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

% *Date of Decision: 31.10.2023*

\+ **ITA 344/2004**

COMMR.OF INCOME TAX, CENTRAL-II ..... Appellant
Through: Mr Gaurav Gupta, Sr. Standing Counsel with Mr Shivendra Singh and Mr Puneet Singhal, Standing Counsel.

versus

AMARJIT SINGH BAKSHI (HUF) ..... Respondent
Through: Mr C.S. Aggarwal, Sr Adv with Mr Ravi Pratap Mall and Mr Uma Shankar, Advs.

\+ **ITA 345/2004**

COMMR.OF INCOME TAX, CENTRAL-II ..... Appellant
Through: Mr Gaurav Gupta, Sr. Standing Counsel with Mr Shivendra Singh and Mr Puneet Singhal, Standing Counsel.

versus

AMARJIT SINGH BAKSHI ..... Respondent
Through: Mr C.S. Aggarwal, Sr Adv with Mr Ravi Pratap Mall and Mr Uma Shankar, Advs.

\+ **ITA 577/2008**

AMARJIT SINGH BAKSHI ..... Appellant
Through: Mr C.S. Aggarwal, Sr Adv with Mr Ravi Pratap Mall and Mr Uma Shankar, Advs.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr Abhishek Maratha, Sr Standing Counsel with Mr Parth Semwal, Adv.

\+ **ITA 1291/2008**

AMARJIT SINGH BAKSHI HUF ..... Appellant
Through: Mr C.S. Aggarwal, Sr Adv with Mr Ravi Pratap Mall and Mr Uma Shankar, Advs.

versus

COMMISSIONER OF INCOME TAX ..... Respondent
Through: Mr Abhishek Maratha, Sr Standing Counsel with Mr Parth Semwal, Adv.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. The record shows that a coordinate bench of this court had passed an order dated 02.08.2016, wherein, *inter alia*, the court sought to ascertain as to whether or not a satisfaction note had been generated by the Assessing Officer (AO) of the searched person before issuing notice under Section 158BD, read with Section 158BC of the Income Tax Act, 1961 [in short, "Act"].

2. This issue is of seminal importance, both from the point of view of the assessee, as well as the revenue, as it impinges on the jurisdiction of the AO. Under the aforementioned provision jurisdiction could have been assumed by the AO of the assessee only after a satisfaction note had been prepared by the AO of the searched person. For convenience, the order dated 02.08.2016 passed by the coordinate bench is set forth below:

> *"1. These four appeals are directed against the common order dated 24 June, 2003 passed by the Income Tax Appellate Tribunal (TTAT') in I.T. (SS) Appeal No. 96(Del) of 1998 for the Assessment Year ('AY') 1987-88 to*

1997-98. Two of the appeals, ITA Nos. 344/2004 and 345/2004, are by the Revenue. The other two appeals i.e. ITA Nos. 577/2008 and 1291/2008, are by the Assessees, Amarjit Singh Bakshi (Individual) and Amarjit Singh Bakshi HUF respectively.

2. It may be mentioned at the outset that although ITA No. 577/2008 is not included in the cause list for today, with the consent of the counsel for the parties, it has also been taken up since it arises out of the same common order of the ITAT.

3. The appeals by the Assessees i.e. ITA Nos. 577/2008 and 1291/2008 are accompanied by applications for condonation of delay in filing of the appeals. In ITA No. 577/2008 there is a delay of 1492 days, while in ITA No.1291/2008, the delay involved is of 1655 days.

4. As far as Revenue's appeals i.e. ITA Nos. 344/2004 and 345/2004 are concerned, the Court admitted the appeals by an order dated 9th August 2004 and framed the following two questions of law:

> *"1. Whether the I.T.A.T. was correct in law in admitting the additional evidence without giving an opportunity to the Revenue to examine the genuineness and correctness of the evidence?*
>
> *2. Whether the I.T.A.T. was correct in law in deleting the addition by ignoring the provisions of Section 132(4) and (4A) of the Income Tax Act, 1961."*

5. It is significant that the above order was passed ex parte i.e. without notice being served on the Assessees at that stage.

6. It is stated in the applications for condonation of delay that as far as ITA No. 344/2004 is concerned i.e. Revenue's appeal against Amarjit Singh Bakshi (HUF), the paper book was served on the Assessee only on 22nd February, 2008. It is stated that as far as ITA No. 345/2004 is concerned, which is the Revenue's appeal against Amarjit Singh Bakshi (Individual), the copy of the paper book was served on 5 July 2007. It is stated that since the Assessee had succeeded before the ITAT and the additions made for one year i.e. 1995-96 stood deleted by the ITAT, the question of the Assessees filing appeals in this Court did not arise. It is only after the Assessees received the copies of the paper book of the Revenue s appeals that they decided to file appeals raising a question of law concerning the failure by the Assessing Officer ('AO') of the searched party to record a note of satisfaction before sending the documents purportedly pertaining to the Assessees to their AO invoking the provisions of Section 158BD of the Income Tax Act, 1961 ('Act'). The Assessees state that the said issue impinges on the validity of the assumption of jurisdiction to frame an assessment under Section 158BD of the Act as explained by the Supreme Court in Manish Maheshwari v. ACIT (2007) 289ITR 341 (SC).

7. As far as ITA No. 577/2008 is concerned, by an order dated 28th May, 2008 notice was issued both in the appeal as well as in the application

being CM No. 6502/2008 for condonation of delay, permitting the Revenue to file a reply within four weeks. The case was then adjourned on 4 November, 2008. In the order dated 4 November, 2008 in ITA No.577/2008 the Court, inter alia, recorded: "The question of admission of this appeal as well as the condonation of delay would be considered at the time of hearing of the connected appeals, being ITA Nos. 344 & 345 of 2004....". When ITA 1291 of 2008 the case was taken up on 21st November 2008 it was tagged with the other appeals of the Revenue.

8. One of the questions that requires to be considered at the outset is the condonation of delay in the Assessees' appeals. ***As already noted, the Assessees' appeals raise only one question which concerns the recording of the satisfaction note by the AO of the searched person before invocation of Section 158BD of the Act****. The question whether there does exist such a*

satisfaction note is a pure question of fact. The Court notes that in the appeal before the ITAT a generally worded ground was raised by the assessee on the legality of the action of the Revenue in initiating proceedings against the Assessees under Section 158BD of the Act without fulfilling the statutory requirements of that provision.

9. ***In the considered view of the Court even for considering whether the extraordinary delay in the Assessees' filing their appeals should be condoned, it is necessary in the first place to ascertain if in fact a satisfaction note exists in the Revenue's files. The Court would, therefore, like the Revenue to produce before it on the next date the original files in the matter concerning the initiation of proceedings against the assessee under Section 158BD of the Act….”***

[Emphasis is ours]

3. It appears that it is in this backdrop that another coordinate bench condoned the delay in the appeals preferred by the assessee [ITA 577/2008 and ITA 1291/2008] via order dated 01.11.2017.

4. The important aspect is that while the majority view of the Income Tax Appellate Tribunal [in short, “Tribunal”] as reflected by perusing the orders dated 22.04.2003 and 24.06.2003, on merits, is in favour of the assessee, the said view did not deal with the issue concerning assumption of the jurisdiction by the AO of the assessee.

5. It is in this context that the assessee also preferred its appeals, which, as noticed hereinabove, are ITA no.577/2008 and ITA no.1291/2008.

6. As is obvious, the revenue being aggrieved by the decision of the majority, on merits, preferred appeals, which, as noticed in the order dated 02.08.2016 of the coordinate bench are ITA no.344/2004 and ITA no.345/2004.

7. Therefore, the question of law framed in the appeals preferred by the assessee is pivoted on the presence of satisfaction note. For convenience, the question of law, as framed, is set forth hereafter:

> "*Whether the Income Tax Appellate Tribunal was correct in law in upholding the validity of assumption of jurisdiction to frame an assessment by invoking the provisions of Section 158BD of the Income Tax Act, 1961, despite the fact no note of satisfaction was recorded by the Assessing Officer, in view of judgment of the Hon'ble Supreme Court in the case of Manish Maheshwari Vs. ACIT, reported in 289 ITR 341 (SC)?*"

8. If we were to come to the conclusion that the aforementioned question has to be answered in favour of the assessee, then practically nothing would survive in the appeals preferred by the revenue.

9. Concededly, despite the order dated 02.08.2016 passed by the coordinate bench nearly seven (07) years ago, the revenue has not been able to produce the original files, which could have disclosed as to whether or not a satisfaction note was generated by the AO of the searched person.

10. This being the position, we can only draw an adverse inference qua the revenue that no satisfaction note was generated by the AO of the searched person.

11. During the course of arguments, counsel for the revenue sought to highlight the fact that the issue concerning the purported failure of the AO to generate a satisfaction note was not raised before the Tribunal.

12. Our perusal of the record shows that this submission is incorrect. But even if we were to assume that this aspect was not pressed before the Tribunal, since it, otherwise, has a bearing on the jurisdiction of the AO of the assessee to deal with the matter, it can be raised, in our opinion, before the High Court for the first time.

13. However, we need not go that far in this case, as our perusal of the record shows that this aspect was, indeed, pressed before the Tribunal. For easy reference, we may refer to, firstly, the following observations made in paragraph 23 of the order dated 31.08.2001 by the Accountant Member of the Tribunal:

> *"23. I have not discussed and given finding on the ground in which the assessee has challenged the proceeding initiated under section 158BD in this case because the Ld. JM has not given finding on the same in the proposed order."*

14. Furthermore, a perusal of the grounds raised in the appeal preferred before the Tribunal also, to our minds, indicate that the aspect concerning the AO wrongly assuming jurisdiction was embedded therein. For the sake of convenience, the relevant parts of the appeal are extracted hereafter:

> *"1. That the learned ACIT has erred both on facts and in law in initiating the proceedings u/s 158 BD of the Income Tax Act on the assessee HUF. The initiation of the proceedings and completion of assessment under the aforesaid provisions is totally untenable both on facts and in law.*
> *2. That the learned ACIT has failed to appreciate that no proceedings could have been initiated against the assessee only on surmises and conjectures and on the basis of certain papers allegedly seized from one Shri N.S. Atwal, without there being any material to support they belong to the assessee.* ***The burden in establishing the aforesaid documents pertains to the assessee since was not satisfied before the initiation of the proceedings no valid proceedings could have been initiated in law against the assessee.***

3. That in any case and without prejudice, the learned ACT has failed to appreciate that there was no alleged agreement which had been allegedly entered between the assessee and Shri N.S. Atwal on 19.8.1994, and as such, before assuming the jurisdiction to initiate proceedings, the learned ACIT was obliged to bring sufficient and valid evidence, in absence thereof, no proceedings could have validly been initiated against the assessee under section 158 BD of the Income Tax Act.

4. That the order of assessment made under Chapter XIV B of the Income Tax Act is untenable as the learned ACIT completed the assessment without fulfilling the mandatory requirement of law of seeking the due approval of the learned Commissioner of Income Tax in accordance with law. The learned CIT could not grant any such approval mechanically but could only do so, only after giving an opportunity to the appellant and hearing him and that too after providing a copy of the draft order on which his approval was sought, in order to enable the assessee to furnish is obligations. Any order, without fulfilling the aforesaid requirement of law, cannot be regarded as mere irregularity but is a nullity as it goes to the very jurisdiction of the officer to complete assessment in accordance with law. The aforesaid approval could be compared with the approval provided u/s 148 of the Income Tax Act wherein before initiating valid proceedings u/s 148 of the Income Tax Act, the authority has to obtain the due approval in the instant case, since no such approval as required in law has been obtained, the order of assessment is a nullity in the eye of law which required to be annulled as such.

5. That even otherwise, the assessment under Chapter XIV B of the Income Tax Act could not have been made as there was no material for issuing warrant of authorization u/s 132(1) of the Income Tax Act on the assessee. The pre-requisite for issuing the notice under Section 132(1) of the Income Tax Act were since absent in the instant case, the proceedings u/s 132(1) of the Income Tax Act are bad in law and hence, the assessment made is also void and ab-initio bad in law, being without jurisdiction.

6. That the learned ACIT has erred both on facts and in law, in making an order u/s 158 BD of the Income Tax Act for the Block Period ending 6.11.1996 without appreciating that there was no material for assuming that there was any undisclosed income, which can be assessed under the provision of Chapter XIV B of the Income Tax Act.

*7. **That the initiation of proceeding and completion thereof by the aforesaid order is without satisfying the mandatory requirements of the aforesaid chapter and without fulfilling the pre-conditions for making the order of assessment**....*

[Emphasis is ours]

15. The written submissions dated 05.10.2000 lodged on behalf of the assessee before the Tribunal, would also bear this assertion out. The relevant paragraphs of the same are extracted below:

> *"33.* ***It is also contended that in fact no satisfaction note has been recorded by the Assessing Authority having jurisdiction over Shri. N.S. Atwal as such proceedings initiated are bad in law.*** *This submission is being in view of the order of the Hon'ble Tribunal in the case of Ved Prakash Sanjay Kumar 107 Taxman.*
>
> *xxx* *xxx* *xxx*
>
> *37. The Assessing Officer, having jurisdiction overt the assessee with respect to whom, the search was made under Section 132 of the Income Tax Act should be satisfied that any undisclosed income belongs to any other person. (other than the person searched). In other words, the sine-qua-non for initiating the proceedings is that the Assessing Officer having jurisdiction over the assessee who has been searched must be satisfied, on the basis of either the documents or assets seized, that there is an undisclosed income of a person other than of a person who has been searched.*
>
> *38.* ***In the instant case, it is submitted that such a condition does not stand satisfied as there is no material which exists on record as such initiation of proceedings have not validly been made. In fact, to establish that, (the Assessing Officer, having jurisdiction over the assessee, who had been searched) was satisfied on the basis of either books of accounts or documents seized is required to record & note of satisfaction as such a satisfaction has to be arrived at on the basis of material and not on the basis of mere subjective satisfaction****."*
>
> [Emphasis is ours]

16. Therefore, we have no reason to conclude that ground with regard to the AO wrongly assuming jurisdiction was not raised before the Tribunal. This being the factual situation, the issue is no longer *res integra* and stands concluded by the judgments rendered by the Supreme Court in the cases referred to hereafter. For ease of reference, the relevant observations, are set forth hereafter:

(i) ***Manish Maheswari vs. ACIT*** [2007] 289 ITR 341 (SC):

> *"11. The condition precedent for invoking a block assessment is that a search has been conducted under Section 132, or documents or assets have been requisitioned under Section 132A. The said provision would apply in the case of any person in respect of whom search has been carried out under Section 132A or documents or assets have been requisitioned under Section 132A. Section 158BD, however, provides for taking recourse to a block assessment in terms of Section 158BC in respect of any other person, the conditions precedents wherefor are : (i) Satisfaction must be recorded by the Assessing Officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (ii) The books of account or other documents or assets seized or requisitioned had been handed over to the Assessing Officer having jurisdiction over such other person; and (iii) The Assessing Officer has proceeded under Section 158BC against such other person.*
>
> *12. The conditions precedent for invoking the provisions of Section 158BD, thus, are required to be satisfied before the provisions of the said chapter are applied in relation to any person other than the person whose premises had been searched or whose documents and other assets had been requisitioned under Section 132A of the Act….*
>
> *xxx xxx xxx*
>
> *22. **As the Assessing Officer has not recorded its satisfaction, which is mandatory; nor has it transferred the case to the Assessing Officer having jurisdiction over the matter, we are of the opinion that the impugned judgments of the High Court cannot be sustained, which are set aside accordingly.** The appeals are allowed. However, in the facts and circumstances of the case, there shall be no order as to costs..."*

(ii) ***Commissioner of Income-Tax vs. Calcutta Knitwears*** [2014] 362 ITR 673 (SC):

> *"30. In Hepples v. FCT, (1991) 173 CLR 492, the High Court of Australia unequivocally favoured the principle that taxation legislation should be subject to a strict literal interpretation and opined that such an approach was supported by 'common sense'. Therein, the taxpayer, on ceasing to be employed, was paid $40,000 by his employer in exchange for the taxpayer agreeing that he would not carry on or be interested in certain businesses and would not divulge any trade secrets. The issue before the Court was whether or not such payment would form part of the taxpayer's assessable income for the purposes of the Income Tax Assessment Act, 1936(Cth). It*

was held that since the Act did not provide for such payments to form part of a taxpayer's assessable income, the payment would not be assessable.

xxx xxx xxx

38. Having said that, let us revert to discussion of Section 158BD of the Act. The said provision is a machinery provision and inserted in the statute book for the purpose of carrying out assessments of a person other than the searched person under Sections 132 or 132A of the Act. ***Under Section 158BD of the Act, if an officer is satisfied that there exists any undisclosed income which may belong to a other person other than the searched person under Sections 132 or 132A of the Act, after recording such satisfaction, may transmit the records/documents/chits/papers etc to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of the said other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessments under Section 158BD of the Act, the other provisions of XIV-B shall apply****."*

(iii) ***Tapan Kumar Dutta vs. Commissioner of Income Tax*** [2018] 404 ITR 28 (SC):

"11. A perusal of section 158BD of the Income-tax Act makes it clear that the Assessing Officer needs to satisfy himself that the undisclosed income belongs to any person other than the person with respect to whom the search was made under section 132 or whose books of account or other documents or assets were requisitioned under section 132A. ***The very object of the section 158BD is to give jurisdiction to the Assessing Officer to proceed against any person other than the person against whom a search warrant is issued. Although section 158BD does not speak of "recording to [of] reasons" as postulated in section 148, but since proceedings under section 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate though process of the Assessing Officer in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings under section 158BD.****"*

[Emphasis is ours.]

17. In view of the aforesaid factual and legal position, according to us, the question of law framed in the appeals preferred by the assesses i.e., ITA nos.577/2008 and 1299/2008, has to be answered in favour of the assessee and against the revenue. It is ordered accordingly.

18. As indicated above, the logical fallout of the aforesaid would be that the questions of law framed in the appeals preferred by the revenue i.e., ITA nos.344/2004 and 345/2004, are rendered academic. Consequently, the said appeals are closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 31, 2023/pmc