

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

TAX APPEAL No. 895 of 2017

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PR. COMMISSIONER OF INCOME TAX SURAT
2....Appellant(s)
Versus
JITENDRA H MODI HUF....Opponent(s)

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Appearance :

Mr NIKUNT RAVAL for Mrs KALPANAK RAVAL, Advocate for the
Appellant

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CORAM: HONOURABLE Mr. JUSTICE AKIL
KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
5th February 2018

ORAL ORDER (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

This Appeal is filed by the Revenue against the
judgment of Income Tax Appellate Tribunal dated 16th
March 2017. The following questions of law have been
presented for our consideration.

[A] **“Whether on the facts and
circumstances of the case and in
law, the Appellate Tribunal was
right in quashing the assessment**

order passed under Section 158BC r.w.s 144 of the Act on the ground that the notice issued u/s. 158BD of the Act was bad in law due to inordinate delay in recording satisfaction ?”

[B] “Whether on the facts and circumstances of the case and in law, the Appellate Tribunal was right in deleting the addition of Rs. 36,67,115/= made under the head “undisclosed income” for the block period 1992-93 to 2001-02 and upto 17th April 2001 ?”

Briefly stated, the facts are that certain search and seizure operations were carried out against one Jitendra H Modi on 17th April 2001. The assessment order under Section 158BD of the Income-tax Act, 1961 [**“the Act”** for short] was passed against the searched person on 30th April 2003. Till this date, the Assessing Officer had not recorded any satisfaction on the basis of material on record that the assessment in the hands of the

present assessee under Section 158BD of the Act ought to be carried out. Such satisfaction was recorded only on 20th January 2004. The Assessing Officer thereupon passed an order of assessment under Section 158BD of the Act on 17th April 2001 for the Block Period : AY 1992-1993 to AY 2001-2002. He made addition of Rs. 36.67 lacs in the hands of the assessee for the said period.

The assessee carried the matter in appeal before the Commissioner with respect to the latter issue. The Commissioner [Appeals] opined as under :-

"I find myself handicapped in making any worthwhile intervention at this stage. As far as the plea of time gap is concerned, in my view, reasonable time would mean to be reasonable time and in the facts and circumstances of the case once the satisfaction is reached issuance of notices is indeed within such range. There is no substance in the appellant case especially when it had chosen not to file return of income despite the issuance of notice. The

consistent non compliance is subsequent hearings is also not explained satisfactory."

The assessee carried the matter in appeal before the Tribunal and once again took up the question of delay in recording the satisfaction for issuance of notice under Section 158BD of the Act. The Tribunal, referring to the judgment of the Supreme Court in the case of **Commissioner of Income-tax III v. Calcutta Knitwears**, reported in 362 ITR 673, held that the satisfaction which was recorded nearly nine months after passing of the order under Section 158BC of the Act did not satisfy the parameters laid down by the Apex Court in the said judgment. Resultantly, the Tribunal terminated the proceedings of block assessment on the ground of undue delay in recording the satisfaction by the Assessing Officer of the searched person.

This judgment of the Tribunal is challenged in the present Appeal. As is well known, the Supreme Court in

the case of *Calcutta Knitwears* [Supra] considered the question of recording of satisfaction against the person other than the searched person in the context of provisions contained in Section 158BC and 158BD of the Act. The cases before the Supreme Court were such where the Tribunals and the High Courts had taken a view that any satisfaction recorded by the Assessing Officer after passing order under Section 158BC of the Act would not satisfy the requirements of law. The Supreme Court reversed such view and held that even after passing of the order under Section 158BC of the Act, it would be open for the Assessing Officer of the searched person to record a satisfaction for initiating proceedings under Section 158BD of the Act. The relevant observations of the Supreme Court in this regard were as under :-

“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 reasonings 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.”

It could be thus seen that while holding that provisions of law nowhere require that the satisfaction note must be recorded before the proceedings under Section 158BC are completed, it was further provided that such satisfaction note could be prepared at any of the following stages, namely; [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.

Thus, even going by the judgment of the Supreme Court in the case of *Calcutta Knitwears* [Supra] that satisfaction note can be recorded after completion of the proceedings under Section 158BC of the Act, the same must be done immediately thereafter. The Supreme Court in the said judgment had noted that

there is no embargo in the law for recording satisfaction after completion of proceedings under Section 158BC of the Act. It was further noticed that Section 158BE [2] (b) of the Act only provides for limitation for completion of block assessment under Section 158BD which is two years from the end of the month in which the notice for such purpose was served on such person, who happen to be other than the searched person. It was in this background the Supreme Court had culled out the ratio, as reproduced in para 44 of the judgment. Thus, even if such satisfaction note were to be recorded after completion of the proceedings under Section 158BC, the same has to be done immediately thereafter. The term 'immediately' has not been defined nor is it possible to quantify it in absolute terms. In any case, period close to nine months for completion of the proceedings under Section 158BC of the Act, without there being any limiting factor on the Assessing Officer to have recorded satisfaction earlier, cannot be stated to be an immediate action. Delhi High Court in the case

of **Commissioner of Income-Tax v. Bharat Bhushan Jain**, reported in 370 ITR 695 [Delhi] had an occasion to examine similar issue. After referring to the judgment of the Supreme Court in the case of *Calcutta Knitwears* [Supra], it was observed as under :-

“Having regard to the intent of the Supreme Court in paragraph 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 158BD, immediately after the completion of assessment of the searched person, this court is of the opinion that a delay ranging between 10 months of one-and-half 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.”

In the result, Tax Appeal is dismissed.

[AKIL KURESHI, J.]

[B.N. KARIA, J.]

Prakash