



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **ITA No. 129/2007**

Commissioner of Income Tax Appellant
 Through: Mr. Raghav Bansal, Advocate.
 versus

Smt. Praveen Nandrajog Respondent
 Through: Mr.C.S. Aggarwal, Sr. Advocate, with
 Mr. Prakash Kumar, Advocate.

% **DATE OF DECISION: August 25, 2010**

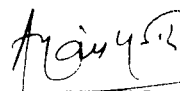
CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

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

J U D G M E N T (ORAL)
25.08.2010

: REVA KHETRAPAL, J.

For Orders see, *ITA No. 250/2007* entitled *Commissioner of Income Tax vs. Smt. Praveen Nandrajog.*


A.K. SIKRI
 (JUDGE)


REVA KHETRAPAL
 (JUDGE)

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J U D G M E N T (O R A L)

25.08.2010

: REVA KHETRAPAL, J.

1. Certain seizure operations under Section 132 of the Income tax Act, 1961 (hereinafter referred to as the Act) were conducted on 19th November, 1999 at the residential and business premises of G.M. Singh group of cases. In the case of the respondent-assessee, a search was also carried out in respect of four bank lockers. A notice under Section 158BC of the Act was issued to the assessee on 7th February, 2000 requiring the assessee to file return of income for the block period 1st April, 1989 to 31st March, 1999, upto 8th February, 2000, in terms of the provisions of the Act for completion of the assessment under Chapter XIV-B of the Act. The said notice dated 7th February,



2002 was duly served on the assessee on the same date i.e. 7th February, 2002. No return was filed by the assessee despite reasonable opportunity granted in this regard. In the circumstances, the Assessing Officer framed the assessment under Section 158BC read with Section 144 of the Act, determining the total undisclosed income of ₹ 2,13,71,398/- for the said block period including jewellery of the value of ₹ 28,48,358/- found in two of the bank lockers, namely, jewellery worth ₹ 21,17,578/- in Locker No. 13-C, Syndicate bank, Pali Hill Branch, Bandra(W), Mumbai and jewellery worth ₹ 7,30,776/- in Locker No. 703, Canara bank, Khar (W) Branch, Mumbai.

2. Aggrieved by the aforesaid assessment made by the Assessing Officer, the respondent-assessee filed an appeal before the Commissioner of Income Tax (Appeals) *inter alia* claiming that the said order made by the Assessing officer is barred by limitation. It was also claimed that there was no warrant of authorization issued against the respondent under Section 132 (1) of the Act, and the purported warrant issued to search the locker could not be regarded as



sufficient to assume the jurisdiction to initiate proceedings under Chapter XIV-B of the Act for the said block period. The CIT(A) held that in view of the *panchnama* dated 8th February, 2000, which was signed by all the concerned persons, the search in the case of the respondent had concluded in the month of February, 2000. Therefore, the assessment made by the Assessing Officer was within the limitation period. The action of the Assessing Officer in resorting to the provisions of Section 144 of the Act was also upheld as it was the admitted case of the parties that the last date for filing of the return was 25th February, 2002, by which date no return was filed by the respondent.

3. The CIT(A), however, allowed the appeal partly resulting in cross-appeals being filed before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') against the order of the CIT(A). The Tribunal allowed the appeal filed by the respondent-assessee and dismissed the appeal filed by the Department agreeing with the arguments advanced by the learned counsel for the respondent that in the absence of a valid warrant of authorization



under Section 132(1) of the Act, the assessment proceedings against the assessee under Section 158BC of the Act were void *ab initio*. The Tribunal further held that even otherwise since the assessment was finalized in February, 2002, the assessment was barred by limitation by virtue of the provisions of Section 158BE of the Act. The relevant portion of the Tribunal's order reads as under: -

“9. We have carefully considered the rival submissions in the light of the material on record. The sequence of events, as narrated by the learned counsel of the assessee is not disputed. There has been no initiation of proceedings under section 132(1) of the Income-tax Act, 1961 against the assessee. The Warrant of Authorization was issued to search Shri G.M. Singh which search commenced on 21.11.1999. Admittedly, warrant to search the lockers had been issued in respect of which keys were found when search was initiated in the case of Shri G.M. Singh but the same cannot be regarded as a search initiated in the case of assessee. In *Nenmal Shankatial Parmar vs. Asstt. CIT (1992) 102 CTR (Kar.)* the Karnataka High Court has held that mere mention of residential premises in the warrant does not enable the Department to effect seizure of any material and hence, it must be held that a warrant under section 132 of the Act, which has not been issued in the name of the assessee, does not authorize the search of assessee's premises. In other words, the High Court held



that a warrant under 132 (1), in order to be valid, must be issued in the name of the assessee. It is thus assessee-specific and not premises-specific.

