

Dcit Vs. Nits Softech Ltd.

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Mar-31-2008

Judge : P Parashar, K Ranjan

Appellant : Dcit

Respondent : Nits Softech Ltd.

Judgement :

1. The appeal filed by the revenue and the cross objection tiled by the assessee arise out of the order of the learned CIT (Appeals) dated 21-3-2005 in relation to block assessment years 1991-92 to 2001-02.
2. Shri L.M. Pandey CIT (DR) appeared on behalf of the Department whereas Shri Salil Kapur Adv. along with Shri Anil Jain CA and Sana Koijani Adv. appeared on behalf of the assessee.
3. In its cross objection, initially the assessee had taken following two grounds: 1. The notice under Section 158BD without any date directing the assessee to file the return within 15 days of the service is illegal and bad in law. The assessment completed under Section 158BD/158BC is also illegal, bad in law and without jurisdiction. Hence the same is liable to be quashed on this account alone.
2. No copy of satisfaction note if any, recorded before the issue of notice Under Section 158BD was made available.

4. Thereafter, application was moved by the assessee for admitting additional ground. This application was allowed vide order dated 9-10-07. Hence, additional ground was admitted as ground No. 3 and the same reads as under: 3. The alleged satisfaction was recorded on 19.12.2002 and assessment Under Section 158BC was completed on 29.8.2002, hence the said note was recorded beyond time and as such notice issued Under Section 158BD was illegal, bad in law and without jurisdiction.

5. In its cross objection, the assessee has raised several legal pleas to assail the validity of the block assessment order Under Section 158BD of the I.T. Act. We, therefore, consider it proper to deal with the legal grounds taken in the cross objection, first.

6.1. The assessee company was incorporated on 5-1-2000. Its registered office was at 7/22, Ansari Road, Daryaganj, New Delhi.

One of the director of the assessee company was Manoj Aggarwal. The assessee had filed return for A.Y. 2001-02 on 31-10-01.

6.2. A search and seizure operation Under Section 132 of the I.T. Act was carried in the case of Shri Manoj Aggarwal on 3-8-2000 and block assessment Under Section 158BC was completed on 29-8-2002 in his case. During the course of block assessment proceedings in the case of Manoj Aggarwal, that material relating to undisclosed income belonging to the assessee was detected. Accordingly notice Under Section 158BC/158BD was issued to the assessee on 19-12-2002 wherein the assessee was required to file the return for the block period within 15 days from the service of the notice. The assessee did not file return in compliance to that notice but subsequently it filed return on 17-12-2003.

6.3. Shri Manoj Aggarwal was examined during the course of his search and during post search inquiries. The modus operandi followed by Shri Manoj Aggarwal in his business, as admitted by him, was providing accommodation in book entries and for this purpose he floated various companies including M/s NITS Softech. Ltd. i.e. the present assessee.

6.4. The AO on the basis of the statement of Shri Manoj Aggarwal and after examination made addition of Rs. 2,47,31,304/- vide assessment order dated 31-12-04.

6.5. The assessee challenged the block assessment order before the learned CIT (Appeals) by taking several grounds including the validity of the assessment order. The learned CIT (Appeals) vide his order dated 9-3-2005 allowed the appeal of the assessee and deleted the addition on merits. In the background of these facts we proceed to take up the legal issues raised by the assessee in the cross objection.

7. Ground Nos. 1, 2 & 3: These grounds challenge the validity of the assessment order on the ground that satisfaction in the case of the present assessee was recorded after completion of the assessment order in the case of Manoj Aggarwal.

8. The learned Counsel for the assessee Shri Salil Kapur submitted that in view of the decision of Hon'ble Supreme Court in the case of Manish Maheshwari v. ACJT 289 ITR 351 and also in view of the order of the JTAT Delhi Bench dated 24-8-2007 in the case of R.S. Bansal v. ACIT rendered in IT(SS)A No. 12/Del/07, the satisfaction should be recorded by the AO before completing the assessment in the case of the searched person. He invited our attention to the satisfaction note dated 19-12-2002 to submit that this satisfaction cannot be regarded as a proper satisfaction for assumption of jurisdiction Under Section 158BD.9. The learned DR on the other hand submitted that the assumption of jurisdiction was fully justified. He pointed out that the satisfaction was recorded vide office note dated 29-8-2002.

10. We have carefully considered the entire material on record and the rival submissions. The assessee has filed copy of letter of Shri P.D.Kanunjna ACIT Gen. Cir. 3, New Delhi dated 16-8-2007, through which a copy of satisfaction note for initiating proceedings Under Section 158BD was supplied to the assessee. This letter is as under: Sub: Copy of satisfaction note for initiating proceedings Under Section 158BD-Furnishing regarding.

With reference to your letter dated 13.08.2007 on the above subject matter - enclosed please find herewith copy of the satisfaction note as mentioned vide your letter under reference.

Search & seizure operations were conducted on 03-08-2000 at various residential and office premises of Sh. Manoj Aggarwal and his associate concerns. The block assessments of this group have been completed on 29.08.2002 the assessment order of Sh. Manoj Aggarwal conclusively establishes the fact that he was involved in providing bogus accommodation book entries to various persons on commission basis. The modus operandi adopted by him have been elaborated in para 1.5 of the assessment order of Sh. Manoj Aggarwal. For the purpose of providing such bogus accommodation book entries, he had used the names and bank accounts of various companies, benami proprietorship concerns in the names of his employees, in the names of his relative and various H.U.F. entities and firms. There are substantial cash and clearing deposits and withdrawals from these bank accounts.

One such concern is NITS Softech. Ltd., the bank accounts of which was operated by Sh. Manoj Aggarwal. The source of the cash and clearing deposits and the withdrawals from these bank accounts needs to be examined. These accounts have been used for accommodation book entries and hence, undisclosed income has arisen in the hand of this concern which has been found during the course of search & seizure operations in the case of Sh. Manoj Aggarwal and his associate concerns. Thus, proceedings Under Section 158BD are applicable in this case.

12. On perusal of the above note dated 19-12-2002, three things are very clear (1) that assessment in the case of Sh. Manoj Aggarwal was completed on 29-8-2002; and (2) The AO was satisfied that in the case of the present assessee proceedings Under Section 158BD are applicable; and (3) the notice Under Section 158BC read with Section 158BD was issued after this note.

13. The contention of the learned DR was that the satisfaction of the AO of Manoj Agarwal was recorded vide office note dated 29-8-2002. A copy of this note has been filed by the learned DR. On going through the office note it is found that it was for departmental use only. With this note a list of 159 parties has been attached. On further examination it is found that against several parties/assessee, it is mentioned that information is being passed for taking up proceedings Under Section 158BD. The name of the assessee appears at Sl. No. 130 and a similar

note has been made against the name of the assessee.

14. The contention of the learned Counsel for the assessee was that this note cannot be treated to be a satisfaction note and secondly that this note has been written much after the completion of the assessment in the case of Manoj Agarwal and is antedated. To prove this fact, the learned Counsel pointed out that in various cases it is written that proposal for centralization of the case in this circle has been approved for taking up proceedings Under Section 158BD. In this regard example of SMC Share Brokers Ltd. appearing at Sl. No. 69 was given. It was further pointed out that in that case on examination it was found that the proposal of centralization of the case was sent for approval much after 25-8-02 and therefore it is proved that this note was not prepared on 29-8-02.

15. We have carefully considered the entire material on record and the rival submissions. We have already reproduced the copy of satisfaction note which has been filed by the assessee with the letter of Shri P.D.Kanunjna ACIT, Central Circle-3, New Delhi dated 16-08-2007. This letter specifically mentions the subject which is, "Copy of satisfaction note for initiating proceedings Under Section 158BD". As per this letter the satisfaction note which has also been reproduced is dated 19-12-2002. Had the department treated the office note dated 29-8-2002, as note regarding satisfaction of AO of Shri Manoj Agarwal, as alleged, there was no necessity for making another satisfaction note on 19-12-2002. Otherwise also, from the contents of the note dated 19-12-2002, reproduced as above, it becomes clear that the AO has taken the decision after being satisfied to initiate action against the present assessee Under Section 158BD only on recording the note dated 19-12-2002.

16. It may be pointed out that the nature of this note and its ambit was examined by the IT AT in detail in the case of M/s SMC Share Brokers vide order dated 27-1-2006 rendered in ITA No. 250/Del/05. In that case also the stand of the department was that this note should be treated to be a satisfaction note. That case also related to the search conducted in the case of Manoj Agarwal and M/s Friends Portfolio Pvt.

Ltd. and assessment order was made on 29-8-02. In that case also, the learned Counsel for the assessee challenged the genuineness and authenticity of this note and submitted that this note is antedated. It was pointed out that against Sl. No. 69 of the annexure, it was mentioned that proposal for centralization of this case in this circle has been approved for taking up proceedings Under Section 158BD but the proposal was in fact made vide letter dated 19-9-02 i.e. after the date of this office note which falsifies the fact that the note was made on 29-8-02 i.e. the date on which the assessment in the case of searched person was completed.

17. The relevant observations are contained in paras 14 to 17 of the order. This order of ITAT has been upheld by the Hon'ble Delhi High Court in CIT v. SMC Share Brokers Ltd. 288 ITR 345 and therefore, the same has got a binding effect. As the facts of the present matter are similar to the facts of M/s SMC Share Brokers Ltd. (supra) in relation to the controversy about the note dated 19-12-02, we follow the same approach in the case of present assessee about the authenticity of this note and hold that this note cannot be treated to be a satisfaction note as required under law for initiating proceedings Under Section 158BD against the assessee. Rather the note dated 19-12-02 contains and records the satisfaction of AO but this note is subsequent to the passing of the assessment order Under Section 158BC in the case of searched person. Hence, jurisdiction cannot be legally justified for initiating proceedings Under Section 158BD on the basis of such subsequent satisfaction note in the case of the present assessee.

18. Besides the above, it may be pointed out that at the time of hearing of the case, the assessee demanded the satisfaction note and vide order-sheet entry dated 10-10-07 the learned DR was directed to produce copy of the proposal for centralizing the case of the assessee and approval given on such proposal. A copy of order passed Under Section 127 of the I.T. Act was also required to be placed but despite this direction the department has not been able to produce the proposal for centralizing the case nor approval granted nor order passed Under Section 127. In absence of such material, adverse inference has to be drawn against the department. From this fact also, following the analogy drawn in the case of M/s SMC Share Brokers Ltd. (supra) it can be safely inferred that in this

case also the proposal was submitted subsequent to 29-8-02.

19. Another relevant fact is that there is no date on the notice issued Under Section 158BD nor any other details are mentioned in that note to show that satisfaction was recorded prior to the issuance of notice Under Section 158BD. This fact also corroborates the conclusion that no satisfaction was recorded on 29-8-02 as alleged by the department.

20. The next contention of the learned Counsel for the assessee to challenge the validity of the notice was that the notice is vague and has been issued without any application of mind. Placing reliance on the ratio of decision of Hon'ble Supreme Court in the case of Manish Maheshwari and other decisions, the learned Counsel for the assessee submitted that since the notice is vague, it cannot be treated to be a valid notice.

21. We have examined the relevant material and the rival submissions.

The assessee has also filed a copy of the notice issued Under Section 158BD. This notice is undated and is as under: Notice Under Section 158BC r.w.s. 158BD of the I. Tax Act, 1961.

Office of the In pursuance of the provisions of Section 158BC r.w.s. 158 BD of the Income tax Act, 1961, you are required to prepare a true and correct return of your total income including the undisclosed income in respect of the block period as defined in Section 158B(a) of the Income Tax Act, 1961 i.e. from previous year ending 31.3.91 to previous year ending 31.3.2000 and from 1.4.2000 to 03.08.2000 relating to the A.Ys. 1991-92 to 2001-2002 (upto 03.8.2000) in respect of which you are assessable as firm.

The return should be in the prescribed form No. 2B and be delivered in this office within 15 days of service of this notice duly verified and signed in accordance with the provisions of Section 140 of the Income tax Act, 1961.

22. On perusal of the notice as reproduced above, it is found that this notice does not indicate any material or the basis on which it is issued. It does not indicate the person in whose case the search was conducted and the material found during the

course of such search relating to the assessee. It does not indicate the satisfaction of the AO for initiating proceedings Under Section 158BD against the assessee.

It is a very formal notice prepared on proforma.

23. The requirement of notice Under Section 158BD was considered by the Hon'ble Supreme Court in the case of Manish Maheshwari. In that case it was also pointed out that no evidence had been filed by the department to show that any material relating to the assessee which was found during the course of search conducted in the premises of Manish Maheshwari was handed over to the AO of the present assessee. In the case of Manish Maheshwari the Hon'ble Supreme Court has observed that one of the condition for initiating proceeding Under Section 158BD is that the AO of the searched person should hand over the material relating to the assessee to the AO of such other person i.e. the assessee.

24. In the case of Manish Maheshwari (supra), the Hon'ble Supreme Court has considered the ambit and scope of Section 132, 158BC and 158BD and observed as under: 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 condition precedent wherefore are: (1) 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.

25. In that case a search was conducted in the premises of Shri Rameshwar Maheshwari, who was one of the Director Under Section 132 of the I.T. Act and his wife on 21-11-1995. During the course of search several incriminating documents relating to the business of the company, namely, M/s Indore Construction Co. (Pvt.) Ltd. ("company" in short) were also seized. In the case of Shri Maheshwari proceedings Under Section 158BC were initiated and assessment order was passed on 29-11-1996. The AO issued notice Under Section 158BD in the case of the company on 6th February 1996. This notice has been reproduced in the judgment of the Hon'ble Supreme Court and is as under: In pursuance of the provisions of Section 158BC of the Income-tax Act, 1961, you are requested to prepare a true and correct return of your total income including the undisclosed income in respect of which you as individual/HUF/firm/company/AOP/body of individual/local authority are assessable for the block period mentioned in Section 158B(a) of the Income-tax Act, 1961.

The return should be in the prescribed Form No. 2B and be delivered in this office within 16 days of service of this notice duly verified and signed in accordance with the provisions of Section 140 of the Income-tax Act, 1961.

26. The Hon'ble Supreme Court after considering the provisions of Section 158BC and 158BD held that the notice dated 6-2-1996 did not record any satisfaction on the part of the AO. This observation of the Hon'ble court is as under: Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated February 6, 1996, satisfies the requirements of Section 158BD of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the mater.

27. In view of the above decision, recording of satisfaction before issuing the notice issued Under Section 158BD or in the notice Under Section 158BDis necessary.

28. The decision of the Hon'ble Supreme Court has been considered by the Hon'ble Delhi High Court in the case of New Delhi Auto Finance (P) Ltd. v. JCIT dated 20-2-2008 rendered in ITA No. 773 of 2007. In this case also the issue related to the validity of notice. The Hon'ble High court has reproduced the notice issued Under Section 158BC on 26-10-1998. This notice reads as follows: Notice Under Section 158BC/D of Income Tax Act 1961 PAN/GIR No. Block Period: 1.4.85 to 20.3.1996 Income Tax Office: Dy. Comm. of I. Tax special Range-15, New Delhi In pursuance of the provisions of Section 158BC/D of the Income Tax Act, 1961, you are required to prepare a true and correct return of your total income including the undisclosed income in respect of which you a individual/HUF/firm/company/AOP/body of individuals/local authority are assessable for the block period mentioned in Section 158B(a) of the I.T. Act, 1961.

The return should be in the prescribed form No. 2B and be delivered in this office within 16 days of service of this notice, duly verified and signed in accordance with the provisions of Section 140 of the I.T. Act, 1961.

29. After comparing the contents of this notice with the notice issued in the case of Manish Maheshwari (supra) and while dealing with the contentions raised regarding vagueness of the notice, the Hon'ble High Court has observed as under: 18. The only question which arises for our consideration is as to whether the notice dated February 6, 1996, satisfied the requirements of Section 158BD of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer.

Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter. No proceeding under Section 158BC had been initiated. There is, thus, a patent non-application of mind. A prescribed form had been utilized. Even t he status of the assessee had not been specified. It had only been mentioned that the search was conducted in the month of November 1995. No other information had been furnished. The provisions contained in Chapter XIV-B are drastie in nature. It has draconian consequences. Such a proceeding can be initiated, it would bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal

presumptions are raised against the assessee. The burden shifts of the assessee.

Audited accounts for a period of ten years may have to be reopened.

19. We are of the opinion that the law laid down by the Supreme Court is clearly applicable to the facts of the present case regarding issuing of a proper notice to the Assessee for initiating block assessment proceedings. The notice dated 26thOctober, 1998 issued to the Assessee is a vague (if not more) than the notice issued in Manish Maheshwari. Such a vague notice, as held by the Supreme Court shows a patent non-application of mind.

20. It has been pointed out by the Supreme Court that the consequences arising out of invoking the provisions of chapter XIV-B of the Act are drastic and draeonian. The accounts of the Assessee may be reopened for ten years and not only a legal presumption is raised against the Assessee but the burden shifts o the Assessee to show that it did not have any undisclosed income. Under these circumstances it is quite clear that the Revenue should not exercise its powers in a mechanical power but should be circumspect while taking action under the provisions of Chapter XIV-B of the Act. That has not happened in so far as the present case is concerned and, therefore, we have no hesitation in giving a finding in favour of the Assessee.

21. Learned Counsel for the Revenue was unable to show any judgment of the Supreme Court which has taken a different view from that taken in Manish Maheshwari and in faet could not press her case very far in the face of the clear law laid down by the Supreme Court.

22. Under the circumstances, we have no option but to answer the substantial question of law in the negative, in favour of the Assessee and against the Revenue.

30. An identical issue was considered by ITAT Chandigarh Bench in the case of Anil Kumar Jagadhari and Ors. v. ACIT Yamuna Nagar IT (SS) A No. 19/Chandi/05 and Ors. dated 29-6-2007. In that case also a similar notice was issued. The Bench has reproduced this notice in para 34 of its order which is as

under: Notice Under Section 158 BC read with Section 158 BD OF The I.T. ACT In pursuance of the provisions of Section 158BC read with Section 158 BD of the I.T. Act, 1961, you are required to prepare a true and correct return of your total income including the undisclosed/Firm/HUF are assessable for the block period ended as on 14.9.99, mentioned in Section 158B(a) of the Income Tax Act, 1961.

The return should be in the prescribed Form No. 2B and be delivered in this office within 30 days of service of this notice, duly verified and signed in accordance with the provisions of Section 140 of the Act.

31. The ITAT Bench after discussing the decision in the case of Manish Maheshwari (supra) and the decision of Hon'ble Gujarat High Court in the case of Arun Kumar & others v. UOI & others 286 1TR 89 in the context of jurisdictional fact held that issuance of notice dated 24-8-01 is bad in law. This decision of Chandigarh Bench of the ITAT has been followed by the ITAT Delhi T Bench in the case of Ajit Singh HUF rendered in IT(SS) No. 135/Del/05 and IT(SS) No. 140/Del/05 and thereafter in the case of Radhey Shyam Bansal (supra).

32. If we compare the notice issued Under Section 158BD in the present case with the notice issued in the case of Manish Maheshwari (supra) and in the case of New Delhi Auto Finance (P) Ltd. (supra), we find that the notice in the case of the present assessee issued Under Section 158BD is identical to the notice issued in the case of New Delhi Auto Finance (P) Ltd. (supra). In fact in this notice also even the date of search conducted in the case of Manoj Agrawal has not been mentioned nor any other detail is given in the notice. Even the date of notice is not given which indicates the casual approach and non application of mind on the part of the AO. The satisfaction of the AO is not discernable from the contents of the notice which appears to be on prescribed proforma only. In view of the above, in our considered opinion, since the notice does not contain or record the satisfaction of the AO nor other details, such notice is to be held as vague and following the ratio of decision of the Hon'ble Supreme Court in the case of Manish Maheshwari as well as the latest decision of the Jurisdictional High Court in the case of New Delhi Auto Finance (P) Ltd. (supra), we hold that the notice is not valid as the same does not meet the requirement of law as propounded by the Hon'ble

Supreme Court in the case of Manish Mahajan (supra) and the Hon'ble Delhi High Court in the case of New Delhi Auto Finance (P) Ltd. (supra).

33. In view of the above, it is found that the notice issued in the instant case is vague, shows non application of mind on the part of issuing authority and has been issued in a most casual way. Such notice, in our view, does not satisfy the requirements of law and as held in various decisions, referred to above, such notice cannot form a legal foundation for initiating proceedings under Section 158 BD of the Act. On this basis also the assessment order is liable to be quashed.

34. After considering the above aspects we, therefore, accept the contention raised by the assessee in ground Nos. 1, 2 & 3 of the cross objection.

35. Consequently, on the basis of our findings on the grounds taken by the assessee in the cross objection the assessment order passed in the case of the present assessee Under Section 158BD of the I.T. Act is quashed.

Although after quashing the assessment order on legal grounds, we are not required to deal with the merits of the addition made by the AO, however, since both the sides have advanced arguments in respect of the basis for making addition, we consider it proper to deal with the ground taken by the revenue on merits also.

On the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the addition of Rs. 2,47,31,304/- made on account of undisclosed income.

38. On going through the order of the learned CIT (Appeals) we find that he has considered the entire material on record including the nature of transactions and the evidence collected by the AO. The AO had made addition of Rs. 2,47,31,360/-.

39. On going through the entire material on record, it is found that during the course of search in the case of Manoj Agarwal, no incriminating material was found relating to the assessee. Further, the transactions of the assessee were duly recorded in the books of account. The AO of Shri Manoj Agarwal did not hand over any material found during the course of search to the AO of the assessee.

40. The learned CIT (Appeals) has considered the entire material in detail. He has also taken into account the assessment order in the case of Manoj Agarwal. On examining the bank account of the assessee being A/c No. No. 1303, Vijaya Bank, Vigyan Vihar, New Delhi the learned CIT (Appeals) observed that the AO had proceeded on the basis of assumption and conjectures and made the addition to make technical compliance. On going through the order of the learned CIT (Appeals) we do not find any scope to interfere in his order which is upheld by us. Ground foils.

In the result cross objection filed by the assessee is allowed and the appeal of the revenue is dismissed.

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