



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

{ITA 714 of 2009}

&

{ITA 730 OF 2009}

Judgment delivered on:23.11.2010

(1) ITA 714/2009

COMMISSIONER OF INCOME TAX

. . . APPELLANT

Through: Mr. Sanjeev Sabharwal, Advocate

VERSUS

SUNIL BHALA

. . .RESPONDENT

Through: Dr. Rakesh Gupta, Advocate with
Ms. Poonam Ahuja, Advocate.

(2) ITA 730/2009

COMMISSIONER OF INCOME TAX

. . . APPELLANT

Through: Mr. Sanjeev Sabharwal, Advocate

VERSUS

M/S RAJGUL CREDITVEST P LTD.

. . .RESPONDENT

Through: Dr. Rakesh Gupta, Advocate with
Ms. Poonam Ahuja, Advocate

CORAM:-

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J (Oral)

1. A search was conducted in the case of Mr. S.K. Jain and M/s GCB Capital Finance P. Ltd. (referred to as 'M/s GCB Capital') on 14th December, 1999. Certain documents/papers were seized during the search which allegedly related to the two assesseees herein namely



person i.e. the persons other than those whose premises were searched, after the search, statement of Mr. Sunil Bhala, a Chartered Accountant by profession, was also recorded. The Assessing Officer in the case of M/s GCB Capital completed the assessment, forwarded the assessment order pertaining to M/s GCB Capital as well as statement of Mr. Sunil Bhala recorded after the search and seizure operation, to the Assessing Officer of Sunil Bhala and M/s RajGul Credit for necessary action. The exact communication addressed by the Assessing Officer of M/s GCB Capital to the Assessing Officer of these two assesses reads as under:-

“F.No. DCIT/Cir.12(1)/2001-02/

Office of the DCIT, Circle 12 (1),
New Delhi
Dated 31/12/2001

To

The Assistant Commissioner of Income-tax,
Circle 38(1),
New Delhi.

Sub:-Block Assessment in the case of Shri Sunil Bhala,
director of M/s G.C.B. Capital Finance Pvt. Ltd.

The block assessment order under Section 158BC in the case of M/s G.C.B. Capital Finance Pvt. Ltd., has been passed on 28/12/2001. Most of the seized records containing notings of cash transactions have been stated by Shri Sunil Bhala to be not pertaining to M/s GCB Capital Finance Pvt. Ltd. A copy of the statement of Shri Sunil Bhala and a copy of assessment order in the case of M/s GCB Capital Finance Pvt. Ltd. is being forwarded to you for reference and necessary action.

As communicated earlier, the seized records are lying with the undersigned and these may be perused at any time during office hours by yourself or by any Inspector of Income Tax authorized for this purpose.

Yours faithfully



2. The notices to these assesseees were initially issued under Section 158 BC of the Act which proceedings were dropped and thereafter notices under Section 158 BD of the Act were issued to these two assesseees directing them to file the return for the block period 1.4.1989 to 14.12.1999 respectively. The assessment made by the Assessing Officer pursuant to the said notices has been set aside by the Income Tax Appellate Tribunal on the grounds that the mandatory procedure contained in Section 158 BD of the Act was not followed, inasmuch as, (i) there was no satisfaction recorded by the Assessing Officer of M/s GCB Capital while forwarding the case to the Assessing Officer of these two assesseees, and (ii) he did not, also, forward the necessary records seized during the search and seizure operation.

3. Section 158 BD of the Act reads as under:-

“Undisclosed income of any other person.

158BD. 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.”

4. It is clear from the bare perusal of the aforesaid provision that the satisfaction of the Assessing Officer has to be recorded. It is also clear from the aforesaid provision that while sending the case to the concerned Assessing Officer, who is the Assessing Officer of the



exact wording of the letter by which the case was forwarded to t Assessing Officer of these respondent. Nowhere any satisfaction is recorded by the assessing Officer of M/s GCB Capital stating that he was satisfied that the income for this block period in respect of assessee had escaped assessment. Further, it is also clear that the records were also not sent instead he merely stated that these records were available with the forwarding Assessing Officer which could be “perused” by the concerned Assessing Officer during the office hours.

5. Mr. Sanjeev Sabharwal, learned counsel appearing for the Revenue submitted that the satisfaction inferred though not specifically recorded in the said communication, can be inferred from the circumstances. For this purpose, he heavily relied upon the statement of Mr. Sunil Bhala which was recorded after the search operation and was forwarded to the Assessing Officer of these assesseees and during the assessment proceedings of M/s GCB Capital. We have found that Mr. Sunil Bhala in his statement has stated that some of the documents seized during the search operation either related to Mr. Sunil Bhala himself or to M/s RajGul Pvt. Ltd. However, that would not meet the requirement of recording the satisfaction. Merely stating that some of the documents belonged to these two assesseees would not suffice. It was necessary for the Assessing Officer while forwarding the case, to record satisfaction to the effect that there was undisclosed income belonging to those assesseees. As pointed out above, there was no such statement recorded in the forwarding letter, even from the statement of Mr. Sunil Bhala this ingredient cannot be inferred as having been



having been arrived at by the Assessing Officer while forwarding t
case.

6. In these circumstances, we are of the view that learned Tribunal has rightly relied upon the judgment of the Supreme Court in the case of **Manish Maheshwari Vs. Asst. Commissioner of Income-Tax and Another**, 289 ITR 341 to set aside the proceedings on this ground. Following discussion, there from, is of advantage:-

“14. From the above, we find that satisfaction of the Assessing Officer must be recorded to the effect that there is undisclosed income belonging to any person, other than the person in respect of whom the search was made under Section 132 of the said Act. The second condition is that the books of accounts or other documents or assets seized or requisitioned have to be handed over to the Assessing Officer having jurisdiction over such person (i. e, the person other than the person in respect of whom the search was made). It is only thereafter that the Assessing Officer can proceed under Section 158BC against such other person. In the present case, we find that both the Commissioner of Income Tax (Appeals) and the Tribunal have held that no satisfaction was recorded by the Assessing Officer of Yadav & Co. They have also recorded that no material whatsoever was handed over by the Assessing Officer of Yadav & Co. to the Assessing Officer of the assessee company. It is obvious that the essential pre-conditions which needed to be satisfied for the purposes of invoking the provisions of Section 158BD have not been fulfilled.

15. An argument was sought to be raised on behalf of the learned Counsel for the appellant that Section



appreciate this argument because the plain reading of the provision makes it clear that unless and until the Assessing Officer of the person who is searched is satisfied that there is any undisclosed income belonging to any person, other than the person with respect to whom search was made under Section 132, no further steps can take place. The further steps are provided in Section 158BD itself and they are that such Assessing Officer, after being satisfied that there is undisclosed income belonging to such other person, is required to hand over the books of accounts, other documents or assets seized or requisitioned to the Assessing Officer having jurisdiction over such other person. It is from that point on, that the Assessing Officer of such other person is required to proceed in accordance with the other provisions of Chapter XIV and issue notice under Section 158BC.

16. The learned Counsel for the appellant also submitted that the satisfaction of the Additional Director of Income Tax was sufficient compliance with the provisions of Section 158BD. We cannot agree with this submission because the plain reading of the provisions of Section 158BD specify that it is the Assessing Officer who is to be satisfied that there is any undisclosed income belonging to such other person. The Additional Director of Income Tax (Investigation) was not the Assessing Officer of Yadav & Co. It is only the satisfaction of the Assessing Officer of the person in respect of whom the search is conducted that is relevant. In the present case there is no such satisfaction recorded. As a consequence we feel that the Tribunal has correctly applied the law as laid down by the Supreme Court in the case of Manish Maheshwari (supra) in arriving at the conclusion that the proceedings under Section 158 BD/BC in respect of the assessee were without jurisdiction. No substantial question of law arises for the consideration of this Court



7. It is also an admitted case that the records were not forward as well and no satisfactory answer on this account could be given. We are, therefore, of the opinion that no substantial question of law arises and these appeals are dismissed accordingly.

**(A.K. SIKRI)
JUDGE**

**(SURESH KAIT)
JUDGE**

NOVEMBER 23,2010.
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