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THE HIGH COURT OF DELHI AT NEW DELHI

WP (C) No 5759/2002

Judgment delivered on 05 10 2004

M/S AMITY HOTELS PRIVATE LIMITED . Petitioner

- versus -

THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL
 . Respondents

Advocates who appeared in this case:

For the Petitioner Mr Irawant Chaudhary
 For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi Chopra

WITH

WP (C) No 5761/2002

M/S RISHABH MERCANTILE PRIVATE LTD ...Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
 OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Irawant Chaudhary
 For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi Chopra

WITH

WP (C) No 5762/2002

M/S ISHA MERCHANTS PRIVATE LIMITED .. Petitioner

- versus -

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**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents · Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 5763/2002

M/S KESHAV TRADING COMPANY PVT LTD .. Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents · Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 5768/2002

M/S ISHA OVERSEAS PRIVATE LIMITED ...Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 5769/2002

M/S ISHA MARKETING PRIVATE LIMITED . Petitioner



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- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 5770/2002

M/S PRADEEP MERCHANTS PVT LIMITED ..Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 6104/2002

SHRI GULSHAN KUMAR JOLLY ..Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 6105/2002



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SMT NEELAM JOLLY

..Pctitioner

- versus -

THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL & OTHERS

Respondents

Advocates who appeared in this case:

For the Petitioner	Mr Pawan Chaudhary
For the Respondents	Mr R D Jolly with Mr S C Sharma and Ms Rashmi Chopra

WITH

WP (C) No 6107/2002**SHRI GULSHAN KUMAR JOLLY**

..Pctitioner

- versus -

THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL & OTHERS

Respondents

Advocates who appeared in this case:

For the Petitioner	Mr Pawan Chaudhary
For the Respondents	Mr R D Jolly with Mr S C Sharma and Ms Rashmi Chopra

WITH

WP (C) No 6108/2002**SMT NEELAM JOLLY**

.. Pctitioner

- versus -

THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL & OTHERS

Respondents

Advocates who appeared in this case:

For the Petitioner	Mr Pawan Chaudhary
For the Respondents	Mr R D Jolly with Mr S C Sharma and Ms Rashmi Chopra

WITH



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WP (C) No 6407/2002

M/S DIAMOND PROPERTIES PVT LTD

.. Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS**

Respondents

Advocates who appeared in this case:

For the Petitioner

Mr Iawan Chaudhary

For the Respondents

Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 6423/2002

M/S EXPRESS MARKETING PRIVATE LIMITED . Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS**

Respondents

Advocates who appeared in this case:

For the Petitioner

Mr Iawan Chaudhary

For the Respondents

Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 6424/2002

M/S DIVYA JYOTI CONSTRUCTION PVT LTD . Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS**

Respondents

Advocates who appeared in this case:



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For the Petitioner · Mr Pawan Chaudhary
 For the Respondents · Mr R.D Jolly with Mr S.C. Sharma and Ms Rashmi
 Chopra

WITH

WP (C) No 6425/2002

M/S BANKE BEHARI HOTELS LTD .. Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
 OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner · Mr Pawan Chaudhary
 For the Respondents · Mr R.D Jolly with Mr S.C. Sharma and Ms Rashmi
 Chopra

WITH

WP (C) No 6426/2002

M/S AASHRAM ESTATES PRIVATE LIMITED ..Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
 OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner · Mr Pawan Chaudhary
 For the Respondents · Mr R.D Jolly with Mr S.C. Sharma and Ms Rashmi
 Chopra

WITH

WP (C) No 6427/2002

M/S ANNAPURNA COLONISERS PVT LTD Petitioner

- versus -



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**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
OTHERS** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents · Mr R.D Jolly with Mr S.C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 3749/2003

M/S SAHIL FARMS PRIVATE LIMITED ...Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
ANR** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents · Mr R.D Jolly with Mr S.C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 3750/2003

M/S SWING ESTATES PRIVATE LIMITED .. Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
ANR** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents · Mr R.D Jolly with Mr S.C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 3751/2003

M/S SEEMA MERCANTILE PVT LTD . Petitioner



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- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
ANOTHER** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 3752/2003

M/S ROHIT FARMS PRIVATE LIMITED Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
ANOTHER** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R.D Jolly with Mr S C Sharma and Ms Rashmi
Chopra

WITH

WP (C) No 3756/2003

M/S SWING SECURITIES PRIVATE LIMITED .. Petitioner

- versus -

**THE COMMISSIONER OF INCOME-TAX, DELHI CENTRAL &
ANOTHER** Respondents

Advocates who appeared in this case:

