आयकर अपीलीय अधिकरण पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री आर. के. पांडा, लेखा सदस्य के समक्ष

BEFORE MS. SUSHMA CHOWLA, JM AND SHRI R.K. PANDA, AM

ITA No.1782/PN/2013
Block Period : 1996-97 to 2002-03

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. …. Appellant

Vs.

M/s Kalpak Ply,
270/5, Mahavir Nagar,
Bhawani Peth,
Pune – 411 042.
PAN : AACFK1453M …. Respondent

C.O. No.87/PN/2014
Block Period : 1996-97 to 2002-03

M/s Kalpak Ply,
270/5, Mahavir Nagar,
Bhawani Peth,
Pune – 411 042.
PAN : AACFK1453M …. Cross Objector

Vs.

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. …. Respondent

ITA No.1783/PN/2013
Block Period : 1996-97 to 2001-02

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. …. Appellant

Vs.

M/s Maharashtra Timber Trading Company,
27/5, Mahavir Nagar, Bhawani Peth,
Pune 411 002.
PAN : AADFM1516E …. Respondent

C.O. No.88/PN/2014
Block Period : 1996-97 to 2001-02

M/s Maharashtra Timber Trading Company,
27/5, Mahavir Nagar, Bhawani Peth,
Pune 411 002.
PAN : AADFM1516E .... Cross Objector

Vs.

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. .... Respondent

ITA No.1784/PN/2013
Block Period : 1996-97 to 2002-03

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. .... Appellant

Vs.

M/s Arihant Developers,
31-B, New Timber Market,
Bhawani Peth, Pune – 411 002.
PAN : AACFA1648N .... Respondent

C.O. No.89/PN/2014
Block Period : 1996-97 to 2002-03

M/s Arihant Developers,
31-B, New Timber Market,
Bhawani Peth, Pune – 411 002.
PAN : AACFA1648N .... Cross Objector

Vs.

The Dy. Commissioner of Income Tax,
Circle- 5, Pune. .... Respondent

Assessee by : Shri Nilesh Khandelwal
Department by : Shri B.C. Malakar

सुनवाई की तारीख / **Date of Hearing : 28.05.2015**		घोषणा की तारीख / **Date of Pronouncement: 26.08.2015**

आदेश / ORDER

PER SUSHMA CHOWLA, JM :

Out of this bunch of appeals and cross objections, the Revenue has filed appeals in the case of three different assessees against separate orders of CIT(A)-III, Pune dated 29.07.2013 relating to block period 1996-97 to 2002-03 against respective orders passed under section 158BD r.w.s. 158BC of the Income Tax Act, 1961. All the three assessees have also filed Cross Objections against all the appeals filed by the Revenue.

2. All the three appeals relating to different assessees and the Cross Objections filed by different assessees on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The facts and issues in all the appeals are similar. We proceed to take up first the appeal of the Revenue in ITA No.1782/PN/2013 and the Cross Objections filed by the assessee in CO No.87/PN/2014, to adjudicate the issue raised in this bunch of appeals and Cross Objections.

4. The Revenue in ITA No.1782/PN/2013 has raised the following grounds of appeal:-

> 1. *The learned Commissioner of Income-tax (Appeals) erred on the facts and in circumstances of the case and in law by admitting the claim of the assessee that assessment was finalized without proper jurisdiction.*
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> 2. *The learned Commissioner of Income-tax (Appeals) erred in relying upon the Apex Court's decision in the case of Hotel Blue Moon [361 ITR 362] when the facts of the case are not identical. In the present case no return was filed in response to notice u/s. 142(1) of the Income-tax Act, 1961.*

3. *The learned Commissioner of Income-tax (Appeals) has not considered the fact that the assessee did not raise any objection during assessment proceedings with regard to issue of notice, contradictory to the provisions of section 292BB of the Income-tax Act, 1961.*

4. *For this and such other grounds as may be urged at the time of hearing, the order of the ld. CIT(A)-III, Pune may be vacated and that of the Assessing Officer be restored.*
5. *The appellant craves leave to add, amend, alter or delete any of the above grounds of appeal during the course of the appellate proceedings before the Hon'ble ITAT.*

5. The assessee in CO No.87/PN/2014 has raised the following grounds of Cross Objection:-

1. *On the facts & circumstances in the case & as per provisions of law, it be held that proceedings completed by the Assessing Officer u/s. 158BD r.w.s. 158BC are without holding & assuming proper jurisdiction in terms of the said sections. It further be held that notice issued u/s. 158BD granting less than 15 days time for compliance is in violation of the provisions of the Act & notice issued in contradiction to the provisions of the law be held as not in tenable in law. It further be held that proceedings started & completed on the basis of notice issued u/s. 158BD is without holding proper jurisdiction, illegal & not tenable in law. The order passed by the Assessing Officer be held as null & void & be cancelled.*

