

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**TAX APPEAL NO. 866 of 2008  
With  
TAX APPEAL NO. 1002 of 2010  
With  
TAX APPEAL NO. 2397 of 2010**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE M.R. SHAH** sd/-  
**and**  
**HONOURABLE MR.JUSTICE B.N. KARIA** sd/-

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>NO</b>
2	To be referred to the Reporter or not ?	<b>NO</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>NO</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>NO</b>

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**COMMISSIONER OF INCOME TAX-II,...Appellant(s)**

Versus

**BIPINCHANDRA CHIMANLAL DOSHI...Opponent(s)**

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**Appearance:**

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1  
MR KIRTIKANT THAKER, ADVOCATE for the Opponent(s) No. 1  
MR PRAVIN P PANCHAL, ADVOCATE for the Opponent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE M.R. SHAH**

and

**HONOURABLE MR.JUSTICE B.N. KARIA**

**Date : 27/02/2017**

**ORAL JUDGMENT**

**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1.0. As all these appeals are with respect to common assessee and are interconnected, all these appeals are decided and disposed of together by this common judgment and order.

2.0. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 30.08.2007 passed by the learned Income Tax Appellate Tribunal, Ahmedabad "B" Bench, Ahmedabad (hereinafter referred to as the "learned Tribunal") passed in MA No.34/AHD/2007 in IT (SS) No. 18/AHD/2000 for the block period from 1.4.1986 to 31.3.1996 and 1.4.1996 to 1.8.1996, by which, the learned Tribunal has allowed the said MA and has recalled the earlier order passed in IT (SS) No. 18/AHD/2000 and has ordered to restore the said appeal to file, the Revenue has preferred Tax Appeal No. 866 of 2008 to consider the following substantial question of law.

- "1. Whether the Appellate Tribunal is right in law and on facts in recalling its entire earlier order dated 17.11.2006 on the ground that ground Nos. 1 and 2 were allegedly not disposed of ?*
- 2. Whether the impugned order of the Appellate Tribunal does not amount to review of the earlier order?"*

2.1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 15.05.2009 passed by the learned Tribunal passed in IT(SS) A.No.18/AHD/2000 for the Block Period 1.4.1986 to 31.3.1996 and 1.4.1996 to 1.8.1996, by which, the learned Tribunal has allowed the said appeal preferred by the assessee and has quashed and set aside the block assessment framed under Section 158BC r.w.s.158BD of the Income Tax Act, the Revenue has preferred Tax Appeal No. 1002 of 2010 to consider the following substantial question of law.

- "Whether the Appellate Tribunal is right in law and on facts in reversing the order passed by the CIT(A) and thereby cancelling the block assessment framed u/s. 158BC r.w.s 158BD of the Act ?"*

2.2. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Tribunal dated 30.04.2010 passed in IT(SS) A No.37/AHD/2008 for Block Period 1.4.1986 to

31.3.1996 and 1.4.1986 to 1.8.1996, by which, the learned Tribunal treated the appeal preferred by the assessee as allowed, the Revenue has preferred Tax Appeal No. 2397 of 2010 to consider the following substantial question of law;

*"Whether the Appellate Tribunal is right in law and on facts in canceling the fresh assessment order dated 27.12.2007 passed by the Assessing Officer u/s 158BC r.w.s.158BD?"*

3.0. The facts leading to the present Tax Appeals in nutshell are as under:

3.1. That the AO framed the block assessment under Section 158BC r.w.s. 158BD and 143(3) of the Income Tax Act for the block period from 1.4.1986 to 3.13.1995 and 1.4.1996 to 1.8.1996. Feeling aggrieved and dissatisfied with the block assessment order dated 29.02.2000, the assessee preferred appeal before the ITAT being IT(SS) A No.18/AHD/2000. That by judgment and order dated 17.11.2006, the learned Tribunal allowed the said appeal, quashed and set aside the block assessment order and remanded the matter back to the AO to make assessment *de-novo* mainly on the ground that the same was in breach of principles of natural justice. While framing the block period, the AO collected the evidence behind the back of the assessee and therefore, reasonable opportunity was not given to the assessee.

3.2. That thereafter, the assessee preferred MA No. 34/AHD/2007 to recall and review the judgment and order dated 17/11/2006 contending inter alia that other two grounds raised by the assessee in the appeal namely block assessment under Section 158BC r.w.s. 158BD was without jurisdiction and therefore, *void-ab-initio* and therefore, liable to be annulled were not considered by the learned

Tribunal. That by order dated 30.08.2007, the learned Tribunal allowed the said MA and recalled the judgment and order dated 17.11.2006 passed in IT(SS) A No. 18/AHD/2000 and restored the appeal to file. (the said order dated 30.08.2007 passed in MA No.34/AHD/2007 is subject matter of Tax Appeal No. 866 of 2008).

3.3. That in the meantime and before Tax Appeal No. 866 of 2008 could be finally heard, decided and disposed of the appeal on remand came up for hearing before the learned Tribunal and by judgment and order dated 15.5.2009, the learned Tribunal has allowed the said appeal and has quashed and set aside the block assessment under Section 158BC r.w.s.158BD of the Income Tax Act mainly on the ground that satisfaction has been recorded after assessment was completed in the case of searched person. (judgment and order dated 15.05.2009 in IT(SS) A No.18/AHD/2000 is the subject matter of Tax Appeal No. 1002 of 2008).

3.4. That despite the fact that earlier judgment and order dated 17.11.2006 passed in IT(SS) A No.18/AHD/2000, by which, the learned Tribunal remanded the matter to the AO, subsequently came to be recalled and the said appeal was ordered to be restored to file, the AO on remand passed the fresh block assessment order. The subsequent block assessment order passed by the AO came to be challenged by the assessee before the learned Tribunal mainly only on the ground that once the remand order vide order dated 17.11.2006 passed in IT(SS) A No.18/AHD/2000 was recalled, there was no question of AO passing the fresh order on remand and therefore, subsequent block assessment is without jurisdiction. Accepting the same, by judgment and order dated 30.04.2010, the learned Tribunal has allowed the said Appeal No. IT(SS) A No.37/AHD/2008 and has quashed and set aside the

subsequent block assessment order. (The judgment and order dated 30.04.2010 passed in IT(SS) A No.37/AHD/2008 is the subject matter of Tax Appeal No. 2397 of 2010).

4.0. For the sake of convenience, we shall take and decide first Tax Appeal No. 866 of 2008 and Tax Appeal No. 2397 of 2010.

5.0. In Tax Appeal No. 866 of 2008 what is challenged is the order passed by the learned Tribunal dated 30.08.2007 passed in MA No. 34/AHD/2007 in IT(SS)A No.18/AHD/2000, by which, the learned Tribunal has recalled its earlier judgment and order dated 17.11.2006, by which, the learned Tribunal quashed and set aside the block assessment order and remanded the matter to the learned AO. However, it is required to be noted that during the pendency and final disposal of the present appeal, in fact, main Appeal No. IT(SS)A No. 18/AHD/2000 was restored to file and thereafter the same has been finally decided and disposed of by the learned Tribunal vide judgment and order dated 15.05.2009, which is the subject matter of Tax Appeal No. 1002 of 2010. Under the circumstances, as such the Tax Appeal No. 866 of 2008 has virtually become infructuous as the order under challenge passed in MA No. 34/AHD/2007 has been acted upon and implemented. Even otherwise, it cannot be said that the learned Tribunal has committed any error in allowing the MA and recalling its earlier judgment and order dated 17.11.2006. Under the circumstances, Tax Appeal No. 866 of 2008 is dismissed as having become infructuous.

**Tax Appeal No. 2397 of 2010:**

6.0. In the present Tax Appeal No. 2397 of 2010 what is challenged by the revenue is the subsequent judgment and order passed

by the learned Tribunal dated 30.04.2010 passed in IT(SS) A No.37/AHD/2008, by which, the learned Tribunal has allowed the said appeal and has quashed and set aside the subsequent block assessment order which was passed by the learned AO on remand, pursuant to earlier judgment and order passed by the learned ITAT dated 17.11.2006 passed in IT(SS) A No.18/AHD/2000. It is required to be noted that subsequently and pursuant to the judgment and order dated 17.11.2006 passed in IT(SS) A No.18/AHD/2000, by which, the learned Tribunal remanded the matter to the AO to pass de-novo assessment order, AO subsequently passed fresh block assessment order. However, it is required to be noted that in the meantime the order of remand dated 17.11.2006 passed in IT(SS) A No.18/AHD/2000 came to be recalled and the appeal no. IT(SS) A No.18/AHD/2000 was restored to file. Under the circumstances, when the remand order itself was recalled by the learned Tribunal, as rightly held by learned Tribunal that the subsequent block assessment order was without jurisdiction. Under the circumstances, the learned Tribunal is justified in allowing the said appeal and quashing and setting aside the subsequent block assessment order. Under the circumstances, we see no reasons to interfere with the subsequent judgment and order dated 30.04.2010 passed in IT(SS) A No.37/AHD/2008 by quashing and setting aside the subsequent block assessment order. Under the circumstances, Tax Appeal No. 2397 of 2010 deserves to be dismissed and is accordingly dismissed by answering question in favour of assessee and against the revenue.

7.0. Now, so far as Tax Appeal No. 1002 of 2010 arising out of the impugned judgment and order dated 15.05.2009 passed by the learned Tribunal passed in IT(SS) A.No.18/AHD/2000 for the Block Period 1.4.1986 to 31.3.1996 and 1.4.1996 to 1.8.1996, by which, the

learned Tribunal has allowed the said appeal preferred by the assessee and has quashed and set aside the block assessment framed under Section 158BC r.w.s.158BD of the Income Tax Act is concerned, at the outset, it is required to be noted that the learned Tribunal has quashed and set aside the block assessment solely and mainly on the ground that satisfaction in the case of assessee (other than searched person) was subsequent to the block assessment in the case of searched person and therefore, the same was belated. Ms. Bhatt, learned counsel for the Revenue has heavily relied upon the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Calcutta Knitweaves reported in **(2014) 362 ITR 673(SC)**. It is vehemently submitted by Ms. Bhatt, learned counsel for the Revenue that in the aforesaid decision, the Hon'ble Supreme Court has observed that the satisfaction note by the AO in the case of assessee (other than searched persons) can be subsequent to the assessment order framed in the case of searched person and therefore, even if the satisfaction note is subsequent to the assessment order framed in the case of searched persons, but before the order of assessment in the case of assessee (other than searched person) the block assessment order cannot be set aside on the ground that satisfaction note by the AO was subsequent to the assessment order framed in the case of searched person. Relying upon above decision, it is submitted that the impugned judgment and order passed by the learned Tribunal quashing and setting aside the block assessment under Section 158BC r.w.s.158BD of the Income Tax Act on the ground that the satisfaction note by the AO was subsequent assessment order framed in the case of searched person cannot be sustained and same deserves to be quashed and set aside.

8.0. Present appeal is vehemently opposed by Shri Kirtikant Thaker, learned counsel for the assessee. Shri Thaker, learned counsel

for the assessee has heavily relied upon the decision of the Delhi High Court in the case of Commissioner of Income Tax vs. Bharat Bhusan Jain reported in (2015) 370 ITR 695 (Delhi). It is submitted that considering para 44 of the decision of the Hon'ble Supreme Court in the case of Calcutta Knitweaves (supra), the Delhi High Court in the aforesaid case has held that even in a case where the satisfaction note is immediate i.e. belated the block assessment is required to be quashed and set aside. It is submitted that in the present case the satisfaction note was after a period of approximately one year and therefore, in the facts and circumstances of the case, the learned Tribunal has not committed any error in quashing and setting aside the block assessment under Section 158BC r.w.s 158BD.

Making above submission and relying upon the above decision, it is requested to dismiss the present appeal.

9.0. Heard the learned counsel for the respective parties at length.

10. At the outset, it is required to be noted that by impugned judgment and order, the learned Tribunal has quashed and set aside block assessment under Section 158BC r.w.s 158BD of the Act on the ground that the satisfaction note in the case of assessee (other than searched person) was belated and after the assessment was completed in the case of searched person. The question which is posed for consideration of this Court is whether in the facts and circumstances of the case the learned Tribunal is justified in quashing and setting aside the block assessment under Section 158BC r.w.s, 158BD on the aforesaid ground ?

11. Identical question came to be considered by the Hon'ble Supreme Court in the case of **Calcutta Knitweaves (supra)**. In para 39 to

44, the Hon'ble Supreme Court has observed and held as under :

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.

40. The Tribunal and the High Court are of the opinion that it could only be prepared by the assessing officer during the course of the assessment proceedings under [Section 158BC](#) of the Act and not after the completion of the said proceedings. The Courts below have relied upon the limitation period provided in [Section 158BE\(2\)\(b\)](#) of the Act in respect of the assessment proceedings initiated under [Section 158BD](#), i.e., two years from the end of the month in which the notice under Chapter XIV-B was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after 01.01.1997. We would examine whether the Tribunal or the High Court are justified in coming to the aforesaid conclusion.

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.

42. 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.

43. In the lead case, the assessing officer had prepared a satisfaction note on 15.07.2005 though the assessment proceedings in the case of a searched person, namely, S.K. Bhatia were completed on 30.03.2005. As we have already noticed, the Tribunal and the High Court are of the opinion that since the satisfaction note was prepared after the proceedings were completed by the assessing officer under [Section 158BC](#) of the Act which is contrary to the provisions of [Section 158BD](#) read with [Section 158BE\(2\)\(b\)](#) and therefore, have dismissed the case of the Revenue. In our considered opinion, the reasoning of the learned Judges of the High Court is contrary to the plain and simple language employed by the legislature under [Section 158BD](#) of the Act which clearly provides adequate flexibility to the assessing officer for recording the satisfaction note after the completion of

proceedings in respect of the searched person under [Section 158BC](#). Further, the interpretation placed by the Courts below by reading into the plain language of [Section 158BE\(2\)\(b\)](#) such as to extend the period of limitation to recording of satisfaction note would run counter to the avowed object of introduction of Chapter to provide for cost- effective, efficient and expeditious completion of search assessments and avoiding or reducing long drawn proceedings.

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.

11.1. Therefore, as such the aforesaid question is now not res-integra. As observed by the Hon'ble Supreme Court in the case of **Calcutta Knitwears (supra)** satisfaction note can be after the assessment is completed in the case of searched person. Under the circumstances, the impugned judgment and order passed by the learned Tribunal quashing and setting aside the block assessment on the ground that satisfaction note in the case of assessee (other than searched person) was subsequent to the assessment framed in the case of searched person and therefore belated, cannot be sustained.

12. Now, so far as reliance placed upon the decision of the Delhi High Court in the case of **Bharat Bhusan Jain (supra)** is concerned, we do not agree with the view taken by the Delhi High Court. The Delhi High Court has considered para 44 of the decision of

the Hon'ble Supreme Court in the case of **Calcutta Knitweaves (supra)** and has observed and held that even in such case satisfaction note must be immediately after the assessment framed in the case of searched person. However, the decision of the Hon'ble Supreme Court as a whole is required to be considered. There is no absolute proposition of law in the said decision that satisfaction note must be immediately after the assessment order framed in the searched person, otherwise the block assessment in the case of assessee (other than searched person) shall fail. If the entire judgment of the Hon'ble Supreme Court in the case of **Calcutta Knitweaves (supra)** is considered the ratio is that the satisfaction note in the case of assessee can be after the assessment order framed in the case of searched person and as such that was the controversy before the Hon'ble Supreme Court.

13. In view of the above and for the reasons stated above, more particularly, considering the decision of the Hon'ble Supreme Court in the case of **Calcutta Knitweaves (supra)**, impugned judgment and order dated 15.05.2009 passed by the learned Tribunal passed in IT(SS) A.No.18/AHD/2000 is hereby quashed and set aside. Present Tax Appeal No.1002 of 2010 is allowed to the aforesaid extent. No costs. The question of law is held in favour of the Revenue and against the assessee.

sd/-

(M.R. SHAH, J.)

sd/-

(B.N. KARIA, J.)

Kaushik