For the Petitioner Mr Iawan Chaudhary
For the Respondents Mr R.D Jolly with Mr S C Sharma and Ms Rashmi
Chopra



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CORAM:-

**HON'BLE MR JUSTICE B.C. PATEL, CHIEF JUSTICE
HON'BLE MR JUSTICE BADAR DURREZ AHMED**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

B.C. PATEL, CJ (ORAL)

1. These petitions are preferred by different assesseees questioning the issuance of notices by the Assessing Officer under Section 158 BD of the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') It transpires that in accordance with the provisions contained in the Act, namely, under Section 131, the search and seizure operation was carried out in respect of M/s Bharat Lottery Agency and its proprietor Shri Praveen Kumar Jolly on 23 06.1999. It is also indicated in the petition that the residential premises of the said Shri Praveen Kumar Jolly was searched It is in view of this search and seizure of the books of accounts, that a report was submitted by the raiding party. It transpires that on the basis of this Appreciation Report, action has been initiated against all these petitioners Section 158 BD being relevant is quoted hereunder:-



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"Undisclosed income of any other person

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 158BC against such other person and the provisions of this Chapter shall apply accordingly "

2. The Assessing Officer, if he is satisfied that any undisclosed income belongs to any person other than the person in respect of whom the search was made under Section 132 or documents were requisitioned under Section 132A, then, such documents are to be handed over to the Assessing Officer having jurisdiction for initiating proceedings under Section 158 BC of the Act. In the instant case, it is submitted that there was the same Assessing Officer who assessed all the petitioners.

3. So far as the procedure for block assessment is concerned, one will have to refer to Section 158 BC of the Act. The relevant portion of Section 158BC is reproduced hereunder:

"158BC. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,--

(a) the Assessing Officer shall--



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- (i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1977, serve a notice to such person requiring him to furnish within such time not being less than fifteen days,
- (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1977, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days,

as may be specified in the notice a return in the prescribed form⁸³ and verified in the same manner as a return under clause (i) of sub section (1) of section 142 setting forth his total income including the undisclosed income for the block period

XXXX XXXX XXXX XXXX XXXX*

4 Reading the aforesaid provision, it is clear that in view of Section 132, a search must have been carried out or books of accounts or other documents or assets must have been requisitioned under Section 132A of the Act. Section 132 requires that the officer mentioned therein must have "reason to believe" that the person concerned despite issuance of notice has

⁸³ See rule 12(1A) and Form No 2B



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failed to produce or cause to be produced books of accounts or other documents as required by such summons or notice. We are not discussing the entire scheme of this Section because, in our view, it is not necessary and the relevant part is that there must be "reason to believe" for initiating action under Section 132 of the Act.

5. Similarly, Section 132A of the Act requires that the officer mentioned therein, in consequence of information in his possession must have "reason to believe" that the person has omitted or failed to produce or cause to be produced such books of accounts, etc. Just as in the case of Section 132, we are not discussing the entire section in detail, but we note that what is required is that there must be "reason to believe" for initiating action. After initiating action in consonance with Section 132 or 132A of the Act, the Assessing Officer can follow the procedure laid down in Section 158 BC of the Act for block assessment.

6. In the instant case, there was no question of there being any "reason to believe" that the present petitioners have warranted the officers to initiate action either under Section 132 or 132A of the Act. It is in view of this that Section 158 BD calls upon the Assessing Officer to be satisfied himself before initiating action. In our view, it is not necessary for the Assessing Officer

A handwritten signature in black ink, appearing to be 'BV' with a checkmark-like flourish.



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to record his satisfaction with regard to the person against whom the action has been initiated under Section 132 or Section 132A of the Act, but it is required only if action is taken against any other person other than the one covered by Section 132 or 132A of the Act

7 It was submitted before us that, as stated in the affidavit in reply, the material was considered for initiating action. The relevant portion reads as under-

"The assessee has acquired the following properties -
1/4th share in property located at 5/11 WEA Karol Bagh for a sum of Rs 1,89,000/-
1/10th share in property located at 9-B, Rajindra Park for a sum of Rs 9,45,000/-

The following issues with regard to the above need to be investigated

- i) Source of funds for making such purchases, whether the value of such properties have been disclosed at the prevailing market rate, whether any value addition has been made to such properties by way of fresh construction/renovation and whether such property was commercially exploited to generate any income
- ii) On collating information available in the Appraisal report alongwith information available in IT returns filed in regular course and looking at the larger picture in totality, it is noted that at least five different companies, owned by the Jolly family, including the assessee, are operating from the same address, i.e. 7B/8B, Rajindra