2. *Without prejudice to ground no.1 & in the alternative on facts and circumstances prevailing in the case and as per provisions & scheme of the Act it be held that there is no undisclosed income assessable in the hands of the appellant as assessed by the AO and that confirmed by the 1st appellate authority. It further be held that undisclosed income in aggregate of Rs.13,49,000/- assessed by the Assessing Officer and confirmed by the first appellate authority for the block period is unjustified, improper, contrary to the provisions of law & facts prevailing in the case. The entire income so assessed by the AO and confirmed by the first appellate authority be deleted. The appellant be granted just and proper as per provisions of law and facts prevailing in the case.*

3. *The appellant prays to be allowed to add, amend, modify, rectify, delete, raise any grounds of appeal at the time of hearing.*

6. Briefly, in the facts of the present case, search and seizure operations under section 132 of the Act were carried out in the case of M/s. Rajashree Enterprises, Prop. Shri Ramanlal Shah and M/s. Maheshwari Financiers Prop. Shri Mahendra Shah at Adoni, Andhra Pradesh on 12.10.2001. It was noted that Shri Ramanlal

Shah i.e. main person covered under search, had unaccounted cash initially with him, which was generated from his various business activities. The Assessing Officer further noted as under:-

> *"4.1 ….. This unaccounted cash was deposited initially in 1980s by Ramanlal into the accounts of the HUFs by opening scores of bank accounts in the names of different HUFs, Kartas of which were family members and friends. This process of deposit of cash in the accounts of HUFs started in 1989 and continued till 1997-98. To bring back this unaccounted cash, belonging to Ramanlal and the businessmen in Pune, in the regular books of accounts, two finance concerns were opened in Adoni, by Ramanlal Shah, which had their bank accounts in Pune in Bank of India, Bhavani Peth, Pune. (A/c No.1740 and 1728) Ramanlal himself was the proprietor of one concern Rajashree Enterprises and later on another concern Maheshwari Financiers was floated and Ramanlal's nephew Mahendra J. Shah was shown as the proprietor of this concern, whereas the financial affairs of both the concerns were managed by Ramanlal.*
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> *4.2 The cheques were issued from these bank accounts in favour of Pune based concerns and interest @ 18% was charged from these concerns. When the money was received back from these businessmen of Pune, by cheque, then the cash was withdrawn from these bank accounts. There has to be some explanation for the cash deposits and withdrawals reflected in these bank accounts from which the cheques were issued. To explain the source of this unaccounted cash, the plea was taken that the cash was physically brought from Adoni. Therefore, the books of accounts of these two finance concerns were maintained at Adoni. The unaccounted cash with Ramanlal generated from his different businesses was deposited into the accounts of the HUFs. From these accounts, these HUFs, in turn issued cheques to Maheshwari Financiers and Rajashree Enterprises, as loans, which were deposited in the bank accounts of these concerns in Adoni, from these bank accounts the cash was withdrawn and shown as cash in hand, in the cash book of these two concerns. Therefore whenever some party in Pune wanted a loan entry by cheque then in the books of accounts of these concerns, the cash account was credited and entry was passed that the cash was claimed to be physically carried and deposited to the bank accounts of these finance concerns in Pune. No cash was actually transferred to Pune, because in Pune the source of cash was the unaccounted money from the businessmen of Pune who required the loan. However the documentation had to be done in the books, to show that the cash was physically transferred from Adoni to Pune, therefore there was need to put traveling expenses, even when no actual expenses were incurred. The above facts are further corroborated by the following examinations, statements and enquiries.*
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> *4.3 It was found that the cash was deposited in the Bank accounts of these finance concerns in Pune, when the cheques were to be issued in favour of Pune businessmen. The plea was taken by the Ramanlal (discussed in detail below) that the cash was physically brought from Adoni and deposited to these bank accounts. To justify this physical transfer of cash, there was need to debit traveling expenses in the books of accounts, which were maintained at Adoni, to do the desired documentation in the books of these finance concerns."*

7. The statements of various persons were also recorded in this connection and thereafter, vide para 4.7, the Assessing Officer notes that perusal of the bank accounts and the books of account of the said concerns reflected that the persons who had received cheques of loan entries were mainly promoters and builders or persons involved in business i.e. in the field of timber, building material, finance companies, etc. The Assessing Officer also noted that the said loans and advances were made without any security. However, both the financial concerns Maheshwari Financiers and Rajashree Enterprises had charged interest from the parties to whom the loan entries were given and further interest payments were shown to the family members and friendly HUFs from whom the amounts were raised. The Assessing Officer in this regard observed that the circumstantial evidence relating to authenticity and genuineness of the loan transactions in the form of statement recorded during the course of search and post-search enquiries and other facts as mentioned in the assessment order had to be considered.

