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

Decided on: 07.01.2015

+ **ITA 578/2008**

THE COMMISSIONER OF INCOME TAX XIII

..... Appellant
Through Mr. Ruchir Bhatia, Mr. Rohit Madan
and Ms. Suruchi Aggarwal, Advs.

versus

MANOJ BANSAL

..... Respondent
Through Mr. Salil Kapoor, Mr. Vikas Jain and
Mr. Sanat Kapoor, Advs.

+ **ITA 582/2008**

THE COMMISSIONER OF INCOME TAX XIII

..... Appellant
Through Mr. Ruchir Bhatia, Mr. Rohit Madan
and Ms. Suruchi Aggarwal, Advs.

versus

RADHEY SHYAM BANSAL

..... Respondent
Through Mr. Salil Kapoor, Mr. Vikas Jain and
Mr. Sanat Kapoor, Advs.

+ **ITA 583/2008**

THE COMMISSIONER OF INCOME TAX XIII

..... Appellant
Through Mr. Ruchir Bhatia, Mr. Rohit Madan
and Ms. Suruchi Aggarwal, Advs.



versus

SUKESH KUMAR GUPTA

..... Respondent

Through Mr. Salil Kapoor, Mr. Vikas Jain and
Mr. Sanat Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The present appeal has been received on limited remit by the Hon'ble Supreme Court which had by its judgment and order reported as *CIT V. Calcutta Knitwear* (2014) 362 ITR 673 (SC) directed examination of the limited question as to whether opinion formation – in terms of Section 158BB of the Income Tax Act, and the time within which it had to be recorded was complied with.

2. The facts of the case are that a search was conducted on 3.8.2000 in the premises of Sh. Manoj Aggarwal. This led to the seizure of various documents and other materials; even the statement was recorded under Section 132 of the Income Tax Act. The present assesseees were issued with a notice on 22.03.2004 by his assessing officer. It was alleged by the revenue that the notice was on account of opinion formation in terms of Section 158BB of Sh. Manoj Aggarwal's assessing officer. During the course of proceeding the matter ultimately reached the ITAT which after considering the



submissions of the parties as far as the records of assessment, in the assessee's case, held that the requirement of Section 158BB were not complied with in terms of the judgment of the Supreme Court cited as *Manish Maheswari V. ACIT 2007 289 ITR 341 (SC)*. The order of the ITAT became the subject matter of challenge in ITA 582/2008. By judgment and order dated 30.5.2011, this Court affirmed the findings of the ITAT. While doing so, the judgment in *Manish Maheswari* (supra) was considered, and so too were the other decisions of the Supreme Court. Thereafter the Court in para 17 discussed the letter/communication dated 15.7.2003, by the assessing officer of Manoj Aggarwal, who wrote to the assessing officer of the present assessee. The relevant extract of the said letter is as follows :

*“1) Various diaries have been seized from the possession of Sh. Manoj Aggarwal which establish that Radhey Shyam Bansal is a mediator for providing accommodation book entries by Sh. Manoj Aggarwal. The quantum of transaction done by him as per these documents is given in Annexure-A. Photocopies of these paper are enclosed in Annexure-B.
2) There are evidences of cash having been received by Mr. Manoj Aggarwal from Radhey Shyam Bansal. The summary of the amounts so received as per various seized documents is given in Annexure-C. The photocopies of these documents are provided as per Annexure-D.”*

3. The revenue's contention on that occasion was that the actual satisfaction had been recorded on the file by the assessing officer of Manoj Aggarwal on 29.8.2002. This Court in para 24 of its judgment (reported as 2011 337 ITR 217) recorded in this regard as follows :

“The last plank of submission of learned counsel appearing for the revenue was a note that was recorded by the assessing



officer of the Manoj Aggarwal on the date of assessment. It is contended by Ms. Prem Lata Bansal, learned senior counsel, Mr. Sanjeev Sabharwal, Ms. Suruchi Aggarwal, Mr. Chandramani Bhardwaj, learned counsel for the revenue that though the said note was not filed before the tribunal but the same should be treated as a part of evidence on record and dealt with it. Whether that could have been taken as an additional evidence under Order 41 Rule 27 of the Code of Civil Procedure though such an application has not been filed. The same is not necessary in view of the finding recorded by the tribunal in SMC Share Brokers Ltd. (supra) in. In the said case, i.e., ITA No.250/Del/2005, the tribunal expressed the view that a satisfaction note by the assessing officer of the searched person recording undisclosed income of any person within the meaning of Section 158BD could be validly recorded after completion of assessment of the searched person. In that context, the tribunal held the only requirement is that the satisfaction must be in writing. In the said case, the tribunal was dealing with the search carried out on the premises of Manoj Aggarwal on 3.8.2000. The present case also relates to the said search. It is noteworthy the departmental representative in the case of SMC Share Brokers Ltd. (supra) had pressed into service the note dated 29.8.2002 which has been sought to be pressed into service by the learned counsel for the revenue herein. The tribunal while dealing with the said note dated 29.8.2002 expressed their views as follows:

