



**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.07.2008

+ **ITA 489/2005**

**THE COMMISSIONER OF INCOME TAX  
DELHI (CENTRAL)-III**

... Appellant

- versus -

**M/S D. D. SALES CORPORATION**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr R. D Jolly with Mr Paras Chaudhary

For the Respondent : Mr P. N Monga with Mr Manu Monga

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal has been preferred by the revenue against the order passed by the Income Tax Appellate Tribunal on 06.10.2004 in IT (SS) No. 278/Del./1997 in respect of the block period 01.04.1986 to 29.08.1996. The ground raised by the assessee in its appeal before the Tribunal was as under:-

“That the search having been conducted on 29.08.1996 /30.08.1996, the assessment made on 31.10.1997, is barred by limitation in view of the provisions contained in Section



one year from the end of the month in which the last authorization for search under Section 132 had been executed, the assessment made under Section 158BC, therefore deserves to be vacated.”

A reading of the aforesaid ground of appeal before the Appellate Tribunal makes it clear that the question was with regard to the bar of limitation in making an assessment order for the block period under Section 158 BC. The limitation is prescribed, admittedly, by the provisions of Section 158 BE (1) (a) of the Income Tax Act, 1961. The said section, *inter alia*, stipulates that the order under Section 158 BC shall be passed within one year from the end of the month in which the last authorization for search under Section 132 was executed. Explanation 2 appended at the end of Section 158 BE reads as under:-

“*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, —

- (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;
- (b) in the case of requisition under section 132A, on the actual receipts of the books of account or other documents or assets by the Authorised Officer.”

A reading of the said Explanation 2 indicates that what is crucial is to note the date of conclusion of the search as recorded in the last *panchnama* drawn in relation to any person in whose case the warrant



concluded would be deemed to be the date on which the authorization would have been executed.

2. In the present case there is only one *panchnama* and as recorded in the Tribunal's order the date and time of search and close of the search is clearly mentioned in paragraph 8 of the *panchnama* which was prepared on 30.08.1996. It was recorded that the search commenced on 29.08.1996 at 8.45 pm and closed at 30.08.1996 at 3.45 pm. Consequently, in view of the provisions of Section 158BE and, particularly, Explanation 2 to the said Section it is apparent that the authorization was executed on 30.08.1996 at 3.45 pm. The contention raised by the revenue that the restraint order had been lifted on 17.10.1996 and, therefore, the search continued was not accepted by the Income Tax Appellate Tribunal. In view of the deeming provisions provided in Explanation 2, the conclusion arrived at by the Tribunal on the basis of the factual position that the date and time of the search and the close of the search was recorded in the *panchnama*, cannot be faulted. The closure of the search recorded in the *panchnama* was at 3.45 pm on 30.08.1996. The Tribunal also noted that this was the only *panchnama* and there was no other *panchnama* prepared nor any further material was found in consequence of the search. In view of the clear provisions of law and the factual position,



of law arises in this case for our consideration. The finding of facts arrived at by the Tribunal also cannot be said to be perverse.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**July 22, 2008**  
**SR**