9.1 Further, it is seen that the warrant of Authorization issued on 20.11.1999 was finally concluded on 7.12.1999 after the lockers were searched, investigated and valuation report prepared. The re-sealing of the locker and the prohibitory order under Section 132(3) passed by the authorized office on that day cannot extend the time limit under section 158BE of the Act.

4. In view of the aforesaid, the following question of law is raised by the Revenue in the present appeal: -

“Whether on the facts of the present case, the Tribunal was justified in law in holding that the block assessment order passed under Section 158BC of the Act was beyond the time stipulated under Section 158BE of the Act?”

5. In order to properly appreciate the controversy between the parties, it is necessary to note that in the case of the assessee, a search was carried out in respect of the following bank lockers: -

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S.No.	Particulars of Lockers	Date of commencement of Search	Date of completion	Assets found	Assets seized
1	Locker No.93, Canara Bank, Santacruz, (W) Mumbai	22.11.99	19.1.2000	NIL	NIL
2	Locker No.371 Canara Bank, Santacruz, (W) Mumbai	-do-	-do-	NIL	NIL
3	Locker No. 13-C, Syndicate Bank, Pali Hill Branch, Bandra(W), Mumbai.	-do-	8.2.2000	<u>Jewellery</u> 21,17,578	NIL
4	Locker No.703 Canara Bank, Kher (W) Branch, Mumbai	21.11.99	-do-	<u>Jewellery</u> 7,30,776	NIL
5	Locker No.482, Canara Bank, Worli Branch, Mumbai	22.11.99	25.1.2000	NIL	NIL

6. The case of the Revenue is that the last *panchnama* was drawn on 8th February, 2000 and the search was concluded on the said date.



The learned counsel for the respondent-assessee on the other hand stated that the search having been concluded on 7th December, 1999 (even assuming that was a valid search under Section 132 of the Act), the assessment made on 25th February, 2002 was barred by limitation in view of the provisions of Section 158-BE (1) (b) of the Act, the assessment order having been passed beyond the period of two years from the end of the month in which the last of the authorizations for search under Section 132 had been executed. The learned counsel for the assessee further contended that in view of Explanation 2, the last authorization referred to in sub-Section (1) shall be deemed to have been executed on the conclusion of the search, as recorded in the last *panchnama* drawn. The last *panchnama* for the purposes of Explanation 2 was drawn on 7th December, 1999. Even assuming a *panchnama* was drawn on 8th February, 2000, the said *panchnama* cannot be treated to be the last *panchnama* drawn for the purposes of sub-Section (1) of Section 158-BE as no seizure was made on the said date and the said *panchnama* merely records the withdrawal of the orders under Section 132 (3) of the Act.

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7. The provisions of Explanation (1) are apposite and are accordingly reproduced herein: -

“Section 158BE

**TIME LIMIT FOR COMPLETION
OF BLOCK ASSESSMENT.**

158BE. [(1) The order under section 158BC 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 30th day of June, 1995, but before the 1st day of January, 1997;

(b) within two years 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 on or after the 1st day of January, 1997.

(2) The period of limitation for completion of block assessment in the case of the other person referred to in section 158BD shall be—



(a) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997; and

(b) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.]

Explanation 1.—In computing the period of limitation for the purposes of this section,—

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(22)



(iii) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(iv) in a case where an application made before the Settlement Commission under section 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under sub-section (2) of that section,

shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order under clause (c) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]



[*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 receipt of the books of account or other documents or assets by the Authorised Officer.]”

8. The documentary evidence on record in the instant case shows that the Joint Director of Income Tax (Investigation) issued four different warrants of search for the search of the bank lockers of the respondent-assessee, since at the time of the search initiated in the case of Sh.G.M. Singh, a key of Locker No. 703 at Canara Bank, Khar (W), Mumbai in the name of the assessee was found. This fact is evident from the *panchnama* prepared in the case of Sh.G.M. Singh, which has been placed on record. Other relevant documents which are on record include a *panchnama* dated 20th November,



1999, a *panchnama* dated 7th December, 1999 as well as the prohibitory orders issued under Section 132 (3) made on 20th November, 1999 and 7th December, 1999. There is also on record a list of the jewellery found but not seized along with the valuation report dated 7th December, 1999, and a loose paper which was found and seized on the same date, i.e. 7th December, 1999.