8. The Assessing Officer in view thereof, was of the opinion that the loan amount of Rs.11 lakhs given by M/s. Maheshwari Financiers to M/s. Kalpak Ply i.e. assessee before us was latter's own money which was routed through the concerns of M/s. Maheshwari Financiers in the garb of loan. The assessee claimed to have accepted the said loan and also paid interest on such loans from time to time. However, the Assessing Officer held that the genuineness of loan of Rs.11 lakhs from M/s. Maheshwari Financiers was not proved. Hence, the same was added as income in the hands of the assessee on account of unexplained cash credit under section 68 of the Act. Similarly, yearwise interest paid on such loan was treated as unexplained expenditure under section 69C of the Act and addition of Rs.13,49,000/- was made in the hands of the assessee as undisclosed income for the block period.

9. Before the CIT(A), the first objection raised by the assessee was the issue of notice under section 158BD of the Act being without jurisdiction. Connected legal issues raised before the CIT(A) was the validity of initiation of proceedings under section 158BD of the Act after completion of block assessment under section 158BC of the Act and non-service of notice under section 143(2) of the Act, prior to completion of assessment under section 158BC of the Act. The CIT(A) noted that the assessment in the case of M/s. Maheshwari Financiers and M/s. Rajashree Enterprises was completed on 24.12.2003, but the notice under section 158BD of the Act was issued only on 10.02.2006 i.e. after delay of over 23 months with reference to the date of completion of assessment of search persons. The CIT(A) further observed that even if the date of satisfaction was considered to be the date of receipt of satisfaction note by the Assessing Officer of the assessee on 06.04.2004, the notice issued thereafter on 10.02.2006 was delayed by over 20 months. The CIT(A) relied upon the decision of Special Bench of Delhi Tribunal in Manoj Aggarwal Vs. DCIT reported in 113 ITD 377, wherein it was held that the satisfaction had to be recorded before the completion of assessment of person searched under section 132 of the Act. The CIT(A) further relied on the ratio laid down by Pune Bench of Tribunal in Ramchandra Mahadeo Patil Vs. ACIT in ITA No.583/PN/2006, wherein the Tribunal vide order dated 31.12.2008 had held that the period of 60 days could be considered as reasonable time for reckoning issue of notice under section 158BD of the Act, from the date of satisfaction recorded by the Assessing Officer. The CIT(A) further noted that though the Parliament had not provided limitation period for the issuance of notice under section 158BD of the Act, however, the requirement was that the Assessing Officer of the searched person had to be satisfied that the undisclosed income belonged to any person, other than the searched person and that the documents, books of account and other receipts had to be handed over to the Assessing Officer having jurisdiction over such other

person. Further, reliance was placed on the ratio laid down by the Hon'ble Supreme Court in Manish Maheshwari Vs. ACIT and Another reported in 289 ITR 341 (SC) and the ratio laid down by the Punjab & Haryana High Court in CIT Vs. Om Parkash & Sons reported in 347 ITR 500 (P&H). The CIT(A) further held as under:-

> *"4.4 …..The present case is a case involving money lending found in the books of AP based person / persons viz. Maheshwari Financiers who was found to have engaged in providing accommodation entries to several businessman in Pune comprising of timber merchants, building construction business, finance companies and builders. No doubt, examination of the searched persons, books of accounts, the seized documents / papers and coordination of the entries given to the Pune based concerns / businesses takes substantial time and effort on the part of the Assessing Officer, specially since the search was conducted outside the state in Andhra Pradesh. Therefore, even though there is a delay of around 20 months in the issuance of notice u/s 158BD from the date of satisfaction recorded by the Assessing Officer of the searched person, this delay cannot be held to be unreasonable, particularly when the section does not provide any time limit for issuance of such notice."*

10. The CIT(A) vide para 4.6 thus, held that where no time limit is provided under the Act, the assessment made in the case of the assessee was valid and there was no unreasonable delay in notice issued under section 158BD of the Act. Regarding the issue of non-receipt of notice under section 143(2) of the Act, while undertaking the block assessment, the CIT(A) perused the record and noted that the Assessing Officer had not issued any notice under section 143(2) of the Act during assessment proceedings. Accordingly, on perusal of assessment records, the plea of the assessee was found to be correct by the CIT(A) and relying on the ratio laid down by the Hon'ble Supreme Court in ACIT Vs. Hotel Blue Moon reported in 321 ITR 362 (SC), it was held that in the absence of any notice being issued and served upon the assessee under section 143(2) of the Act, the issue is to be allowed in favour of the assessee. With regard to the merits of the addition made under sections 68 and 69C of the Act, the CIT(A) noted that the original order in the case of Shri Ramanlal Shah i.e. proprietor of M/s. Maheshwari Enterprises and Shri Mahendra Shah, proprietor of M/s. Maheshwari Financiers passed under

