IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No.316

ITA No.346 of 2009 (O&M)
Date of decision: 22.09.2016

Surjeet Bahadur Khurania ....Appellant

versus

Commissioner of Income Tax, Karnal ....Respondent

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL

*** * * ***

Present:- Mr. S.K. Mukhi, Advocate
for the appellant.

Mr. Yogesh Putney, Advocate
for the respondent.

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

This is an appeal against the order of the Tribunal confirming the order of the Commissioner of Income Tax (Appeals), Patiala (for short-'CIT Appeals'). The CIT (Appeals), in turn, had substantially confirmed the order of the Assessing Officer. The appeal is in respect of the block period from 01.04.1987 to 06.06.1997.

The matter arises on account of an order passed by the Assessing Officer under Section 158BC(c) read with Sections 158(BB) (b) and Section 143(3) of the Income Tax Act, 1961 (for short the 'Act').

2. The appellant/assessee contends that the following substantial questions of law arise in this appeal:-

"i) That the ITAT is not justified in non-consideration of legal objections and not deciding the Grounds of Appeal legally taken by the appellant though reproduced in its order under Statutory appeal indicate non-application of mind by the ITAT while deciding the appeal and thus deserve indulgence of this Hon'ble Court in setting aside the orders of ITAT and the Authorities below.

ii) That the ITAT is not justified in concurring with the findings of CIT (A) without considering the arguments, explanations and judicial decisions and also without passing any speaking order on the legal issue of reference to special auditors u/s 142(2A)of the Income Tax Act, 1961 and that too having so done without affording any opportunity of being heard to the appellant being a basic and legal requirement of such reference.

iii) That the ITAT is not justified in concurring with the findings of CIT(A) without considering the arguments, explanations and judicial decisions and also without passing any speaking order on the legal issue pertaining to "Dumb Document" giving no indication to prove having any connection any enquiry qua the said document and also not appreciating the legal principle that though any document found at the place of the assessee is presumed to be belonging to him but this presumption is rebuttable and having duly rebutted by the appellant the resultant addition of Rs.32,72,595/- in the hands of appellant is bad in law.

iv) That the ITAT has erred in concurring with the findings of the CIT (A) in confirming the additions to the extent of Rs.50,000/-, 60,000/- and Rs.70,000/- in the A.Y. 1991-92, 1992-93 and 1993-94 respectively on the basis of estimation of undisclosed income from the alleged sale and purchase of land on the basis of the alleged dumb document as so referred in item No.(H) (spura) which does not belong to the appellant at all nor any material/evidence has been brought on record by the AO to prove any nexus wherein the appellant relies upon the basis as adopted in item H (supra).

v) That the ITAT has erred in concurring with the findings of the CIT (A) in confirming the additions to the extent of Rs.40,000/-, in the A.Y. 1998-99, on the basis of estimation of undisclosed income from the alleged profit on sale of EO Plot and that of Bajaj Plot on the basis of the alleged dumb document copy at Annexure A-8 as so referred in item No.(H)(supra) which does not belong to the appellant at all nor any material/evidence has been brought on

record by the AO to prove any nexus wherein the appellant relies upon the basis as adopted in item H (supra).

vi) That the ITAT has erred in concurring with the findings of the CIT (A) in confirming the additions to the extent of Rs.12,00,000/- on account of alleged loans given, in the A.Y. 1998-99, and Rs. 15,000/- on the basis of loans raised as undisclosed income on the basis of the alleged dumb document copy at Annexure A-9 as so referred in item No.(H)(supra) which does not belong to the appellant at all nor any material/evidence has been brought on record by the AO to prove any nexus wherein the appellant relies upon the basis as adopted in item H (supra).

vii) That the ITAT has erred in concurring with the findings of the CIT (A) in confirming the additions to the extent of Rs.6,000/- and Rs.20,000/- on account of alleged loans on 06.05.1997 and 30.05.1997 respectively by referring to some dumb document No.13 at page 48 on the basis of loans raised as undisclosed income on the basis of the alleged dumb document copy at Annexure A-10 as so referred in item No.(H) (supra) which does not belong to the appellant at all nor any material/evidence has been brought on record by the AO to prove any nexus wherein the appellant relies upon the basis as adopted in item H (supra).

viii) That the ITAT has erred in concurring with the findings of the CIT (A) in confirming the additions to the extent of Rs.22,43,258/- by wrongly presuming it to be cash found during the course of search as per para 3.8 of its order which factually incorrect as there was no such cash found during the search nor it was so held either by the AO or by the CIT(A) and thus ITAT without application of its mind concurred with the findings of AO.

ix) That the order of the Tribunal is legally unsustainable & bad in law and perverse.

