IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.6759/Del/2013
Assessment Year : 2004-05

ACIT, Central Circle-13, New Delhi.	Vs.	K.G. Finvest Pvt. Ltd., 10, 3rd Floor, Satya Niketan, New Delhi. PAN: AAACK4032H

ITA No.6662/Del/2013
Assessment Year : 2004-05

K.G. Finvest Pvt. Ltd., 10, 3rd Floor, Satya Niketan, New Delhi. PAN: AAACK4032H	Vs.	ACIT, Central Circle-13, New Delhi.

Assessee By	:	Shri Salil Kapoor, Shri Sumit Lalchandani & Ms Ananya Kapoor, Advocates
Deptt. By	:	Shri Naveen Chandra, CIT, DR

Date of Hearing	:	25.04.2017
Date of Pronouncement	:	28.04.2017

ORDER

PER R.S. SYAL, VP.

These two cross appeals - one by the assessee and the other by the Revenue - arise out of the order passed by the CIT(A) on 14.10.2013 in relation to the A.Y. 2004-05.

2. Succinctly, the facts, as recorded in the assessment order, are that a search and seizure action u/s 132 of the Income-tax Act, 1961 (hereinafter also called `the Act') was carried out in the Swastik Pipes group of cases on 28.08.2008. Notice u/s 153A was issued on 25.08.2010 and served on the assessee. In response to the same, the assessee submitted vide its letter dated 7.10.2010 that the return filed u/s 139 of the Act may be treated as its return of income in response to notice u/s 153A. Notice u/s 142 was issued and eventually, the assessment was completed on total income of Rs.33,43,390/- as against the returned income of Rs.13,390/-, thereby making an addition of Rs.33,30,000/- on account of unproved share application

money received from various persons. The assessee challenged initiation of proceedings u/s 153A before the ld. CIT(A), primarily, contending that no warrant of search was executed on the assessee company. The ld. CIT(A) dismissed such contention. Thereafter, he dealt with the addition made u/s 68 of the Act on merits. Out of total addition of Rs.33,30,000/- made by the Assessing Officer, the ld. CIT(A) deleted the addition to the tune of Rs.30,80,000/- and sustained the remaining addition of Rs.2,50,000/-. Both the sides are in appeal on their respective stand points. The assessee, in its appeal, has, *inter alia,* challenged the initiation of proceedings u/s 153A of the Act.

3. We have heard the rival submissions and perused the relevant material on record. Before embarking upon the examination of the contention raised on behalf of the assessee against the invalid initiation of proceedings u/s 153A of the

Act, it is befitting to note down the relevant parts of section 153A, which run as under:-

> "153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, *in the case of a person where a search is initiated under section 132* or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—
>
> (a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;
>
> (b) *assess or reassess the total income of six assessment years* immediately preceding the assessment year relevant to the previous year *in which such search is conducted* or requisition is made :
>
> Provided that ………"

4. Sub-section (1) of section 153A provides that: 'In case of a person where a search is initiated u/s 132 or books of account………. are requisitioned u/s 132A', the Assessing Officer shall issue a notice under this section requiring such person to furnish return of income in respect of each of the assessment years falling within the six assessment years. It is,

thereafter, that the Assessing Officer has to complete the assessment of such six assessment years immediately preceding the assessment year relevant to the previous year in which 'such search is conducted or requisition is made.' On going through the plain language of sub-section (1) of section 153A, it is overt that notice under this provision can be issued on a person on whom search is initiated u/s 132 or requisition is made u/s 132A. It is not the case of the Revenue that books of account or any other documents or assets were requisitioned u/s 132A *qua* the assessee. Thus, we are confined to the former part of sub-section (1), which mandates that notice u/s 153A can be issued on 'a person where a search is initiated u/s 132' of the Act. This shows that initiation of search u/s 132 is a pre-requisite for issuing notice u/s 153A, though assessment has to be made of the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is `conducted'. In other words, unless a searched is initiated on a person u/s 132, the

Assessing Officer cannot acquire jurisdiction for issuing notice u/s 153A of the Act. The case of the assessee before us is that no search was initiated on it and hence notice u/s 153A of the Act is bad in law.