section 158BC of the Act had been set-aside by the CIT(Central), Pune and re-assessment under section 158BC r.w.s. 263 of the Act has been completed by the Assessing Officer subsequently, vide order dated 29.12.2006 by adding cash entries in the bank accounts belonging to the concerns. However, Pune Bench of Tribunal in ITA Nos.627 & 628/PN/2006, order dated 30.06.2011 has quashed the orders passed by the Commissioner under section 263 of the Act. The CIT(A) further noted that one of the grounds taken before the Tribunal by the searched person was that though the Department had issued notice under section 158BD of the Act to various persons to whom they had given loans out of cash deposits from bank accounts and the action of the Assessing Officer in bringing to tax the cash deposited in Pune bank accounts, would be contrary to the action already initiated by the Department in other cases. The CIT(A) further noted that the Tribunal after examining the satisfaction note, the statements of assessees recorded by the Assessing Officer and the instructions received by the Assessing Officer for reopening the cases of other persons, held that the Commissioner was not justified in invoking provisions of section 263 of the Act and in directing the addition of cash in the hands of two proprietors. The CIT(A) held that *Therefore, the issue regarding the assessment of the loans introduced in the form of cash credit and advanced by cheque to the appellant has now become final and it should logically be assessed in the hands of the appellant and other similarly placed persons.* The CIT(A) in view of the circumstantial evidence brought on record by the Assessing Officer of the searched persons i.e. the deposit of huge amount of cash, upheld the addition in the hands of assessee both under sections 68 and 69C of the Act. The CIT(A) also held that application of section 68 of the Act was not confined to the cash entries in the books of account, but where the liability shown in the account was found to be bogus and there was no plausible and reasonable explanation of the assessee, the amount could be added towards the income of the assessee. Reliance in this regard was placed on the ratios laid down by Hon'ble Madhya

Pradesh High Court in VISP (P) Ltd. Vs. CIT reported in 265 ITR 202 (MP) and the Hon'ble Madras High Court in Mangilal Jain Vs. ITO reported in 315 ITR 105 (Mad). The CIT(A) in this regard upheld the addition made by the Assessing Officer.

11. The Revenue is in appeal against the findings of CIT(A) that the assessment finalized in the hands of the assessee was without proper jurisdiction. The grievance of the Revenue is that no reliance could be placed on the ratio laid down by the Hon'ble Apex court in ACIT Vs. Hotel Blue Moon (supra) since the facts of the present case were not identical as the assessee had not furnished any return of income in response to notice under section 142(1) of the Act. Further, the assessee had not raised any objections during the assessment proceedings with regard to issue of notice, which was contradictory to the provisions of section 292BB of the Act.

12. On the other hand, the assessee has filed Cross Objections objecting to the assumption of jurisdiction by the Assessing Officer under section 158BD r.w.s. 158BC of the Act, wherein the notice issued by the Assessing Officer under section 158BD of the Act, granting less than 15 days time for compliance, was in violation of the provisions of the Act. Without prejudice to the issue raised against the jurisdiction assumed under section 158BD r.w.s. 158BC of the Act, the assessee has also challenged the addition made in its hands under section 68 and 69C of the Act totaling Rs.13,49,000/-.

13. The learned Departmental Representative for the Revenue pointed out that after the issue of notice under section 158BD of the Act, no return of income was filed by the assessee even in response to notice issued under section 142(1) of the Act. It was further pointed out by the learned Departmental Representative for the Revenue that in the facts of the case before the Hon'ble Apex court in ACIT Vs.

Hotel Blue Moon (supra), after search upon assessee, return of income was filed and thereafter assessment was completed, hence, the reliance by the CIT(A) on the said ratio laid down by the Hon'ble Apex court was mis-placed. In the facts of the present case, the learned Departmental Representative for the Revenue pointed out that no return of income was filed within 45 days and as such, no notice under section 143(2) of the Act was issued. Reference was made to the observations of the Assessing Officer in para 1 of assessment order and observations of CIT(A) in paras 4.7 and 4.8 of the appellate order.

