IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "C" DELHI)

BEFORE SHRI P.M. JAGTAP AND SHRI A.D. JAIN

IT (SS) No. 09(Del)2005
Block Period: 1.4.1990 to 24.11.2000

| | | |
|---|---|---|
| Shri Sudhir Malik,<br>B-246, Lok Vihar, Delhi. | V. | Dy.Commissioner of Income Tax,<br>Cent. Cir.20, New Delhi. |

IT(SS)No. 16(Del)2005
Block Period: 1.4.1990 to 24.11.2000

| | | |
|---|---|---|
| Dy.Commissioner of Income Tax,<br>Cent. Cir. 20, New Delhi. | V. | Shri Sudhir Malik, B-246, Lok Vihar,<br>Pitam Puri, Delhi. |
| (Appellant) | | (Respondent) |

Assessee by: Shri Kapil Goel, AR
Department by: Shri R.S. Meena, CIT/DR

ORDER

PER A.D. JAIN, J.M.

IT(SS) No. 9(Del)05 is the assessee's appeal for the block period, whereas IT(SS) No. 16 is the department's cross appeal.

2. The assessee has taken as many as 17 grounds of appeal. We will, to begin with, take up ground Nos. 2 to 5, which are on legal issues.

3. At this juncture may it be mentioned that an additional ground of appeal, as follows, was sought to be raised by the assessee, which is effectively covered by Ground No.5 and which request stands rejected:-

*"The Additional Director of Income Tax does not enjoy any powers issued search warrant u/s 132 and, therefore, Panchnama dated 24.11.2000 is the last Panchnama in the case of the assessee and accordingly the block assessment completed on 31.1.2003 is invalid, illegal and also without any jurisdiction and hence merits question."*

3. These grounds read as follows:-

*"2. On the facts and in the circumstances of the case and in law the learned CIT(A) was incorrect and unjustified in not declaring the assessment as completed outside the time limit even when as per panchnama the authorized officer had himself declared and stated that the search had come to end on 24.11.2000 itself.*

*3. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in not declaring the block assessment as time barred in view of the provision of Chapter XIV-B since as per Panchnama the search concluded on 24.11.2000 and accordingly the block assessment should have been completed on or before 30.11.2002 whereas the same has been completed on 31.01.03.*

*4. On the facts and in the circumstances of the case and in law the authorities below were incorrect and unjustified in treating the second warrant of search dated 24.11.2000 as issued in the case of Sudhir Malik whereas the same was issued in the case of T.R. Malik and S.K. Malik.*

*5. On the facts and in the circumstances of the case and in law even the warrant of search issued on 24.11.2000 by Addl. Director of Investigation is illegal and invalid, ab initio void since Addl.Director is not authorized to do so in view of the express provisions made in section 132."*

4. Apropos the question of validity of search warrant issued on 24.11.2000 by the Additional Director of Investigation, the case of the assessee is that the said warrant of search is illegal and void ab initio, since the Additional Director of Investigation is not authorized to issue such a warrant, as per the express provisions of section 132 of the Income Tax Act. Regarding this proposition, the learned counsel for the assessee has placed reliance on the decision of Hon'ble Delhi High Court in the case of "CIT, Delhi(Central)-II v. Pawan Kumar Garg", passed on 16.01.2009 (copy placed on record). As per this judgment, the Addl. Director of Investigation is not authorized to issue a warrant of search u/s 132 of the Income Tax Act. Further, the assessee has sought to place reliance on another judgment of the Hon'ble jurisdictional High Court in the case of "CIT, Delhi (Central)-II v. Capital Power Systems Limited" (copy filed) delivered also on 16.01.2009. As per this decision, a specific notification u/s 132(1) of the Act would necessarily have to be issued by the CBDT if it ceases to empower any Joint Director to authorize action to be taken u/s 132(1) of the Act and in the absence of any such specific empowerment by the Board, the Joint Director is not empowered to issue any authorization for search. Still further, the assessee seeks to rely on "CIT & Another v. T.S. Chandrashekar through LRs" [2009] 221 CTR(Kar)385(copy placed on record).

5. The learned DR, on the other hand, refuting the assertions made by the learned counsel for the assessee, seeks to rely on 'Mrs. Aanisa Batool Gilani', 2008-TIOL-91-ITAT-DEL (copy placed on record) and 'Sunil Dua v. CIT', a decision of the Hon'ble jurisdictional High Court, passed on 30.1.2008, in ITA No. 1429/2006 (copy placed on record). Also , the ld. DR relies on the decision in the case of 'Honda Siel', 295 ITR 466(SC).

6. The basic facts of the case are that a search took place on the assessee on 24.11.2000, for the block period 1.4.1990 to 24.11.2000. The search was finally concluded on that day itself, i.e., on 24.11.2000. A restraint order was passed on that day also. The assessment was completed on 31.1.2003. A Panchnama along with order revoking the restraint order was issued on 4.1.2000. There was no seizure as per the said Panchnama. The search warrant with regard to the locker was issued and signed by the Additional Director of Investigation. The bank locker was sealed as per the said search warrant, as well as an order u/s 132(3) of the Act was passed as a result of the said search warrant. It has been, all through, the assertion of the assessee that the search warrant issued by the Additional Director of Investigation, other than being invalid for its non-empowerment by the Additional Director, was in a different name and was not in continuation of

the original search warrant. To state, the original search warrant was in the names of Sudhir Kumar Malik (the assessee) and Sushil Kumar Malik, whereas the subsequent search warrant was in the names of S.K. Malik and D.R. Malik; that the first bank Panchnama dated 24.11.2000 was not in continuation of the residential search; that the Panchnama dated 4.1.2001 of the bank was only in continuation of the Panchnama dated 24.11.2000; and that the Panchnama dated 24.11.2000 was the last Panchnama , since the subsequent two Panchnamas were based on the authorization of the Additional Director, Investigation.

7. We have heard the parties and have perused the material on record. It is seen that both the parties, inter alia, have respectively relied on the case laws which are in their favour and are of co-ordinate benches of the Hon'ble jurisdictional High Court. Now, it cannot be gain-said that the decisions of the jurisdictional High Court are binding on the Tribunal and where the decisions are of co-ordinate benches, the latest in point of time is to be followed. In the present case, "Sunil Dua"(supra), cited by the department, is a Division Bench judgment of the Hon'ble jurisdictional High Court, dated 30.1.2008. "Pawan Kumar Garg"(supra) and "Capital Power Systems Limited"(supra), quoted by the assessee, on the other hand, are both Division Bench judgments of the Hon'ble jurisdictional High Court and are

both dated 16.1.2009. Undisputedly, all these judgments are on the issue at hand. Both "Pawan Kumar Garg" and "Capital Power Systems Limited" (supra), which are in favour of the assessee, are post "Sunil Dua" (supra), which is in favour of the department. Therefore, it is "Pawan Kumar Garg" and "Capital Power Systems Limited" rather than "Sunil Dua", which have to be followed.

8. In "Pawan Kumar Garg"(supra), the Hon'ble jurisdictional High Court has held that, inter alia, as follows:-

> *"6. Section 132(1) of the said Act indicates the persons who are authorized to issue warrants of authorization for searches. There are two classes of persons mentioned in Section 132 (1). The first class includes the Director General, Director, the Chief Commissioner and Commissioner. This group of persons can authorize other persons specified in Clause (A) of Section 132 (1) to conduct the search. The second group of persons includes the Joint Director and Joint Commissioner. However, the Joint Director and Joint Commissioner who fall in this category are those who are empowered in this behalf by the Central Board of Direct Taxes (in short the 'board') to issue warrants of authorization to other persons indicated in Clause (B) of Section 132(1) of the said Act. In the present case what has happened is that the second warrant of authorization in respect of the said locker was issued by the Additional Director Income Tax (Investigation). The Additional Director does not find mention in the provisions of Section 132(1). However, it was contended by the learned counsel for the revenue that the Additional Director would be covered in the expression "Joint Director" in view of the provisions of Section 2 (28D) of the said Act. Even assuming that the expression "Joint Director" as used in Section 132(1) includes an Additional Director, such Additional Director or Joint Director would have to have initial empowerment by the Board to issue warrants of*