9. It bears repetition that the Tribunal in the instant case has noted that the execution of the warrant of authorization, issued on 20th November, 1999, was finally concluded on 7th December, 1999 after the lockers were searched, investigated and valuation report prepared. The Tribunal further noted that the resealing of the lockers and the issuance of prohibitory orders under Section 132(3) of the Act by the authorized officer on that day cannot extend the time limit under Section 158BE of the Act, within which it was incumbent upon the Department to have framed the assessment for the block period. We are inclined to affirm the aforesaid findings of the Tribunal, for, we find that nothing tangible appears to have been done by the Department on 8th February, 2000 to show that any further search was



conducted or any seizure effected on the said date. As a matter of fact, it is not even the case of the Revenue that any search or seizure operation took place on that day. We are of the view that in the present case, the search which started on 20th / 21st November, 1999, even otherwise, could not have been continued till 8th February, 2000 without any justifiable cause for the protraction thereof, since it is well-settled that a search action being an infringement of the right of privacy, there must be a reasonable explanation with regard to the time-gap between the initiation of the search and the conclusion thereof, more so in the instant case, when no seizure was effected from the lockers searched, except for a piece of paper.

10. A Division Bench of this Court in the case of *Commissioner of Income-tax vs. S.K. Katyal : (2009) 308 ITR 168 (Delhi)*, while holding that the time gap between the search conducted in the said case on 17th November, 2000 and on 13th January, 2000 had not been explained by the Revenue, addressed the question as to whether the panchnama prepared by the Revenue on 3rd January, 2001 was of the type mentioned in Explanation 2(a) to Section 158BE. Relying upon



an earlier Division Bench judgment of this Court in the case of *Commissioner of Income Tax vs. Sarb Consulate Marine Products (P) Ltd. (2007) 294 ITR 444* and a Division Bench judgment of the Bombay High Court in *Commissioner of Income Tax vs. Mrs. Sandhya P. Naik (2002) 253 ITR 534 (Bom.)*, the Division Bench held as follows: -

“.....We have examined the meaning of the word panchnama in some detail because it is used in Explanation 2(a) to Section 158BE of the said Act although it has not been defined in the Act. A panchnama, as we have seen is nothing but a document recording what has happened in the presence of the witnesses (panchas). A panchnama may document the search proceedings, with or without any seizure. A panchnama may also document the return of the seized articles or the removal of seals. But, the panchnama that is mentioned in Explanation 2(a) to Section 158BE is a panchnama which documents the conclusion of a search. Clearly, if a panchnama does not, from the facts recorded therein, reveal that a search was at all carried out on the day to which it relates, then it would not be a panchnama relating to a search and, consequently, it would not be a panchnama of the type which finds mention in the said Explanation 2(a) to Section 158BE.

(emphasis added)



17. This discussion leads us to the question – was the panchnama of 03.01.2001 of the type mentioned in the said Explanation 2(a)? From the facts narrated above, it is clear that the panchnama of 03.01.2001 itself reveals that nothing was seized on that date. Nor was anything "found" on that date. In fact, no search was conducted. The jewellery that was put in the cash box of the almirah had already been searched, found, inventorised and valued by the DVO on 17.11.2000 itself. Nothing remained to be searched thereafter. And, in fact, no further search was conducted after 17.11.2000. Obviously, nothing else could be found. All that was done on 03.01.2001, in the presence of the witnesses (panchas), was that the seals were removed from the cash box and the almirah and the keys were handed back to the assessee. Essentially, the revocation of the restraint order was given effect to. This is exactly what the Tribunal found as a fact and meant when it concluded that the panchnama dated 03.01.2001 was merely a release order and could not extend the period of limitation.”

11. Similar views have been expressed by the Delhi and Karnataka High Courts in the cases reported as *Commissioner of Income Tax vs. Deepak Aggarwal and Anr. : (2009) 398 ITR 116 (Delhi); Commissioner of Income Tax vs. D.D. Sales Corporation : (2008) 305 ITR 254 (Delhi); Commissioner of Income Tax vs. D.D. Axles Pvt. Ltd. in ITA No. 1652/2006 decided on 9th April, 2010 (Delhi*

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High Court) and by the Karnataka High Court in its decision rendered in *Nenmal Shankarlal Parmer vs. Commissioner of Income Tax : (1992) 195 ITR 582 (Kar.)*.

12. Keeping in view the aforesaid settled position of law, we are constrained to hold that no substantial question of law arises in the instant cases. There is, therefore, no merit in these appeals which are dismissed accordingly.

A.K. Sikri
A.K. SIKRI
(JUDGE)

Reva Khetrapal
REVA KHETRAPAL
(JUDGE)

August 25, 2010
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