



REPORTABLE

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

% Judgment delivered on: 16.10.2008

+ **ITA No. 1187/2008**

**COMMISSIONER OF INCOME TAX
DELHI-IV, NEW DELHI**

..... **Appellant**

-versus-

DAWN VIEW FARMS PVT LTD

..... **Respondent**

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Amit Dayal

CORAM :-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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

BADAR DURREZ AHMED, J (ORAL)

1. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act') is directed against the order dated 7.12.2007 passed by the Income Tax Appellate Tribunal in



ITA(SS) No. 323/Del/05 pertaining to the block period 1.4.1995 to 7.3.2002. The only issue that has been raised in this appeal pertains to the question of assumption of jurisdiction under Section 158BD of the said Act.

2. The facts are that search and seizure operations were carried out under Section 132 of the said Act in the case of M/s Yadav and Co. In the course of the search, statements of Sh O P Yadav and Mahinder Singh Yadav were recorded wherein they stated that they had not opened or operated the bank accounts in question. By a letter dated 9.9.2002 the Additional Director of Income Tax (Investigation) informed the Commissioner of Income Tax, Delhi-IV who apparently had jurisdiction over the present assessee that there were bogus entries in the bank accounts pertaining to the present assessee (Dawn View Farms Pvt Ltd). Through the said letter the ADIT (Investigation) also informed the said commissioner that on the basis of material gathered and investigation carried out in the case of Yadav & Co it was apparent that the said bank account was bogus and no real transactions of dealing in shares ever took place. The Additional Director of Income Tax (Investigation) also sent



copies of the statement of Sh Om Prakash Yadav and Sh Mahinder Singh Yadav as recorded on 7.3.2002.

3. On the basis of the above mentioned communication dated 9.9.2002 which was addressed to the Commissioner, the Assessing Officer of the present assessee took up proceedings under Section 158BD and issued notices under Section 158BC on 31.3.2003. In the course of the block assessment proceedings, the assessee issued a letter dated 25.2.2005 requesting for a copy of the reasons/satisfaction recorded for issuance of the notice under Section 158BD. In reply, the Assessing Officer, as per the ordersheet entry dated 15.3.2005, informed the assessee that the information was received directly from Additional Director of Income Tax (Investigation) who duly recorded his satisfaction and the Assessing Officer also issued notice under Section 158BD based on such satisfaction.

4. The assessee had made submissions taking legal objection to the assumption of jurisdiction by the Assessing Officer and it was pointed out that the notice under Section 158BD was not based on the satisfaction of the Assessing Officer of M/s Yadav & Co. It was



also pointed out that the Additional Director of Investigation who had sent the report to the Assessing Officer of the present assessee (through the Commissioner of Income Tax, Delhi-IV) was not the Assessing Officer of Yadav & Co in respect of which the search had been conducted. The Assessing Officer, however, rejected the plea of the assessee and framed the assessment making additions to the extent of Rs 28,76,220/-.

5. Before the Commissioner of Income Tax (Appeals), the assessee had urged, inter alia, the point of jurisdiction. The Commissioner of Income Tax (Appeals), after noting the facts of the case, observed that the search took place in respect of Yadav & Co and the search was carried out by the investigation wing of the department. The said wing also made post search inquiries and on the basis of such inquiries concluded that the bank account no. 35001 in the name of Yadav & Co was used as a conduit to give accommodation entries and that some transactions related to the assessee company.

6. The Commissioner of Income Tax (Appeals) also noted that, based on this information, the investigation wing, by virtue of the



letter dated 9.9.2002 to the Assessing Officer of the assessee company (through the Commissioner of Income Tax, Delhi-IV), advised the Assessing Officer to take up the case being a fit one for block assessment and to issue notice under Section 158BD. Thereupon, the Assessing Officer issued notice on the basis of the said report.

7. It is recorded in the order passed by the Commissioner of Income Tax (Appeals) that, admittedly, there is no satisfaction recorded by the Assessing Officer of Yadav & Co during the course of block assessment proceedings in the case of Yadav & Co. The Commissioner also noted that the Assessing Officer of the assessee company merely acted on the advice of the Additional Director of Investigation who had conducted the search in the case of Yadav & Co. From this, the Commissioner of Income Tax (Appeals) concluded that, manifestly, there was no satisfaction note as was required to be recorded by the Assessing Officer of Yadav & Co. Referring to the decisions of this Court in the case of *Amity Hotels Pvt Ltd vs CIT: 272 ITR 75*, the Commissioner of Income Tax (Appeals) held that the block assessment proceedings in respect of



the assessee were not in conformity with the mandatory requirements of Section 158 BD.

8. The Commissioner of Income Tax (Appeals) concluded as under:-

“I have carefully considered the facts of the case recorded in assessment order and the written submissions and material filed by the AR of the appellant company. It is observed that none of the ingredients of section 158BD stand satisfied in this case in as much as there is no material, books of accounts or other documents or assets which have been found during the course of search at the premises of Yadav & Co. on the basis of which it could be said that any undisclosed income found therein belonged to the appellant. **No satisfaction has also been recorded by Assessing Officer of Yadav & Co. On the other hand the Assessing Officer is seen to have himself stated in the very first paragraph of his order under appeal that the notice u/s 158BD was issued on the basis of Investigation Report received from Addl. Director of Income Tax (Inv.), New Delhi vide letter dated 9th September 2002.** In my opinion in the light of the judgment of Hon’ble Gujarat High Court and Delhi High Court as also the Hon’ble Special Bench of ITAT the assumption of jurisdiction by the Assessing Officer to frame the impugned assessment is without authority of law and therefore on this ground alone the appellant deserves to succeed. This ground of appeal is accordingly allowed.”

(Underlining added)



9. Apart from deciding the question of jurisdiction in favour of the assessee, the Commissioner of Income Tax (Appeals) also decided the case in favour of the assessee on merits.

10. Being aggrieved by the order passed by the Commissioner of Income Tax (Appeals), the Revenue preferred the said appeal [ITA (SS) No 323/Del/2005] before the Income Tax Appellate Tribunal. The main issue that was argued before the Tribunal was the issue of jurisdiction. The Tribunal noted that the undisputed fact was that the Additional Director of Income Tax (Investigation) conducted the search in the case of Yadav & Co and made certain post search inquiries. It is he who sent a note of advice or guidance to the Assessing Officer of the assessee company through the Commissioner of Income Tax, Delhi-IV. The Assessing Officer of Yadav & Co did not record any satisfaction. The Tribunal also noted that the Assessing Officer of Yadav & Co. did not hand over any material to the Assessing Officer of the assessee company. The Assessing Officer of the assessee company also assumed jurisdiction merely on the basis of the note/advice of Additional Director of Income Tax (Investigation). No material relating to the assessee was



found during the course of search of Yadav & Co nor had any material been handed over to the Assessing Officer of the assessee company.

11. The Tribunal followed the decisions of the Gujarat High Court in the case of *Khandubhai Vasanji Desai vs. Deputy CIT: 236 ITR 73* which had been approved by the Supreme Court in the case of *Manish Maheshwari vs. Asst. CIT: 289 ITR 341(SC)*. Following the said decisions, the Tribunal concluded that for want of recording of satisfaction, the assessment proceedings under Section 158BD were invalid. Consequently, the same were quashed on this count alone. Because of this, the Tribunal did not find it necessary to adjudicate upon the other grounds of appeal.

12. We have heard the counsel for the parties and we feel that the Tribunal has arrived at the correct conclusion. We may note that in *Amity Hotels Pvt Ltd (supra)* we had in similar circumstances observed as under:-

“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 158BD of the Act. From the record, it appears from the 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 an indepth scrutiny is required to detect concealment”. It is further said “keeping in view the above observations and preliminary examination of the seized record, proceedings under section 158BD of the Income-tax Act are hereby initiated against the assessee-company, to carry out detailed investigation”.

“.....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 the 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.....”

13. The law on this aspect is very clear in view of the recent decision of the Supreme Court in *Manish Maheshwari (supra)* wherein the Supreme Court observed as under:-

“11.The condition precedent for invoking a block assessment is that a search has been conducted under section 132, or documents or assets have been requisitioned under section 132A. The said provision would apply in the case of any person in respect of whom search has been carried out under section 132A or documents or assets have been requisitioned under section 132A. Section 158BD, however, provides for taking recourse to a block assessment in



terms of section 158BC in respect of any other person, the conditions precedent wherefor are : (i) satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 of the Act; (ii) the books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) the Assessing Officer has proceeded under section 158BC against such other person.

12. The conditions precedent for invoking the provisions of section 158BD, thus, are required to be satisfied before the provisions of the said Chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under section 132A of the Act.”

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 158BD nowhere specifies that the satisfaction is to be of the Assessing Officer of the searched party and not of the Assessing Officer of the assessee. We fail to 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 158 BD 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 158BD/BC in respect of the assessee were without jurisdiction. No substantial question of law arises for the consideration of this Court, the position in law being settled by the Supreme Court.

17. The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

October 16, 2008
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