

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

ITA No.808/Del/2022, A.Y.2017-18)

| | | |
|--|-----|--|
| Smt. Kusum Mittal Anaj Mandi Back Side Charkhi Dadri Haryana-127306 PAN : ADUPM5280H (Appellant) | Vs. | Deputy Commissioner of Income Tax, CC-1, Gurgaon (Respondent) |
|--|-----|--|

| | |
|---------------|--|
| Appellant by | Shri Gautam Jain, Adv. & Shri Lalit Mohan, CA |
| Respondent by | Mr. Waseem Arshad, CIT(DR) |

| | |
|-----------------------|------------|
| Date of Hearing | 23/01/2024 |
| Date of Pronouncement | 07/03/2024 |

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals)-3, Gurgaon ["Ld. CIT(A)", for short], dated 25/03/2022 for the Assessment Year 2017-18.

2. The Grounds of the assessee is as under:-

“1. That notice issued u/s 153A of the Act and, assessment framed u/s 153A/143(3) of the Act without satisfying the statutory preconditions contained in the Act were without jurisdiction and therefore deserves to be quashed as such.

2. That in absence of any search having been initiated and conducted on the appellant, the conclusion of the learned Commissioner of Income Tax (Appeals) upholding the validity of notice issued u/s 153A of the Act is illegal, invalid and untenable.

1.2 That the finding that there was search conducted on the appellant in respect of locker no. 96, Punjab National Bank, Charkhi Dadri has been recorded without opportunity and therefore untenable.

2. That since no notice under section 143(2) of the Act was issued and served on the appellant subsequent to filing of return in response to notice under section 153A of the Act and prior to framing an order of assessment under section 153A/143(3) of the Act, order of assessment so framed is without jurisdiction and deserves to be quashed as such.

3. That the learned Commissioner of Income Tax (Appeals) has erred both in law and on facts in restricting the addition by adopting circle rate of the property purchased @

Rs. 18,000/- per sq. yards to Rs. 7,47,000/- by invoking section 56(2)(vii)(b) of the Act.

3.1 That the aforesaid addition has made without opportunity that once no reference was made to the valuation officer u/s 55A of the Act despite specific request by the appellant and therefore addition made is illegal, invalid and void-ab-initio.

Prayer It is therefore, prayed that it be held that assessment made by the learned Assessing officer and sustained by the learned Commissioner of Income Tax (Appeals) deserves to be quashed as such. It will be further held disallowance made and upheld by the learned Commissioner of Income Tax (Appeals) be deleted and appeal of the appellant be allowed.”

3. Brief facts of the case are that, a search and seizure operation u/s 132 of Income Tax Act, 1961 ('Act' for short) was conducted on 23/08/2017 in the case of M/s Raj Cotton Group, wherein the assessee case was also covered. The assessment proceedings were initiated against the assessee u/s 153A of the Act, in response to the same, the assessee filed return of income on 08/11/2019 declaring total income of Rs. 22,05,280/-. The Assessment Order came to be passed on 30/12/2019 by making addition to the tune

of Rs. 10,80,000/- u/s 56(2)(vii) of the Act on account of purchase of property below the circle rate and further made addition of Rs. 35,80,000/- on account of unexplained credit in the bank account of the assessee. Aggrieved by the Assessment Order dated 30/12/2019, the assessee preferred an Appeal before the CIT(A), the Ld. CIT(A) vide order dated 25/03/2022 restricted the addition by adopting circle rate of the property at Rs. 18,000/- instead of 20,000/- considered by the A.O. and deleted the remaining addition. As against the order of the Ld. CIT(A) dated 25/03/2022, the assessee preferred the present Appeal on the Grounds mentioned above.

4. The assessee filed additional Grounds of appeal challenging the Order impugned on the ground of violation of CBDT Circular No. 19/2019 on the issue of DIN. The Ld. Counsel for the assessee has not pressed the said additional Ground of Appeal, accordingly, the Additional Grounds of Appeal is dismissed as not pressed.