5. Let us examine if the search was initiated on the assessee u/s 132 of the Act. The Assessing Officer has unequivocally recorded that the search and seizure action was taken u/s 132 in the Swastik Pipes Group of cases on 28.8.2008 and the case of the assessee was centralised by the CIT and, thereafter, notice u/s 153A was issued and served on the assessee. The assessee has challenged the very fact of initiation of any search on it. It is not only that the assessee challenged validity of issuance of notice u/s 153A before the ld. CIT(A) and the Tribunal, but, this issue was strongly pitched before the Assessing Officer as well, contending that no search took place on it. This clearly emerges from the facts that the Assessing Officer issued notice dated 25.08.2010 u/s 153A,

whose copy is available on page 49 of the paper book. Such notice was addressed to the Principal Officer of 'M/s K.G. Finvest & Trade Pvt. Ltd.' with PAN AAACK4032H. The assessee objected to such notice and shot a letter dated 14.09.2010 to the Assessing Officer contending that no search was initiated u/s 132 on it and, hence, the notice issued u/s 153A be withdrawn. The Assessing Officer replied vide his letter dated 17.9.2010, a copy of which has been placed on page 51 of the paper book. This letter of the Assessing Officer was again addressed to the Principal Officer of 'M/s K.G. Finvest & Trade Pvt. Ltd.' with PAN AAACK4032H. Through this letter, the Assessing Officer conveyed that the assumption of jurisdiction u/s 153A of the Act was valid. To justify his point, the AO annexed a copy of Form No. 45, being the Warrant of authorisation u/s 132 of the Act issued by the Director of Income-tax, which is available on page 52-53 of the paper book. It can be seen that such warrant of authorization was issued in the name of `M/s Northern Strips

Ltd., M/s Super Plastic Coats Pvt. Ltd. & others as per annexure.' The said annexure contains names of six parties including 'K.G. Finvest and Trade Ltd.' The address given on the Warrant of authorization is 1-2, Central Market, West Avenue Road, Punjabi Bagh, New Delhi. The assessee returned its reply dated 24.9.2010 to the Assessing Officer, whose copy is available on page 54 of the paper book, contending that the warrant contains the name of 'K.G. Finvest & Trade Ltd.', as against the its name of 'K.G. Finvest Pvt. Ltd.' It was also asserted that none of its directors had any directorship in the two companies mentioned in Form No.45 or any of the other five companies enumerated in the annexure. The Assessing Officer replied vide his letter dated 30.09.2010 that the Permanent account number referred to in the report of ADIT (Inv.), New Delhi pertained to the assessee company and, hence: 'the intended search is on M/s K.G. Finvest Pvt. Ltd.' The assessee was directed to file return of income u/s 153A. Pursuant to such letter, the assessee filed a return and

the assessment was finalized. The above correspondence between the assessee and the AO took place before the completion of assessment on 28.12.2010. From the above correspondence, it becomes palpable that the warrant of authorization included the name of `K.G. Finvest and Trade Ltd.', whereas the assessee's name is `K.G. Finvest Pvt. Ltd.'; the address given on the warrant of authorization is 1-2, Central Market, West Avenue Road, Punjabi Bagh, New Delhi, as against the assessee's address of 10, 3rd floor, Satya Niketan, New Delhi; and the assessee categorically submitted before the Assessing Officer that none of its directors had any directorship in the companies named in the warrant of authorization and its annexure, which was not controverted by the Assessing Officer in his later letter. These facts have also not been disputed by the ld. DR. When the lapses, as highlighted by the assessee, became known to the AO, he coined a new concept of `intended search' on the assessee, which is unknown to the law. There is either a search or no

search on a person. Not being searched, a person cannot suffer the consequences of an `intended search', which is not initiated.