14. The learned Authorized Representative for the assessee referring to the notice issued under section 158BD of the Act which is placed at page 1 of the Paper Book pointed out that the said notice issued under section 158BD of the Act is no notice, since it should be issued under section 158BC of the Act. The learned Authorized Representative for the assessee pointed out that the said plea of the assessee was a legal plea and could be raised for the first time. Another objection raised by the learned Authorized Representative for the assessee was that original search proceedings were carried out on 11/12 October, 2001 and the assessment of the searched person was completed on 24.12.2003, whereas the notice under section 158BD of the Act was issued to the assessee dated 10.02.2006 as against the date of receipt of satisfaction note on 06.04.2004. Reliance in this regard was placed on the findings of CIT(A) in para 4.1 at page 5 of the appellate order. The learned Authorized Representative for the assessee pointed out that after the completion of the assessment of searched persons, there was delay of two years in recording satisfaction note and the assessment was completed thereafter, a gap of about two years. Reliance in this regard was placed on the ratio laid down by the Hon'ble Supreme Court in CIT vs. Calcutta Knitwears (2014) 362 ITR 673 (SC). It was further pointed out by the learned Authorized Representative for the assessee that the proceedings under section 158BD of the Act could be initiated immediately

after conduct of search on searched persons, or during the course of assessment being carried out against the searched persons, and / or immediately after assessment having been completed in the case of searched persons. Reference was made to the definition as under Black's Law for the meaning of word immediate notice "that is to be issued within reasonable time".

15. The learned Authorized Representative for the assessee further stressed that the Assessing Officer has failed to provide satisfaction note or copies of documents relied upon and has also not given any opportunity to cross-examine the person. The proceedings completed against the assessee were violation of principles of natural justice. Further, reliance was placed on the ratio laid down by Cochin Bench of Tribunal in N.C. Thomas Vs. DCIT (2013) 144 ITD 667 (Cochin-Trib). Another objection raised by the learned Authorized Representative for the assessee was against the order of CIT(A) in not following the judicial precedents i.e. the decisions of Pune Bench of Tribunal. It was pointed out by him that the Tribunal in Shri Manruplal M. Sanghvi Vs. CIT in ITA No.385/PN/2006 and in Shri Popatlal M. Sanghvi Vs. CIT in ITA No.386/PN/2006, relating to block period 1996-97 to 2002-03, order dated 29.05.2009 had held that the loan entries were part and parcel of regular books of account and there was no merit in the said additions. It was explained by him that in the hands of persons who had given loans, the deposit of cash has been accepted and in the hands of the other persons, no addition was warranted as entries were part of the books of account. Our attention was drawn to the confirmation letter and ledger extracts of M/s. Maheshwari Financiers and it was pointed out that the amount received by the assessee was through cheque and the same were entered in its books of account and in the absence of any evidence being brought on record to establish the link between the cash and cheque deposits, there was no merit in the said addition. Further, no documents were supplied to the assessee and where the assessee had no means to controvert, the

entire addition made on the basis of addition in Shri Ramanlal Shah, proprietor of M/s. Rajashree Enterprises wherein it was held that entries were made through books of account, no addition was warranted in the hands of the assessee. In conclusion, the learned Authorized Representative for the assessee pointed out that Chapter XIV-B was a code in itself and where the assessee had asked for the reasons and documents and also cross-examination, before completing the assessments on such documents, opportunity should have been given to the assessee. He further stressed that the notice issued under section 158BD of the Act had to be issued within reasonable time and if no case of time limit, then proceedings would go on.

16. The learned Departmental Representative for the Revenue in rejoinder pointed out that section 158BD of the Act itself mentions that Assessing Officer shall proceed as under section 158BC of the Act and section 158BE of the Act talks of completion of assessment under section 158BC and 158BD of the Act. Reliance in this regard was placed on the ratio laid down by the Hon'ble Delhi High Court in Venad Properties Pvt. Ltd. Vs. CIT (2012) 340 ITR 463 (Delhi) for the proposition that where opportunity had been provided, mandatory provisions could be waived off. Another reliance placed upon by the learned Departmental Representative for the Revenue was on G.K.N Drive Shafts (India) Ltd. Vs. ITO & Others [2003] 259 ITR 19 (SC) for the proposition that no reasons for reopening the assessment under section 148 of the Act were to be provided till the return of income was filed. Since the assessee had failed to file the return of income, no documents were provided to the assessee. Another reliance placed upon by the learned Departmental Representative for the Revenue was on the ratio laid down by Agra Bench of Tribunal in ACIT Vs. Shri Uday Bhagwan Industries in ITA No.154/Agr/2011, relating to assessment year 2003-04, order dated 15.03.2013, for the proposition that after the issue of notice under section 148 of the Act, where no

return of income was filed, the Tribunal held that there was no requirement to issue notice under section 143(2) of the Act. Our attention was drawn to the definition in section 158B(b) of the Act.