5. The Ld. Counsel for the assessee addressing on Ground No. 1 and its sub Grounds submitted that there was no legal and proper search warrant/Panchnama in the name of the assessee and therefore assessment proceedings u/s 153A of the Act are bad in law. Thus submitted that, the assessment proceedings is void-ab-initio. The Ld. Counsel for the assessee taken us through the copy of the Panchnama and other documents produced along with the paper book and sought for deletion of the addition sustained by the CIT(A).

6. Per contra, the Ld. Departmental Representative relying on the orders of the Lower Authorities, submitted that the very same contention has been raised before the CIT(A) during the Appellate Proceedings and the A.O. verified the original records and it has been communicated to the Ld. CIT(A) by the A.O. that search warrant was executed in the name of the assessee on 11/10/2017. The Ld. DR has drawn our attention to the Finance Act, 2012 wherein Section 292CC has been inserted with retrospective effects from 1st April 1976, which provides that it shall not be necessary to

issue an authorization u/s 132 of the Act separately in the name of each person where the authorization has been issued mentioning thereon more than one person. Further submitted that at the warrant of authorization for search would be issued u/s 132(1) of the Act is qua 'premises' and not qua 'assessee', common search warrant and common Panchnama issued against two assesses who are two separate group companies engaged in different business but operating from one premise was held to be justifiable by the High Court of Orissa in the case of Shiva Cement Ltd. Vs. Director of Income Tax (Inv.), Bhubaneswar reported in (2021) 132 Taxmann.com 286 (Orissa) and also relied on the Full Bench Judgment of Allahabad High Court in the case of Commissioner of Income Tax Vs. Devesh Singh (2012) 24 Taxmann.com 26 (All.) (FB) thus, sought for dismissal of the Ground No. 1 and its sub Grounds of the assessee.

7. We have heard both the parties and perused the material available on record. The search and seizure operation u/s 132 of the Act in the case of M/s Raj Cotton Group has been initiated on

23/08/2017, wherein the case of the assessee was also covered u/s 132 of the Act. Subsequently, Panchnama has been drawn on 24/08/2017. The assessee contended before the CIT(A) that there was no legal and proper search warrant/panchnama in the name of the assessee, and therefore, assessment proceedings u/s 153A of the Act are bad in law. In order to verify the said contention of the assessee the Ld. CIT(A) called report from the A.O. and it was communicated by the A.O. that the search warrant was executed in the name of the assessee on 11/10/2017 in respect of Locker No. 96, Punjab National Bank, Chakri Dadri.

8. The legislature vide Finance Act, 2012, inserted Section 292CC to the Act with retrospective effects from 1st April 1976, which provides that it shall not be necessary to issue an authorization u/s 132 of the Act separately in the name of each person where the authorization has been issued mentioning thereon more than one person. The provision of Section 292CC reads as under:-

Authorisation and assessment in case of search or requisition.

“292CC. (1) *Notwithstanding anything contained in this Act,—*

- (i) *it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;*
- (ii) *where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.*

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.”

9. The Full Bench of the Hon’ble Allahabad High Court of in the case of Commissioner of Income Tax Vs. Devesh Singh (supra) while interpreting the retrospective amendment made in Finance Act 2012 in insertion of Section 292CC of the Act, held as under:-

“LEGISLATIVE AMENDMENT”

We do not feel it proper to go into the question as to which view expressed by the two sets of Division Benches is the correct one as we find that after the decision of this Court in the cases of Smt. Vandana Verma and Smt. Madhu Chawla (supra), the Parliament stepped in and by Clause 107 of the Finance Bill, 2012 a new section 292CC was sought to be inserted with retrospective effect from 1st April, 1976. It had an overriding effect. It provides as follows:

"107. Insertion of new section 292CC.--After section 292C of the Income-tax Act, the following section shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 1976, namely:-

"292CC.Authorisation and assessment in case of search or requisition.-(1)Notwithstanding anything contained in this Act,-

(1) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition"

In the Notes on Clauses of the Finance Bill, 2012 it has been stated as follows Clause 107 of the Bill seeks to insert section 292CC in the Income-tax Act relating to authorization and assessment in case of search or requisition.

