REPORTABLE

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

ITA No.130/2009, 333/2009, 335/2009, 336/2009, 337/2009, 339/2009, 350/2009, 351/2009 and 367/2009

% *Judgment Reserved on: 03.11.2009*
Judgment Pronounced on : 30.11.2009

Commissioner of Income-Tax Central III .....Appellant (in all matters)

through : Mr. N.P. Sahni

VERSUS

M/s. Shilpi Securities Pvt. Ltd. .....Respondent in ITA No.130/2009

M/s. Uikam Investment & Finance Pvt. Ltd. and Others .....Respondent in ITA No.333/2009

M/s. Annie Investment and Finance Co. P. Ltd. .....Respondent in ITA No.335/2009

M/s. Kandla Petrochemicals Corporation Ltd. .....Respondent in ITA No.336/2009

M/s. Independent Courrier Pvt. Ltd. .....Respondent in ITA No.337/2009

M/s. Harmony Psychitary Centre Pvt. Ltd. .....Respondent in ITA No.339/2009

M/s. Professional Leasing & Capital Services Ltd. .....Respondent in ITA No.350/2009

M/s. Patliputra Internaitonal Trading Ltd. .....Respondent in ITA No.351/2009

M/s. Vaidahi Lease and Finance Pvt. Ltd. .....Respondent in ITA No.367/2009

through: Ms. Bhakti Pasrija

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed

3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. These appeals were admitted and heard on the following substantial questions of law:-

    1. Whether the Income Tax Appellate Tribunal was competent and correct in law in entertaining the issue of validity of the search and holding that the Search Warrants under Section 132(1) of the Act were illegal and quashing the block assessment made by the Assessing Officer under Section 158BC of the Income Tax Act?

    2. Whether in view of the facts and circumstances of the case the Tribunal is right in law in holding that the assessment order passed by the Assessing Officer on 30th September, 1997 had been passed beyond the date of limitation specified in Section 158BE of the Act?

    3. Whether the warrant signed by the Additional Director of Income Tax is without any authority?

2. Here itself we may point out that not only these questions are common to all these appeals, these appeals preferred by the Revenue are against the judgment dated 30.4.2008 vide which all the cases were decided. Since the issues have arisen in identical circumstances and similar background, our purpose would be served in taking note of the facts in ITA No.130/2009.

3. With a view to conduct searches on the assessee and its group

of Income Tax (Investigation) issued warrants of authorization on 27.6.1996. In the said warrants, authorization was given to search lockers/accounts of the assessee maintained with the Citi Bank. According to the Revenue, all these assessees, which belong to the same group, were involved in well-known Urea Scam. Search was conducted in the case of all these assessees. Thereafter, notice dated 7.4.1997 under Section 158BC of the Act was issued to the assessee requiring the assessee to file the block return of the total income, including the undisclosed income for the block period, i.e., from 1.4.1986 to 27.6.1996. The assessee filed the return on 5.6.1997 declaring nil income as undisclosed income.

4. The Assessing Officer proceeded to assess the income for the block period and vide assessment orders dated 30.9.1997 framed the assessment at an undisclosed income of Rs.1,28,93,030/- after considering the replies of the assessee as well as statements of certain persons, namely, S/Sh. Anil Sanghi and Prakash Chand Yadav and others recorded during the search. The assessee filed appeal there against before the Income-Tax Appellate Tribunal (ITAT). ITAT allowed the appeal of the assessee vide its decision dated 17.3.2006 on the ground that there was no search warrant in the name of the assessee and therefore, block assessment was not proper. Against this order of the ITAT, the Department preferred appeal to this Court.