6. At this stage, the ld. DR pleaded that there is no need to establish that any search was actually conducted on the assessee because section 153A uses the word `initiation' of search. Pointing out a distinction between the initiation and actual conduct of the search, the ld. DR relied on the order passed by the Jodhpur Bench in *Suraj Prasad Soni vs. ACIT (2007) 106 ITD 321 (Jodhpur),* in which the meaning of the word `initiation of search' has been dealt with. We fully agree with the ld. DR that, firstly, what is significant for the issue of notice u/s 153A of the Act is the initiation of search and secondly, there is a marked distinction between `initiation' and `commencement' of search. In common parlance, 'Initiation' means the beginning of a process or, in other words, a first step in the entire process. Search commences with the issue of

authorization by the competent authority. Thus, the 'initiation' of search commences with the issue of authorization by the DIT. 'Execution' of search warrant, which is a step after the initiation of search, takes place later on, which leads to the actual conduct of the search at the premises of the person searched. Going by the contention of the ld. DR, seen in the context of section 153A, there remains no doubt that notice u/s 153A can be issued where a search is initiated u/s 132 or, in other words, a warrant of authorization is issued. Per contra, in the absence of a warrant of authorization on the assessee, no notice u/s 153A can follow. We have gone through the copy of Warrant of authorization in this case, from which it is apparent that neither the assessee is named therein nor its address is given in it. Even, there is no mention of any permanent account number of the assessee in that.

7. The ld. DR submitted that some inadvertent typographical error must have crept in the Warrant of authorization by which the name of the assessee, namely, `K.G. Finvest Pvt. Ltd.', came to be wrongly written as 'K.G. Finvest & Trade Ltd.' To buttress this point, he referred to a copy of Chapter-7 of the Appraisal report, which is available on page 4 of the DPB. Name given at serial no. 17 of this list is `M/s K.G. Finvest & Trade Ltd.', which is not the assessee. It is simple that if a warrant of authorization is issued in the name of A, the AO cannot make assessment u/s 153A in the hands of A1, A2, A3 etc., who are not named in the warrant of authorisation. It is true that PAN of the assessee is appearing in the above Chapter-7 documents, which is not the warrant of authoristion, but the corresponding address column in such document has also been left blank. Law contemplates initiation of search on a person u/s 132 of the Act and not on the permanent account number. Even if a wrong permanent account number is taken into consideration, but, a correct person is subjected to search,

assessment has to be framed in terms of section 153A of the Act. Conversely, if a search is not initiated on a person u/s 132, but, his PAN is wrongly mentioned in the documents, obviously, there can be no question of notice u/s 153A to be followed by assessment under this section. The crux of the matter is that unless a searched is initiated u/s 132 or requisition is made u/s 132A on a person, no jurisdiction can be assumed for making assessment by issuing notice u/s 153A of the Act. Page 2 of the Departmental paper book, which is Chapter-4 containing a list of 15 persons in whose names warrants of authorisation were issued u/s 132 of the Act, does not carry the name of the assessee.

8. Notwithstanding the fact that there is no evidence of initiation of search on the assessee in terms of the above discussion, we required the ld. DR to bring on record any evidence showing the actual taking place of search on the assessee. Despite the fact that the hearing of the appeal started

on 17.04.2017 and it continued on 18.04.2017, the ld. DR could not bring on record any material to show that the assessee was actually subjected to search. Acceding to his request, we adjourned the matter to 24.04.2017 for enabling the Revenue to place on record any material indicating the factum of any search action having been actually undertaken on the assessee u/s 132 of the Act. On the appointed date again, the ld. DR sought some more time. This time, again the request was accepted but it was conveyed that no further time will be allowed beyond the next scheduled date of hearing on 25.4.2017. On the given date, again the result remained the same and a similar request was made, which was turned down. In the given circumstances, we have no difficulty in drawing an inference that there is no material indicating the actual conduct of search on the assessee. Not only the assessment order, but also the impugned order, do not refer to any material or evidence to prove the factum of actual taking place of search on the assessee. It transpires from the above

discussion that neither any search was `initiated' nor `conducted' on the assessee.

