

\$~46 to 49, 53, 55 to 62

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

Decided on: 8th January, 2015

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ITA 648/2009

THE COMMISSIONER OF INCOME TAX Appellant

versus

BHARAT BHUSHAN JAIN Respondent

+

ITA 669/2009

THE COMMISSIONER OF INCOME TAX Appellant

versus

ANIL KUMAR BANSAL Respondent

+

ITA 670/2009

THE COMMISSIONER OF INCOME TAX Appellant

versus

ANIL KUMAR BANSAL Respondent

+

ITA 711/2009

THE COMMISSIONER OF INCOME TAX Appellant

versus

SADHU RAM AGGARWAL Respondent

+ **ITA 1075/2009**

THE COMMISSIONER OF INCOME TAX XIII Appellant

versus

BHARAT BHUSHAN JAIN Respondent

+ **ITA 1318/2009**

THE COMMISSIONER OF INCOME TAX Appellant

versus

SUNIL JAIN Respondent

+ **ITA 196/2010**

THE COMMISSIONER OF INCOME TAX Appellant

versus

ANU AGGARWAL Respondent

+ **ITA 198/2010**

THE COMMISSIONER OF INCOME TAX Appellant

versus

GAURI SHANKAR AGGARWAL Respondent

+ **ITA 279/2010**

COMMISSIONER OF INCOME TAX Appellant

versus

SANJAY RAI CHOWDHARY Respondent

+ **ITA 777/2010**

THE COMMISSIONER OF INCOME TAX Appellant

versus

GALLRI DEVI Respondent

+ **ITA 1145/2010**

CIT Appellant

versus

RASHMI MONGA Respondent

+ **ITA 1313/2010**

COMMISSIONER OF INCOME TAX Appellant

versus

MONIKA SAXENA Respondent

+ **ITA 1326/2010**

COMMISSIONER OF INCOME TAX Appellant

versus

MONIKA SAXENA Respondent

Presence : Mr. Rohit Madan, Mr.Ruchir Bhatia and Mr.Akash Vajpai, Advocates for the Revenue in ITA Nos. 648/2009, 669/2009, 670/2009, 711/2009, 1075/2009, 1318/2009, 196/2010, 198/2010 279/2010, 777/2010 1145/2010, 1313/2010 & 1326/2010.

Mr. Pranjal Srivastava and Mr. V.M.Chaurasia, Advocates for respondent in ITA Nos. 648/2009, 669/2009, 670/2009 and 1075/2009.

Mr. Salil Kapoor & Mr. Vikas Jain, Advocates for respondents in ITA Nos. 711/2009 and 1145/2010.

Mr.Piyush Kaushik, Advocate for respondent in ITA No. 1318/2009

Dr. Rakesh Gupta, Ms.Poonam Ahuja, Mr.Mukul Mathur, Advocates for the respondent in ITA No. 279/2010.

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. These appeals are directed against the impugned order of ITAT. Since they involved common questions of law, a common order is being made in the present cases.

2. In all these cases, assessee/respondents were third parties, who were issued notice under Section 158BD pursuant to search proceedings in respect of other persons. In all these cases, the search proceedings were conducted on 03.08.2000. Thereafter notice was issued to them for block assessment for filing of relevant returns for previous years. The assessment proceedings were completed on 29.08.2002. Thereafter, the present

assesses-third parties were issued notices under Section 158BD . The relevant dates of recording of the satisfaction note by the A.O., issue of notices to the present assesses and completion of assessments are recorded in tabular statement in the following manner:-

ITA No.	Date of Search on Manoj Aggarwal group	Date of assessment of searched person under Section 158 BC	Date of Satisfaction Note for other person	Date of notice u/S 158BD	Date of completion of assessment u/s 158BD
648/2009	03.08.2000	29.08.2002	15.07.2003	31.03.2004	31.03.2006
669/2009	03.08.2000	29.08.2002	15.07.2003	31.03.2004	31.03.2006
670/2009	03.08.2000	29.08.2002	15.07.2003	31.03.2004	31.03.2006
771/2009	03.08.2000	29.08.2002	21.07.2003	31.03.2004	31.08.2006
1075/2009	03.08.2000	29.08.2002	15.07.2003	17.08.2004	31.03.2006
1318/2009	03.08.2000	29.08.2002	15.07.2003	31.03.2004	31.03.2006
196/2010	03.08.2000	29.08.2002	13.01.2004	09.02.2004	30.12.2005
198/2010	03.08.2000	29.08.2002	14.01.2004	05.02.2004	17.02.2006
279/2010	03.08.2000	29.08.2002	26.08.2003	27.08.2003	30.08.2005
777/2010	03.08.2000	29.08.2002	13.01.2004	09.02.2004	15.02.2006
1145/2010	03.08.2000	29.08.2002	14.01.2004	06.05.2005	29.05.2007
1313/2010	03.08.2000	29.08.2002	04.06.2003	18.06.2003	27.06.2005
1326/2010	03.08.2000	29.08.2002	04.06.2003	18.06.2003	27.06.2005

3. These appeals were originally disposed of by common judgment of this Court reported as *CIT vs. Radhey Shyam Bansal* 2011 337 ITR 217 (DLI). In that judgment it was held that the satisfaction note in all the cases was recorded and notices were issued beyond the period of limitation. It was held, *inter alia*, that the satisfaction note recorded in these cases did not accord with the requirements of Section 158BD, applying the decision in *CIT vs. Manish Maheshwari* (2007) 289 ITR 341 (SC). In this batch of judgments, along with another batch of cases, appeal was preferred before the Supreme Court, which decided in its judgment reported as *CIT vs. Calcutta Knitwears, Ludhina* 362 ITR 673 (SC), *inter alia*, that:

“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.”

4. So far as the determination whether the satisfaction recorded was in conformity with the Section 158BD is concerned, there is no controversy in view of the concurrent findings. Having regard to the order of this Court in *CIT vs. Radhey Shyam Bansal (supra)* the bone of contention is whether the period when the satisfaction note was recorded, was contemporaneous with the period in which assessment proceedings of the searched person were carried out, as held by the judgment of the Supreme Court in *CIT vs. Calcutta Knitweaves (supra)*. In each of the cases it is evident that the satisfaction note was recorded almost or just short of or more than a year after the completion of assessment of the searched person. In ITA No. 279/2010, the satisfaction note was recorded on 26.08.2003 i.e. four days short of a year after completion of assessment of the searched person; in ITA No. 1145/2010 it is recorded on 14.01.2004 i.e. about one year and four months after the searched person's assessment is completed. In ITA No. 1313/2010 and 1326/2010, satisfaction notes were recorded on 04.06.2003 i.e. about nearly 10 months after the completion of the assessment of the searched person.

5. Additionally, we may note in ITA No.1318/2009 that the main judgment of this Court in *Radhey Shyam Bansal (supra)* itself recorded that letter/communication note of 12.07.2003 did not accord with Section 158BD. The findings in the said judgment are as follows:

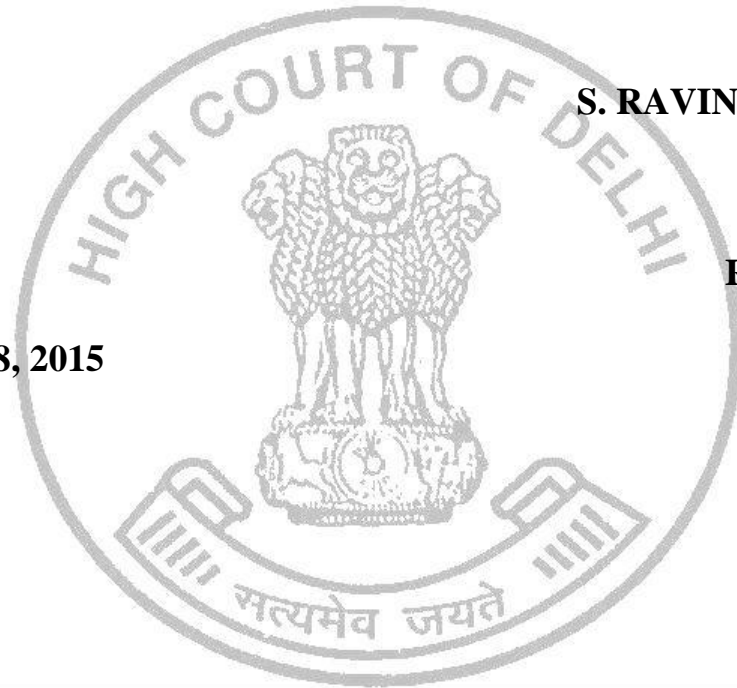
“17. In view of the above, it is clear that on or before 29th Aug., 2002, the AO of M/s Friends Portfolio (P) Limited and that of Shri Manoj Aggarwal did not record any satisfaction. The note dt. 29th Aug., 2002 is, therefore, not to be taken for recording satisfaction required under Section 158BC/158BD.

23. In view of the aforesaid legal position we can now examine the letterdated 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 ITA 582/2008 with connected matters 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 ITA 582/2008 with connected matters 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 ITA 582/2008 with connected matters 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. Having regard to the intent of the Supreme Court in Para 44 of the *Calcutta Knitwears (supra)*, where it was indicated that the Revenue has to

be vigilant in issuing notice to the third party under Section 158 BD, immediately after the completion of assessment of the searched person, this Court is of the opinion that a delay ranging between 10 months of 1 ½ years cannot be considered contemporaneous to assessment proceedings. We are of the opinion that notices were not issued in conformity with the requirements of Section 158BD, and were unduly delayed. The appeals of the Revenue accordingly fail and are dismissed.



**S. RAVINDRA BHAT
(JUDGE)**

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

JANUARY 08, 2015

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