warrants of authorization were produced in the High Court. This warrant of authorization was not produced before the Tribunal because of which the Tribunal had drawn an adverse inference against the Revenue that warrants were never issued. This was the position in respect of all the assessees in these appeals. Since the warrants of authorization was produced for the first time in this Court, counsel for the assessee had objected to the acceptance of these documents and pleaded that the Revenue be not granted indulgence and permitted to take advantage of the situation. This Court, however, did not agree with this plea. While holding that there were warrants of authorization produced by the Revenue, the Tribunal should decide the appeals preferred by the assessee afresh. At the same time cost of Rs.10,000/- in each case was imposed upon the Revenue. It was in these circumstances that the Tribunal took up all these appeals afresh. By the impugned decision dated 30.4.2008, block assessment proceedings in respect of all these assessees are again quashed on the following two grounds:-

a) The warrants of authorisation in respect of many assessees were vague.

b) In certain cases, warrants were signed by the Additional Director of Income Tax, who had no authority under Section 132 of the Act.

c) All the block assessments had been completed beyond the period of limitation prescribed under the Act and therefore, barred by limitation.

Challenging that order, present appeals are preferred.

5. In so far as first ground accepted by the Tribunal is concerned, according to the Tribunal, following infirmities were found in various warrants of authorisation:-

i) In the case of M/s. Independent Courier Pvt. Ltd., name is incorrectly mentioned in the warrants as "M/s. Independent Courier". Further, in the search warrant no details have been given as to the premises to be searched and the column prescribed for the said purpose has been left blank.

ii) In respect of the assessee M/s. Harmony Psychitary Centre Pvt. Ltd., though the name is correctly mentioned, but the premises to be searched is stated as "Citi Bank, New Delhi" without mentioning the particular branch of the bank or the address.

(iii) & (iv) So far as M/s. Shilpi Securities Pvt. Ltd. and M/s. Vaidahi Lease and Finance Pvt. Ltd. are concerned, names of these assessees are correctly mentioned but the premises to be searched are vaguely stated as "Citi Bank, Delhi".

6. The Tribunal was of the opinion that even if mis-description of the

Independent Courier") in the search warrants could be condoned as procedural irregularity not affecting the validity of such proceedings by invoking Section 292B of the Act, non mentioning or incorrect mentioning of the premises to be searched in the search warrants was material illegality which could not be glossed over. The Tribunal relied upon the judgment of the Supreme Court in ***I.T.O.*** **v.** ***Seth Brothers*** (1969) 74 ITR 836 wherein the Apex Court held that Section 132 does not confer any arbitrary power upon the Revenue authority. Search is always premises specific and assessee specific. If the premises to be searched are left blank or are mentioned vaguely without being specific, it would give an unguided power to the authorised officer which cannot be countenanced. The Tribunal also referred to Search and Seizure Manual issued in 1989 by the Directorate of Income Tax (Research, Statistics, Publications and Public Relations), Mayur Bhawan, New Delhi for departmental use, inter alia, providing following guideline under the head:-

> "Preparation of warrant of authorisation" as follows:-
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> "(c) An authorization without the name of the party whose premises are to be searched is invalid. The premises to be searched should be clearly mentioned. The issue of blank authorization is legally prohibited."

7. On that basis, the Tribunal opined that in so far as the aforesaid four assessees are concerned, search warrants suffered from grave uncertainties inasmuch as the premises to be searched had either not been mentioned or had been mentioned vaguely.

8. In the cases of M/s. Independent Courier Pvt. Ltd., M/s. Harmony Psychitary Centre Pvt. Ltd., M/s. Uikam Investment & Finance Pvt. Ltd. and M/s. Professional Leasing and Capital Services Pvt. Ltd., the warrants were also quashed on the ground that they were signed by Additional Director of Income-Tax (Investigation), who had no power to do so under Section 132(1) of the Act as held by this Court in the case of ***Dr. Nalini Mahajan*** **v.** ***Director of Income-Tax (Investigation) and Others***, [2002] 257 ITR 123.

9. Mr. Sahni, learned counsel appearing for the Department, argued that these grounds were not taken before the AO and he had no occasion to adjudicate upon the same. Even in the appeal no such ground was given. As regards the alleged defects in the search warrants, our attention was invited to the chart filed during the course of hearing pointing out the exact defect noticed in each case. It is not denied that the words 'Pvt. Ltd.' were not added to the name of the company Independent Courier Pvt. Ltd., which omission cannot be said to be material and fatal to the proceedings especially when the account number tallied and the bank did not raise any

other alleged defect relates to the incomplete address of Citi Bank, New Delhi in search warrants in the cases of Shilpi Securities, Vaidahi Lease and Finance, Independent Courier and Harmony Psychiatry Centre Pvt. Ltd. In the case of Patliputra Investment, the address written is "Citi Bank, Connaught Place, New Delhi", which could not be said to be incomplete. In this connection, he referred to para 3.11 of ITA No.337/2009 in the case of Independent Courier Pvt. Ltd. (this is illustrative and similar paras are in there in other relevant appeals also) which reads as under:-

> "It is submitted that ITAT has failed to appreciate that name and location of the Bank was correctly stated and the officer authorised to execute the search warrant not only reached the location given but also detected the account of the assessee which was required to be searched. There was thus no uncertainty or vagueness in the search warrant, which is held to be illegal. It may be submitted here that there was only one operating Branch of Citi Bank at Connaught Place, Delhi at the relevant time. In some of the search warrants in the cases of sister concerns of the assessee, the full particulars like 'Barakhamba Road, Connaught Place, New Delhi" were stated and it was not considered necessary to write full

was no other Branch at the relevant time. Moreover, the said search warrants were properly executed and there was no objection from any quarter at the time of execution.

10. It was further argued that the ITAT has also failed to appreciate the provisions of Section 292B of the Act, which reads as under:-

> "No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with and according to the intent and purpose of this Act." It is not a case where search warrant has been executed at wrong place or in respect of wrong assessee/person. Proper satisfaction was recorded before issuing the search warrant and the same is

executed in respect of the right person and the right premises."

11. Learned counsel for the respondent/assessee, per contra, argued that the assessees only dealt with Citi Bank having its branch at Janpath, Connaught Place and not any other branches of Citi Bank like Barakhamba Road, Connaught Place, New Delhi etc. as wrongly mentioned in ITA No.333/2009 in the ground extracted above. The assessee also did not deal with any branch of Citi Bank having branch at Delhi as claimed by the Department in some warrants of other assessee companies. Moreover, in case of Kandla Petrochemicals Corporation Ltd. the warrants were issued in three names which would demonstrate that purported warrants were issued blank making such warrants illegal.

12. We are of the opinion that undoubtedly the search warrants have to be assessee specific and premises should also be clearly stated so that they are discernible. Not only the particular assessee should be clearly discernible from the reading of these warrants, it also should be clear as to which premises are to be searched. Therefore, there is no difficulty in answering that where the premises to be searched are left blank, such warrants would be vague and thus, illegal. On this basis, in so far as the assessee M/s. Independent Courier Pvt. Ltd. is concerned, since no details were given as to the premises to be

searched and the column for this purpose was left blank, the Tribunal was right in holding that search warrants would be illegal.

13. In other three cases the premises to be searched was mentioned as "Citi Bank, New Delhi" or "Citi Bank, Delhi". The question is as to whether it is vague description. Answer to this would depend upon the fact as to whether from the description given, the parties understood which premises to be searched or by mentioning the aforesaid premises the search team or the assessees could relate it to some other premises. Answer would depend on the facts of each case. On this fact of this case we are of the opinion that this description of the premises would not make the description vague. It was well known that all these assessees had their accounts in Citi Bank. In the case of some of these assessees (and all the assessees are group companies) categorical description of Citi Bank, Janpath, Connaught Place, New Delhi is also given. Search warrants of all assessees were signed simultaneously and premises/accounts in resident of all assessees searched at the same time when the parties understood that in respect of other assessees also, belonging to the same group, the premises to be searched relate to same branch and there was no doubt about the said particular branch of Citi Bank not only in the minds of the officials of the Department but the assessees as well, the warrants cannot be termed as vague. No doubt, it would

Janpath, Connaught Place was also given in respect of these assesses as well. However, when even the description "Citi Bank, New Delhi" did not generate any doubt and both the parties were at *ad idem* identifying the same with Janpath and that is the only branch of the Citi Bank where these assesses had the accounts, going by these considerations we are of the opinion that the warrants of authorization could not be treated as vague in these cases. We, thus, answer the question of law No.1 in favour of the Revenue in so far as M/s. Harmony Psychitary Centre Pvt. Ltd. is concerned. In the case of M/s. Independent Courier Pvt. Ltd. the question is answered in favour of the assessee as in that case the warrants were left blank.

