

Income-tax Appeal No. 591 of 2009

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Income-tax Appeal No. 591 of 2009

Date of decision: 20.7.2010

Commissioner of Income-tax-I
Ludhiana

--- Appellant

Versus

Mridula, Prop. M/s. Dhruv Fabrics,
Ludhiana

--- Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Vivek Sethi, Standing Counsel for the
Revenue-appellant.

AJAY KUMAR MITTAL, J.

In this appeal filed under Section 260-A of the
Income-tax Act, 1961 (in short "the Act") at the instance of
the Revenue it has been submitted that the following

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substantial question of law arises in this appeal for the consideration of this Court, from the order of the Income-tax Appellate Tribunal, Chandigarh Bench, 'B' Chandigarh (for brevity, "the Tribunal") passed on 5.2.2003, in I.T.S.S. No. 19/CHANDI/2008 for the block period 1.4.1998 to 5.2.2003:

"Whether on the facts and in law, the Hon'ble Income Tax Appellate Tribunal was justified in holding the recording of satisfaction u/s 158BD by the Assessing Officer of the person searched and consequent issuance of notice u/s 158BD on 2.9.2005 was belated and beyond the period prescribed by law when the section 158 BD read with section 158BE does not specify that satisfaction has to be recorded by the Assessing Officer before completion of assessment u/s 158BC of the Income Tax Act, 1961."

Briefly, the facts may be noticed. The assessee, an individual, is carrying on business of manufacturing hosiery goods in the name and style of "M/s.

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Dhruv Fabrics.” Search operations under Section 132(1) of the Act were carried out against Shri S.K. Bhatia, a yarn dealer, on 5.2.2003 and certain loose papers were seized. A notice under Section 158BD of the Act was issued to the assessee on 2.9.2005 which was served on her on 8.9.2005. The assessee filed return for the block period from 1.4.1998 to 5.2.2003 wherein the undisclosed income was declared at Nil. Survey was conducted at the premises of the assessee on 19.2.2003 wherein she surrendered Rs. 2.75 crores. The assessee had claimed that the unaccounted transactions with Bhatia Group were covered in the surrender made on 19.2.2003. The assessing officer did not accept this and finalized the assessment on 28.9.2007 at undisclosed income of Rs. 91,96,083/- under Section 158BC read with Section 158BD of the Act. The assessee feeling dissatisfied preferred appeal to the Commissioner of Income-tax (Appeals) [in short “the CIT (A)”]. The appellate authority accepting the contention of the assessee, deleted the addition vide order dated 30.6.2008. Revenue’s appeal to the Tribunal was dismissed by accepting the preliminary plea of the

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assessee that assumption of jurisdiction under Section 158BD of the Act by the assessing officer was not valid as the assessing officer of the person searched, while framing block assessment under Section 158BC in the case of S.K. Bhatia's Group was required to record his satisfaction that undisclosed income discovered, belonged to some person other than the person searched. The block assessment in the case of S.K. Bhatia's Group was finalized under Section 158BC on 30.3.2005 and satisfaction recorded to initiate action under Section 158BD of the Act against the assessee was on 15.7.2005 which was clearly beyond time envisaged by the aforesaid provisions. Hence, this appeal.

The point for consideration in this appeal is, whether initiation of proceedings under Section 158BD of the Act, by recording satisfaction on 15.7.2005 and issuing a notice dated 2.9.2005, which was served on the assessee on 8.9.2005, was valid when block assessment against the person searched had been finalized under Section 158BC of the Act on 30.3.2005.

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It would be advantageous to refer to the provisions of Section 158BD of the Act which deals with cases of undisclosed income of persons other than those against whom search has been conducted under Section 132 of the Act and Section 158BE which relates to limitation for framing of assessment under Section 158BC in the case of the person whose premises have been searched, and also under Section 158BD of the Act against whom action under the said Section has been initiated. The said provisions read thus:

“Undisclosed income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under [section 132](#) or whose books of account or other documents or any assets were requisitioned under [section 132A](#), then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [under [section 158BC](#)] against such other person and the provisions of this Chapter shall apply accordingly.

Time limit for completion of block assessment.

158BE. [(1) The order under [section 158BC](#) shall be passed—

(a) within one year from the end of the month in which the last of the authorizations for search under [section 132](#) or for requisition under [section 132A](#), as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorizations for search under [section 132](#) or for requisition under [section 132A](#), as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

(2) The period of limitation for completion of block assessment in the case of the other person referred to in [section 158BD](#) shall be—

(a) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the

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30th day of June, 1995, but before the 1st day of January, 1997; and

(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.]