3. The appeal stands admitted only in respect of question No.(i). In our view, the other questions do not raise any substantial question of law.

4. This appeal was directed to be heard alongwith ITA No.121 of 2010, which is not on board today. In that appeal, another counsel is appearing on behalf of the respondent/assessee. However, learned counsel appearing on behalf of the department states that the appellant therein will

be withdrawing that appeal as the tax effect therein is less than that prescribed in circular dated 10.12.2015 issued by the CBDT.

Re: Question No.(i) and question in CM No.17939 of 2014.

5. If the appellant succeeds on this issue, the rest of the issues must also be decided in his favour.

6. The appellant contended that the notice issued under Section 158BC is *non-est* and void and therefore, the entire proceedings relating to the block assessment are illegal. The contention is as follows: Section 158BC requires the notice to stipulate that the return should be filed in not less than 15 days. The notice issued to the appellant under Section 158BC, however, required him to file the return "within 15 days". The expression "within 15 days" is less than 15 days. The notice according to the assessee is, therefore, void *ab initio*.

7. We will presume that this point was raised before the Assessing Officer, CIT (Appeals) and the Income Tax Appellate Tribunal. However, from the orders passed by these three Authorities, it is apparent that this point was not pressed. After the decision of the Tribunal, dismissing the assessee's appeal, the assessee raised the issue before the Tribunal by filing a Miscellaneous Application No.381/DEL/2009 contending that it is a pure question of law. The Tribunal having rejected the application, these questions have been sought to be raised in CM No.17939 of 2014 filed in this appeal. The questions are as follows:-.

> "a. It is contended that the learned CIT (Appeals) has erred in not deciding as to whether the Assessing Officer had the jurisdiction to from a block assessment order u/s 158BC of the I.T. Act 1961 in the facts and circumstances of the case of appellant.
>
> b. It is contended that the learned CIT(Appeals) has erred in holding that the notice issue u/s 158BC on dated 21.09.98 is a valid and

legal notice.

c. It is contended that the learned CIT (Appeals) has erred in facts and law in not appreciating the contention of the appellant that the issue of notice u/s 158BC without providing all the photocopies of the seized material renders the same as nullity and hence proceeding culminating out of such a notice are bad in law".

Mr. Putney, the learned counsel appearing on behalf of the respondent-revenue contended that the appellant ought not to be permitted to raise this issue as it had not been pressed earlier before the Authorities. We have, however, permitted the appellant to raise the issue.

8. Mr. Mukhi, the learned counsel appearing on behalf of the appellant-assessee contends that block assessment proceedings are null and void, based on the following facts.

On June 06, 1997, a search and seizure operation was conducted under Section 132(1) of the Act in the premises of the assessee and other members of his family and group concerns viz. M/s Muni Roller Flour Mills Private Limited and M/s Durga Trading Company, which is a sole propriety concern of the assessee. Documents were seized together with the regular books of accounts pertaining to the block period. The assessee filed the return on 12.05.1999 declaring his income to be "nil". During the search at the assessee's residence, several documents including ledgers, journals, cash books and stock register were seized.

9. Initially, the department served a notice dated 19.11.1997 upon the assessee. At the head of the notice, it is stated to be under Section 142 (1) of the Income Tax Act, 1961. This was an inadvertent error. The body of the notice makes it clear that it was in fact a notice under Section 158 BC. The notice states that it is in connection with the assessment for which the assessee was required to prepare a true and correct return of his income in

respect of which he was assessable. The notice further stated that the return should be in the application Form 2B, as is prescribed in Rule 12(1A) of the Income Tax Rules, 1962. The return was directed to be delivered to the Assessing Officer on or before 24.12.1997, which was more than 15 days from the date of the said notice i.e. 19.11.1997.