17. We have heard the rival contentions and perused the record. The first issue raised in the present appeal is jurisdictional issue in relation to the proceedings initiated against the assessee under section 158BD of the Act. Search and seizure operations were carried out under section 132 of the Act in the case of M/s. Rajashree Enterprises and M/s. Maheshwari Financiers at Adoni, Andhra Pradesh on 12.10.2001. The search team in the case of Shri Ramanlal Shah, proprietor of M/s. Rajashree Enterprises and Shri Mahendra Shah, proprietor of M/s. Maheshwari Financiers noted the link of transactions with the bank account i.e. where cash was deposited in the bank and cheques were issued from the said bank account in favour of Pune based concerns, further interest @ 18% was charged from these concerns. It was also noted by the search team and thereafter by the Assessing Officer in-charge of search proceedings that when the money was received back from the said businessmen of Pune by cheque, then cash was withdrawn from the bank accounts and enquiries were made with regard to the aforesaid cash deposits and withdrawals from the said bank accounts. The finding of the Revenue in this regard was that in fact, no cash was transferred from Adoni in Andhra Pradesh to Pune for deposit of cash in bank account of respective parties, but the cash belonging to Pune parties was deposited in the said bank account and thereafter from there, the cheques were issued to the respective parties. The assessment in the case of searched persons was completed on 24.12.2003. Thereafter, notice under section 158BD dated 10.02.2006 was issued to the assessee as against the date of receipt of satisfaction note on 06.04.2004. In other words, after the completion of assessment of searched persons under section 158BC of the Act on 24.12.2003, the satisfaction note was recorded by the

Assessing Officer in-charge of the searched persons, which in turn, was forwarded to the Assessing Officer in-charge of the assessee on 06.04.2004 i.e. after a gap of about 4 months. The Assessing Officer, in-charge of assessee thereafter, issued the notice under section 158BD of the Act after a gap of more than 20 months on 10.02.2006. The first issue raised before us is against such delay in issue of notice under section 158BD of the Act. The case of the assessee before us is that the said notice under section 158BD of the Act, should have been issued within reasonable time and in the absence of the same, the proceedings initiated were vitiated.

18. Another objection raised by the assessee with regard to issue of notice under section 158BD of the Act was that the same should have been issued under section 158BC of the Act and in the absence of the same, the notice issued against the assessee was no notice under the Act. The said plea raised by the assessee for the first time before us and the same being legal plea, is admitted for adjudication.

19. Another aspect of jurisdictional issue is non-issue and non-service of notice under section 143(2) of the Act. The assessee is aggrieved that no such notice was issued under section 143(2) of the Act to the assessee. The Revenue on the other hand, pointed out that no return of income was filed by the assessee within 45 days from the date of notice under section 158BD of the Act and as such, there was no requirement for issuing any notice under section 143(2) of the Act. Reliance of the CIT(A) on the ratio laid down by the Hon'ble apex court in ACIT Vs. Hotel Blue Moon (supra) was stated to be mis-placed as the facts of the assessee's case were at variance to the facts before the Hon'ble apex court. The learned Departmental Representative for the Revenue pointed out that in the absence of any return of income being filed by the assessee, requirement of issue of notice under section

143(2) of the Act could not be met with and the Assessing Officer had issued notice under section 142(1) of the Act, to which also there was no compliance and thereafter, the assessment was completed. In this regard, reliance was placed on the ratio laid down in ACIT Vs. Shri Uday Bhagwan Industries (supra).

20. The Hon'ble Supreme Court in CIT vs. Calcutta Knitwears (supra) had held that while interpreting the provisions of fiscal legislation, the Courts should neither add nor subtract the words from the provisions. The Hon'ble Apex Court held that where the words of statute were absolutely clear and un-ambiguous, recourse could not be made to the principles of interpretation other than the liberal rules. Referring to the provisions of section 158BD of the Act, the Hon'ble Supreme Court in CIT vs. Calcutta Knitwears (supra) held as under:-

> *"The opening words of section 158BD of the Income-tax Act, 1961, are that the Assessing Officer must be satisfied that "undisclosed income" belongs to any person other than the person with respect to whom a search was made under section 132 of the Act or a requisition of books was made under section 132A of the Act and thereafter, transmit the records for assessment of such other person. Before initiating proceedings under section 158BD of the Act, the Assessing Officer who has initiated proceedings for completion of assessments under section 158BC of the Act should be satisfied that there is an undisclosed income which has been traced out when a search was carried out in respect of a person under section 132 or books of account were requisitioned under section 132A of the Act. This is in contrast to the provisions of section 148 of the Act where recording of reasons in writing is a sine qua non. Under section 158BD, the existence of cogent and demonstrative material is germane to the Assessing Officer's satisfaction in concluding that the seized documents belong to a person other than the person against whom search was conducted and is necessary for initiation of action under section 158BD.*
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> *The satisfaction note could be prepared by the Assessing Officer either at the time of initiating proceedings for completion of assessment of a person against whom search was conducted under section 158BC of the Act or during the stage of the assessment proceedings. It does not mean that after completion of the assessment, the Assessing Officer cannot prepare the satisfaction note to the effect that there exists income belonging to any person other than the person in respect of whom search was conducted under section 132 or requisition of books of account was made under section 132A of the Act. The language of the provision is clear and unambiguous. The Legislature has not imposed any embargo on the Assessing Officer in respect of the stage of proceedings during which the satisfaction is to be reached and recorded in respect of the person other than the person against whom search was conducted.*
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> *For the purpose of section 158BD of the Act, a satisfaction note is a sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages: (a) at the time*

