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

Decided on: 8<sup>th</sup> January, 2015

+ **ITA 996/2009**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr.Rohit Madan, Mr.Ruchir Bhatia  
and Mr.Akash Vajpai, Advs.

versus

ALKA BHANDARI ..... Respondent

Through: Mr.Pradeep Aggarwal and Mr.Anurag  
Jain, Advs.

+ **ITA 1163/2009**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr.Rohit Madan, Mr.Ruchir Bhatia  
and Mr.Akash Vajpai, Advs.

versus

ASHOK KUMAR & SONS HUF ..... Respondent

Through: Mr.Pradeep Aggarwal and Mr.Anurag  
Jain, 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 appeals have to be decided pursuant to a remittal and directions of the Supreme Court in its judgment reported as *CIT vs. Calcutta*



*Knitwears, Ludhina* 362 ITR 673 (SC). The Court in its judgment had directed 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.”*

2. In the present case, the ITAT originally had accepted the contentions of the assessee that the satisfaction note recorded, in their case was delayed and also had, *inter alia*, recorded that the satisfaction note did not accord with the requirements of Section 158 BD as per the judgment of Supreme Court reported as *CIT vs. Manish Maheshwari* (2007) 289 ITR 341 (SC). In both the cases the facts are common and are discussed hereinafter.



3. The search of one Sh. Manoj Aggarwal was conducted on 03.08.2000, thereafter notice was issued to him. His Assessing Officer considering the block returns submitted by the searched person and the material supplied and forthcoming during the search proceedings completed the assessment by an order dated 29.08.2000. Based upon the materials obtained, the Assessing Officer of the searched person recorded a satisfaction note on 06.03.2003 in the case of both assesseees in the present appeals, taking the view that additional income had escaped assessment on the basis of this satisfaction note, which was forwarded to the Assessing Officer of the present assesseees. The latter issued notice on 18.06.2003 to the respondent/assessee. After considering their submissions the A.O. completed assessment on 27.06.2005 in both the cases. In the case of assessee in ITA No. 996/2009 an addition of ₹ 36,38,119/- and a further addition of ₹72762/- was made and in the case of assessee in ITA No.1163/2009 an addition of ₹34,73,000/- and further sum of ₹73727/- and further addition of ₹69535/- was ordered. Both these were subject matter of appeals to the CIT which held in favour of the assessee. The revenue appeals before ITAT were dismissed. The present appeals were originally disposed of in the common judgment and order of this Court, reported as *CIT vs. Radhey Shyam Bansal* 2011 337 ITR 217 (DLI). That judgment was apparently set aside to the extent that the Supreme Court wants examination of the limited question as to whether the notices were issued within the period mentioned in para 44 of *Calcutta Knitweaves (supra)*. It is evident from the narration of the facts discussed above that the satisfaction note was recorded more than six months after the assessment of searched person; the assessment was completed on 29.08.2002 and the satisfaction note was



recorded 06.03.2003. This Court recollects that the extended period within which the Revenue has been permitted to issue notice under Section 158BD in such cases is subject to condition of it being “immediate” or contemporaneous to the time when assessment of the searched persons is completed.

4. Since the limitation period for completion of block assessment, or in the case of searched persons as well as the third party who is issued notice is two years, it is reasonable to assume that the revenue can be given latitude of six months which can be considered as “immediate” or immediately proximate in point of time. In the present case, the six month period expired on 28.02.2003; the satisfaction note was recorded on 06.03.2003 and the notice was issued more than 3 ½ months after lapse of the date i.e. 18.06.2003.

5. In these circumstances this Court holds that the notices did not accord with the Supreme Court’s declaration of law and was unduly delayed. They cannot be considered as having been recorded immediately after the completion of assessment proceedings under Section 158BC Income Tax Act. The appeals are accordingly dismissed.

**S. RAVINDRA BHAT**  
(JUDGE)

**R.K.GAUBA**  
(JUDGE)

**JANUARY 08, 2015/mr**