Question of Law No. 2: Re. Limitation

14. The block assessment in the cases of all the assessees has been set aside on the ground of limitation as well. The Tribunal has pointed out that if search is conducted between 30.6.1995 and before 1.1.1997, as per the provisions of Section 158BE (1)(a) read with Section 2(a), block assessment had to be completed within one year from the end of the month in which last of the search warrant was executed. Block assessment was to be completed within one year from the end of the month and each last of the search warrant was executed. Search warrants were executed sometime in July, 1996. For example, in the case of M/s. Independent Courier Pvt. Ltd., the search warrant was

limitation to be reckoned from that date as per which last date for completion of block assessment would be 31.7.1996. The case of the Department, on the other hand, was that amount was recovered from the bank only on 20.9.1996 which is recorded in the Panchnama and therefore, that would be the date from which limitation of one year would start and therefore, last date for completion of the block assessment would be 30.9.1997.

15. The Tribunal has, however, accepted the plea of the assessees. The date of 20.9.1996 is not taken into consideration on the ground that recovery of money from the bank in exercise of power of search under Section 132 has been held to be impermissible by the Supreme Court in ***KCC Software Limited*** (supra).

16. Mr. Sahni contended that reliance placed by the Tribunal on the aforesaid judgment of the Apex Court in ***KCC Software Limited*** (supra) is misplaced. The Supreme Court has not adjudicated the issues involved in the present case and it does not help the case of the assessees. The issue involved in the present appeals is dealt with and answered by this Court in the case of ***M.B. Lal* v. *CIT***, [2005] 279 ITR 298 (Delhi) . It is submitted that restraint order under Section 132(2) has a limited life of 60 days only. The resort to this Section could not be said to be improper in view of the actual seizure of substantial unexplained cash exceeding Rs.25 crores from various accounts.

AO has clearly brought out that the assessees had failed to establish the source of cash deposits. Having regard to the facts and circumstances, the specific provisions of Section 158BE(1) Explanation 2A, Section 132(3) Explanation, Section 132(8) and the case law cited above, it is submitted that this ground is also baseless and invalid.

17. Submission of learned counsel for the assessees, on the other hand, was that the view of the Tribunal is correct in law. The learned counsel in addition to placing reliance upon ***M/s. KCC Software Limited*** (supra) also referred to number of other judgments. She submitted that in ***B.K. Nowlakha and Ors.*** **v.** ***Union of India AND Ors.***, (1991) 192 ITR 436 (Delhi) this Court has held:

> "once an order of restraint had been passed under Section 132 (3), the period of limitation commenced and such an order could not be continued unless and until the provisions of Section 132 (8A) were satisfied."
>
> xxx xxx xxx
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> "The power under Section 132(3) cannot be exercised as to circumvent the provisions of Section 132(1) read with Section 132 (5). When a search is conducted and valuable movable articles are found which are liable to be seized, then should be seized."

18. She also relied upon the following observations in ***CIT*** **v.** ***Mrs. Sandhya P. Naik***, [2002] 253 ITR 534 (Bom.):

> difficulty in seizing the item which is liable to be seized. Where there is no such practical difficulty the officer is left with no other alternative but to seize the item, if is of the view that it represents undisclosed income. Power under Section 132(3) of the Act cannot be exercised so as to circumvent the provisions of Section 132(3) read with Section 132(5) of the Act. The position has become more clear after the insertion of the Explanation to Section 132(3) effective from July 1, 1995 that a restraint order does not amount to seizure. Therefore, by passing a restraint order, the time limit available for framing the order cannot be extended.

19. On the basis of these judgments, her submission is that the date of taking away the money illegally, cannot be termed in any manner as the date of execution of the search warrants.

