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

% Judgment delivered on: 16th February, 2010

+ **ITA No.155/2010**

**THE COMMISSIONER OF INCOME TAX (CENTRAL-II)
E-2, ARA CENTRE
JHANDEWALAN EXTENSION
NEW DELHI**

..... Appellant

- versus -

**P.C. JAIN (HUF)
THROUGH SHRI DINESH JAIN
22-A, RAJPUR ROAD
CIVIL LINES
DELHI**

..... Respondent

WITH

ITA No.169/2010

**THE COMMISSIONER OF INCOME TAX (CENTRAL-II)
E-2, ARA CENTRE
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NEW DELHI**

..... Appellant

- versus -

**P.C. JAIN (HUF)
THROUGH SHRI DINESH JAIN
22-A, RAJPUR ROAD
CIVIL LINES
DELHI**

..... Respondent

Advocates who appeared in this case:

For the Appellant	:	Ms Rashmi Chopra
For the Respondent	:	Mr Piyush Kaushik

**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?

BADAR DURREZ AHMED, J (ORAL)**CM 1578/2010 in ITA No.155/2010 (Condonation of Delay)**

Delay in filing the appeal is condoned.

The application stands disposed of.

CM 1577/2010 in ITA No.155/2010 (Exemption)

Allowed subject to all just exceptions.

The application stands disposed of.

ITA No.155/2010 & 169/2010

1. These two appeals arise out of the common order passed by the Income Tax Appellate Tribunal on 22nd April, 2009 pertaining to the assessment year 2001-02 and in respect of two appeals, one by the Revenue and one by the assessee in ITA No.2138/Del./2008 and 1326/Del/2008 respectively, filed before the said Tribunal.

2. In the assessee's appeal 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 such 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.

3. The Tribunal, following the decision of this Court in the cases of *Dr. Nalini Mahajan & Others vs. Director of Income Tax (Investigation) & Others:257 ITR 123*, *CIT vs. Pawan Kumar Garg* in *ITA No.881/2008* decided on 16th January, 2009 and *Prem Gandhi* in *ITA No.90/2009* decided on 2nd March, 2009 accepted the plea taken by the assessee and held that the Additional Director of Income Tax (Investigation) was not authorized to issue the search warrant 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 appeal was also not examined because the assessment itself had been quashed on the first ground taken by the assessee before the Tribunal.

4. 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.

5. Consequently, we set aside the impugned order and remit the matter back to the Tribunal with the direction that the Revenue's appeal before the Tribunal gets revived and so does the assessee's appeal before the Tribunal on all the other points originally urged before the Tribunal.

6. The appeals stand disposed of on these terms.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 16, 2010

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