9. The ld. DR argued that the assessee subjected itself to the jurisdiction of the AO in as much as it filed the return of income in response to notice u/s 153A and also participated in the completion of assessment. In view of such submission to the jurisdiction of the AO, the ld. DR fervently argued that the initiation of search cannot be faulted with. To support this contention, he relied on a recent judgment of the Hon'ble Supreme Court in *Gunjan Girishbhai Mehta VS. D.I. (2017) 80 taxmann.com 23(SC).*

10. Before considering the *ratio decidendi* of the verdict of the Hon'ble Supreme Court, let us find out the elaborate facts of this case from the appealed against judgment of the Hon'ble Gujarat High Court in *Gunjan Girishbhai Mehta and Ors. Vs. Director of Investigation (2014) 49 taxmann.com 69 (Gujarat).* In that case, one Late Shri Girishbhai K. Mehta passed away

on 11.10.1998. A search warrant was issued by the Director of Investigation in the name of the deceased on 27.09.2001. Search at the residential premises of the deceased was carried out. On seeing the authorization, it was pointed out to the search party by his son, Sh. Gunjan Girishbhai, that the person in whose name the search warrant was issued had passed away long back and therefore, no search could be effected. Despite that, the search and seizure proceedings continued though the search party took note of the said fact inasmuch as a list of investments and seized papers prepared subsequently carried the heading "Late Shri Girishbhai K. Mehta". Thereafter a warrant of panchnama came to be drawn in the name of deceased person and cash of Rs.25,000/ was seized and also various other documents. Assessment was completed in the name of deceased at Nil income under section 158BC by an order dated 11.09.2003. Thereafter a notice dated 04.11.2003 was issued in the name of Gunjan Girishbhai under Section 158BD of the Act directing him to file block assessment return

of income. At that stage, Gunjan Girishbhai preferred the petition under Article 226 of the Constitution of India, praying i) to quash the warrant of authorization issued under section 132; ii) to quash the assessment order dated 11.09.2003 framed under section 158BC of the Act and iii) to quash the notices dated 04.11.2003 issued under section 158BD of the Act. The Hon'ble High Court noticed that in so far as the challenge to the warrant of authorization issued under section 132 of the Act and consequently to quash the assessment order dated 11.09.2003 framed under section 158BC of the Act was concerned, the same was mainly on the ground that the said warrant of authorization issued under section 132 of the Act was in the name of a dead person i.e. Late Shri Girishbhai K. Mehta. The Hon'ble Court noticed that as a part of search in the Nirma Group, the residential premises of deceased person was covered under section 132 of the Act as the said deceased person was a director in an investment company of the group. It was noticed that though the authorization was in the name of

the deceased, but the search warrant was issued for the correct address of the deceased. It was also noted that at the time of search of the aforesaid premises, Gunjan Girishbhai signed the panchnama, claiming to be the heir of deceased person. Not only that even thereafter when the proceedings under section 158BC of the Act came to be initiated, no protest was raised by the petitioner and on the contrary, the return of the income for the block period was filed on 03.10.2002 and the same was also signed by him and thereafter the assessment order determining the income at "NIL" was passed on 11.09.2003. Since the search warrant was issued for a premises as a part of search in Nirma Group, the Hon'ble High Court held that it could not be said that such search warrant was null and void. The Hon'ble High Court then espoused the challenge to the notice u/s 158BD on the ground that as the warrant of authorization issued under section 132 of the Act was *per se* illegal as it was against a dead person, the search could no longer be valid and therefore, chapter XIVB of the Act would

become inapplicable and as such no notice u/s 158BD would stand. Rejecting such a contention, the Hon'ble High Court noted that notice u/s 158BD was served on Gunjan Girishbhai, and even if it was presumed that the authorization for search under section 132 of the Act was bad and illegal as the same was against the dead person, the proceedings u/s 158BD could not be declared as invalid on the ground of invalidity of search warrant because there was no requirement u/s 158BD that there must be a legal and/or valid search under section 132 of the Act. As such, Gunjan Girishbhai was held to be not entitled to any relief with respect to the challenge to the notice under section 158BD of the Act. The Hon'ble Apex Court has since dismissed the SLP in *Gunjan Girishbhai Mehta (supra)*. Their Lordships have noted in para 4 of the judgment that the point urged before it was that if the original search warrant was invalid the consequential action under section 158BD would also be invalid. Rejecting such a contention, the Hon'ble Summit Court held that : `The issue of invalidity of the search

warrant was not raised at any point of time prior to the notice under section 158BD. In fact, the petitioner had participated in the proceedings of assessment initiated under Section 158BC of the Act. The information discovered in the course of the search, if capable of generating the satisfaction for issuing a notice under Section 158BD, cannot altogether become irrelevant for further action under Section 158BD of the Act.'

11. On going through the mandate of the judgment of the Hon'ble Supreme Court, it becomes evident that the challenge before it was to the notice u/s 158BD, being the notice for assessment of income of any person other than the person searched. Whereas section 158BC in the earlier provisions of assessment of search cases under Chapter XIV-B dealt with the assessment of a person searched, section 158BD dealt with the assessment of `any other person'. In the successor provisions, dealing with search, introduced w.e.f. 1.6.2003, section 153A deals with the assessment of a person searched and section

153C with the assessment of `any other person'. In other words, section 153A is a parallel of section 158BC and section 153C is a parallel of section 158BD. In the instant case, it is the assessment of person allegedly searched, which is disputed before us, unlike the notice issued for the assessment of `other person' before the Hon'ble Supreme Court. Even otherwise, the issue of invalidity of the search warrant in that case was not raised at any point of time prior to the notice under section 158BD. On the contrary, the assessee contested the validity of search before the AO at the very threshold, immediately on receipt of notice u/s 153A. Moreover, in that case, a search operation actually took place and the defect, if any, claimed was in the warrant of authorization. In the oppugnation, the Revenue in the instant case has failed to demonstrate that any search action was, in fact, taken on the assessee. We are reminded of the celebrated judgment of the Hon'ble Supreme Court in *Pooran Mal vs. Director of Inspection (1974) 93 ITR 505 (SC)* laying down that the material seized in an illegal

search can be validly used by the income-tax authorities. The judgment in *Gunjan Girishbhai Mehta (supra)* is reiteration of almost the same view, when it held that `the information discovered in the course of the search, if capable of generating the satisfaction for issuing a notice under Section 158BD, cannot altogether become irrelevant for further action under Section 158BD of the Act.' What to talk of some `information discovered in the course of search' in the case under consideration, the Revenue has not proved the basic fact that the assessee was subjected to any search. Contention of the ld. DR, on the basis of certain observations made in the judgment of *Gunjan Girishbhai (supra)* validating the assessment on attending the assessment proceedings, that the validity of notice u/s 153A be upheld as the present assessee also attended the assessment proceedings, is sans merit. Such observations in the judgment are to be seen in the context in which these were made, being the actually carrying out of a search operation and finding of some incriminating material. It goes

without saying that if no search is initiated or carried out, a simple participation by the assessee pursuant to notice of assessment, and that too, after registering a protest against such proceedings, cannot validate the jurisdiction of AO, if such jurisdiction is, in fact, absent. As such, we find that this judgment does not help the Revenue in any manner.