10. This notice, it is contended, is also void for it is stated to be under Section 142(1) and not under Section 158BC.

11. The contention is not well-founded. The reference to Section 142(1) was an obvious inadvertent error. This is clear from the fact that the notice itself states that the return should be in Form 2B as prescribed in Rule 12(1A). Rule 12(1A), as it stood at the relevant time, read as under:-

> "**12. Return of income:-**
>
> **.....**
>
> 12(1A)- The return setting forth the total income including the undisclosed income for the block period required to be furnished under clause (a) of Section 158BC shall be in Form No.2B and be verified in the manner indicated therein."
>
> (emphasis supplied).

Further, Rule 12(1) refers to all returns including regular returns under Section 139. It is important to note that Rule 12(1A) specifically requires the return with respect to the block period. Rule 12(1A) specifically refers to Section 158BC and to Form No.2B.

The heading of Form No.2B read as under:-

> "FORM No.2B
> Return of income for block assessment
> [See rule 12(1A) of Income-tax Rules, 1962]"

It is, therefore, clear that the assessee could not possibly have considered the notice to be under Section 142(1).

12. Even the facts and circumstances of the case do not indicate that the assessee could have been under the misapprehension that the notice was under Section 142(1) and not under Section 158BC. The assessee was admittedly aware of the search and seizure operation. He had already filed the return under Section 139. He must have known, therefore, that the notice was not to file a regular return which he had already filed.

13. It was then contended that the notice does not specify the block period.

14. At least, in the facts and circumstances of this case, that would not render the notice void. It is not the assessee's case that there was any other search and seizure operation other than the one conducted on 06.06.1997. That being the case, the block period also was obvious. It was as stipulated in Section 158B(a) which as it stood at the relevant time provided that unless otherwise required block period means the period comprising previous years relevant to the 10 assessment years preceding the previous year in which the search was conducted under Section 132.

15. In any event, this would be a mere technicality. The assessee was not prejudiced in any manner whatsoever. The assessee has not established that he was prejudiced on account of the notice not furnishing the block period or on account of it stating to be under Section 142(1). Section 292B is a complete answer to this contention. Section 292B reads as under:-

> "**Return of income, etc., not to be invalid on certain grounds.**
>
> **.....**
>
> **292B.** No return of income, assessment, notice summons or other

> proceeding, furnished or made or issued taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."

16. The reference to Section 142(1) and the absence of the block period being specified in the notice were mere mistakes, defects or omissions and the notice in substance and effect is in conformity with and/ or according to the intent and purpose of this Act. The intent and purpose of the Act is to be carried out in respect of the block assessment.

17. This question, therefore, must be answered against the assessee on the basis of the notice dated 19.11.1997 itself.

18. There is yet another aspect on this question. The Assessing Officer probably out of abundant caution issued a further notice dated 21.08.1998, which has been annexed to the said CM No.17939 of 2014.

19. This notice is expressly under Section 158BC. The block period is specified as the financial year 1987-88 to 1996-97 and 01.04.1997 to 06.06.1997. The only infirmity that is pointed out in respect of this notice is that the return should be delivered "within 15 days of the service of this notice". Mr. Mukhi, contended that the expression "within 15 days" indicates a period less than 15 days. In support of this submission, he relied upon a judgment of the Supreme Court in *'Commissioner of Income-Tax vs. Braithwaite and Co. Ltd.', [1993] 201 ITR 343 (SC)*. We will assume that to be so. In other words, we will assume that words "within 15 days" indicate a period of time less than 15 days.

