013 agreed with the Assessee that no satisfaction was recorded by the AO and, therefore, the proceedings under Section 158 BD were bad in law, the Judicial Member (JM) disagreed and held in favour of the Revenue. The matter was then referred to the Third Member of the ITAT. Although there were subsequent orders passed by both the AM and the JM even while the matter was pending before the Third Member, it is not necessary to refer to those orders since what mattered thereafter was the order of the Third Member. That order came to be passed on 21st July, 2014. The Third Member held that the onus of having to show that there was no satisfaction note recorded by the AO of Mr Kamal Chand Jain in the file was on the Assessee. Since it had failed to do so, the requirement of Section 158BD of the Act stood satisfied. Thereafter the Division Bench of the ITAT passed a confirmatory order on 8th December 2014 dismissing the Assessee's appeal.

10. At the hearing of this appeal on 24th September 2015, Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Revenue, sought some time to seek instruction on the aspect of the satisfaction note as well as on the question of limitation. At the hearing today she stated that pursuant to the order passed by this Court on the previous date, she had asked the Department to give her information about the existence of the satisfaction note in the file. She has shown to the Court the letter dated 28th October, 2015 written by the ITO, Ward 47(2) New Delhi where, *inter alia,* a

reference is made to a letter received from the ITO/Ward 47[1]/ dated 19th October, 2015 which reads as under:

> "In this connection, it is submitted that I have gone through the file and find that the ACIT, Central Circle-14, New Delhi vide his letter dated 23.09.2008 informed the ACIT Circle-29(1), New Delhi that no satisfaction note, regarding intimation of proceedings u/s 158-BD in the case of M/S Haryana Paneer Bhandar, of the then AO of Central Circle 14, New Delhi is readily available in the block assessment of Sri Kamal Chand Jain. In view of the above this office is unable to provide copy of satisfaction note in the case of M/s Haryana Paneer Bhandar."

11. The fact of the matter is that the Revenue is unable to produce before this Court the satisfaction note as referred to by the AO in his remand report. It could not do so at any stage of the proceedings before the AO, the CIT (A) and the ITAT as well.

12. Before proceeding to discuss the two questions framed for consideration, the Court proposes to refer to Sections 158BD and 158 BE (2) (b) of the Act which read as under:

> **"Section 158 BD**- Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed under section 158 BC against such other person and the provisions of this Chapter shall apply accordingly."
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"**Section 158BE Time limit for completion of block assessment**

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

(b)- two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997."

13. Section 158BD requires the AO of the searched person to record a proper note of satisfaction that there is "cogent and demonstrated material" to conclude that the seized documents show that some undisclosed income belongs to a person other than the searched person. Explaining the mandatory nature of this requirement, the Supreme Court in ***Commissioner of Income-Tax v. Calcutta Knitwears (2014) 362 ITR 673 (SC)*** observed as under:

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

indicates that the satisfaction note could be prepared by the Assessing Officer either at the time of initiating proceedings for completion of assessment of a searched person under section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the Assessing Officer cannot prepare the satisfaction note to the effect that there exists income tax (*sic* income) belonging to any person other than the searched person in respect of whom a search was made under section 132 or requisition of books of account were made under section 132A of the Act. The language of the provision is clear and unambiguous. The Legislature has not imposed any embargo on the Assessing Officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the searched person."

14. It was further held in paragraph 44 as under:

> "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."

15. Turning to the decisions of this Court, in ***Commissioner of Income Tax v. Sunil Bhala (2011) 336 ITR 50 (Del)*** the Court held that the AO of the searched person "has to record satisfaction to the effect that there was undisclosed income belonging to the assessees." in the absence of there

being any recording of the satisfaction of the AO while forwarding the case to the AO of the 'other person', the block assessment proceedings were held to have been rightly invalidated. In ***Commissioner of Income Tax v. Feather Breweries & Market (2008) 166 Taxman 271 (Del)*** the Court noted that the Revenue "is unable to produce the satisfaction recorded by the Assessing Officer in terms of Section 158 BD of the Act" and held that the in view of the decision of the Supreme Court in ***Manish Maheshwari v. Asst. CIT (2007) 289 ITR 341 (SC)***, the block assessment proceedings were unsustainable in law.

16. Recently, in ***Commissioner of Income Tax v. Manju Finance Corporation (2015) 231 Taxman 44 (Del)*** the Court reiterated as under:

> "The requirement of Section 158 BD is that the Assessing Officer of the person searched or against whom an order under Section 132 A has been passed, should be satisfied that any undisclosed income belongs to a third person. This is the statutory mandate and a jurisdictional prerequisite before proceedings under Section 158 BD are initiated. Violation of the said requisite and mandatory requirement would result in annulment of the assessment under Section 158 BD read with Section 158 BC."

17. In the present case, as already noticed, the Revenue has been unable to produce the satisfaction note of the AO of the searched person, to the effect that there was "cogent and demonstrative" material to conclude that the seized documents showed undisclosed income belonging to the Assessee. The absence of such satisfaction note on the file also explains why the AO resorted to Section 147 of the Act to reopen the assessment in the first place instead of issuing notice under Section 158 BD of the Act. Consequently, on this short ground of there being no satisfaction note, which is a mandatory

requirement under Section 158 BD of the Act, as explained by the Supreme Court in ***Commissioner of Income-Tax v. Calcutta Knitwears*** (*supra*), the entire block assessment proceedings are held to be bad in law. Question (b) is accordingly answered in the affirmative and in favour of the Assessee and against the Revenue.

18. In view of the answer to question (b), the answer to question (a) has also to be in the affirmative i.e. the in the circumstances of the present case, the notice under Section 158-BD issued to the Assessee is held to be bad in law.

19. The Court also notes that the order of the CIT (A) dated 12th December, 2002 held that the re-assessment proceedings under Section 147 of the Act were bad in law and that the AO was however free to initiate fresh block assessment proceedings under Section 158BD of the Act subject to fulfilling the requirement under Section 158 BE (2) (b) of the Act. That part of the said order of the CIT (A) was not challenged by the Revenue. Section 158BE(2)(b) makes it clear that the limitation period for completion of a block assessment in the case of the person other than the searched person, which in the present case is the Assessee, is "two years from the end of the month in which the notice under this Chapter was served on such other person....". Although the said notice under Section 158 BD was served on the Assessee only on 25th September 2006, i.e. nearly nine years after the search of the premises of Mr. Jain, the said notice was itself bad in law since it was not preceded by the recording of a note of satisfaction which was a *sine qua non*. In any event, such notice could not have been served nine years after the search when the object of Section 158 BE (2) is to complete

the block assessment proceedings within two years of the service of the notice, which obviously had to be within a reasonable period after the search. In any event, as far as the present case is concerned, the answers to questions (a) and (b) above are sufficient to invalidate the block assessment proceedings.

20. The impugned orders dated 28th May and 15th July 2013 of the JM, the order dated 21st July 2014 of the Third Member and the confirmatory order dated 8th December 2014 of the ITAT, and the corresponding orders of the AO and the CIT (A) to the extent they hold against the Assessee are hereby set aside. The appeal is allowed with no order as to costs.

S. MURALIDHAR, J

VIBHU BAKHRU, J

NOVEMBER 5, 2015
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