

A-145
12-11-20

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "A" NEW DELHI)
BEFORE SHRI RAJPAL YADAV AND SHRI K.G. BANSAL

I.T.(SS) A.No13/Del/2007
(Block Period 1991-92 2001-02)

Bharat Bhushan Jain, 17-Madhav Kunj, Sector-IX, Rohini, Delhi.
Vs. Assistant CIT, Circle 37(1), New Delhi.

(Appellant) (Respondent)

Appellant by: Ms. Rano Jain, CA
Respondent by: Shri B. Koteswara Rao, Sr.DR

ORDER

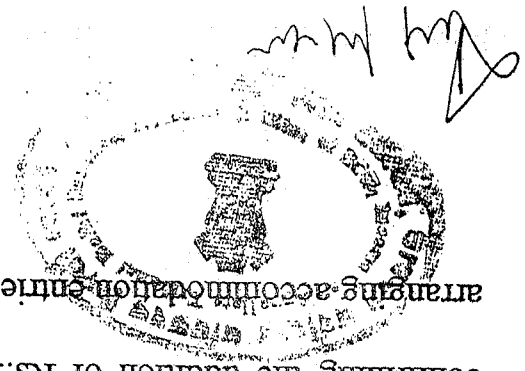
PER RAJPAL YADAV: JUDICIAL MEMBER

The assessee is in appeal before us against the order of learned CIT(Appals) dated 30th October 2006 passed for the block period starting from assessment year 1991-92 and ending on 3rd August 2002. The grounds of appeal taken by the assessee are not in consonance with Rule 8 of ITAT Rules, they are descriptive and argumentative in nature.

2. In brief the grievance of assessee is that the learned CIT(Appals) has

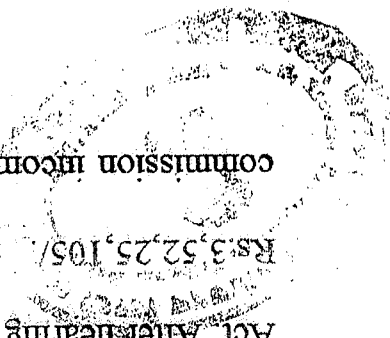
erred in upholding the action of Assessing Officer in initiating proceedings under sec. 158BD of the Income-tax Act, 1961 against the assessee and confirming the addition of Rs.5,20,568/- as commission income earned on

arranging accommodation entries to various persons.



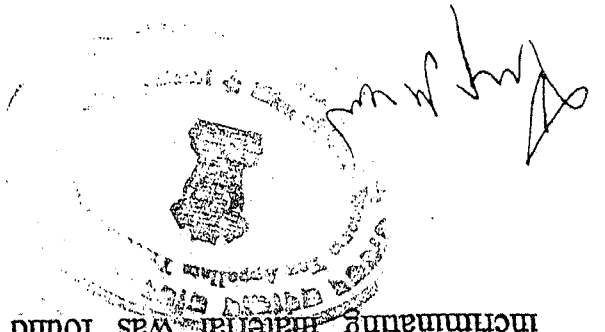
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3. The brief facts of the case are that a search and seizure operation under sec 132 of the Income-tax Act, 1961 was conducted at the business premises of M/s. Friends Portfolios (P) Ltd. and the residential premises of its director Shri Manoj Aggarwal on 30th August, 2000. According to the Assessing Officer, during the course of search, documentary evidence indicating the fact that Shri Manoj Aggarwal was giving bogus accommodation entries to various persons was found. The Assessing Officer has assessed Shri Manoj Aggarwal passed an information to the Assessing Officer of the present assessee on 15th July, 2003 indicating the fact that assessee is one of the mediator who has played a crucial role in providing accommodation entries to various entities and individuals from Shri Manoj Aggarwal. Hence he deserves to be assessed under sec. 158-BD of the Act. The Assessing Officer accordingly had issued notice under sec. 158-BD on 31.3.2004. In response to this notice, the assessee has filed return of income for the block period on 27.5.2004 declaring nil income. The learned Assessing Officer had issued notices under sec. 143(2)/142(1) of the Act. After hearing the assessee, he has determined the undisclosed income at Rs.3,52,25,105/. On appeal, learned CIT(Appels) observed that only commission income earned by the assessee in helping Shri Manoj Aggarwal



for giving accommodation entry is to be assessed in the hands of the assessee. In this way, the commission income on the total transaction was computed at Rs. 5,20,568/- and the same has been confirmed.

