



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

% Judgment reserved on: 24th February, 2010
 Judgment delivered on: 9th April, 2010

+ **ITA No.1652/2006**

COMMISSIONER OF INCOME TAX Appellant

- versus -

D.D. AXLES PVT. LTD Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal
 For the Respondent : Mr Manu Monga

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

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

SIDDHARTH MRIDUL, J

1. This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') is directed against the order dated 28th April, 2006, passed by the Income Tax Appellate Tribunal in IT(SS) No.313/D/1997 pertaining to the block period 1st April, 1986 to 29th August, 1996. The appellant/Revenue is aggrieved by the fact that the



Tribunal held the block assessment order to be barred by limitation and, therefore, quashed the same.

2. The facts of the case are that search under Section 132(1) of the Act was conducted on the 29th August, 1996 which concluded on 30th August, 1996. A panchnama was drawn on the 29th August, 1996 when books of accounts and other documents were seized. On that date a restraint order was passed. By another order passed on 28th October, 1996 the restraint order was extended till 18th November, 1996. On the 18th November, 1996 a panchnama was drawn and nothing further was seized from the premises of the assessee. By the order dated 18th November, 1996 the restraint placed vide order under Section 132(3) of the Act dated the 18th October, 1996 on a steel almirah was vacated.

3. The case of the Revenue is that since the last panchnama was drawn on the 18th November, 1996, the search was concluded on that date. The assessee had submitted that the search having been conducted on the 29th August, 1996/30th August, 1996, the assessment made on 28th November, 1997, was barred by limitation in view of the provisions contained in Section 158BE(1)(a) of the Act. In other words, the assessment order has been passed beyond the period of one year from the end of the month in which the last authorization for search under Section



132 of the Act had been executed and, therefore, the assessment made under Section 158BC, deserves to be vacated.

4. The Tribunal noticed that the search must be considered to have been completed on the date of the last panchnama drawn when certain seizure was affected. The Tribunal further noted that the restraint order issued under Section 132(3) of the Act does not amount to seizure. In order to search the premises again, in accordance with the provisions of Section 132(1) of the Act, the authority to initiate the search must have firm belief that some income remained undisclosed, that was represented by books of accounts, money, bullion etc. and issue an authorization for search. This was not done. Further, the officials who visited the premises on various dates, after gaps and after repeated action of lifting and re-imposing the restraint order, did not feel any necessity for seizing any files. The Tribunal observed that, therefore, the last authorization was executed on the date when the search party left the premises of the assessee, after seizing those items considered to be related to the undisclosed income of the assessee. The assessment was to be completed within one year from the end of the month of that date. The Tribunal found that in the instant case the search was completed on the 30th August, 1996 and the panchnama was drawn on 29th August, 1996 when books of accounts were seized. The restraint order placed on an alimrah



was passed on the 30th August, 1996 which was extended further till 18th November, 1996 by an order passed on 18th October, 1996. The Tribunal found that on the 18th November, 1996 another panchnama was drawn when nothing was seized and the restraint order was vacated. The Tribunal held that in the circumstances, for all practical purposes, the search concluded on the 29th August, 1996/30th August, 1996 when the panchnama was drawn in execution of the warrant to search under Section 132(1) of the Act and the necessary seizure was made. The Tribunal also held that after that the Revenue has not done anything tangible on the 18th October, 1996 and the 18th November, 1996 to demonstrate that the search was still in progress. Hence, the Tribunal came to the conclusion that the last authorization was executed on the 29th August, 1996 and the one year time limit for framing the block assessment started from the end of the month i.e. 31st August, 1996 and ended on the 31st August, 1997. Accordingly, the Tribunal held that the block period assessment framed on the 28th November, 1997 was barred by limitation and was, therefore, bad in the eyes of law. The Tribunal accordingly quashed the same.

5. In *Commissioner of Income Tax vs. S.K. Katiyal: 308 ITR 168 (Delhi)*, a Division Bench of this Court observed as under:-

“17. This discussion leads us to the question – Was the panchnama of January 3, 2001, of the type mentioned in the



said *Explanation 2(a)*? From the facts narrated above, it is clear that the panchnama of January 3, 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 November 17, 2000, itself. Nothing remained to be searched thereafter. And, in fact, no further search was conducted after November 17, 2000. Obviously, nothing else could be found. All that was done on January 3, 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 January 3, 2001, was merely a release order and could not extend the period of limitation.”

6. In the present case, it is obvious that the search started on the 29th August, 1996 and continued till 30th August, 1996, during which period various articles and documents were seized. On the 30th August, 1996 a restraint order was passed with regard to an almirah that had been sealed. Nothing remained to be searched thereafter. The restraint order passed on 30th August, 1996 was extended on the 18th October, 1996 till the 18th November, 1996, when the last panchnama was drawn up. On the 18th November, 1996 restraint order was vacated. Therefore, essentially from the 30th August, 1996 when the panchnama was drawn and restraint order passed, till the 18th November, 1996 when the last panchnama was drawn and the restraint order vacated, nothing else was found and in fact no further search was conducted. Therefore, the last panchnama dated the



18th November, 1996 was merely a release order and could not extend the period of limitation, as found by the Tribunal.

7. In view of the foregoing discussion, we agree with the learned counsel for the respondent/assessee that the impugned order does not call for any interference on our part and that no substantial question of law arises for our consideration.

8. The appeal is dismissed.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

APRIL 09, 2010

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