Explanation 1.—In computing the period of limitation for the purposes of this section,—

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of [section 142](#) and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(iii) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to [section 129](#); or

(iv) in a case where an application made before the Settlement Commission under [section 245C](#) is rejected by it or is not allowed to be proceeded with by it, the

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period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of [section 245D](#) is received by the Commissioner under sub-section (2) of that section, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order under clause (c) of [section 158BC](#) is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be *extended accordingly*.

Explanation 2.- For the removal of doubts, it is hereby declared that the authorization referred to in sub-section (1) shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued;

(b) in the case of requisition under [section 132A](#), on the actual receipt of the books of account or other documents or assets by the Authorized Officer.

Section 158BD was inserted in Chapter XIV by the Finance Act, 1995, with effect from, 1.7.1995. The aforesaid

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provision is made applicable when the following conditions are fulfilled:-

- (a) there should be undisclosed income within the meaning of Section 158B(b) which relates to the assets or books/ documents found and seized/requisitioned;
- (b) the assessing officer should record a finding that there was undisclosed income in such assets or books of accounts or documents of the searched person which belonged to the person other than the one searched.

According to plain reading of Section 158BD *ibid*, the assessing officer, while framing assessment of an assessee under Section 158BC of the Act against whom action has been taken under Section 132 or 132A of the Act, is mandatorily required to record satisfaction before action can be initiated under Section 158BD of the Act against such other person. In other words, the satisfaction by the assessing officer making assessment under Section 158BC of the Act, in the case of the person searched, that there is

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certain undisclosed income as a result of examination of seized material which belongs to some other identified person, is essential for assuming jurisdiction under Section 158BD of the Act. The satisfaction required to be recorded is prima facie satisfaction and is not firm or conclusive satisfaction at that stage.

Section 158BE of the Act prescribes time limit for framing of assessments under Section 158BC and 158BD of the Act. The assessing officer of the person against whom action under Section 132 or 132A of the Act has been taken, is the assessing officer who initiates the proceedings under Section 158BD of the Act by recording satisfaction that any undisclosed income belongs to such other person so as to take action under Section 158 BD of the Act against that person. The Act nowhere specifically prescribes any time limit or limitation for initiation of proceedings under Section 158BD of the Act or for recording of satisfaction before taking action under that provision. The plain and reasonable construction that can be placed on the aforesaid provision would be that the recording of satisfaction for taking

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action against any other person under Section 158BD of the Act has to be between initiation of proceedings under section 158BC and before completion of block assessment under Section 158BC of the Act in the case of the person searched. It would, thus, mean that the action contemplated under Section 158BD of the Act against a third party to a search, is necessarily to be during the course of block assessment proceedings under Section 158BC of the searched person. It cannot be after the conclusion of the same as there is no occasion for an assessing officer to examine the seized material or documents of the searched person when the block assessment proceedings have concluded and no other proceedings are pending before him. If any other time limit is read in the provisions/statute, it shall lead to anomaly and would be arbitrary and unreasonable. It could not be read in the provision that where block assessment under Section 158 BC of the Act in the case of an assessee against whom action under Section 132 or 132A of the Act had been carried out is finalized, Revenue can take action at any time in the absence of any specific limitation prescribed

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in the statute. A construction which leads to such an anomaly should be avoided.

It is not disputed that the premises of S.K. Bhatia and Group were searched on 19.2.2003 and block assessment under Section 158BC was framed on 30.3.2005. The satisfaction as contemplated under Section 158BD in the case of the assessee was recorded on 15.7.2005 as observed by the Assessing Officer of the person searched, i.e. the Assistant Commissioner of Income-tax, Central Circle-II, Ludhiana and notice was issued on 2.9.2005. The satisfaction having been recorded and the proceedings initiated after finalization of the block assessment in the case of S.K. Bhatia and Group on 30.3.2005, same were bad in law.

In view of the above, the substantial question of law claimed by the Revenue is answered against the Revenue and finding no merit in the appeal, the same is accordingly dismissed.

(AJAY KUMAR MITTAL)

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JUDGE

(ADARSH KUMAR GOEL)

JUDGE

July 20, 2010

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