It is proposed to insert aforesaid new section 292CC so as to provide that notwithstanding anything contained in this Act, it shall not be necessary to issue an authorization under section 132 or make a requisition under section 132A separately in the name of each person

It is further proposed that where an authorization under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorization or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

It is also proposed to provide that notwithstanding that an authorization under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization or requisition

These amendments will take effect retrospectively from 1st April, 1976 and will, accordingly, apply to the assessment year 1976-1977 and subsequent assessment years."

In the Memorandum Explaining the Provisions in Finance Bill, 2012, necessity of introducing Section 292CC has been explained as follows:-

Under the existing provisions of section 132 and section 132A, an authorisation can be issued or a requisition can be made, as the case may be, where the Director General or the Director in consequence of information in his possession has reason to believe that any person is in

possession of any money, bullion, Jewellery or other valuable article or thing (hereafter referred to as undisclosed income or property), then, he may authorise any Additional Director or Deputy Director, etc, to enter and search any building, place, vehicle, etc. and seize any such books of accounts, other documents, undisclosed property, etc.

Where a search is initiated under section 132 or requisition is made under section 132A, assessment is to be completed under the provisions of section 153A or section 153C (and if search was prior to 31st May, 2003 under Chapter XIV-B of the Act) or section 143(3), etc.

In a recent Court decision, it has been held that in search cases arising on the basis of warrant of authorisation under section 132 of the Act, warrant of authorisation must be issued individually and if it is not issued individually, assessment cannot be made in an individual capacity. It was also held that if the authorization was issued jointly, the assessment will have to be made collectively in the name of all the persons in the status of association of persons/body of individuals.

This decision is not in accordance with the legislative intent.

It is accordingly proposed to insert a new section 292CC in the Income-tax Act to provide that-

(i) it shall not be necessary to issue an authorisation under section 132 or make a requisition

under section 132A separately in the name of each person;
(ii) where an authorisation under section 132 has been issued or a requisition under section 132A has been made mentioning therein the name of more than one person, the

mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons;

(iii) notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition.

These amendments will take effect retrospectively from the 1st day of April, 1976 and will accordingly apply to assessment year 1976-1977 and subsequent assessment years."

EFFECT OF THE RETROSPECTIVE AMENDMENT

The Finance Bill, 2012, has been enacted into an Act by the Parliament being Finance Act, 2012. The effect of insertion of Section 292CC with retrospective effect from 1st April, 1976 is that-

(1) it is not necessary for the authorities to issue an authorisation under Section 132 or requisition under Section 132A of the Act separately in the name of each person;

(2) if an authorisation/requisition has been issued in the name of more than one person it shall not be construed that it was issued in the name of association of persons or body of individuals, consisting of such persons;

(3) if an authorisation has been issued under Section 132 or requisition under Section 132A of the Act in the name of

more than one person, the assessment or reassessment can be made separately in the name of each of the persons mentioned in the authorisation/requisition.

As the provisions of Section 292CC of the Act has come into force retrospectively i.e. from 1st April, 1976 it shall be deemed that the aforesaid provision was on the Statute Book i.e. the Income- tax Act, 1961 since 1st April, 1976 and the consequence of issue of a warrant of authorisation under Section 132 of the Act if issued in joint name of more than one person has to be adjudged in the light of the provisions of Section 292CC of the Act.

