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

% Date of Decision : 30th April, 2012.

\+ ITA 308/2007

COMMISSIONER OF INCOME TAX ..... Appellant
Through Ms. Rashmi Chopra, sr. standing counsel

versus

PROMAIN LTD. ..... Respondent
Through Mr. Salil Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

Having heard counsel for the parties, we frame the following two substantial questions of law :

> "(1) Whether the Income Tax Appellate Tribunal was right in recording that the name of the respondent-assessee Promain Ltd. was not mentioned in the warrant of authorization issued under Section 132 of the Income Tax Act, 1961 read with Rule 112(2)(a) of the Income Tax Rules, 1962?

(2) Whether the Income Tax Appellate Tribunal was right in recording the finding that no addition could have been made in the block assessment proceedings as the Assessing Officer has not relied upon any material collected/seized during the course of search?"

2. We have heard counsel for the parties and proceed to dictate our decision on the aforesaid questions.

3. Search under Section 132 of the Income Tax Act, 1961 ('Act', for short) was conducted on 21.11.1996 pursuant to the warrant of authorization. Thereafter, the block assessment order dated 28.11.1997 under Section 158BC of the Act for the period ending 21.11.1996 was passed in the case of the respondent-assessee. One of the grounds raised by the respondent-assessee before the Income Tax Appellate Tribunal ('Tribunal', for short) was that the warrant of authorization did not include and mention the name of the respondent-assessee and therefore, the block assessment proceedings under Section 158BC were invalid and illegal for the want of jurisdiction as only the assessee who has been searched can be subjected to the said procedure. For other persons, the procedure under Section 158 BD has to be adopted and the said procedure was not followed in the present case.

4. In paras 10 to 14 of the impugned order, the Tribunal has recorded and observed as under :

"10. The learned counsel for the assessee Shri C.S. Aggarwal, Sr. Advocate insisted for production of search warrant by submitting that there was no authorization of search against the assessee. In this regard he made reference to the direction of the Bench dated 29-8-05 through which the DR was directed to produce – (1) warrant of authorization; (2) Panchnama in the name of the assessee company, if any; and (3) His satisfaction note. He further submitted that in absence of any warrant of authorization the block assessment in the case of the assessee cannot be held to be valid. Another argument of the learned counsel for the assessee was that even if there was any search warrant for the group of cases or group of companies then it is to be seen as to whether the authorization was specifically in the name of the assessee, and whether the same was executed upon the assessee.

11. As against this, the learned DR opposing the arguments of the learned counsel for the assessee submitted that a common warrant of authorization in the case of group companies including the assessee was issued and in consequence to such search a common panchnama dated 21-11-1996 was also prepared. The learned DR produced warrants of authorization which were in the names of General Engineering Works; Jai Commercial Co.; and Cynedes & Chemicals Ltd.

12. She also produced copy of panchnama which mentions as under:

(1)General Engineering Works;

(2)Jai Commercial Co.;

(3)Cynedes & Chemicals Ltd.; and

(4)Promain Ltd.

13. A copy of this panchnama has been kept on record. It may be observed that in clause 6 of the panchnama it is mentioned that statements of Shri R.P. Modi, A.K. Mehta, S.K. Gupta and Shri H.K. Aggarwal and Joti Massani etc. were recorded in the course of search by the authorized officer. A copy of panchnama had also been received and signatures of receipts are appearing on the last page.

14. From the above facts and documents produced before the Bench and back ground of the case it is clear that despite direction by the Bench the Department has not been able to produce any authorization for conducting search specifically in the name of the assessee. On perusal of panchnama also it is not clear that it was received by any authorized person on behalf of the assessee. Merely because panchnama mentions the name of the assessee also it is not proved that warrant of authorization was also issued in the name of the assessee until and unless such warrant of authorization is shown. It is to be pointed out that in the instant case, the Bench has issued specific direction to the DR on 29-7-05 to produce warrant of authorization but the warrant of authorization in the case of the assessee for conducting the search against the assessee has not been produced."

5. In this appeal which was preferred on or about 9th January, 2007, the Revenue has taken a specific plea and contention that the warrant of authorization in fact, mentions the name of the

respondent-assessee. Thus the factual finding recorded by the tribunal is incorrect. The search warrant was in respect of Hindustan Development Corporation Group('HDC Group', for short). The allegations were that HDC Group had arranged profits in various group companies in collusion with sharebrokers. Speculation profit was set off against the interest outgo, mainly to the flagship company. The assessee was facilitating the ploughing back of undisclosed income.