“14.3 As per the Departmental Representative, the satisfaction for initiating proceedings under Section 158BD was recorded by the AO making assessment in the case of Shri Manoj Aggarwal and M/s Friends Portfolio (P) Ltd. on 29th Aug., 2002 also i.e. on the date of passing assessment order dt. 29th Aug., 2002



itself. However, the learned Counsel for the assessee has seriously challenged the genuineness and the authenticity of this note. According to him, this note is antedated. He tried to substantiate his argument by demonstrating that if the satisfaction note was recorded on 29th Aug., 2002 then there would have been no necessity to further record the satisfaction again on 26th Nov., 2002. He also pointed out that from the contents and language of the alleged satisfaction note dt. 29th Aug., 2002, it is evident that this note is subsequently prepared. He submitted that if the satisfaction was recorded on 29th Aug., 2002, the notice should also have been issued on that date itself or just thereafter.

14.4 The learned Departmental Representative, on the other hand, maintained that the AO had made this note on 29th Aug., 2002.

15. We have carefully considered the entire material on record and the rival submissions. With this note, a list of beneficiaries has been appended. The name of assessee appears at item No. 69, which is as under:

69	SMC	17, Netaji	Friends	30000000	The assessee has taken bogus accommodation entry through M/s Friends Portfolio (P) Ltd. and hence satisfaction note in this regard has been recorded in the case of this company and proposal for centralization of this case in this circle has been approved for taking up proceedings u/s 158BD.
	Sharebrokers	Subhash	Portfolio		
	Ltd.	Marg,	(P) Ltd.		
		Daryaganj,			
		New			
		Delhi-02			



The last sentence in the above note indicates that the proposal for centralization of this case in this circle has been approved for taking up proceedings under Section 158BD. The learned Counsel pointed out before us that no such approval was taken before 29th Aug., 2002. According to him, the proposal is dt. 19th Sept., 2002, i.e. after the date of the office note. The office note cannot, therefore, mention any event, which has occurred later on, i.e., after 29th Aug., 2002. The fact that the proposal itself is dt. 19th May, 2002 could not be controverted by the learned Departmental Representative.

16. On going through the alleged office note available on pp. 202 to 226, it is found that the office note has been allegedly signed on 29th Aug., 2002 that is the date on which the assessment order in the case of M/s Friends Portfolio (P) Ltd. was completed. On closer scrutiny of the facts and circumstances mentioned above including the fact regarding the mention of satisfaction note in the case of "this company" and proposal for centralization of the case in the circle in which the cases of searched persons fell, as referred to above, and also in view of the circumstances relating to this issue, we find force in the submissions of the learned Counsel for the assessee made before us and conclude that no satisfaction note was prepared on 29th Aug., 2002 and this note has been prepared even after 26th Nov., 2002. Our reasons for holding so are as under:

(i) Had the satisfaction been recorded on 29th Aug., 2002, there would have been no necessity to record another satisfaction on 26th Nov., 2002. The note refers



to the "satisfaction recorded in the case of this company" which reference is to the satisfaction dt. 26th Nov., 2002 and hence this note has been prepared subsequent to satisfaction note dt. 26th Nov., 2002.

(ii) Had the satisfaction note been recorded on 29th Aug., 2002 then the record pertaining to the other person not searched should have been transferred to the AO of the present assessee who was a different officer at that time than the officer of the searched person.

(iii) The alleged satisfaction makes mention of the proposal and approval regarding centralization of the case. This proposal is dt. 19th Nov., 2002 and is subsequent to the alleged note which fact proves the contention of the learned Counsel for the assessee that the notice (sic-note) is antedated.

(iv) There is a detailed note by the AO, a copy of which has been filed at p. 33 of the paper book. The concluding observations of the AO in this note are as under:

“In view of the facts mentioned above and the block assessment orders of Sh. Manoj Aggarwal and M/s Friends Portfolio (P) Ltd., undisclosed income has arisen in the hands of M/s SMC Share Brokers Ltd. which has been found during the course of search and seizure operations in the case of Shri Manoj Aggarwal and his associate concerns. Thus, proceedings under Section 158BD are applicable in this case.”

The date below the signatures of the AO is not legible in this copy. Therefore, the learned Departmental



Representative was asked during the course of hearing of the case to verify the date of this note. On verification from the record, she informed that the note is dt. 26th Nov., 2002. This fact has been recorded by the Bench on p. 33 itself.