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Park, Pusa Road However, all of them are claiming separate office and administrative expenses The authenticity of such expenses needs to be verified and whether any duplicity, with regard to claim of such expenses, by each of such companies has to be looked into as in the past such cases were assessed by different assessing officers

- iii) A plethora of other information is also available from the seized record by way of papers filed with ROC property tax papers, details about expenses incurred on construction--renovation etc, which requires to be collated and compared with information available in the returns filed by the assessee in the past Some of it is verifiable from the record of the Department but for the rest, an in-depth scrutiny is required to detect concealment
- iv) The issues discussed above need to be scrutinized more so in the light of the fact that the case of the assessee company has not been scrutinized in the last five years

Keeping in view the above observations and preliminary examination of the seized record, proceedings u/s 158 BD of the Income-Tax Act are hereby initiated against the assessee company, to carry out detailed investigation."

8. Before us, the Appreciation Report prepared by the search party under Section 132 of the Act was also produced with various annexures for perusal It is in view of this report, it appears that the Assessing Officer initiated proceedings under Section 158 BD of the Act From the record, it appears from the



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Appreciation Report that in almost all the cases, what issues need to be investigated are indicated. Over and above, it is also indicated "Some of it is verifiable from our record, but for the rest and in-depth scrutiny is required to detect concealment". It is further said "keeping in view the above observations and preliminary examination of the seized record, proceedings u/s 158 BD of the Income-Tax Act are hereby initiated against the assessee company, to carry out detailed investigation".

9 The satisfaction is required to be preceded by the investigation and not that the investigation is required to be preceded by the satisfaction. On behalf of the revenue, our attention was drawn to a decision of the Division Bench of the Gujarat High Court in the case of Rushil Industries Limited v. Harsh Prakash: 251 ITR 608, wherein it is pointed out that satisfaction is not required to be recorded. However, it is in a different context and the Court has clearly indicated so. The Division Bench of the High Court at page 613 has pointed out as under-

* A bare reading of the provisions of Section 158BD (quoted above) would show that for taking action under the said section, the Assessing Officer is merely required to be satisfied that the books of account or other documents or assets found in the search show undisclosed income of a person other than one against whom the search



was conducted Merely because no books of account or other documents or assets were found in the search against the two abovenamed persons it cannot be said that no action for alleged undisclosed income was called for against the petitioner under section 158BD "

Thus, it is very clear that satisfaction is required and it cannot be said that proceedings can be initiated without such satisfaction. Although, this satisfaction may be on the basis of material which is seized not from the noticee, but from the other assessee and against a person in respect of whom action was taken under Section 132 or 132A of the Act The Court further pointed out at page 614 as under:-

" This disclosure in the search operations against the two abovenamed persons was a relevant material for forming of an opinion and satisfaction that the petitioner has not truly disclosed his income and the action under section 158BD was, therefore, called for "

10. A similar view is taken in a subsequent decision in the case of **Priya Blue Industries P. Ltd. v. Joint Commissioner of Income-Tax: 251 ITR 615** which has followed the decision which we have discussed hereinabove

11. In the present case, there is nothing to indicate that the Assessing Officer could have formed an opinion and could

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have arrived at a satisfaction that the petitioner has not truly disclosed his income. As we indicated earlier, that the Appreciation Report clearly reveals that the Assessing Officer was called upon to look into it with regard to several entries and the Assessing Officer in his noting has clearly indicated that it requires further investigation, in-depth scrutiny and there is nothing to indicate he has recorded in writing that he was satisfied about the action required to be initiated. The Assessing Officer has come out with the version in para 4 of the affidavit in reply that "there is no requirement under provisions of Section 158BD for recording "reasons to believe" before issuing notice under the said Section." Thus, it is very clear that there was no satisfaction. Even it is not stated in affidavit in reply that, that the Assessing Officer was satisfied and hence issued notice. On the contrary, it reveals that to arrive at a satisfaction, notice was issued and that is clear from the affidavit of assessing officer. It may be noted that the property which is referred for initiating proceedings has already been disclosed in the return of income

12 In view of what is stated herein above, this Court is of the opinion that the proceedings are not in accordance with law and, therefore, are required to be quashed. However, it goes without saying that if there is any material, the department can

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take action in accordance with law The writ petitions are
disposed of accordingly.

Belal
CHIEF JUSTICE

Amrullah
BADAR DURREZ AHMED, J

October 05, 2004

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