



% 19.11.2009

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Present: Mr. Aman Lekhi, Sr. Advocate with Mr. makrand Bakore, Adv.  
for the petitioner.  
Ms. Sonia Mathur, Adv. for the respondent.

+ CM No.14455/2009 (exemption)

Allowed, subject to just exceptions.

CM stands disposed of.

WP(C) No.13249/2009

This Writ Petition is filed challenging the initiation of proceedings under Section 153A of the Income Tax Act vide assessment order passed by the Assessing Officer 24.12.2008. It is the contention of the petitioner that on an incorrect assumption of jurisdiction under Section 153A, a search was conducted on the Gurgaon premises of the petitioner company on 01.06.2008. Notice under Section 153A of the Act was issued. According to the petitioner, no such search was carried out on the petitioner company, but on M/s. Vipul Group which occupies the same premises as that of the petitioner, *i.e.*, Global Arcade, Gurgaon but on different floor. It is also submitted that the AO was swayed by the authorization warrants which included the name of the petitioner company ignoring the fact that though there was warrant of authorization, as a matter of fact, no such search was carried out on the petitioner.



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It is not in dispute that the assessment order has already passed on 24.12.20058. It is also accepted by the petitioner that against that assessment order, appeal is preferred before the CIT (Appeals), which is pending consideration and in that appeal this very issue is raised and the assessment proceedings are sought to be annulled on the aforesaid ground.

In view thereof, we are of the opinion that it would be in the fitness of things if CIT (A), who is seized of the appeal involving the aforesaid issue as well, decides the same in the first instance. We make it clear that since the validity of the initiation of the proceedings under Section 153A of the Act is challenged, in the first instance the CIT (A) shall decide this issue. It is also made clear that this Court has not commented upon the merits of the contention advanced by the petitioner in writ petition.

Writ petition is disposed of in the aforesaid manner.

Copy of the order be given *dasti* to the counsel.

A handwritten signature in black ink, appearing to read 'A.K. SIKRI'.

A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'Siddharth Mridul'.

SIDDHARTH MRIDUL, J.

November 19, 2009  
pmc