of or along with the initiation of proceedings against the person against whom search was conducted under section 158BC of the Act; (b) along with the assessment proceedings under section 158BC of the Act ; and (c) immediately after the assessment proceedings are completed under section 158BC of the Act of the person against whom search was conducted. To say that since the satisfaction note was prepared after the proceedings were completed by the Assessing Officer under section 158BC of the Act which is contrary to the provisions of section 158BD read with section 158BE(2)(b) would be contrary to the plain and simple language employed by the Legislature under section 158BD of the Act which clearly provides adequate flexibility to the Assessing Officer for recording the satisfaction after the completion of proceedings in respect of the person against whom search was conducted under section 158BC.

Section 158BE(2)(b) only provides for the period of limitation for completion of block assessment under section 158BD in the case of a person other than the person against whom search was conducted as two years from the end of the month in which the notice under the Chapter was served on such other person in respect of search carried out after January 1, 1997. The section neither provides for nor imposes any restrictions or conditions on the period of limitation for preparation the satisfaction note under section 158BD and consequent issuance of notice to the other person. To read the plain language of section 158BE(2)(b) such as to extend the period of limitation to recording of satisfaction would run counter to the avowed object of introduction of Chapter to provide for cost-effective, efficient and expeditious completion of search assessments and avoiding or reducing long drawn proceedings.

Where the Assessing Officer had prepared a satisfaction note on July 15, 2005, though the assessment proceedings in the case of the person in respect of whom the search was conducted were completed on March 30, 2005 :

Held accordingly, that the High Court was wrong in saying that since the satisfaction note was prepared after the proceedings were completed by the Assessing Officer under section 158BC of the Act the assessment under section 158BD was barred. The High Court was to consider the cases in the light of the observations of the court on the scope and possible interpretation of section 158BD of the Act.

Decision of the Punjab and Haryana High Court in CIT v. Calcutta Knitwears (supra) and of the Delhi High Court in CIT v. Radhey Shyam Bansal (2011) 337 ITR 217 (Delhi) set aside and matters remanded to High Court."

21. As per the Hon'ble Supreme Court in view of the provisions of section 158BD of the Act, the preparation of the satisfaction note by the Assessing Officer of the searched persons, before he transmits the records to the other Assessing Officer, who has jurisdiction over such other person, is a sine qua non. It was further held by the Hon'ble apex court that the satisfaction note could be prepared either at the time of or along with initiation of proceedings against the persons against whom search was conducted under section 158BC of the Act, or along with assessment proceedings under section 158BC of the Act and / or immediately after

the assessment proceedings are completed under section 158BC of the Act of the searched persons. Reference was made to the provisions of section 158BE(2)(b) of the Act and it was observed that the said section only provides period of limitation for completion of block assessment under section 158BD of the Act, in the case of a person, other than the person against whom the search was conducted, as to two years from the end of the month, in which notice under Chapter was served on such other person, in respect of search carried out after first January, 1997. The Hon'ble Supreme Court held that the section neither provided for nor imposed any restrictions or conditions on the period of limitation for preparation of satisfaction note under section 158BD of the Act and consequent issuance of notice to the other person. In the facts of the case before the Hon'ble Supreme Court, the Assessing Officer had prepared satisfaction note on July 15, 2005 though the assessment proceedings in the case of searched persons were completed on 30.03.2005. It was held that the High Court was wrong in saying that the satisfaction note prepared after proceedings were completed by the Assessing Officer under section 158BC of the Act and consequent assessment under section 158BD of the Act was barred. The matter was set-aside to the High Court to consider the case in the light of observations of the Hon'ble Supreme Court.

22. In the facts of the present case, the assessment under section 158BC of the Act of the searched persons was completed on 24.12.2003 and thereafter, satisfaction note was received by the Assessing Officer in-charge of the assessee on 06.04.2004. In view of the proposition laid down by the Hon'ble Supreme Court in CIT vs. Calcutta Knitwears (supra), we hold that the Assessing Officer in-charge of the searched persons can record satisfaction note after the completion of assessment in the hands of the searched persons and forward the same to the Assessing Officer, who is in-charge of the other person, as provided under section 158BD of the Act.