20. We have considered the respective submissions in the light of the legal provisions as well as the judgments cited before us. As per Explanation 2 (a) to Section 158BE, execution of the search warrants has been explained as the date on which the search was concluded as recorded in the last Panchnama. The search warrants in these cases were executed on various dates as disclosed in the chart extracted above and the recovery of money from the bank in exercise of power of search was made on 20.9.1996 when the recovery of money took place. The Tribunal has not taken into consideration this date because of the reason that such recovery of money from the bank in exercise of power of search under Section 132 of the Act has been held to be impermissible by the Supreme Court in the case of ***KCC***

and Ors., (2008) 298 ITR 1 (SC). All the judgments on which reliance is placed by the learned counsel for the assessee only demonstrate that such seizure of money was not proper. While this action of recovery of money may later turn out to be improper, the moot question is as to whether on that ground this date will not be taken into consideration at all for the purpose of computing the limitation. We afraid, no such conclusion can be drawn. For the purpose of limitation last date of Panchnama is to be seen which is 20.9.2006. Merely because the act done on that date, i.e., seizure of money is ultimately held as impermissible, would not be relevant for the purposes of the limitation as that has no bearing on this issue. It is more so when validity of search cannot be challenged in appeal filed against block assessment carried out under Section 158 BC of the Act. This is so held by this Court in ***M.B. Lal* v. *CIT*** (supra). In that case the Court was directly concerned with the issue of limitation. It found that authorization was issued on 2.2.2000. The search also started on the same date and continued till 29.6.2000 during which period various articles and documents were seized. The Court further observed that since search would end only upon revocation of the order passed under Section 132(3), which in that case was done on 29.6.2000, the period of limitation for making an assessment order under Section 158 BC read with Section 158 BE of the Act would be

30.6.2002. It would be of interest to note that argument of the assessee in the said case was that search was concluded on 2.2.2000 and the period of limitation was to start from that date and therefore, assessment order was time-barred. It was specifically contended that merely passing of order under Section 132(3) of the Act in regard to the contents of almirah and cupboards, the search could not be artificially prolonged, more so when there was no practical difficulty in seizing the items liable to be seized nor could the authorised officer exercise his power under Section 132(3) of the Act to circumvent the provisions of Section 132(1) read with Section 132(5) of the Act. This contention was specifically repelled. It was held that ,as noted above, since the revocation order passed under Section 132(3) was dated 29.6.2000 when the contents of almirah and cupboards were seized, that would be the date of reckoning for the purpose of limitation. We, thus, hold that the assessment was completed within the prescribed period of limitation and it was not time-barred.

21. The judgments relied upon by the learned counsel for the assessee have no application. As pointed out above, in ***CIT* v. *Mrs. Sandhya P. Naik*** (supra) the orders passed under Section 132 (3) were by the officers not authorised in this behalf and for this reason it was held that the date of the said order would not extend the period of

restraint orders were held to be invalid for want of approval of the Commissioner which was required to be obtained under Section 132(8)(a) for extension of the restraint beyond 60 days. Accordingly, we decide the question of limitation in favour of the Revenue and as a consequence set aside the judgment of the Tribunal on this ground.

Re: Question No. 3

22. As regards the second ground, Section 132 has been amended by the Finance (No.2) Act, 2009 with retrospective effect from 1.6.1994 enabling the Additional Director of Income-Tax to issue authorizations under Section 132(1) of the Act. This ground is, thus, no longer valid which position was conceded by the learned counsel for the respondent.. In view of this legislative amendment retrospectively with effect from 1.6.1994, this question is answered in favour of the Revenue and against the assessee holding that the warrants signed by the Additional Director of Income-Tax would not be invalid as he had the necessary authority in view of the amended provisions of Section 132 of the Act.

Consequential Order:-

23. The appeal of the Revenue in the case of M/s. Independent Courier (ITA No.337/2009) is dismissed on the ground that search warrants in this case were vague for want of details in respect of the premises

and the matter in those cases is referred back to the Tribunal for decision on merits.

24. No costs.

(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

November 30, 2009.
HP.