It is well settled that any retrospective amendment in the statute has to be taken into consideration while deciding an appeal as the appeal is in continuation of the original proceedings [See: CIT v. Dewan Bahadur Ram Gopal Mills Ltd. [1961] 41 ITR 280 (SC), State of Uttar Pradesh v. Raja Syed Mohammad Saadat Ali Khan [1961] 41 ITR 737 (SC) and CIT V. Indian Telephone Industries Ltd. [1991] 187 ITR 181 (SC).

CONCLUSIONS

In the present case we find that the warrant of authorisation under Section 132 of the Act has been issued on 10th November, 2006 in the joint name of three persons. We are, therefore, of the considered opinion that in view of the provisions of Section 292CC, as inserted by Finance Act. 2012 in the Statute Book i.e. the Income-tax Act, 1961, the assessments made in the individual capacity of each persons named in he warrant of authorisation was perfectly within the jurisdiction of the Assessing Authority and the Commissioner of Income Tax (Appeals) as also the Tribunal were not justified in annulling the assessment on the ground that if the warrant of authorisation was issued jointly in the name of

more than one person, the assessment could not have been made in the capacity of an individual. We, therefore, set aside both the orders passed by the Commissioner of Income Tax (Appeals) and the Tribunal and remand the matter to the Commissioner of Income Tax Appeals to decide the appeals on merits. The substantial question of law on which the appeals have been admitted is decided in favour of the Revenue by holding that where the warrant of authorisation has been issued jointly the assessment can be made individually.

In view of the retrospective effect having been given to Section 292CC of the Act, the law propounded in the cases of Smt. Vandana Verma and Smt. Madhu Chawla (supra) loses its significance.

All the appeals stand disposed of with the aforesaid observation.”

10. Further in the case of Shiva Cement Vs. Director of Income Tax (Inv.) (Bhubaneswar) the Hon'ble High Court of Orissa(supra) held that the warrant of authorization for search issued u/s 132(1) was qua 'premises'- and not qua 'assessee' common search warrant, a common panchnama and common warrant of Authorization issued against two assessees who were two separate group companies engaged in different businesses but operating from one premises, was justified by the Hon'ble High Court in following manners:-

“ 28. It is then argued that if indeed there was such information available for the purposes of search, why did the Department have to undertake a 'survey' of the factories of both Shiva and Shivom under section 133A of the Act? It appears to the Court, prima facie, that there is nothing in either in Section 132 or 133A of the Act that prohibits the Department from undertaking a survey of an entity exclusive to one location of its operations, whereas it may have credible information for search as regards the operations in another location. As rightly pointed out by the Department, search is qua a 'place' and not necessarily qua the 'Assessee'. Survey by its very nature could be of the entity and any place from where such entity may operate. It is perfectly possible that while conducting survey and search of the premises of an entity, for which an authorisation has been issued, the Department can come across material pertaining to some other person or entity. The provisions like Section 153C of the Act deal with such contingencies. However, that is not to say that a survey or a search cannot happen in two different premises simultaneously. Further, if search is qua the place, the Court sees no reason why if there are two entities in one premises, there cannot be a common search operation.

29. In this context reference may be made to Section 292 CC of the Act which reads as under:

"292-CC. Authorization and assessment in case of search or requisition.- (1) Notwithstanding anything contained in this Act,-

(1) it shall not be necessary to issue an authorisation under section 132 or make a requisition under section 132A separately in the name of each person;

(ii) where an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to construe that it was issued in the name of an association of persons or body of individuals consisting of such persons.

(2) Notwithstanding that an authorisation under section 132 has been issued or requisition under section 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorisation or requisition".

30. Consequently, the Court is not prepared to accept the plea of the Petitioners that in the present case the search and survey operations were entirely without jurisdiction. The Court would like to add that this conclusion is of a prima facie nature since despite the petitioners having insisted on a finding by this Court, the right of the Assessees to agitate this issue again in the further proceedings cannot be lost sight of."

11. Considering the above facts and circumstances and following the ratio laid down in the above Judgments and the provision of Section 292CC of the Act, we find no merit in the submissions

made by the AR in support of Ground No. 1 & its sub Grounds, accordingly, Ground No. 1, 1.1 & 1.2 are dismissed.

12. The assessee has not pressed Ground No. 2, accordingly, Ground No. 2 of the assessee is dismissed.

13. In Ground No. 3 & 3.1, the assessee contended that the Ld. CIT(A) has erred in restricting the addition by adopting the circle rate of the property at Rs. 18,000/- per sq. yards of Rs. 7,47,000/- by invoking Section 56 (2)(vii)(b) of the Act. The Ld. Counsel for the assessee submitted that the orders of the Lower Authorities are bad in law as no reference was made to the Valuation Officer u/s 55A of the Act despite specific request made by the assessee. Therefore sought for intervention by the Tribunal.

14. Per contra, the Ld. Departmental Representative submitted that the immovable property measuring 166.5 sq. yard was purchased for Rs. 22,50,000/- and the value of the property has been assessed for the purpose of stamp duty was at Rs.

33,30,000/- at Rs. 20,000/- per sq yard, the addition has been partially sustained by the CIT(A) based on the credible evidence to prove that the circle rate in respect of the property purchased by the assessee was Rs. 18,000/- per sq. yard, therefore, submitted that the addition has been rightly restricted by the Ld. CIT(A) on taking into the circle rate of the property at Rs. 18,000/- per sq. yard, thus, sought for dismissal of the Ground No. 3 and 3.1 of the assessee.

15. We have heard both the parties and perused the material available on record. The Ld. A.O. observed that the assessee has purchased the land for Rs. 22,50,000/- as against value of the property mentioned in circle rate i.e. Rs. 33,30,000/-, therefore, the Ld. A.O. proposed to make addition u/s 56(2)(vii) (b) of the Act. It was the case of the assessee before the A.O. that there was no evidence on record to show that excess consideration has been paid for purchase of land, but the Ld. A.O. made addition of Rs. 10,80,000/- considering the circle rate mentioned in the deed at Rs.20,000/- per sq. yard.

16. During the appellate proceedings it has been contended that the amount of Rs. 22,50,000/- was paid as per prevailing market rate, whereas the stamp duty mentioned in the sale deed was due to an error in IT System Operational at the Office of the Registrar. The Ld. CIT(A) after verifying the notification of the Office of the Registrar produced by the assessee which reflects the circle rate of Rs. 18,000/- in respect of the land purchased by the assessee, and following the said notification, the circle rate of Rs. 18,000/- has been considered by the CIT(A) and accordingly, restricted the addition. The Ld. AR submitted that assessee had also requested the A.O. for reference to valuation of Registrar u/s 55A of the Act, but the A.O failed to make enquiries with the Office of the Registrar regarding prevailing stamp value and also failed to refer the matter to the Valuation officer.

17. It is fact on record that the assessee has made request for Valuation Officer to make reference for valuation u/s 55A of the Act but the Ld. A.O. has not referred the matter for valuation as sought

by the assessee. When the assessee makes a request for reference for valuation of Valuation Officer u/s 55A of the Act, the Ld. A.O. cannot reject the same and make additions in the absence of the report of the Valuation Officer and without complying the provisions of Section 55A of the Act. Thus, we deem it fit to remand the matter to the file of the A.O. with a direction to make reference to Valuation Officer for ascertaining the fair market value and based on such Valuation Report decide the issue in accordance with law after providing opportunity of being heard to the assessee. Accordingly, we partly allow the Ground No. 3 and its sub ground for statistical purpose.

18. In the result, appeal filed by the assessee is partly allowed for statistical purpose.

Order pronounced in open Court on 07th March , 2024

Sd/-

(M.BALAGANESH)
ACCOUNTANT MEMBER

Dated: 07/02/2024
Binita/R.N Sr.PS

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI