**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Income Tax Appeal No.344 of 2010
Date of decision: January 11, 2017**

The Commissioner of Income Tax, Faridabad ....Appellant

versus

Ajit Singh ....Respondent

***CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN***

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Present: Mr. Tajender K. Joshi, Advocate
for the appellant-Revenue.

Mr. Brij Mohan Monga, Advocate and
Mr. Rohit Kaura, Advocate
for the respondent-assessee.

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AJAY KUMAR MITTAL, J. (Oral)

This order shall dispose of two appeals bearing ITA Nos.344 and 345 of 2010 as learned counsel for the parties state that the issue involved therein is identical. For brevity, the facts are being extracted from ITA No.344 of 2010.

2. The appellant-Revenue has approached this Court under Section 260A of the Income Tax Act, 1961 (in short, “the Act”) against the order dated 05.10.2007 (**Annexure A-III**) passed by the Income Tax Appellate Tribunal, New Delhi (in short, 'the Tribunal') in IT(SS) No.140/Del/2005 for the block period ending 18.02.1997, claiming the following substantial questions of law:-

> “(i) Whether, on the facts and in the circumstances of the case, the findings recorded by the learned ITAT is perverse and contrary to the evidence available on record

as the Assessing Officer (in short 'AO') had initiated the proceedings u/s 158BD of the Income Tax Act, 1961 after recording requisite satisfaction for the purpose of initiating proceedings u/s 158BD of the Income Tax Act, 1961, in the case of the assessee?

(ii) Whether, on the facts and in the circumstances of the case, the learned ITAT was right in law in holding that the satisfaction contemplated under Section 158BD of the Act has not been recorded and hence issuance of notice under section 158BD dated 24.08.2001 is bad in law even though the findings recorded by the learned ITAT are perverse in so far the detailed proceedings and reasoning given in the assessment order itself evidences implied satisfaction which is also borne our from the additions in the assessment order?

(iii) Whether, on the facts and in the circumstances of the case, the learned ITAT was right in law in holding that in absence of the clear period of 15 days for filing the return, the notice u/s 158BD dated 24.08.2001 stands vitiated in law, illegal and void and therefore the assessment order passed in consequence of such illegal notice is required to be quashed even though the assessee had not file return of income even after more than two and a half years of the issue of notice u/s 158 BD of the Income Tax Act, 1961?

(iv) Without prejudice to the question No.(iii) above, whether the learned ITAT was right in law in quashing the Block Assessment made consequent to the notice u/s 158BD of the Income Tax Act, 1961, though Section 292B of the Income Tax Act, 1961 specifically provides that no proceeding under Income Tax Act, 1961, shall be invalid by reason of any mistake, omission or defect in a notice?

(v) Whether on the facts and in the circumstances of the case, the learned ITAT was right in law in not adjudicating the additions deleted by the learned CIT(A) in holding that these are academic in nature and not confirming the order of the Assessing Officer?"

3. At the outset, learned counsel for the respondent-assessee submitted that similar issue had arisen in the case of the brother of the assessee titled as '***Commissioner of Income Tax, Faridabad vs. Shri Ajay Singh***' in **ITA No.58 of 2009** decided on 01.09.2015 wherein it was held that the service of notice for recording the requisite satisfaction precedent under Section 158BD of the Act was mandatory and the same had not been complied with by the Assessing Officer (in short 'AO') of the person who had been put to search before transmitting the records to the other AO who had jurisdiction over such other person. The substantial questions of law as claimed herein had already been answered in the said judgment. Further reference was also made to a Circular No.24/2015 dated 31st December, 2015 issued by the Central Board of Direct Taxes to substantiate that the Board has issued appropriate directions that the revenue should either withdraw the appeals or they should be dismissed as not pressed in view of the judgment passed by the Supreme Court in the case titled as '***Commissioner of Income Tax-III vs. M/s Calcutta Knitwears, Ludhiana***' in **Civil Appeal No.3958 of 2014** decided on 12.03.2014 wherein it was held that the recording of satisfaction note is a prerequisite and the satisfaction note must be executed/prepared by the AO before he transmits the record to the other AO, who has jurisdiction over such other person under Section 158BD of the Act. The Circular reads thus:-

> **"Subject: Recording of satisfaction note under Section 158BD/153C of the Act-**reg.**-**

The issue of recording of satisfaction for the purposes of section 158BD/153C has been subject matter of litigation.

2. The Hon'ble Supreme Court in the case of **M/s Calcutta Knitwears** in its detailed judgment in Civil Appeal No.3958 of 2014 dated 12.03.2014 (available in NJRS at 2014-LL-0312-51) had laid down that for the purpose of Section 158BD of the Act, recording of a satisfaction note is a prerequisite and the satisfaction note must be prepared by the AO before he transmits the record to the other AO who has jurisdiction over such other person u/s 158BD. The Hon'ble Court held that "*the satisfaction note could be prepared at any 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; or*

(b) *in the course of the assessment proceedings under Section 158BC of the Act; or*

(c) *immediately after the assessment proceedings are completed under Section 158BC of the Act of the searched person."*

3. Several High Courts have held that the provisions of Section 153C of the Act are substantially similar/pari-materia to the provisions of Section 158BD of the Act and therefore, the above guidelines of the Hon'ble SC, apply to proceedings u/s 153C of the IT Act, for the purposes of assessment of income of other than the searched person. This view has been accepted by CBDT.

4. The guidelines of the Hon'ble Supreme Court as referred to in Para 2 above, with regard to recording of satisfaction note, may be brought to the notice of all for strict compliance. It is further clarified that even if the AO of the searched person and the "other person" is one and

the same, then also he is required to record his satisfaction as has been held by the Courts.

5. In view of the above, filing of appeals on the issue of recording of satisfaction note should also be decided in the light of the above judgement. Accordingly, the Board hereby directs that pending litigation with regard to recording of satisfaction note under Section 158BD/153C should be withdrawn/not pressed if it does not meet the guidelines laid down by the Apex Court."

4. In view of the above, learned counsel for the appellant-Revenue could not dispute that questions No.1 and 2 are to be answered in favour of the assessee in view of decision in ***M/s Calcutta Knitwears' case*** (***supra***) and also the above-mentioned Circular. Accordingly, questions No.1 and 2 are answered in favour of the assessee. It was also submitted that on the basis of answers to questions No.1 and 2, the issues involved in Question Nos.3 to 5 have become infructuous.

5. In view of the above, both the appeals are accordingly, dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(RAMENDRA JAIN)
JUDGE

January 11, 2017
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Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No