



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

% Judgment delivered on 22.11.2011

+ **ITA 1115/2008**

THE COMMISSIONER OF INCOME TAX Appellant

versus

CAPITAL POWER SYSTEMS LTD
B-40, SECTOR 4, NOIDA

..... Respondent

WITH

+ **ITA 1228/2011**

THE COMMISSIONER OF INCOME TAX Appellant

versus

CAPITAL POWER SYSTEMS LTD
B-40, SECTOR 4, NOIDA

..... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchi Aggarwal

For the Respondent : Mr. Piyush Kaushik

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

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 Digest?



BADAR DURREZ AHMED (ORAL)

1. ITA No. 1115/2008 and 1228/2011 arise out of the common order passed by the Income Tax Appellate Tribunal on 08.02.2008 pertaining to the block assessment period 01.04.1989 to 17.12.1999 and in respect of two appeals filed by the assessee and the revenue in I.T. (SS) A.No. 58 (Del) 2005 and I.T. (SS) A. No. 125 (Del) 2005, respectively, before the said Tribunal.

2. ITA No. 1115/2008 and ITA No. 1228/2011 are appeals by the revenue and both arise out of the common order passed by the Income Tax Appellate Tribunal on 08.02.2008 pertaining to the block assessment period 01.04.1989 to 17.12.1999 in respect of appeals filed by the assessee and revenue being I.T (SS) A. No. 58/Del/2005 and I.T (SS) A. No. 125/Del/2005, respectively, before the said Tribunal.

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 Joint 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 v. Director of Income Tax (Investigation) & Others:** 257 ITR 123, accepted the plea taken by the assessee and held that the Joint



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 appeal was 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 01.10.1998 whereby the Joint 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 order and remit the matters 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 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 Joint Director of Income Tax to issue a warrant of authorization with retrospective effect.

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

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

November 22, 2011
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