20. We are, however, unable to agree with Mr. Mukhi on the main contention, namely, that on account of the notice dated 21.08.1998 requiring the assessee to file the return in less than 15 days, the entire block assessment is without jurisdiction and void *ab initio*. Section 158BC reads as under:-

> "**Procedure for block assessment.**
>
> 158BC. Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,—
>
> (a) the Assessing Officer shall—
>
> (i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;
>
> (ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period :
>
> **Provided** that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter :
>
> **Provided further** that a person who has furnished a return under this clause shall not be entitled to file a revised return;
>
> (b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143, section 144 and section 145 shall, so far as may be, apply;
>
> (c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;
>
> (d) the assets seized under section 132 or requisitioned under section 132A shall be dealt with in accordance with the provisions of section 132B."
>
> (emphasis supplied)

21. Section 158BC mandates that the Assessing Officer is to serve a notice to such person requiring him to furnish a return in the prescribed form and verified in the manner stipulated. The Assessing Officer must, therefore, serve such a notice, without which an assessee would not be liable to file a return in respect of a block assessment. The assessee is also entitled, as a matter of right, to a period not less than 15 days to file such a return. The Assessing Officer does not have the power to curtail this period. Thus, even if a notice under Section 158BC(a) specifies a period less than 15 days, it would not affect an assessee's right to file a return after a period of 15 days. The present case falls under Section 158BC(a)(ii). In such a case, an assessee would be entitled to file the return within the outer limit prescribed in Section 158BC(a)(ii) namely 45 days. Thus, while it is mandatory for the Assessing Officer to serve a notice requiring the assessee to file a return under Section 158BC and the assessee is entitled to not less than 15 days to file the return, the section does not indicate that if the notice inadvertently prescribes a period less than 15 days, it is void. Much less does the section indicate that the entire block proceedings relating to the block assessment would be void on account thereof.

22. This is, in fact, the view taken by a Division Bench of this Court in *'Commissioner of Income-Tax vs. Naveen Verma', [2012]346 ITR 100 (P&H)*. The questions before the Division Bench were as follows:-

> "(i) Whether the hon'ble Income-Tax Appellate Tribunal was right in holding that the notice under Section 158BD becomes defective merely because the Assessing Officer has allowed less than 15 days time to file the return?
>
> (ii) Whether the hon'ble Income-Tax Appellate Tribunal, having held the notice under Section 158BD to be defective, erred in holding that the defect was not curable under Section 292B of

the Act?"

The Tribunal allowed the assessee's appeal only on the ground that the assessment proceedings were vitiated on account of the assessee having not been given a clear period of 15 days for filing the return under Section 158BC. The Division bench held as under:-

> "8. The above provisions are statutory recognition of the principles of natural justice which are applicable to assessment proceedings under the Act. The affected party is entitled to the fair opportunity and fair procedure. Since the period of 15 days has been specified statutorily, it may not be fair to expect filing of return in shorter period. At the same time, the effect of violation of the principles of natural justice is not to always nullify the exercise of jurisdiction unless prejudice is caused. Where period specified in the notice is less than the statutory period, no prejudice is caused if return filed is taken into account. The notice specifying lesser period can be read as specifying the statutory period. The principle is duly recognised under section 292B of the Act."

In State Bank of Patiala v. S. K. Sharma [1996] 3 SCC 364, after considering the case law on the point. The Division Bench answered the questions in favour of the Revenue. It was held as under:

> 33. We may summarise the principles emerging from the above discussion. (These are by no means intended to be exhaustive and are evolved keeping in view the context of disciplinary enquiries and orders of punishment imposed by an employer upon the employee) : . . .
>
> (3) In the case of violation of a procedural provision, the position is this : procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are, generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. Except cases falling under — 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provision should be examined from the point of view of prejudice, viz., whether such violation has prejudiced the delinquent officer/employee in defending himself properly and

> effectively. If it is found that he has been so prejudiced, appropriate orders have to be made to repair and remedy the prejudice including setting aside the enquiry and/or the order of punishment. If no prejudice is established to have resulted therefrom, it is obvious, no interference is called for. In this connection, it may be remembered that there may be certain procedural provisions which are of a fundamental character, whose violation is by itself proof of prejudice. The court may not insist on proof of prejudice in such cases. As explained in the body of the judgment, take a case where there is a provision expressly providing that after the evidence of the employer/ Government is over, the employee shall be given an opportunity to lead defence in his evidence, and in a given case, the enquiry officer does not give that opportunity in spite of the delinquent officer/ employee asking for it. The prejudice is self-evident. No proof of prejudice as such need be called for in such a case. To repeat, the test is one of prejudice, i.e., whether the person has received a fair hearing considering all things. Now, this very aspect can also be looked at from the point of view of directory and mandatory provisions, if one is so inclined. The principle stated under (4) hereinbelow is only another way of looking at the same aspect as is dealt with herein and not a different or distinct principle."

