



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

% Judgment delivered on: 16th February, 2010

+ **ITA No.200/2010**

THE COMMISSIONER OF INCOME TAX Appellant

- versus -

**JYOTI LIMBOO
PROP. M/S JYOTI & CO.
118, SUBBA FARMS
MEHRAULI-GURGAON ROAD
NEW DELHI** Respondent

WITH

ITA No.727/2009

THE COMMISSIONER OF INCOME TAX Appellant

- versus -

**JYOTI LIMBOO
PROP. M/S JYOTI & CO.
118, SUBBA FARMS
MEHRAULI-GURGAON ROAD
NEW DELHI** Respondent

WITH

ITA No.691/2009

THE COMMISSIONER OF INCOME TAX Appellant

- versus -

**JYOTI LIMBOO
PROP. M/S JYOTI & CO.
118, SUBBA FARMS
MEHRAULI-GURGAON ROAD
NEW DELHI** Respondent



Advocates who appeared in this case:

For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : Mr Manish Sharma

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?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

SIDDHARTH MRIDUL, J

1. ITA No.691/2009 and 727/2009 arise out of the common order passed by the Income Tax Appellate Tribunal on 21st November, 2008 pertaining to the block assessment period 1st April, 1989 to 23rd June, 1999 and in respect of two appeals, one by the assessee and one by the Revenue in I.T.(SS) A.No.151(DEL)/2006 and I.T.(SS) A.No.158(DEL)/2006 respectively filed before the said Tribunal.

2. ITA No.200/2010 is an appeal by the Revenue and arises out of the order passed by the Income Tax Appellate Tribunal on 10th June, 2009 pertaining to the block assessment period 1st April, 1989 to 23rd June, 1999 and in respect of an appeal filed by the Revenue being I.T.(SS) A No.23/Del/2008 before the said Tribunal. The impugned order in ITA No.200/2010 was passed in pursuance to order dated 21st November, 2008 of the Tribunal whereby the block assessment had been held to be bad in law and resultantly quashed.



3. In the assessee's appeal before the Tribunal one of the points taken was that the warrant of authorization had been issued by the Additional Director of Income Tax (Investigation), who was not authorized to issue a search warrant and, therefore, the assessment made in consequence of such an invalid search warrant, was itself invalid and was liable to be quashed.

4. The Tribunal, following the decision of this Court in *Dr. Nalini Mahajan & Others vs. Director of Income Tax (Investigation) & Others: 257 ITR 123* accepted the plea taken by the assessee and held that the Additional Director of Income Tax (Investigation) was not authorized to issue search warrants and consequently the search warrant became invalid as did the assessment which followed thereafter. In view of the fact that the entire proceedings were held to be invalid, the other grounds taken by the assessee in his appeal were not gone into by the Tribunal. Similarly, the Revenue's appeals were also not examined because the assessment itself was quashed on the first ground before the Tribunal.

5. The learned counsel for the Revenue now points out before this Court that by virtue of The Finance (No.2) Act, 2009, an amendment has been introduced in Section 132(1) with retrospective effect from 1st June, 1994, whereby the Additional Director has also been empowered to issue warrants of authorization. In view of this amendment, the impugned



order is liable to be set aside and the matter is to be remitted to the Tribunal to consider the appeals filed by the assessee as well as by the Revenue on all the other grounds urged by the parties.

6. Consequently, we set aside the impugned orders and remit the matters back to the Tribunal with the direction that the Revenue's appeals before the Tribunal get revived and so does the assessee's appeal before the Tribunal on all points originally urged before the Tribunal.

7. As requested by the learned counsel for the respondent/assessee, this order passed by us today is without prejudice to the assessee's right to challenge the constitutional validity of the amendment introduced by The Finance (No.2) Act, 2009 whereby the amendments were introduced in Section 132(1) empowering the Additional Director of Income Tax to issue a warrant of authorization with retrospective effect.

8. On these terms, the appeals stand disposed of.

SIDDHARTH MRIDUL, J

BADAR DURREZ AHMED, J

FEBRUARY 16, 2010

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