

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF MAY 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

I.T.A. NO.234 OF 2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III
CENTRAL REVENUE BUILDINGS
QUEENS ROAD
BANGALORE-560001.
2. THE ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 2(2)
BANGALORE.

... APPELLANTS

(BY SRI.E.I.SANMATHI, ADV.)

AND:

SHRI. N. RAMAKRISHNAN
NO.3, KRISHNA SINGH LANE
ULSCORPET, BENGALURU-560002
SINCE DEAD BY LR.

SMT. MOHANAMBAL
AGED ABOUT 59 YEARS
NO.29, 19TH CROSS, 1ST MAIN
LALJI NAGAR, LAKKASANDRA

BANGALORE-560030
(RELATED TO DECEASED WIFE).

... RESPONDENT

(SERVED V/O DT. 24.7.19 THROUGH PAPER PUBLICATION
RESPONDENT - UNREPRESENTED)

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THIS I.T.A. IS FILED UNDER SECTION 260-A OF THE INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 04.03.2011 PASSED IN IT(SS)AA NO.62/(BANG)/2007, FOR THE ASSESSMENT YEAR 01/04/1981 TO 29/05/2011, PRAYING TO FORMULATE THE SQL STATED THEREIN AND TO SET ASIDE THE APPELLATE ORDER DATED 04.03.2011 PASSED IN IT(SS)AA NO.62/(BANG)/2007 DATED 04.03.2011 AS SOUGHT FOR IN THIS APPEAL.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been filed by the revenue. The subject matter of this appeal pertains to block period from 01.04.1981 to 29.05.2001. The Appeal was admitted by a bench of this Court by an order dated 17.10.2019 on the following substantial question of law:

- (i) Whether the Tribunal is justified in law on the facts and in the circumstances of the case in holding that the assessment order passed under Section 148BD read with Section 158BC is not valid and is void *ab initio* on the ground that the assessing officer of the person searched has not recorded satisfaction before the completion of block assessment proceedings under Section 158BC relying upon the decision of the Apex Court in case of Manish Maheswari (289 ITR 341) without appreciating the fact that the assessing officer in the case of the person searched as the assessing officer who initiated proceedings under Section 158BD in the case of the respondent - assessee is the same person and also that satisfaction was recorded in the case of the respondent- assessee before the issue of notice under Section 158BD?

2. Facts leading to filing of this appeal briefly stated are that a search under Section 132 of the Act was carried out in the residence of Mr.Syed Farahatullah alias Javed, one of the partners of M/s Domicile Developers. During the course of the search, a memorandum of understanding entered by him with one Ramakrishnan for purchase of land measuring 1 acre 11 guntas forming part of Sy.No.56/17, Hongasandra Village, Begur Hobli, Bangalore South was seized. As per memorandum of understanding dated 29.05.1995, total sale consideration was fixed at Rs.1,92,00,000/- and out of the aforesaid amount, a sum of Rs.1,12,00,000/- was paid to aforesaid N.Ramakrishnan the payment of which was duly acknowledged. Thereafter, a survey was conducted in the premises of N.Ramakrishnan on 15.06.2001 and certain documents were impounded. The impounded documents revealed that property was sold to one Akram Khan and as per agreement dated 04.12.1998, total sale consideration was Rs.2,12,00,000/-,

out of which an amount of Rs.1,83,00,000/- was already paid to Mr.N.Ramakrishnan. Mr.N.Ramakrishnan did not disclose this transaction to the Income Tax department.

3. In order to bring the aforesaid amount to tax, notice under Section 158BD read with Section 158BC of the Act was issued on 09.07.2003 which was served on the assessee on 14.07.2003. The assessee filed the return of income for the block period on 06.11.2003 declaring undisclosed income as 'NIL'. The assessing officer by an order dated 29.07.2005 *inter alia* held that assessee had entered into an agreement for sale of the property in question and had received the entire sale consideration as on the date of the agreement and handed over the possession. Therefore, the transfer of property had taken place within the meaning of Section 2(47)(v) of the Act and the capital gains arising out of transfer is chargeable to tax for the block period. Accordingly, the Assessing Officer held

that a net sum of Rs.1,13,67,594/- is payable as tax on capital gain. The interest and penalty under Section 158BFA(1) and 158BFA(2) were initiated separately. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 28.09.2007 dismissed the appeal. Being aggrieved, the assessee approached the Income Tax Appellate Tribunal. The Tribunal by an order dated 04.03.2011 *inter alia* held that before completion of block assessment proceedings under Section 158BC of the Income Tax Act, the assessing officer has to come to the conclusion whether the undisclosed income belongs to the persons searched or any other person. It was further held that even if the Assessing Officer is the same person in the case of both the person searched as well as other person, the recording of satisfaction has to be before the completion of block assessment proceeding in case of person searched. It was also held that since, the Assessing Officer did not record

satisfaction before completion of proceeding under Section 158BC which should be reflected in notice under Section 158BD of the Act, the order of assessment is *ab initio* void. Accordingly, the same was quashed and the appeal was allowed. Being aggrieved, the Revenue is in appeal before us.

4. Learned counsel for the revenue submitted that the proceedings under Section 158BD were completed in case of Javed on 30.05.2003 and thereafter, the satisfaction was recorded by the Assessing Officer. However, the Income Tax Appellate Tribunal, without examining the appeal on merits, has allowed the appeal simply on the ground that the satisfaction was not recorded in case of Javed before completion of assessment proceedings. It is further submitted that the aforesaid finding is contrary to law. In this connection, reliance has been placed on the decision of the Supreme Court in the case of '**CIT Vs. CALCUTTA**

KNITWEARS' (2014) 362 ITR 673 (SC). None has appeared on behalf of the respondents despite service of notice.

5. We have considered the submissions made by the learned counsel for the revenue and have perused the record. The issue which arises for consideration before the Supreme Court in the case of **CALCUTTA KNITWEARS, supra**, was at what stage of proceedings under Chapter 14-D, the Assessing Authority is required to record his satisfaction for issuing a notice under Section 158BD of the Act. The aforesaid issue has been answered in paragraph 44 of the judgment by the Supreme Court which is reproduced below for the facility of reference:

"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.”

6. Thus, from perusal of the aforesaid paragraph, it is evident that the satisfaction can even be recorded immediately after completion of the assessment proceedings under Section 158BC of the Act. In the instant case, admittedly, the satisfaction has been recorded after completion of the proceedings under Section 158BC of the Act. However, the order passed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) has been set aside by the Tribunal merely on the ground that the satisfaction has not been recorded before completion of the assessment proceedings. The aforesaid finding is

contrary to law laid down by the Supreme Court in the case of ***CALCUTTA KNITWEARS***, *supra*. Therefore, the same cannot be sustained in the eye of law.

7. In view of the preceding analysis, the substantial question of law framed by this Court is answered in the negative. In the result, the impugned order passed by the Tribunal dated 04.03.2011 is hereby quashed and the matter is remitted to the Tribunal to deal with the appeal on merits expeditiously in accordance with law.

In the result, the appeal is allowed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

SS/RV