11. We are of the view that the Tribunal erred in concluding that failure to give notice of 15 days will vitiate the assessment itself without considering the prejudice to the assessee. Total absence of notice may be on a different footing but if notice is duly served, the assessee can either avail of the statutory time for filing of the return irrespective of shorter period mentioned in the notice or can be given fresh opportunity if it is held that the assessee suffered prejudice on account of shorter period mentioned in the notice. In any situation, it is not permissible to quash the assessment proceedings merely on the ground that the period mentioned in the notice was lesser than the statutory period specified under section 158BC(a)."

(emphasis supplied)

There is no doubt that the judgment squarely covers the case against the appellant. Mr. Mukhi, however, submitted that we ought not to be bound by the judgment as the respondent did not appear before the Court in that case. We are unable to agree. The doctrine of precedent applies even if one of the parties remains unrepresented. This was an appeal under Section 260-A of the Income Tax Act, 1961. The Court was not bound to allow the appeal merely because the respondent did not appear.

The judgment is, therefore, binding on us. We are in any event entirely in agreement with the judgment.

23. The question of law is, therefore, answered in favour of the respondent/revenue and against the appellant.

24. Mr. Mukhi, however, relied upon the judgment of the Supreme Court in *'Assistant Commissioner of Income-Tax and another vs. Hotel Blue Moon', [2010] 321 ITR 362***.** The questions that fell for consideration before the Supreme Court were as follows:-

> "(1) Whether on the facts and in circumstances of the case the issuance of notice under Section 143(2) of the Income-Tax Act, 1961 within the prescribed time limit for the purpose of making the assessment under Section 143(3) of the Income-Tax Act, 1961 is mandatory?
>
> (2) Whether, on the facts and in the circumstances of the case and in view of the undisputed findings arrived at by the Commissioner of Income-Tax (Appeals), the additions made under Section 68 of the Income-tax Act, 1961 should be deleted or set aside?"

25. The question that fell for consideration, therefore, was not under Section 158BC.

Mr. Mukhi, however, also relies upon the following observations of the Supreme Court:-

> "13. Section 158BC stipulates that the Chaper would have

> application where search has been effected under Section 132 or on requisition of books of account, other documents or assets under Section 132A. By making the notice issued under this Section mandatory, it makes such notice the very foundation of jurisdiction. Such notice under the section is required to be served on the person who is found to be having undisclosed income. The section itself prescribes the time limit of 15 days for compliance. In respect of searches on or after January 1, 1997, the time limit may be given up to 45 days instead of 15 days for compliance. Such notice is prescribed under rule 12(1A)which in turn prescribes Form 2B for block return.
>
> 14. Section 158BC(b) is a procedural provision for makin a regular assessment applicable block assessment as well. Section 158BC(b) would require the Assessing Officer to compute the income as well as tax on completion of the proceedings to be made. Section BC(d) would authorise the Assessing Officer to apply the assets seized in the same manner as are applied under Section 132B."

Indeed, the Supreme Court held the issuance of the notice under Section 158 BC to be mandatory. It is in that context that the Supreme Court held that such a notice is the very foundation for adjudication. It also held that the Section prescribed the time limit of 15 days for compliance. The Supreme Court, however, did not hold that if there is an inadvertent error such as the one in the present case, the notice would be void. Much less, is it held that the entire block assessment proceedings are void on account thereof. The issue that falls for our consideration was neither raised before, nor decided by the Supreme Court. The judgment, therefore, is of no assistance to the appellant.

26. Mr. Mukhi then relied upon the judgment of the Karnataka High Court in *'Commissioner of Income-Tax and another vs. Micro Labs Ltd.', [2012] 348 ITR 75*, wherein it was held as under:-

> "The proceeding under Chapter XIV-B and the provisions

> of Section 139 are different. A return filed under Section 139 is a voluntary return, A return under Chapter XIV-B cannot be filed voluntarily, it is only when a notice under Section 158BC is validly issued, only then a return could be filed. It is not in every case that a notice under Section 158 BC would be issued by the Revenue. However, as and when validly issued, it is only then that a return could be filed. When any search has been conducted under Section 132 or books of account, other document or assets are requisitioned under Section 132A, it is only then, the Assessing Officer shall proceed to assess the undisclosed income. Therefore, section 158BA provides for jurisdiction to the Assessing Officer to assess the undisclosed income in accordance with Chapter XIV-B. Section 158BA(2) is a charging section. Section 158BB provides for computation of undisclosed income for the block period and section 158BC provides for procedure for block assessment. Therefore, a notice under Section 158 BC cannot be equated with that of notice under Section 148. A notice under Section 158BC provides for a procedure to be adopted for block assessment. Under this procedure envisaged, the Assessing Officer shall serve a notice requiring the assessee to furnish his return within such time not being less than 15 days but not more than 45 days as specified in the notice. Therefore, the time to be granted to the assessee in terms of Section 158BC is a minimum of 15 days and a maximum of 45 days. If the said period of time is not granted, the notice is invalid rendering the entire proceedings as without jurisdiction. Admittedly, in this case, the notice under Section 158BC called upon the assessee to submit its return of income "within a period of 15 days". Within a period of 15 days is less than 15 days. Therefore, the mandatory period of time as stipulated under Section 158BC has not been complied with. The notice, therefore, is invalid. An invalid notice cannot confer any jurisdiction on the authority. Hence, the entire proceeding are bad in law. The notice ab initio void."

27. The judgment does support the appellant. We are, however, for the reasons already mentioned, with respect, unable to agree with the judgment. In any event, we are bound by the judgment of this Court in *'Commissioner of Income-Tax vs. Naveen Verma'*, [2012] 346 ITR 100 (supra).

28. In any event, in the case before us, there was also an earlier notice dated 19.11.1997 which we have held is valid.

29. Mr. Putney, has relied upon the fact that the assessee had filed a return, pursuant to second notice dated 21.08.1998. He submitted that the assessee did not raise the objection. Had we come to the conclusion that the proceedings are void on account of the notice dated 21.08.1998 granting the petitioner less than 15 days to file a return it may have been possible to contend that the entire proceedings would have been vitiated and the appellant having filed a return may not have made a difference on the ground that there can be no estoppel against statute.

30. The analogy sought to be drawn with Section 148 of the Act is not well-founded. In answer, Mr. Putney, relied upon the judgment of a Division Bench of the Bombay High Court in *'Shirish Madhukar Dalvi vs. Assistant Commissioner of Income-Tax', [2006] 287 ITR 242*, where it was held :-

> "49. Having said so, now it is necessary to consider one more potent legal submission of Mr. Sathe that the provisions of sections 148 and 158BC are synonymous and pari materia. Having examined the provisions of sections 148(1) and 158BC, side by side, it would be clear that section 148(1) opens with the words "Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him . . . ". This very opening sentence, unequivocally, goes to suggest that in order to assume jurisdiction for assessment under section 147, notice under section 148(1) is a condition precedent ; whereas the scheme of Chapter XIV-B of the Act suggests that section 158BA is a section which provides that notwithstanding anything contained in any other provisions of this Act, where after June 30, 1995, a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter. A reading of this provision suggests that this section 158BA is the

provision which provides for jurisdiction in favour of the Assessing Officer to assess undisclosed income in accordance with Chapter XIV-B. Whereas section 158BA(2) is a charging section ; section 158BB provides for computation of undisclosed income for the block period ; whereas section 158BC provides procedure for block assessment. Section 158BA bestows jurisdiction on the Assessing Officer and not section 158BC as submitted by Mr. Sathe. Thus, notice under section 158BC(a) cannot be equated with that of notice under section 148. That notice under section 158BC(a) only provides for procedure to be adopted for block assessment. It does not confer jurisdiction to assess in favour of the Assessing Officer. In these circumstances, the submission made by Mr. Sathe is devoid of any substance.

50. The judgment of the Calcutta High Court in the case of Shaw Wallace & Co. Ltd. v. Asst. CIT [1999] 238 ITR 13 relied upon by Mr. Sathe is not at all applicable to the facts of the present case. In that case, the Calcutta High Court was dealing with the power of the Assessing Officer to make a regular assessment in respect of a financial year which formed the subject matter of the block period of assessment. While considering this question, the observations were made by the Calcutta High Court to say that section 158BC substituted the procedure under section 148. The observations made in the judgment are required to be read in the context in which they are made. It is not permissible to read them in isolation or out of context. A stray sentence cannot be allowed to be put into service to draw a meaning which was never meant by the author himself. Thus, these observations by themselves do not mean that the rigour of section 148 stands substituted with that of section 158BC. Section 148 is a substantive section whereas section 158BC is a procedural section. Both sections definitely stand on different footings. As already observed, a procedural requirement can always be waived by the subject for which benefit they are enacted as such submission made by Mr. Sathe in this behalf does not hold water."

31. In any event, as we have already held, though the notice under Section 158 BC is mandatory errors such as those in the present case which do not cause the assessee any prejudice do not render either the notice or the

block assessment proceedings void.

32. Question (i) and the questions raised in CM No.17939 of 2014 are, therefore, answered in favour of the Revenue-respondent.

33. As we mentioned earlier during the search and seizure operation several documents were seized. Many of them did not form part of the regular Books of Accounts including Ledger.

Re: Question (ii)

34. This appeal is not maintainable in respect of this question. The appeal, is therefore, dismissed as regards question (ii).

Re: question (iii)

35. The respondents referred to a document that was found during the search. This document comprises five pages. It is titled 'Chitha' 01.04.1993 to 31.12.1993. 'Chitha' translated means a balance-sheet. The very first entry refers to the assessee Sh. Surjit Bahadur. A sum of Rs.40,14,126.18 is shown against his name. The assessee contended that the reference is to another person as his first name is spelt “Surjeet” and not 'Surjit' as in the disputed document.

36. This is essentially a question of fact. The Assessing Officer, CIT and the Tribunal had dealt with this document and considered it in detail. Further, the last page of this document spelt the name correctly as “Surjeet Bahadur” and against his name were written the words: “Rokar Mein”, which translated mean “in cash”. Further, as Mr. Putney pointed out, the appellant himself, in the appeal before the CIT(A) spelt his name as Surjit (Annexre A-5). There is no warrant for interference with the impugned order on this ground.

37. It is important to note that the Assessing Officer exercised power under Section 142(2A) directing the assessee to get the accounts audited by an accountant, as defined in the explanation to Section 288(2). The special auditor analyzed this balance sheet and the other documents, that were seized, as well. Based on the same and based on the independent analysis, the three Authorities had come to the conclusion that the said amount of Rs.40 lacs was unexplained. The Assessing Officer added the same to the appellant's income.

38. The assessee also disowned the documents. He stated that he had nothing to do with the documents and was unaware how they were found at his place and at his residence. The fact is that the document were admittedly found at his residence Apart from the statement that he was unaware of the documents, there is no explanation for the same. The reliance of the Authorities under Section 132 (4A) is well-founded. The Authorities, therefore, rightly drew the presumption, in these circumstances, that the documents pertained to the assessee and the contents thereof are true. In any event, this is a finding of fact which does not raise a substantial question of law.

The nature of the entries in documents have been sufficiently analyzed by the Authorities. They have, in fact, given the assessee credit for the amounts found in the regular books of accounts assessed the unexplained income only thereafter.

39. The question is, therefore, answered against the appellant/assessee.

40. Question Nos.(iv) to (vii) and (ix) raise questions of fact. The Authorities under the Act have analyzed each of the entries in sufficient

detail. The suggested discrepancies do not raise a substantial question of law. These questions are, therefore, also answered against the appellant.

Re: Question No.(viii)

The Authorities have in fact granted the assessee credit by considering this amount as a part of the amount reflected in the balance-sheet. It is agreed that the result of this question follows the answer to question No.(iii). In other words, the appeal regarding this question is also dismissed.

41. In the circumstances, question No.(i) and the additional questions, which have been allowed to be raised, are answered in favour of the revenue-respondent and against the assessee/appellant. The appeal as regards the other questions, is dismissed.

42. In the result, the appeal is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

September 22, 2016
Jyoti 1

(i)	Whether speaking/reasoned	Yes
(ii)	Whether reportable	Yes