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

+ **INCOME TAX APPEAL NO. 1420/2010**

Date of decision: 27th August, 2014

COMMISSIONER OF INCOME TAX

..... Appellant

Through Ms. Suruchi Aggarwal, Sr. Standing
Counsel.

versus

RAGHUBIR SINGH GARG

..... Respondent

Through Mr. Rishabh Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL):

The following substantial question of law is framed:-

“Whether Income Tax Appellate Tribunal was right in holding that the block assessment proceedings under Section 158BD of the Income Tax Act, 1961 were invalid as reasons/satisfaction note was recorded, after passing of the block assessment order under Section 158BC, by the Assessing Officer of the “person searched”



2. Block assessment order for the period 1st April, 1990 to 26 August, 2000 was passed on 30th August, 2005. Income Tax Appellate Tribunal (Tribunal, for short) has held that the block assessment order is invalid and void.
3. One Mr. Manoj Aggarwal and a company M/s Friends Portfolio Private Limited were subjected to search and seizure operation under Section 132 of the Income Tax Act, 1961(Act, for short) on 3rd August, 2000. Subsequently, block assessment under Section 158BC of the Act was completed in the case of M/s Friends Portfolio Private Limited on 29th August, 2002. Similarly, block assessment proceedings were completed in the case of Manoj Aggarwal vide order dated 30th August, 2005.
4. On 16th January, 2003, the Deputy Commissioner of Income Tax, Central Circle-3, New Delhi, who had passed the block assessment order in the case of M/s Friends Portfolio Private Limited, on the basis of seized material recorded the following satisfaction note:-

“Your assessee Shri Raghubir Singh Garg, Room No. 6, 1st Floor, 2897, Kishan Mkt., Hauz Quazi, Delhi-6 has received a total amount of Rs.21,17,191/- (cheques Nos.) (1) Rs.4,00,000/- vide cheques No. 958609, (2) Rs.3,00,000/- vide cheques No. 940946, (3) Rs.2,56,922/- vide cheques No.945544, (4) Rs.3,80,000/- vide cheques No. 964193, (5) Rs.5,00,000/- vide cheque No. 940657 & (6) Rs.2,80,268/- vide cheque No.965567 drawn on a/c No. 1224, Vijaya Bank, Vigyan Vihar, New Delhi from M/s Friends Portfolio Pvt. Ltd. This amount is a cheque received in lieu of unaccounted



money paid. This is the prima-facie transaction of accommodation entry as evident from the seized material and inquiries done from the bank accounts of M/s Friends Portfolio Pvt. Ltd. These may be other transactions of accommodation entries received by your assessee from M/s Friends Portfolio Pvt. Ltd. These may also be examined at your end and the full quantum of undisclosed income may be determined. The ownership of the shares claimed to have been sold through M/s Friends Portfolio Pvt. Ltd. may also be examined since it is clear that the shares would not even be belonging to your assessee.

The papers seized during the course of search and inquiries conducted during assessment proceedings thus clearly establish that undisclosed income belonging to Shri Raghbir Singh Garg has been found during the course of search of Sh. Manoj Aggarwal. This information is being(sic) passed on to you for initiating proceedings u/s 158BC read with Section 158BD since the jurisdiction over Raghbir Singh Garg is with you. This amount has been added in the case of M/s Friends Portfolio Pvt. Ltd. on protective basis. The outcome of the investigation may be intimated to the undersigned for taking necessary action in the case of M/s Friends Portfolio Pvt. Ltd.”

5. Thereafter, block assessment proceedings under Section 158BD read with Section 158BC were initiated against the respondent-assessee by issue of notice dated 5th August, 2003.

6. In the impugned order passed by the tribunal dated 30th September, 2009, it has been held that the block assessment proceedings were not validly initiated as the satisfaction note was recorded by Deputy Commissioner of Income Tax, Central Circle-3, New Delhi on 16th



January, 2003, which is after the passing of the block assessment order under Section 158BC in the case of “searched person”, i.e. M/s Friends Portfolio Private Limited, on 29th August, 2002. The Deputy Commissioner of Income Tax, Central Circle-3, New Delhi had thus become *functus officio* and could not have recorded the satisfaction note once he had passed the block assessment order in the case of M/s Friends Portfolio Private Limited on 29th August, 2002.

7. The aforesaid reasoning and ratio of the tribunal is contrary to the law subsequently expounded by the Supreme Court in ***Commissioner of Income Tax-III versus Calcutta Knitwears, Ludhiana*** (2014) 6 SCC 444 wherein the relevant provisions of Chapter XIV-B of the Act were considered and it has been held that Section 158BD was a machinery provision inserted in the statute for the purpose of carrying out assessment of persons other than the searched persons. A satisfaction note regarding undisclosed income belonging to another person must be recorded, but the satisfaction note need not be recorded before the block assessment order was passed in the case of the person searched. There was nothing in the language of the provisions, which suggested that the satisfaction note cannot be recorded upon completion of the proceedings under Section 158BC of the Act against the “searched person”. Section 158BE(2)(b) only prescribed limitation period for completion of proceedings initiated



under Section 158BD. The exact observations of the Supreme Court in

this regard read as under:-

“38. We would certainly say that before initiating proceedings under Section 158BD of the Act, 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.

39. Further, Section 158BE(2)(b) only provides for the period of limitation for completion of block assessment under section 158BD in case of the



person other than the searched person as two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search carried on after 01.01.1997. The said section does neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation the satisfaction note under Section 158BD and consequent issuance of notice to the other person.

40. XXXXX

41. 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.”

8. In light of the aforesaid *ratio decidendi*, the question of law has to be answered in favour of the appellant-Revenue and against the respondent-assessee. The Tribunal was not correct in holding that the block assessment proceedings were barred and invalid because the satisfaction note was not recorded by the Assessing Officer before he had passed the block assessment order under Section 158BC in the case of the person searched.



9. Learned counsel for the respondent-assessee states that the matter may be remanded for examination of the addition on merits. We accept the said prayer as the Tribunal has not decided the appeal, which was preferred by the respondent-assessee on merits, i.e., whether on the facts and evidence on record the addition on merits is justified. To cut short delay, parties are directed to appear before the Tribunal on 13th October, 2014, when a date of hearing will be fixed. The appeal is disposed of.

DASTI.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

AUGUST 27, 2014
VKR