6. When the matter came up for hearing before High Court on 22.8.2007, the following order was passed :

> "Learned counsel for the Revenue has shown us the original warrant of authorisation under Section 132 of the Income Tax Act, 1961 read with Rule 112 (2) (a) of the Income Tax Rules, 1962. The warrant contains the name of the Assessee (Promain Ltd.)
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> Issue notice to the Assessee, returnable on 3rd December, 2007.
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> Original file shall be produced on the next date of hearing."

7. The original warrant of authorization has been shown to us today in the Court. The original document at page 1 mentions the name of General Engineering Works, Jai Commercial Co., Cynedes & Chemicals Ltd. and Promain Ltd. These four names are clearly readable and appear to be in the same handwriting and written with

the same pen. It appears that these names were also mentioned on the top of the second page. Ld. counsel for the appellant has produced before us photocopy of the warrant of authorization which she had obtained when the confidential file was originally sent to her. In the photocopy, the aforesaid four names are also clearly visible and stated on the second page top. The photocopy has been retained and kept on record. However, the original now produced, the top portion of second page it is apparent has been torn, the names therefore cannot be ascertained. As recorded the name of the respondent-assessee is however clearly recorded and mentioned on the first page.

8. Ld. counsel appearing for the respondent-assessee however submits that the appellant-Revenue should have preferred an application for rectification under Section 254(2) and the Tribunal could not have made an error of the nature mentioned in the order. He however admits that the counsel for the assessee had not seen warrants of authorization, when they were produced before the Tribunal as it was not shown. He also accepts the position that there cannot be more than one warrant of authorization. We also notice that in the Panchnama, the name of the respondent-assessee is clearly mentioned and the documents which were seized have also been stated and give numbers. Ld. counsel for the respondent-assessee

has admitted before us that this plea and objection was not taken before the Assessing Officer in the block assessment proceedings.

9. Counsel for the respondent-assessee has drawn our attention to the order dated 4.1.2012 passed by us. For the sake of convenience we are reproducing the said order as under:

> "Learned counsel for the petitioner seeks and is granted permission to file photocopy of the warrant of authorization as well as panchnama, typed copy of which have been enclosed as Annexure-A to the appeal. Photocopy of the said warrant of authorization and of panchnama will also be served on the counsel for the respondent-assessee. The aforesaid documents will be filed within 10 days.
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> The appellant will produce original records on the next date of hearing including the warrant of authorization which was produced before the Tribunal at the time of the hearing. It may be noted that an application was filed by the revenue under Section 254(2) of the Income Tax Act, 1961 before the Tribunal. It is stated that the same has been dismissed as it was filed beyond the prescribed time.
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> Re-list the matter on 9th February, 2012."

10. The aforesaid order does not help the respondent-assessee in view of the original warrant of authorization which has been produced before us. The finding of the tribunal is clearly contrary to the original warrant. This is a case wherein mistake has happened. It will be very difficult for us to point out why and how this mistake

was made by the tribunal. The appellant-Revenue has filed an affidavit of the Assessing Officer, Mr.S B Singh who was then the Assistant Commissioner of Income Tax, Circle-14(1), New Delhi. He has been stated that there was only one warrant of authorization available with them and it is the same warrant of authorization which has been produced before this Court. As the warrant of authorization was not seen by the counsel for the assessee, it is not possible for him to comment or state about the contents thereof and whether or not the name of the respondent-assessee was not mentioned. Ld. counsel for the respondent-assessee, however, submits that such a statement was made at the time of hearing before the Tribunal. We would not like to comment upon the same as it is not possible for us to go into the said aspect, which is not recorded or mentioned in the impugned order.

11. We do not agree with the contention of the respondent-assessee that the warrant of authorization produced before this Court should not relied upon and referred to as the Revenue did not prefer an application under Section 254(2) for rectification before the Tribunal

within the statutory period of 4 years. We may note that the Revenue had preferred an appeal before this Court within the limitation period of 180 days and the appeal had come up for hearing on 22.8.2007. On the said hearing, the original warrant of authorization was shown, to the court and then notice was issued.

12. In view of the aforesaid findings and we hold that the Tribunal had recorded a wrong factual finding and incorrectly observed and held that the warrant of authorization did not include the name of the respondent-assessee. The respondent-assessee was searched. The first substantial question of law mentioned above is answered in negative i.e. in favour of the Revenue and against the respondent-assessee.

