



Sr. No.

Date

Orders

31.08.2004

Present: Mr. Sanjiv Khanna for the appellant  
Mr. C S Aggarwal with Mr. Prakash Jain  
for respondent

+ ITA 134/2004 & ITA 13/2002

These appeals are preferred by the Revenue against the order made by the Income Tax Appellate Tribunal, Delhi Bench in IT (SS) No. 141/Del/97 on 20<sup>th</sup> June, 2001 for the block assessment period 1-4-1985 to 30-6-1996. The question in this matter raised by the learned counsel for the Revenue is about limitation. As per Section 158BE of the Income Tax Act, 1961 (hereinafter referred to as the Act) the assessment is required to be made within a stipulated time and if it is not made then the same would be time barred.

As the court is required to examine sub-section (1) of Section 158BE of the Act, the relevant provision is incorporated hereunder:-

"158 BE (1). The order under Section 158 BC shall be passed-

(a) Within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30<sup>th</sup> day of June, 1995, but



Sr. No.	Date	Orders
		<p>before the 1<sup>st</sup> day of January, 1997;"</p> <p>2. xxxxx</p> <p>Explanation 2- For the removal of doubts, it is hereby declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed,-</p> <p>(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;</p> <p>The Tribunal in para 7 pointed out that the search was concluded on 20<sup>th</sup> March, 1996 and said that "if there is no authorisation with the approval of the concerned authority, then in that case the assessment has to be passed on or before 31-3-1997." Before the Tribunal the assessee contended that there is no authorisation after the date of search and therefore the assessment passed on 30<sup>th</sup> June, 1997 is barred by limitation. The Tribunal specifically observed as under: -</p> <p>"The learned DR has stated that a restraint order was passed on 27-6-96, which is equal to the authorisation. In our considered view, this letter dated 27.6.1996 cannot be equated with the authorisation, because authorisation has to be passed after obtaining necessary approval of Director of Income-tax. Investigation or the</p>



Sr. No.	Date	Orders
		<p>Commissioner of Income-tax, whatever the case may be.”</p> <p>The Tribunal further observed as under:-</p> <p>“.....the panchnama in the case of assessee, M/s Kuwer Industries Ltd was prepared separately i.e. on 20-3-1996 and signed on 21-3-1996. A copy of the same is placed in the papers filed by the learned DR.”</p> <p>Thus the case rested on the Panchnama which was dated 20<sup>th</sup> March, 1996 and executed completely on 21-3-1996. This Panchnama (copy) is placed before us. It is specifically mentioned at page 4 of the Panchnama as under:-</p> <p>“The search commenced on 20<sup>th</sup> March, 1996 at 8.45 AM. The proceedings were closed on 21.3.1996 at 10.15 AM.”</p> <p>Thus it is clear that the authorisation was executed on 21-3-1996. However, learned counsel for the Revenue submitted that the Tribunal has ignored another Panchnama made subsequently. On behalf of the assessee it was pointed out that the said Panchnama was not produced before the Tribunal and there is no reference to this Panchnama in the order of the Assessing Officer.</p> <p>Therefore, neither the Assessing Officer nor the Tribunal has</p>



Sr. No.	Date	Orders
		<p>considered this later panchnama. It is true that if the Panchnama was considered by the Assessing Officer and made a basis for passing an order then matter would have been quite different. But in reality this document cannot be relied upon as the same was neither considered by the Assessing Officer nor by the Tribunal, the Tribunal being final fact finding authority. As we indicated that the subsequent Panchnama was not a part of the record, we cannot rely upon. It is interesting to note that even before the Assessing Officer there is only a reference of one Panchnama only dated 20<sup>th</sup> March, 1996 which shows that search was concluded on 21<sup>st</sup> March, 1996. Counsel for the Revenue stated that if the subsequent Panchnama is not placed on the record then it cannot be said that the tribunal has committed an error but his contention is that the record should have been placed not only by the appellant but should have been pointed out to the Tribunal by the departmental representative also.</p> <p>We gave our anxious thought and we find that when the Assessing Officer has not considered the same, the appellant may not think it proper to rely on the document as</p>



Sr. No.

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Orders

that was not considered by the Assessing Officer himself against him. But, certainly it was the duty of the departmental representative to point out to the Tribunal that this document is required to be taken into consideration and if considered then proceedings would not be barred by limitation and it would be within time. Well the Assessing Officer has not bothered about this document maybe because it has not been produced by the raiding party. Therefore at this juncture we are not in a position to say anything about the responsibility of the person concerned for not producing the same.

Considering the facts and circumstances of this case we direct the Commissioner of Income Tax to examine the matter administratively and if panchanama dated 25-2-1997 was not placed before the Assessing Officer or before the Tribunal, the Commissioner shall examine the matter in greater detail and it is hoped that he shall take immediate action in the matter and shall file a report about the action taken within a period of three months from today. This appeal is disposed of. However, the same shall be listed after three months for considering the report.



Sr. No.	Date	Orders
		<p data-bbox="596 342 1094 387">List on 25<sup>th</sup> January, 2005.</p> <p data-bbox="432 439 1544 667">In view of what is stated herein above ITA 134/2004 as well as ITA 13/2002 do not raise any substantial question of law and are dismissed.</p> <p data-bbox="1098 745 1401 846"><i>Belairi</i> CHIEF JUSTICE</p> <p data-bbox="432 1016 738 1099">August 31, 2004 mv</p> <p data-bbox="1015 949 1541 1059"><i>Badar Durrez Ahmed</i> BADAR DURREZ AHMED, J.</p>