*authorization in view of the provisions of Section 132(1)(B). This, of course, is de hors the argument that the definition given in Section 2(28D) has to be read in the light of the opening words of Section 2 which clearly stipulates that the definitions given in that provision are subject to the expression — "unless the context otherwise requires".*

*7. The learned counsel for the revenue also contended that there was authority granted to the Additional Director of Income-tax by the Board to issue warrants of authorisation of search and seizure operations under Section 132(1) of the said Act. A reference was made, first of all, to a notification dated 06.11.1979 issued by the Board in exercise of powers conferred under Section 132(1) of the said Act. By virtue of the notification, the Board empowered the following Deputy Directors of Inspection and Inspecting Assistant Commissioners to authorize action under Section 132(1) of the said Act:-*

*1. The Deputy Directors of Inspection posted in the Directorate of Inspection (Investigation) and working under the Director of Inspection (Investigation);*
*The Deputy Directors of Inspection posted in the Intelligence Wings; and*
*The Inspecting Assistant Commissioners of Income-tax.*

*It is clear from the above notification that only Deputy Directors of Inspection posted in a particular wing had been authorized by the Board to issue warrants of authorisation in respect of search and seizure operations under Section 132(1) of the said Act. Such an authorisation by the Board was imperative before any Deputy Director of Inspection or any Inspecting Assistant Commissioner could authorise an action under Section 132(1) of the said Act. It is also clear that only those Deputy Directors of Inspection and Inspecting Assistant Commissioners who have been specifically authorised by virtue of the said notification dated 06.11.1979, had the authority to act under Section 132(1) of the said Act.*

*The learned counsel for the revenue then referred to the notification dated 11.10.1990 issued by the Board empowering the following*

*Deputy Directors and Deputy Commissioners to authorise action under Section 132(1) of the said Act:-*

*1) All Deputy Directors of Income-tax (Investigation) posted under the Directors General of Income-tax (Investigation);*
*All Deputy Directors of Income-tax (Investigation) posted under the Directors of Income-tax (Investigation); and*
*All Deputy Commissioners of Income-tax in-charge of Income-tax Ranges, including Special Ranges.*

*10. This notification of 11.10.1990 was necessitated because of the amendment brought about in Section 132(1) of the said Act in 1988. At this juncture, it would be relevant to point out the legislative history of Section 132(1). Initially, under Section 132(1), it was only the Commissioner who was empowered to authorise any action under Section 132 of the said Act. This position continued till 1965 when, by virtue of the amendments brought about in 1965, the Director of Inspection, alongwith the Commissioner, was empowered to take action under Section 132 of the said Act. By the amendment introduced in 1975, an additional class or category of persons was created in Section 132(1). That class or category included Deputy Directors of Inspection and Inspecting Assistant Commissioners. While the persons belonging to the original category, i.e., of Director of Inspection or Commissioner of Income-tax were empowered by the statute itself to authorise any action under Section 132 of the said Act, the persons falling in the second category, i.e., Deputy Directors of Inspection and Inspecting Assistant Commissioners had to be specifically empowered by the Board to issue warrants of authorization of search and seizure operations under Section 132 of the said Act. After the 1975 amendment, even Deputy Directors of Inspection and Inspecting Assistant Commissioners could initiate action under Section 132 provided they were specifically empowered to do so by the Board. It is pursuant to this amendment in 1975 that the Board issued the notification dated 06.11.1979 empowering specific Deputy Directors of Inspection and Inspecting Assistant Commissioners to take action under Section 132 of the said Act. This position continued till 1988 when, by virtue of an amendment, the first category of persons comprised of (1) the Director General; (2) Director; (3) Chief Commissioner and (4) Commissioner. These*

*persons, without requiring any further authorization from the Board, could issue warrants of authorization of search and seizure operations under Section 132. The second category of persons was also amended. It comprised of the Deputy Director of Income-tax and the Deputy Commissioner of Income-tax. These persons, however, required specific empowerment by the Board before they could authorise action under Section 132(1) of the said Act. It is apparent that because of this amendment brought about in 1988, the Board issued the second notification dated 11.10.1990 authorizing the specified Deputy Directors of Income-tax and Deputy Commissioners who were empowered to authorise action under Section 132(1) of the said Act. It is apparent that not all the Deputy Directors and not all the Deputy Commissioners were empowered to authorize action under Section 132(1) of the said Act. Only those officers who found specific mention under the notification dated 11.10.1990 were empowered to authorize action under Section 132 (1) of the said Act.*

*To continue the historical development of Section 132 of the said Act, we note that the position as obtaining after the 1988 amendment continued upto 1998 when, w.e.f. 01.10.1998, the second category of persons was amended. The first category of persons remained the same. It comprised of Director General, Director, Chief Commissioner and Commissioner. As pointed out above, these persons were empowered by the statue itself to authorize action under Section 132 (1) of the said Act. The second category of persons, however, was altered to comprise of Joint Director and Joint Commissioner in place of the erstwhile category which comprised of Deputy Director and Deputy Commissioner. However, unlike the past, the Board did not issue any notification after the amendment of 1998 specifically empowering any Joint Director or Joint Commissioner to authorize action under Section 132(1) of the said Act.*

*The learned counsel for the revenue sought to get over this hurdle by drawing our attention to a notification dated 23.10.1998 issued by the Central Government under Section 117(1) of the said Act. The said notification merely re-designated certain officers of the Indian Revenue Service w.e.f. 01.10.1998. The re-designation, inter alia, entailed that Deputy Directors of Income-tax and Deputy Commissioners of Income-tax in the pay scale of Rs 12,000-375-16,500/- would be re-designated as Joint Director or Income-tax and*

*Joint Commissioner of Income-tax in the pay scale of Rs 12,000-375-16,500/-. The learned counsel for the revenue contended that the empowerment as per notification dated 11.10.1990, would automatically apply, in view of the above re-designation, to Joint Directors of Income-tax as also Joint Commissioners of Income-tax. This argument does not advance the case of the revenue. First of all, the officer who issued the warrant of authorisation on 25.05.2000 was not a Joint Director of Income-tax, but was the Additional Director of Income-tax (Investigation). Secondly, the notification that was necessary in the present case, was a notification by the Board in exercise of powers under Section 132(1) of the said Act. There is no such notification authorizing any Joint Director or Joint Commissioner. The notification dated 23.10.1998 on which the revenue seeks to place reliance is one which has been issued not by the Board, but by the Central Government and that too in exercise of powers under Section 117 (1) of the Act. There is no specific empowerment in favour of any Joint Director or Joint Commissioner under Section 132(1) of the said Act. Mere re-designation of a class of officers does not translate to the specific empowerment which is required under Section 132(1) of the said Act.*

*13. At this juncture, we may take note of the decision of this court in the case of* ***Dr Nalini Mahajan v. Director of Income-tax (Investigation): 257 ITR 123*** *which had been heavily relied upon by the respondent / assessee and also by the tribunal in passing the impugned order. At the outset, we would also like to mention that the revenue had preferred an appeal before the Supreme Court against the order passed by this court in* ***Dr Nalini Mahajan*** *(supra). By virtue of a judgment dated 30.09.2008, the Supreme Court in Civil Appeal No.6410-6411/2003* ***(Director of Income-tax v. Dr Nalini Mahajan)*** *observed that the principal question which arose for consideration in the appeals before it was whether the Additional Director (Investigation) had the requisite jurisdiction to authorize any officer to effect search and seizure in purported exercise of his power conferred upon him under Section 132(1) of the said Act as it stood at the relevant time. The Supreme Court observed that the said question had become academic inasmuch as the Commissioner of Income-tax had issued orders under Section 132B for release of cash, for release of jewellery and for release of books of accounts that were seized*

*during the search and seizure conducted under Section 132(1) of the said Act.*

*The Supreme Court observed that as the said question had become academic, it was not required to examine the issue raised in the appeals before it. The Supreme Court, however, made it clear that the questions of law raised in the said appeals were expressly kept open. No opinion was expressed by the Supreme Court in that regard. Subject to this, the said civil appeals were dismissed as infructuous. The position in law, therefore, is that the question of law decided by a Division Bench of this court in the case of* ***Dr Nalini Mahajan*** *(supra), insofar as this court is concerned, stands concluded. The issue before the Supreme Court, however, is open. The Supreme Court has not expressed any opinion either way in its said judgment dated*

*30.09.2008.*

*14. With these prefatory remarks in respect of the Division Bench decision of this court in* ***Dr Nalini Mahajan*** *(supra), it would be appropriate to now examine what was actually held in that decision. One of the issues raised was whether the Additional Director (Investigation) had the requisite jurisdiction to authorize any officer to effect search and seizure in purported exercise of the power conferred upon him under Section 132 of the said Act. The Division Bench concluded that the Additional Commissioner (Investigation) did not have the power to issue any authorisation or warrant to the Joint Director, New Delhi. While doing so, the Division Bench considered, inter alia, the provisions of Section 2(21) which defined Director General and Director; Section 2(28D) which defined Joint Director and Section 132(1) of the said Act. The definition of Director General or Director given in Section 2(21) after the amendment of 01.10.1998 indicated that the Director General or Director meant a person appointed to be a Director General of Income-tax or, as the case may be, a Director of Income-tax, under sub-section (1) of Section 117, and included a person appointed under that sub-section to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or Deputy Director of Income-tax. An argument was advanced on behalf of the revenue that since the definition of Director includes an Additional Director of Income-*

*tax, the warrant of autorisation issued by the Additional Director of Income-tax would be valid. This argument was repelled by the Division Bench after noting that the interpretation clause as contained in Section 2 begins with the words "unless the context otherwise requires" and that the definitions of Director General or Director are exhaustive ones. The court observed that it was a well-settled principle of law that although a definition would govern the statute whenever the defined word is used in the body thereof, where the context makes the definition given in an interpretation clause inapplicable, a defined word may have to be given a meaning different from that contained in the interpretation clause. The court also observed that had "Additional Director" been covered within the purview of the definition of Director General or Director, there would have been no necessity of defining "Joint Director" again as has been done in Section 2 (28D) of the said Act, in terms whereof also a Joint Director would be an Additional Director. The Division Bench also observed that an interpretation clause is not a positive enactment and that it was well-settled that an interpretation clause, having regard to its limited operation, must be given a limited effect. While giving effect thereto, the court must not forget that the scope and object of such a provision is subject to its applicability and it is usedhaving relation to the context only. The Division Bench further observed that a statutory power has been conferred under Section 132 upon the board in favour of a particular statutory authority. In this regard, it was specifically held:-*

*"The scope and purport of the said definition, thus, cannot be extended to other authorities in whose favour the power has not been delegated."*

*15. The Division Bench also reiterated the well-settled proposition, after noticing the important cases on this aspect, namely,* ***Nazir Ahmad v. The King-Emperor: AIR 1936 PC 253; Viteralli v. Saton: 3 Law Ed. 1012*** *and* ***Rumania Dayaram Shetty v. International Airport Authority o f India: 1979 (3) SCC 489,*** *that when a power is given to do a certain thing in a certain manner, the same must be done in that manner or not at all and that all other proceedings are necessarily forbidden. In this context, the Division Bench found that the Additional Director (Investigation) had no jurisdiction to issue a*

*warrant of authorisation and consequently, the same was liable to be quashed.*

*16. We may also note that in* ***CIT v. Jainson****: ITA 366/2007 decided on 17.07.2008, we had endorsed and respectfully followed the view taken by this court in* ***Dr Nalini Mahajan*** *(supra). The main question sought to be raised in* ***CIT v. Jainson*** *(supra) was with regard to the power of the Additional Director of Income-tax (Investigation) to issue a warrant under Section 132(1) of the said Act. The tribunal in that case had found that the warrant of authorisation by the Additional Director of Income-tax (Investigation) was without authority and, therefore, the entire search as well as the assessment proceedings subsequent upon such warrant were invalid and bad in law. The tribunal had, like in the present case, followed the decision of this court in* ***Dr Nalini Mahajan*** *(supra). We had noted that in* ***Dr Nalini Mahajan*** *(supra) this court had arrived at a conclusion that the Additional Director or Income-tax (Investigation) did not have any power to issue any authorisation or warrant under Section 132(1) of the said Act. We found that the issue sought to be raised by the revenue was entirely covered by the decision of this court in the case of* ***Dr Nalini Mahajan*** *(supra) and consequently we dismissed the appeal as the issue did not call for any further consideration.*

*17. The learned counsel for the revenue had referred to the decision of another Division Bench of this court rendered on 30.01.2008 in* ***Sunil Dua v. CIT*** ***(ITA 1429/2006).*** *That decision was referred to in the context of the argument that the expression "Deputy Director" included an Additional Director and, therefore, since the notification dated 06.11.1979 had empowered the Deputy Directors to issue warrants of authorisation, an Additional Director would, consequently, also have such authority. It may be noted that in* ***Sunil Dua*** *(supra), the search had concluded on 16.01.1998, i.e., prior to the amendment of 01.10.1998. The definition of Deputy Director given in Section 2 (19C) prior to 01.10.1998 included not only a Deputy Director, but also an Additional Director of Income-tax. Section 2(19C) had been introduced in 1994 w.e.f. 01.06.1994. The said provision suffered an amendment in 1998 w.e.f. 01.10.1998, whereby the reference to Additional Director of Income-tax was deleted.*

*Perhaps, the definition of Deputy Director as it stood prior to 01.10.1998, was what persuaded the court to observe that the expression "Deputy Director" includes an Additional Director. The position has altered after the 1998 amendment. Therefore, the decision in* ***Sunil Dua*** *(supra) would have no application to the present case. In any event, the said decision did not notice the earlier decision of this court in the case of* ***Dr Nalini Mahajan*** *(supra). Apart from that, in* ***Sunil Dua*** *(supra), it was contended that the warrant of authorisation drawn up "in favour of the Additional Director of Income-tax was not valid. Here the question is entirely different. It is not a question of in whose favour the warrant of authorisation is drawn up, but who has issued the warrant of authorisation. On this ground also, the decision in* ***Sunil Dua*** *(supra) is clearly distinguishable.*

*18. It had been argued by the learned counsel for the revenue that as per Section 2(28D), the Joint Director meant a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax under Section 117(1) of the said Act. It was, therefore, contended that since the warrant of authorisation in the present case had been issued by an Additional Director of Income-tax, it meant that it was issued by a Joint Director of Income-tax and, therefore, the warrant of authorisation was valid. This argument cannot be accepted. As held in* ***Dr Nalini Mahajan*** *(supra), the definition of Joint Director has to be read contextually. The provisions of Section 132(1) refers to Director General or Director as well as Joint Director or Joint Commissioner. While the first two authorities fall within the first category, which were empowered by the statute itself to authorize action under Section 132(1), the latter two authorities, namely, the JointDirector or Joint Commissioner, can only authorize action if they are specifically empowered by the Board in that behalf. Now, the definition of Director General or Director as given in Section 2 (21), includes Additional Director of Income-tax as well as a Joint Director of Income-tax. If the argument of the learned counsel for the revenue were to be accepted that the expression "Joint Director" as used in Section 132(1) would include an Additional Director of Income-tax, then there would have been no occasion for the legislature to have separately specified Joint Director under Section 132(1) when it had already mentioned the Director General or Director. It is obvious that*

*the legislature was mindful of the definitions given under Section 2 (21) when it gave separate treatment to Director General / Director and Joint Director / Joint Commissioner. The Director General or Director did not require any further empowerment from the board, whereas the Joint Director or the Joint Commissioner required such specific empowerment. It is clear that the context requires that the words "Director General" or "Director" be construed in the limited sense and not in the inclusive sense as defined in Section 2(21) of the said Act. By similar logic, when the legislature has specified the authorities who may be empowered as being the Joint Director or Joint Commissioner, we cannot extend the same by employing the definition given in Section 2 (28D) to extend it to Additional Directors of Investigation. We may also point out that 'Additional Director' has also been defined under Section 2(1D) which was introduced with retrospective effect from 01.06.1994 by virtue of the Finance Act, 2007. Under that provision, Additional Director means a person appointed to be an Additional Director of Income-tax under Section 117(1) of the said Act. It is pertinent to note that while the definition of Additional Director has been inserted with retrospective effect from 01.06.1994 by virtue of the Finance Act, 2007, the definition of Joint Director was introduced as Section 2 (28D) for the first time in the said Act by virtue of the Finance No. (2) Act of 1998 w.e.f. 01.10.1998. Thus, there was no concept of a Joint Director prior to 01.10.1998. Since the definition of Additional Director has been inserted with retrospective effect from 01.06.1994, the legislature clearly made the distinction between a Joint Director and an Additional Director. The manner in which the expression "Joint Director" has been used in Section 132(1) re quires the same to be interpreted in its limited sense as meaning only the Joint Director and not an Additional Director of Income-tax. This is so because had the legislature intended to include an Additional Director of Income-tax, it would have done so specifically in Section 132(1)itself.*

*19. For all these reasons, we feel that the tribunal has correctly applied the law in following the decision of this court in* ***Dr Nalini Mahajan*** *(supra). The impugned decision of the tribunal does not call for any interference and the issue is entirely covered by the decision of this court in the case of* ***DrNaliniMahajan*** *(supra)."*

Since in "Pawan Kumar Garg"(supra), the issue has been dealt with at length, we have reproduced above hitherto the unreported judgment in extenso.

9. "Pawan Kumar Garg" (supra), has been followed in "Capital Power Systems Limited" (supra).

10. In view of the above, following 'Pawan Kumar Garg'(supra), finding merit in ground No.5 raised by the assessee, the same is accepted and it is held that the warrant of search issued on 24.11.2000 by the Additional Director of Investigation is not sustainable in law as per the ratio laid down in "Pawan Kumar Garg"(supra).

11. Since we have held that the warrant of authorization issued by Addl. DIT on 24.11.2000 was invalid, what survives in law is the warrant of authorization originally issued in the name of the assessee. The last panchnama in pursuance of the said warrant having been admittedly drawn on 24.11.2000, the time limit available to the AO to complete the block assessment in the case of the assessee was 30.11.2002, i.e., within a period of two years from the end of the month in which the last of the authorizations for search u/s 132 was executed, as prescribed by the provisions of section 158 BE(1)(b). The assessment completed by the AO

on 31.1.2003 thus was invalid, being barred by limitation and the same is liable to be quashed. We order accordingly.

12. Keeping in view our decision rendered above on the preliminary issue raised in the appeal of the assessee quashing the assessment made by the AO u/s 158 BC, the other grounds raised in the appeal of the assessee, as well as those in the appeal of the revenue have become infructuous and the same are accordingly rejected.

13. In the result, the appeal of the assessee is allowed whereas that filed by the department is dismissed.

This decision was pronounced in the open court on ..24...02.2009