13. In respect of the second question, the factual findings recorded by the Tribunal read as under:

> "21. We have carefully considered the entire material on record and the rival submissions. In the assessment order the AO has not pointed out any specific material on the basis of which the additions have been worked out or determined. The assessment has been framed as if it is a case of reassessment. It may be pointed out that the assessee had already furnished entire relevant information including the books of account which were examined while completing the assessment in the case of the assessee u/s 143(3) for the assessment years 1993-94 and 1994-95 and therefore the conclusions drawn by the assessee on examination of the same material are based upon reappraisal of the same evidence.

> 22. We have also considered the relevant documents including the paper sheets found during the course of search. J In these sheets of papers, copies of which are available at pages 215 to 222 of the paper book, the entries also do not pertain to the assessee and thus the contents of these documents cannot be utilized against the assessee. On this basis, the block assessment order made under section 158BC against the assessee cannot be justified.
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> 23. Thus, on acts and in the circumstances of this case, it is found from record that no material has been collected during the course of search against the assessee on the basis of which the computation of undisclosed income for the block period is worked out. We, therefore, find sufficient force in the ground taken by the assessee for assailing the assessment order."

14. In this connection we deem it appropriate to refer to the block assessment. The Assessing Officer in the block assessment order has referred to the modus operandi adopted by the HDC group. Para 5, thereafter, refers to the profit and losses shown by the respondent-assessee in respect of the transactions which have been effected through a single broker M/s Rahul and Company, Kolkata. These transactions were in respect of 1993-94 and 1994-95. In para 6, a reference is made to the accounts of the respondent-assessee which show the investments were made out of loans advanced by the flagship company and interest was paid to the bank/financial

institutions. It also refers to the adjustments which have been made. In para 7 of the assessment order, the Assessing Officer has stated that in view of the statement made by the share brokers, seized documents from the office of the HDC etc. and office of Rahul and Company, certain features and facts have come to light and these have been discussed as sub-paras A to C. Para C has further sub-paras from (i) to (vii). A perusal of the sub-paras shows that the Assessing Officer has referred to several documents and statements as well as so-called admissions. Allegation is made that R. P. Mody and V. A. Mody were not deliberately shown as shareholders of the investment company of which the respondent-assessee was also one. Reference is made to statements of Shishir Kejriwal, Dinesh Kr. Singhania, A.M. Lodha and V C Mehta. The assessment order relies on enquiries conducted following the search operations and statement of bank accounts etc. It is further stated that no evidence was produced by Rahul and Company regarding the physical delivery of units of mutual funds/shares and the books of accounts of Rahul and Company did not record the sale transactions etc.

15. What is noticeable from the reasons/finding given by the Tribunal is that they have not specifically referred to and dealt with the observations and findings given by the Assessing Officer. Some general observations have been made by the Tribunal to hold that

none of the documents or seized material pertain to the respondent-assessee. These findings, however, do not deal with the observations and findings of the Assessing Officer which are detailed, specific and to the contrary. The Assessing Officer, as noticed above, has referred to several factual aspects, documents, account statements, oral statements etc. in support of the contention of the Revenue. The Tribunal is required to deal with the factual findings recorded by the Assessing Officer and, then after examining the document and evidence, give and record their factual conclusions. The factual conclusion should be based upon reasons and should be outcome of analysis and discussion. The Tribunal being the final fact finding authority cannot merely record its conclusions without discussing the factual matrix, evidence and material. Merely stating that the papers etc. do not pertain to the assessee and the contents of the document cannot be utilized, is the conclusion or the final inference which is not sufficient and adequate in the light of what has been recorded and held by the Assessing Officer in the block assessment order. In these circumstances, we have no other option but pass an order of remit and ask the Tribunal to discuss and examine the matter afresh and decide the factual matrix in detail. Of course the applicable provision of the Act have also to be examined.

16. Ld. counsel for the respondent-assessee states that he had filed

a detailed written synopsis and states that this was taken note of by the Tribunal. However, this does not mean that the order of the Tribunal meets the legal requirement. The impugned order cannot be upheld on this ground. Law requires and mandates that the Tribunal should explain and give reasons which are discernible and should be apparent from the order. We cannot assume, what had weighed and mattered with the tribunal in the absence of discussion.

17. Hence, the second question is answered in favour of the Revenue and against the respondent-assessee. An order of remit is passed.

18. We clarify that we have not expressed any opinion on the merits of the matter. It will be open to the Tribunal to examine the issue on merits without being influenced by the above order.

SANJIV KHANNA, J.

R.V.EASWAR, J.

APRIL 30, 2012
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