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

Date of decision: November 26, 2014

\+ **ITA No. 339/2002**

COMMISSIONER OF INCOME TAX, NEW DELHI ..... Appellant
Through: Mr.Akash Vajpai , Advocate

Versus

M/S. MANJU FINANCE CORPORATION, NEW DELHI
..... Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V.KAMESWAR RAO

SANJIV KHANNA, J. (Oral)

1. This appeal by the revenue under Section 260-A of the Income Tax Act, 1961 ('Act', in short) impugns the order dated 15.04.2002 passed by the Income Tax Appellate Tribunal (Tribunal, in short) annulling and setting aside block assessment proceedings under Section 158BD of the Act. The block assessment period involved is 01.04.1986 to 29.08.1996.

2. By order dated 01.02.2005, the following substantial question of law was framed:

> *"Whether in the facts and circumstances of the case, non-issuance of notice under Section 158BD of the Income Tax Act, 1961 would vitiate the proceedings initiated under Section 158BC of the Act?"*

3. The respondent assessee is a firm originally constituted on 01.03.1990 and had been filing their returns of income from the address X-49, Loha Mandi, Naraina Phase-2, New Delhi. On 29.08.1996 search and seizure operations under Section 132(1) of the Act were conducted at E-49, Naraina Vihar, New Delhi at the residence of Nem Chand Gupta, an individual. During the course of search, books of accounts namely a journal, a cash book and a ledger belonging to the respondent assessee were found and seized. At this stage, we may record that the grounds of appeal wrongly record and state that search and seizure operations were carried out at the premises of the assessee. This fact does not borne and is contrary to the assertion made in the assessment order. Subsequently, the jurisdiction of the respondent assessee was transferred to DCIT, Special Range 13 in exercise of power and order under Section 127 of the Act. The said order is dated 20.02.1997. Thereupon, the Deputy Commissioner of Income Tax Special Range 13, New Delhi, issued notice under Section 158BC of the Act dated 06.03.1997 which was duly served on the respondent assessee and return of income for block period was filed in Form No. 2B on 17.04.1997. Block assessment order was passed on 29.08.1997 assessing undisclosed income for the block period at Rs.67,95,370/-.

4. The block assessment order was made subject matter of challenge

before the Income Tax Appellate Tribunal and as noted above the block assessment order stands annulled. The reasons given by the Tribunal for annulling the block assessment are to be substantially found in paragraph No.11 of the impugned order, which for the sake of convenience is reproduced below:-

> *"11. Regarding the jurisdiction, this is undisputed fact that no search was conducted on the assessee, neither any warrant of search was issued in the name of assessee nor any Panchnama was prepared in the name of the assessee. Therefore, no proceedings can be taken against the assessee u/s 158BC. The search was conducted on one Shri Nem Chand Gupta on 29.8.1996 and proceedings u/s 158BC were taken against that assessee. Some papers related to the assessee were found during the course of search made on Shri Nem Chand Gupta. Those books of accounts had papers were seized and notice u/s 158BC was issued to the assessee and the assessee was asked to file the return for the block period. The notices u/s 143(2) and 142(2) along with questionair were issued to the assessee. A specific query was raised during the course of hearing by the Bench to the learned DR that whether any notice u/s 158BD was issued or not, it was fairly admitted that no notice u/s 158BD was issued. However, it was categorically stated that there is no material difference between the notice u/s 158BD and notice u/s 158BC. As we have already stated that assessee deserved to succeed on*

this issue because the provisions of sections 158BC and 158BD are separate and distinct. The proceedings u/s 158BC can be initiated only on the assessee on whom the search was conducted and proceedings u/s 158BD are to be initiated where the concerned AO has received an information or intimation from Assessing Officer of the person on whom the search was conducted. No such material was brought on record that whether any intimation or information were received by the AO from the Assessing Officer of Shri Nem Chand Gupta, on whom the search was conducted. Therefore, it cannot be stated that there is no material difference between section 158BD and section 158BC. The defect also cannot be cured by section 292B, as both the sections are separate and distinct because the proceedings under both the sections are entirely different."

(emphasis supplied)

4. We have reservations on the findings with regard to issue of notice issued under Section 158BC instead of Section 158BD of the Act. Possibly, question of prejudice due to mention of wrong provision etc. may arise. The facts were noted in the assessment order which specifically records that the search was not conducted in the case of respondent assessee but books of accounts i.e. journal, cash book and ledger of the respondent assessee were found in the search. Thus reference was to Section 158BD of the Act. However, the respondent

assessee is entitled to succeed in view of the specific finding given by the Tribunal in the aforesaid paragraph that no material was brought on record whether any intimation or information was received by the Assessing Officer of the respondent assessee from the Assessing Officer of Nem Chand Gupta i.e. the person on whom search was conducted. Accordingly, the finding of the Tribunal was that the Assessing Officer of Nem Chand Gupta had not given any intimation or information to the Assessing Officer of the respondent assessee. On the said aspect, Section 158BD of the Act is clear and stipulates as a pre-condition that the Assessing Officer of the person searched must record his satisfaction that any undisclosed income belongs to a third person i.e. the person other than the person who was searched or whose documents, account books or assets were requisitioned. Thereafter he should handover the said documents to the Assessing Officer of the third person. We would assume in the present case that the Assessing Officer of the person searched and the Assessing Officer of the respondent assessee were the same as there is an order under Section 127 of the Act. However, this would not mean that the Assessing Officer of the person searched should not have recorded the satisfaction before notice was issued under Section 158BD read with Section 158BC of the Act. The requirement of Section 158BD is that the Assessing Officer of the person searched or against

whom an order under Section 132A of the Act 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 158BD of the Act are initiated. Violation of the said requisite and mandatory requirement would result in annulment of assessment under Section 158BD read with Section 158BC of the Act. The aforesaid dictum and ratio stands commandingly and conclusively affirmed by the Supreme Court in ***Commissioner of Income Tax vs. Calcutta Knitwears, Ludhiana [2014] 362 ITR 673 (SC)***, in the following words:-

> *"39. The opening words of Section 158BD of the Act are that the assessing officer must be satisfied that "undisclosed income" belongs to any other person other than the person with respect to whom a search was made under Section 132 of the Act or a requisition of books were made under Section 132A of the Act and thereafter, transmit the records for assessment of such other person. Therefore, the short question that falls for our consideration and decision is at what stage of the proceedings should the satisfaction note be prepared by the assessing officer: whether at the time of initiating proceedings under Section 158BC for the completion of the assessments of the searched person under Section 132 and 132A of the Act or during the course of the assessment proceedings under Section 158BC of the Act or after completion of the proceedings under Section 158BC of the Act.*
> *XXXX*
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> *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 accounts 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 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 accounts 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."

(emphasis supplied)

5. In order to be absolutely sure as to the factual position, we had called upon counsel for the Revenue to examine the original records and ascertain whether satisfaction note of the Assessing Officer of the person searched is available. The appeal was accordingly adjourned. Learned counsel for the Revenue states that he has examined the original records

and no satisfaction note recorded by the Assessing Officer of the person searched is available. In these circumstances and in view of authoritative pronouncement of the Supreme Court in ***Calcutta Knitwears*** (supra), we have to hold that the block assessment proceedings initiated under Section 158BD read with Section 158BC of the Act were bad and contrary to law. The question of law is accordingly answered in favour of the respondent assessee and against the appellant Revenue. The appeal is disposed of. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(V.KAMESWAR RAO)
JUDGE

NOVEMBER 26, 2014
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