17. In view of the above, it is clear that on or before 29th Aug., 2002, the AO of M/s Friends Portfolio (P) Limited and that of Shri Manoj Aggarwal did not record any satisfaction. The note dt. 29th Aug., 2002 is, therefore, not to be taken for recording satisfaction required under Section 158BC/158BD.”

4. This Court thereafter dealt with the revenue’s contention with respect to the note said to have been made on 26.11.2002. the Court recorded specifically in para 25 that the said note pertaining to the case of *SMC Share Brokers V. Dy. CIT* which was the subject matter of another appeal decided in a judgment reported as *Commissioner of Income Tax v. SMC Share Brokers Ltd.* 288 ITR 345. The judgment of the Supreme Court in *Calcutta Knitwear* (supra) pertinently held as follows :

“44. In the result, we hold that for the purpose of Section 158BD of the Act a satisfaction note is sine qua non and must be prepared by the assessing officer before he transmits the 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 the 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



45. We are informed by Shri Santosh Krishan, who is appearing in seven of the appeals that the assessing officer had not recorded the satisfaction note as required under Section 158BD of the Act, therefore, the Tribunal and the High Court were justified in setting aside the orders of assessment and the orders passed by the first appellate authority. We do not intend to examine the aforesaid contention canvassed by the learned counsel since we are remanding the matters to the High Court for consideration of the individual cases herein in light of the observations made by us on the scope and possible interpretation of Section 158BD of the Act.”

5. In the present case the revenue’s contention are not different from what they were in the main appeal, which was decided in the judgment reported as *CIT V. Radhey Shayam Bansal* (2011) 337 ITR 217. It is sought to be reported that the opinion formation contained in the letter dated 15.7.2003 accords with the opinion of Section 158BB. In this regard the court recollects and applies its findings in relation to the note (extracted in para 2 above) on this aspect:

“23. In view of the aforesaid legal position we can now examine the letter dated 15th July, 2003 which was communicated by the Assessing Officer of the searched assessee to the assessing officer of the respondent. The question is whether the aforesaid letter can be regarded as “satisfaction” as required under Section 158BD, i.e. satisfaction of the Assessing Officer of Manoj Aggarwal that there is material that the respondent assessee had undisclosed income. The first paragraph of the aforesaid letter states that the diary seized from the possession of Manoj Aggarwal establishes that the respondent assessee had acted as a mediator for providing accommodation book entries by Manoj Aggarwal. The second sentence in the first paragraph states that the quantum of transactions as shown in the documents were



enclosed as Annexure-A and the photocopies of the papers were enclosed as Annexure-B. The second paragraph states that there was evidence that cash was received by Manoj Aggarwal from the respondent and the summary of the amounts received as per the seized documents was given in Annexure C and the photocopies of the documents were annexed as Annexure-D. It is accepted that Annexures A, B, C & D, referred to in this letter were not filed before the tribunal and have not been produced before us. It is conceded by the learned counsel for the revenue that they are also not available on the file of the Assessing Officer of the respondent. There is no explanation forthcoming with regard to the aforesaid annexures. It is well nigh impossible to know their content. The first paragraph of the letter dated 15th July, 2003 states that the respondent-assessee had acted as a mediator i.e. they had introduced Manoj Aggarwal with other persons to whom accommodation book entries were provided by Manoj Aggarwal. There is no allegation in the first paragraph that the respondent assessee was provided with accommodation book entries or the amounts belong to the respondent assessee. Book entries were provided to third parties. It is not stated in this "satisfaction note" that Manoj Aggarwal or third parties had paid any amount towards commission for acting as a mediator. There is no such allegation or statement in the "satisfaction note". The second paragraph does create some doubt but what is relevant and important is the fact that in the first paragraph, it is accepted by the Assessing Officer of Manoj Aggarwal that the respondent assessee was merely acting as a mediator and nothing more. The second paragraph of the letter states that there was evidence that cash was received by Manoj Aggarwal from the respondent assessee. What was the evidence and material was not brought on record before the tribunal or even before us. The said material is not mentioned in the assessment



order. It cannot be ‘ipse dixit’ without material or evidence to satisfy the concept of requirement as engrafted under Section 158BD. What was the material was neither highlighted before the tribunal nor before us. Thus, the appellant-revenue has not discharged the onus that there was valid satisfaction as required under Section 158 BD. Therefore, the irresistible conclusion is the pre-requisite of “satisfaction” as engrafted under Section 158B for the purpose of initiation of block assessment proceeding is non-existent or absent.”

6. For the above reasons the revenue’s submission lacks merit. Accordingly the appeal is dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 07, 2015

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