23. The second aspect of the issue before us is the notice issued under section 158BD of the Act after a gap of about 20 months i.e. the Assessing Officer in-charge of the assessee had admittedly received the satisfaction note on 06.04.2004, but had issued notice under section 158BD of the Act on 10.02.2006, to the assessee. The assessee is aggrieved by the aforesaid delay in issuing the notice under section 158BD of the Act i.e. after delay of about 20 months. The Hon'ble Delhi High Court in the case of CIT Vs. Bharat Bhushan Jain reported in 92 CCH 0004 has held that Revenue has to be vigilant in issuing notice to third parties u/s.158BD immediately after completion of assessment of searched person. Where the satisfaction note was recorded more than a year after completion of assessment of the searched person notices issued were rightly held to be not issued in conformity with requirement of section 158BD. The relevant observation of Hon'ble High Court at para 6 of the order reads as under :-

> *"6. Having regard to the intent of the Supreme Court in Para 44 of the Calcutta Knitwears (supra), where it was indicated that the Revenue has to be vigilant in issuing notice to the third party under Section 158 BD, immediately after the completion of assessment of the searched person, this Court is of the opinion that a delay ranging between 10 months of 1 ½ years cannot be considered contemporaneous to assessment proceedings. We are of the opinion that notices were not issued in conformity with the requirements of Section 158BD, and were unduly delayed. The appeals of the Revenue accordingly fail and are dismissed."*

24. The learned Departmental Representative for the Revenue on the other hand, had placed reliance on the ratio laid down in Venad Properties Pvt. Ltd. Vs. CIT (supra), wherein it was held that the procedural irregularities in service of notice which could be rectified, was not a illegality. The Hon'ble High Court further held that in matters of due service of notice / summons, a practical and pragmatic approach, rather than mere compliance or non-compliance with the formality is determinative. The issue before us is with regard to the reasonableness of period in which such a notice could be issued and there is no issue of whether the notice was duly served upon the assessee. It is not the case of the assessee that the said

notice was not served upon it, but the plea of the assessee before us was that such a notice which was issued and served upon the assessee after a considerable delay of about 20 months i.e. from the date of receipt of satisfaction note to the date of issue of notice under section 158BD of the Act, cannot be brushed aside. In view of the said notice under section 158BD of the Act being not issued within reasonable time, though there is no time limit provided under the Act to issue the said notice under section 158BD of the Act, the said notice issued under section 158BD of the Act is invalid notice. Following the ratio laid down by the Hon'ble Delhi High Court in CIT Vs. Bharat Bhushan Jain (supra) in line with the proposition laid down by the Hon'ble Supreme Court in CIT vs. Calcutta Knitwears (supra), we hold that the notice issued under section 158BD of the Act in the present case was unduly delayed and the same is held invalid and void. Reliance placed upon by the learned Departmental Representative for the Revenue on the ratio laid down in Venad Properties Pvt. Ltd. Vs. CIT (supra) is with regard to the service of said notice, which proposition is not applicable to the issue before us, since the service of notice upon the assessee is admitted by the assessee itself. In view thereof, we hold that where the notice issued under section 158BD of the Act is both invalid and void, the proceedings initiated against the assessee are invalid and void. Accordingly, the same are set-aside. The assessee has raised various other issues regarding issue of notice under section 158BD of the Act, which becomes academic as the initial notice is held to be invalid and void and we are not adjudicating the same. Similarly, we are also not adjudicating the issue of notice under section 143(2) of the Act. Since the proceedings are held to be invalid and set-aside, there is no merit in the addition made in the hands of the assessee pursuant to issuance of such notice under section 158BD of the Act, which is held to be invalid and void. Consequently, the grounds of objections raised by the assessee in Cross Objections are allowed and the grounds of appeal raised by the Revenue become infructuous, in view of our setting aside the assessment in the hands of the assessee.

25. The facts and issues in ITA Nos.1783/PN/2013 & CO No.88/PN/2014 and ITA No.1784/PN/2013 & CO No.89/PN/2014 are identical to the facts and issues in ITA No.1782/PN/2013 & CO No.87/PN/2014 and our decision in ITA No.1782/PN/2013 & CO No.87/PN/2014 shall apply *mutatis mutandis* to ITA Nos.1783/PN/2013 & CO No.88/PN/2014 and ITA No.1784/PN/2013 & CO No.89/PN/2014.

26. In the result, the Cross Objections of the assessee are allowed and appeals of the Revenue are dismissed.

Order pronounced on this 26th day of August, 2015.

Sd/-	**Sd/-**
(**R.K. PANDA**)	(**SUSHMA CHOWLA**)
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे Pune; दिनांक Dated : 26th August, 2015.

GCVSR

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the order is forwarded to</u> :

1) The Assessee;
2) The Department;
3) The CIT(A)-III, Pune;
4) The CIT-III, Pune;
5) The DR “B” Bench, I.T.A.T., Pune;
6) Guard File.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune