

OD - 4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

PRESENT :

THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITA/104/2011

IA NO: GA/2/2011 (Old No: GA/742/2011)

COMMISSIONER OF INCOME TAX, CENTRAL-III, KOLKATA
VS
KRISHNA KUMAR DAGA

For Appellant : Mr. Tilak Mitra, Advocate
Mr. Prithu Dudhuria, Advocate

For Respondent : Mr. J.P. Khaitan, Senior Advocate
Mr. Pranit Bag, Advocate
Ms. Amani Kayan, Advocate
Mr. A. Agarwalla, Advocate
Ms. Priyanka Garain, Advocate

Heard on : 20.08.2025

Judgment on : 20.08.2025

T.S. SIVAGNANAM, C.J. : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18.12.2009 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in IT (SS) A No.70 (Kol) of 2008 for the Block Assessment Year 1991-92 to 2001-02.

The appeal filed by the revenue was admitted on 25th April, 2011 on the following substantial question of law :

"Whether the Tribunal below committed substantial error of law in rejecting the block assessment order and deleting the addition of Rs.12,34,46,051/- disregarding the Department's finding and evidence on record produced before the Tribunal as well as before the lower authorities making the said order perverse in nature"

By order dated 16th June, 2016 the Hon'ble Division Bench granted leave to the respondent/assessee to file cross-objection which has been filed and taken on record as OCOT/6/2016. In the said cross-objection the following grounds have been raised by the assessee :

"(A) For that the Tribunal was not justified in holding that the notice dated November 28, 2003 issued under section 158BD of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was not invalid or barred by limitation or that satisfaction within the meaning of section 158BD of the Assessing Officer of the searched person was arrived at in the course of the assessment proceedings in the case of the searched person.

(B) For that the Tribunal should have held that the notice dated November 28, 2003 under section 158BD and the proceedings initiated thereunder were wholly without jurisdiction and/or barred by limitation.

(C) For that the Tribunal failed to consider that the letter dated August 5, 2003 of the Assessing Officer of the said company which was relied upon on behalf of the revenue as his satisfaction for the purposes of section 158BD was belatedly issued nearly one year after the block assessment order was passed in the case of the said company on August 29, 2002 and did not constitute

satisfaction requisite for the purposes of section 158BD.

(D) For that the Tribunal was wholly unjustified in taking into consideration an alleged Office note allegedly dated August 29, 2002 produced by the Departmental Representative for the first time before the Tribunal at the time of hearing of the appeal and to which no reference was made by any revenue authority in any previous record/proceedings in the respondent's case.

(E) For that further and in any event and without prejudice to the aforesaid, the Tribunal failed to consider that the Delhi Bench of the Tribunal in the case of M/s SMC Share Brokers Ltd. v DCIT in IT(SS) A No. 250/Delhi/2005 by its order dated January 27, 2006 held and found that the said alleged Office note allegedly dated August 29, 2002 was antedated and revenue's appeal against the said order of the Delhi Bench of the Tribunal was dismissed by the Hon'ble Delhi High Court in CIT v SMC Share Brokers Ltd., (2007) 288 ITR 345 (Delhi)."

We have elaborately heard the learned advocates for the parties.

At this juncture we take note of the submissions made by the learned standing counsel for the Department that the matter relating to the searched person travelled upto the Hon'ble Supreme Court and has attained finality as against the searched person. The revenue cannot place reliance on the decision which was rendered in the case of searched person since the respondent/assessee had preferred a SLP before the Supreme Court in SLP(C) No. 27967 of 2008, arising out of a judgment and order of this Court in APOT 373 of 2004, dated 12.10.2004 and the Hon'ble Supreme Court by order dated 2.12.2008 while dismissing this SLP held that it will be open to the respondent/assessee before us to show jurisdictional fact for issuing the said notice did

not exist before the appellate Tribunal. Therefore, the Hon'ble Division Bench of this Court rightly granted the leave to the assessee to file their cross-objection.

As could be seen from the above grounds raised by the assessee in the cross-objection, the assessee questions the notice dated 28.11.2003 issued by their Assessing Officer at Kolkata under Section 158BD of the Act as being wholly without jurisdiction and/or barred by limitation.

The assessee places reliance on the decision of the Delhi Bench of the Tribunal in the case of *SMC Share Brokers Ltd. Vs. Deputy Commissioner of Income-tax, (2007) 109 TTJ 700 (Delhi)*. Though the learned Tribunal in the impugned order has taken note of the decision, it has not touched upon the issue regarding limitation, more particularly, the correctness of the stand taken by the revenue that there is an Office note generated at the instance of the Assessing Officer of the searched person at Delhi dated 29.8.2002. It is not in dispute that the said Office note was produced for the first time before the learned Tribunal, which had weighed in the mind of the Tribunal to decide against the assessee. The Delhi Bench of the Tribunal in *SMC Share Brokers Ltd.* considered the Office note dated 29.8.2002 and its effect and efficacy qua the stand taken by the assessee that the Office note was ante-dated. The learned Tribunal has elaborately considered the effect of the said Office note dated 29.8.2002 and held that on or before 29.8.2002 the Assessing Officer of M/s. Friends Portfolio Pvt. Ltd. and that of Sri Monoj Agarwal (searched person) did not record any satisfaction and the said note dated

29.8.2002 is, therefore, not to be taken for recording satisfaction required under Section 158BC/158BD of the Act.

The revenue carried the matter on appeal before the Delhi High Court in the case of *Commissioner of Income-Tax Vs. SMC Share Brokers Ltd. (2007) 288 ITR 345 (Delhi)* and on going through the judgment we find that the correctness of the finding rendered by the Tribunal with regard to the Office note dated 29.8.2002 was not put to challenge by the revenue before the Delhi High Court. Therefore, for all purposes the decision of the learned Tribunal in *SMC Share Brokers Ltd.* qua the effect of the Office note dated 29.8.2002 stands affirmed as on date and, therefore, the revenue cannot rely upon the said Office note to mean satisfaction note recorded by the Assessing Officer of the searched person/s. This aspect was taken note of by the Delhi High Court in the case of *Commissioner of Income-Tax vs. Radhey Shyam Bansal, (2011) 337 ITR 217 (Delhi)*, wherein the Hon'ble Division Bench held that as the finding of the Tribunal in the case of *SMC Share Brokers Ltd.* has gone unchallenged, reliance cannot be placed on the Office note dated August 29, 2002 to come to a conclusion that there was recording of satisfaction. The revenue's contention before the learned Tribunal as well as before us is that the Office note dated 29.8.2002 should be regarded as a satisfaction note. The note has a prefix stating Office note (for Departmental use only). On carefully going through the note we find that there is no recording of satisfaction done by the concerned officer, namely, the Deputy Commissioner of Income-tax, Central, Circle-III, New Delhi as there is reference to certain efforts which have been taken by the Investigating wing.

The statute mandates that a satisfaction note has to be recorded by the Assessing Officer and this has been explained in the decision in *Radhey Shyam Bansal*, wherein it was held, the word "satisfaction" has not been defined in the Act. The "satisfaction" by its very nature must proceed before the papers/documents are sent by the Assessing Officer of the person searched to the Assessing Officer of the third person. Mere use or mention of the word "satisfaction" in the order/note will not meet the requirement of the concept of satisfaction as used in section 158BD. The satisfaction has to be in writing and can be gathered from the assessment order, if it is so mentioned/recorded, or from any other order, note or record maintained by the Assessing Officer of the person searched. The word "satisfaction" refers to the state of mind of the Assessing Officer of the person searched, which gets reflected in a tangible shape/form when it is reduced into writing. It is the conclusion drawn or the finding recorded on the foundation of the material available. The Assessing Officer is satisfied when he makes up his mind or reaches a clear conclusion when he takes a prima facie view that the material available establishes "undisclosed income" of a third party. The Assessing Officer must reach a clear conclusion that good grounds exist for the Assessing Officer of the third person to initiate proceedings as material before him shows or would establish undisclosed income of a third person. At this stage, as the proceedings are at the very initial stage, the satisfaction is neither required to be firm or conclusive. The satisfaction required is to decide whether or not block assessment proceedings are required to be initiated. But satisfaction has to be founded on reasonableness. It cannot be capricious satisfaction.

Though it is a subjective satisfaction, it must be capable of being tested on objective parameters. The opinion though tentative, however, cannot be a product of imagination or speculation. The satisfaction must reflect a rational connection with or relevant bearing between the material available and undisclosed income of the third person. The rational connection postulates and requires satisfaction of the Assessing Officer that the third person has undisclosed income on the basis of evidence or material before him. The material itself should not be vague, indefinite, distinct or remote.

Upon perusal of the Office note dated 29.8.2002, there is a reference to the efforts taken by the Investigation wing to identify the beneficiaries of the transactions who have taken entries more than Rs.5 Lacs from particular bank account and two annexures have been appended to the Office note in which the names of the assessee as well as SMC Share Brokers Ltd. features.

We have no hesitation to hold that the Office note at best can be treated to be a speculation and cannot qualify to be a valid satisfaction note. That apart, on the factual aspect, the learned Tribunal has examined the same and in paragraphs 9.3 and 9.4 of the impugned order has rendered a finding in favour of the assessee and this finding of fact cannot be allowed to be reopened by the revenue more particularly, when the revenue was not able to controvert the fact before the Tribunal which has been specifically so recorded by the learned Tribunal in paragraph 9.4 of the impugned order. Therefore, we are of the clear view that the Department cannot place reliance on the Office note

dated 29.8.2002 for all the above reasons and it cannot be taken to be a satisfaction note as required under Section 158BD of the Act.

The next issue is whether such proceedings initiated under Section 158BD has been done within a reasonable time or is it barred by limitation. On this issue we take guidance from the decision of the Hon'ble Division Bench in the case of *Commissioner of Income-Tax vs. Bharat Bhushan Jain*, (2015) 370 ITR 695 (Delhi), wherein the Hon'ble Division Bench took note of the decision of Supreme Court in the case of *Commissioner of Income-Tax vs. Calcutta Knitweaves*, (2014) 362 ITR 673 (SC) and held that the revenue has to be vigilant in issuing notice to third party under Section 158BD, immediately after completion of assessment of the searched person and the delay ranging between ten months of one and half years cannot be considered contemporaneous to assessment proceedings and therefore held the notices impugned therein are not in conformity with the requirements of Section 158BD as they were unduly delayed.

In *Calcutta Knitweaves (supra)*, the Hon'ble Supreme Court held that for the purpose of Section 158BD of the Act, a satisfaction notice is a *sine qua non* and must be prepared by the Assessing Officer before he transmits 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 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.

The Hon'ble Supreme Court in *Calcutta Knitwears (supra)* after laying down the above legal position did not examine the individual cases before it and one such matter which was in the bunch of appeals before the Supreme Court is in the case of Radhey Shyam Bansal and other connected matters and the matters were remanded back to the Delhi High Court for consideration of the matter on the legal principles set out in *Calcutta Knitwears*. Upon such remand the High Court of Delhi in the case of *The Commissioner of Income Tax XIII Vs. Manoj Bansal, ITA 578/2008, decided on 07.01.2015* considered the matter and dismissed the revenue's appeal.

Thus, by applying the decision in the case of *Bharat Bhushan Jain (supra)*, we are inclined to hold that initiation of the proceedings under Section 158BD of the Act pursuant to a letter dated 5.8.2003 issued by the Assessing Officer of the searched person is barred by time as it is almost a year after the block assessment was completed on the searched person on 28.8.2002.

That apart, the Assessing Officer of the assessee before us had issued notice under Section 158BD only on 28.11.2003 and going by these dates it can be safely held that the entire proceedings are inordinately delayed and barred by limitation by applying the legal principle set out in the above decision.

Thus, for the above reasons, we find that the initiation of proceedings under Section 158BD of the Act is flawed and accordingly the same is required to be set aside and the cross-objection filed by the assessee is allowed.

Consequently, the appeal filed by the revenue is dismissed and the substantial questions of law raised by the revenue are answered against the revenue.

The stay application, IA NO: GA/2/2011 (Old No: GA/742/2011), is also dismissed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)