4. The learned counsel for the assessee on the strength of ITAT's order passed in IT(SS) A No. 12/De/07 in the case of Shri Radhey Shyam Bansal vs. ACIT contended that search was carried out on 30th August 2000 at the residence of Shri Manoj Aggarwal. Assessment under sec. 158-BC in his case was completed on 29th August, 2002. Information by the DCIT, Central Circle-3, New Delhi who has assessed Shri Manoj Aggarwal was passed to the Assessing Officer of the present assessee on 15th July, 2003. The Assessing Officer had issued notice under sec. 158-BD on 30.03.2004. There is huge delay of more than 19 months in issuance of notice under sec. 158-BD after the completion of assessment order in the case of Shri Manoj Aggarwal. Thus, the proceedings are vitiated and declared to be null and void. In her second fold of submissions, she contended that no satisfaction was recorded by the Assessing Officer who has passed assessment under sec. 158BD of the Act in the case of person searched. In the absence of proper satisfaction exhibiting the fact that during the course of the search incriminating material was found indicating the fact that assessee has



undisclosed income, no proceedings under sec. 158-BD could be initiated.

For buttressing her second fold of contention, she took us through page 2 of the paper book where satisfaction note for initiating proceedings under sec.

158-BD is available. She pointed out that this note has been supplied to the assessee by DCIT, Central Circle 37 under the signature of Shri Jatender Kumar. The learned officer is the Assessing Officer of the assessee. The

satisfaction should have been recorded by the Assessing Officer who has

passed the order under sec. 158BC of the Act. In support of her contention,

she relied upon the decision of Hon'ble Supreme Court in the case of

Manish Maheshwari vs. ACIT reported in 289 ITR 341.

5. On the other hand, the learned DR with regard to first fold of

submission contended that no time limit is provided in sec. 158-BD of the

Act in issuance of a notice. The courts and tribunals cannot import time limit

at their own. In order to appraise us as to how the provisions of the Income-

tax Act, 1961 ought to have been construed. He relied upon a judgment of

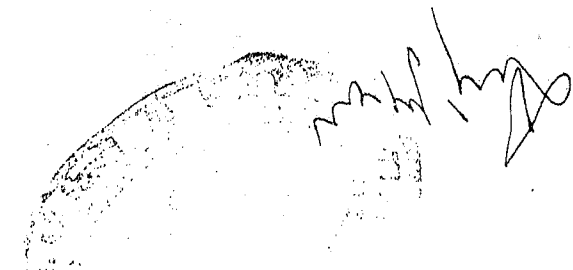
Hon'ble Supreme Court in the case of Vikram Tgrass Ltd. vs. Ist ITO 247

ITR 821. Referring to page 826, he pointed out that the courts while

construing, revenue acts should give a fair and reasonable construction to the

language of statute without leaning to one side or the other. He further

language of statute without leaning to one side or the other. He further

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pointed out that the Hon'ble Supreme Court has observed that the courts must adhere to the words of the statute and the so called equitable construction of those words of the statute is not permissible. The task of the court is to construe the provisions of the taxing enactments according to the ordinary and natural meaning of the language used and then to apply that meaning to the facts of the case. With regard to the second fold of submission, he pointed out that satisfaction was recorded by the Assessing Officer of Manoj Aggarwal while passing order under sec. 158-BC of the Act. He produced one office note before us and contended that this office note should be construed as satisfaction. According to the learned DR the act does not provide the manner and the performa in which such satisfaction ought to have been recorded by the Assessing Officer. If an assessee is able to understand the charges against him then it would be sufficient to say that a proper satisfaction for initiating proceedings under sec. 158-BC of the Act was recorded.

6. We have duly considered the rival contentions and gone through the records carefully. The first contention of the learned counsel for the assessee is that notice under sec. 158-BD has been issued after 19 months of passing the order under sec. 158-BC in the case of the person searched. Thus, there

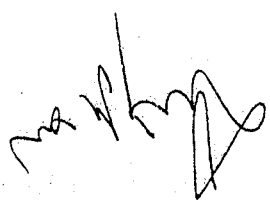


Manoj Aggarwal

is huge delay in issuance of such notices and such notice ought to have been issued in a reasonable time. The ITAT in the case of Shri Radhey Shyam Bansal (supra) has considered this issue elaborately and one of us (Accountant Member) is a party to that order. We cannot do better than to extract the lucid enunciation of the law as well as on the fact made by the ITAT of this issue in the order of Radhey Shyam Bansal (supra). Thus, the same reads as under:

9. The next question to be addressed is whether the notice under section 158BD requires to be issued within a reasonable time and if it is not so issued, whether the assessment made pursuant to the notice is liable to be set aside on that ground. The contention of the learned representative for the assessee, it may be recalled, was that the notice should have been issued at least within a reasonable time after the completion of the assessment of the searched person. In the present case, the block assessment of Manoj Aggarwal was completed on 29.8.2002 but the notice under section 158BD was issued only on 22-3-2004, that is about 19 months later. The further contention based on the judgment of the Gujarat High Court in Khandubhai Vasantji Desai's case (supra) was that the notice should be issued within 15 days from the date of completion of the block assessment in the case of the searched person or at any rate within 60 days from that date, the sanctity behind this period being the provisions of section 132(9A). In Khandubhai's case, the Gujarat High Court referred to the time

limit of 15 days having regard to the fact that under section 132 (9A) as it stood at the relevant time the authorised officer who conducted the search against a person has to hand over the books of account, documents and assets seized to the Income-tax officer having jurisdiction over the person to whom the books of account, documents and assets seized relate, within 15 days of the seizure and thereafter the Assessing Officer is required to serve notice on such person to whom the books of account etc. relate requiring him to furnish a block return under section 158BC. The Gujarat High Court was concerned with the constitutional validity of section 158BD of the Act and one of the contentions was expressed in the form of an apprehension that a notice under section 158BD can be issued by the Assessing Officer in the case of the other person (other than the person who was searched) at any time. While repelling this contention and putting at rest the apprehension that it is ill-founded, the Gujarat High Court held that the notice under section 158BD has to be issued within a reasonable period from the date of the search itself and it was pointed out, taking cue from section 132 (9A), that it should be done within 15 days of the seizure. The obvious implication is that the satisfaction that the income reflected in the seized material belongs to some person other than the person searched should also be reached within the aforesaid period of 15 days so that the same can be transmitted along with the books of account, documents, etc. seized during the search. The period of 15 days has been amended to 60 days by the Finance Act, 2002, w.e.f. 1st June 2002. It is noteworthy that the amendment had come into force even during the pendency of the block assessment



10. The above two findings of ours are sufficient to dispose of the appeals in favour of the assessee. Since no satisfaction has been recorded by the Assessing Officer having jurisdiction over Manoj Aggarwal, the condition precedent for invoking section 158BD against Radhey Shyam Bansal has not been satisfied. The block

period of time, the assessment made on the assessee is bad in law. hold that the notice having been issued well beyond a reasonable issue of the notice under section 158BD. In such circumstances, we Radhey Shyam Bansal, there is a delay of almost 8 months before Officer of Manoj Aggarwal wrote a letter to the Assessing Officer of is to be reckoned from 15.7.2003, the date on which the Assessing block assessment of Manoj Aggarwal. Even if the period of 60 days after the date of search but also after the date of completion of the unreasonable delay in issuing the notice under section 158BD not only not appear to have been achieved in the present case in view of the proceedings should be taken against such persons. That object does only to emphasise the speed and swiftness within which the date of search. The period was highlighted by the Gujarat High Court person other than the person searched and it actually starts from the to the Assessing Officer having jurisdiction over the person who is a section 132 (9A) is actually for handing over the books of account etc. the notice under section 158BD. The period of 60 days mentioned in the Assessing Officer of the assessee took about 19 months to issue completion of the block assessment of Manoj Aggarwal on 29.8.2002; provided in the case of Manoj Aggarwal. However, even after the

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7. As far as the contentions of the learned DR is concerned that no time limit is provided under sec. 158-BD of the Act for issuance of notice, we are of the opinion that the ITAT in the case of Radhey Shyam Bansal has considered all these aspects. It found that no doubt such time limit is not provided in the section but notice ought to have been issued in a reasonable time. In that process, ITAT has considered the other machinery provisions available in the act as well as the decision of Hon'ble Gujarat High Court in the case of Kandhu Bhai Vasan Ji Desai vs. DCIT 236 ITR 73. The issue in the case of Vikrant Tyre (supra) is altogether on different footings. In that

assessment made on Radhey Shyam Bansal is therefore bad in law and is requires to be cancelled. In addition, the notice under section 158BD has been issued to the assessee Radhey Shyam Bansal well beyond a reasonable period of time - reckoned either from the date of search (3.8.2000), or from the date of block assessment on Manoj Aggarwal (29.8.2002) or even from the date on which the Assessing Officer of Manoj Aggarwal wrote a letter to the Assessing Officer of Radhey Shyam Bansal (15.7.2003). Thus even on the ground that there was no effective notice to the assessee within a reasonable period, the assessment requires to be vacated. For these reasons, we vacate the assessment made on Radhey Shyam Bansal on 31.3.2006 under section 158BD read with section 158BC of the Act.

case, assessment orders were served upon the assessee along with the deemed notice, the assessee complied with the demands by paying the taxes due within time. It challenged the addition before the learned Ist Appellate Authority who allowed its appeal, however, Honble High Court has restored the assessment order and confirmed the addition. Meanwhile, the taxes paid by the assessee have been refunded to it because the demands have been wiped off in view of the orders of the learned Ist Appellate Authority. The department made fresh demand and the assessee repaid within time. However, a dispute arose regarding interest under sec. 220(2) of the Act. The assessee filed a writ petition in the Honble High Court challenging the demand of interest on the ground that it was not in default because it had paid the tax in compliance with the original notices on demand and it had not failed to comply with the demand notice under section 156 of the Act. Honble High Court has dismissed the writ petition of the assessee and held that section 3(2) of the Taxation Laws (Continuation and Validity of Recovery Proceedings) Act, 1964 kept alive the earlier demand notices even though payment in full had been made pursuant thereto and treated those earlier notices as having been kept alive till the assessment orders were upheld by the higher forum. Honble Supreme Court reversed the decision



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of Hon'ble High Court and held that the assessee satisfied the demands under the notices issued under sec. 156 of the Act and nothing was due pursuant to the notices of demand. In that context, the Hon'ble Court has observed that as to how court should construe the provisions of revenue acts. The facts are quite distinguishable. Hon'ble Supreme Court in the case of Ambika Prasad Mishra vs. State of UP AIR 1980 (SC) 1762 has observed that every new discovery or argumentative novelty cannot undu or compel reconsideration of a binding precedent and that a decision does not losses its authority merely because it was badly argued or inadequately considered or fallaciously reasoned. Thus, principle of consistency demand to follow the decision of the co-ordinate bench rendered in the case of Radhey Shyam Bansal, extracted supra, and the learned DR was unable to point out any strong circumstance which can pursued us to take a different view on this issue. As far as the second contention of the learned DR is considered, we have gone through that alleged satisfaction. It is an office note and this very note was considered by the Special Bench of the ITAT in the case of Manoj Aggarwal and Ots. Reported in 113 ITD 377. The ITAT while considering this office note in paragraph No. 126 has observed that it cannot be regarded as a satisfaction. We have also perused this office note. There is no reference



of any seized material reliable to the assessee. It only talks about the general modus operandi of various persons in carrying out giving bogus accommodation entries. Therefore, taking into consideration all the facts and circumstances of the case, we allow this appeal of the assessee and quash the assessment order.

8. In the result, the appeal of the assessee is allowed.
 Decision pronounced in the open court on 11.2.2008

(K.G. BANSAL)
 ACCOUNTANT MEMBER
 C.O.

(RAJAT KADAV)
 JUDICIAL MEMBER


Dated: 7/11/2008
 Mohan Lal

Copy forwarded to:
 1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR. ITAT

ASSISTANT REGISTRAR

Income Tax Appellate Tribunal
 Assistant Registrar
 C.O. No. 100/2008
 Income Tax Appellate Tribunal
 Mohan Lal