12. The ld. DR next pressed into service another judgment of the Hon'ble Delhi High Court in *MDLR Resorts Pvt. Ltd. vs. CIT & Ors. (2014) 361 ITR 407 (Del)* to prop up his contention that mere failure of the Revenue to name the assessee in warrant of authorization could not affect the validity of notice issued u/s 153A of the Act. In that case, notice u/s 153A was issued pursuant to search and seizure operation u/s 132 in the premises of the petitioner. The Assessing Officer passed assessment order making addition thereof. Revision petition u/s 264 was filed claiming that the assessment proceedings u/s 153A were invalid as no 'Panchnama' was drawn in the name

of the petitioner. The Hon'ble High Court dismissed the objection by holding that though the name of the petitioner did not figure in the 'Panchnama', but, search warrant was issued against all the petitioners and documents and papers, etc., relating to the petitioner were also seized and duly mentioned in the Annexure to the 'Panchnama'. We are unable to comprehend as to how this judgment advances the case of the Revenue. Admittedly, in that case, search warrant was issued in the name of the assessee and such warrant was also executed. Certain incriminating material was also found. Mere failure to mention the name of the petitioner in 'Panchnama' was held to be not affecting the validity of the search. *Au contraire*, the facts of the instant case are absolutely distinguishable. We are concerned with a situation in which neither any warrant of authorization was issued in the name of the assessee nor any search had actually taken place, much less the finding of any incriminating material. As such, we hold that this judgment does not help the Revenue.

13. The ld. DR, in an untiring endeavour, invoked the provisions of section 124(3) of the Act. He contended that the jurisdiction of the Assessing Officer can be challenged only before the AO and that too, within a period of 30 days from the date of notice u/s 142(1) or section 143(2). As the assessee failed to do so, the ld. DR contended that, it lost the right to take up this issue before the Tribunal at this stage. To buttress his contention, he relied on the judgment dated 05.08.2010 of the Hon'ble Delhi High Court in *CIT vs. Kapil Jain (ITA No.613 of 2009)*. With the help of this judgment, whose copy has been placed on record, it was contended that if no objection is taken within one month in terms of section 124 (3), then, the assessee is debarred from raising such objection in the assessment pursuant to search.

14. There can be no quarrel on the *ratio* of the judgment. However, we are again not convinced with the point put forth on behalf of the Revenue. It is seen that notice u/s 153A of

the Act was issued by the Assessing Officer on 25.08.2010. The assessee objected to the same vide its letter dated 14.09.2010, contending that the provisions of section 153A were not attracted as no search was initiated on it u/s 132. It is vivid from the above dates that the assessee raised objection to the jurisdiction of the Assessing Officer within the stipulated period of 30 days from the date of notice u/s 153A. When pointed out, the ld. DR took the argument to a new level by contending that section 124 talks of raising objection within 30 days from the date of notice u/s 143(2) and 142(1) and not the notice u/s 153A. Since the relevant notice in this case was issued on 11.10.2010, he argued that in the absence of the assessee objecting to the same within 30 days from this date, the plea of lack of jurisdiction could not be taken up.

15. We are unable to appreciate the contention for the obvious reason that once the assessee placed on record its objection before the Assessing Officer pursuant to notice u/s

153A, there was no occasion for it to once again repeat the same objection after the issuance of notice u/s 143(2). The assessee kept on vehemently contesting before the Assessing Officer that he had no jurisdiction because no warrant of authorization was issued in its name, but, the Assessing Officer rejected the same. Once the Assessing Officer issued notice u/s 143(2), after rejecting the assessee's objections in this regard, the assessee could not have, possibly taken up the same issue once again. The essence of the matter is that there should be something to demonstrate that the assessee did challenge before the Assessing Officer the jurisdiction to issue notice u/s 153A, which is patently present in the instant case. In *Kapil Jain (supra)*, search was conducted at the premises of the father of the assessee. Notice u/s 158BC was issued on the assessee. Subsequently, the case was transferred to another Circle. Jurisdiction of the Assessing Officer to issue notice u/s 158BD read with section 158BC was challenged. The same was accepted by the Tribunal. In further appeal, relying on

section 124(3) of the Act, the Hon'ble High Court held that the plea of transfer was not raised by the assessee `within one month from which he was served notice u/s 158BD' of the Act. As such, the Tribunal order was set aside.

16. We find that the judgment rather than serving the stand of the ld. DR, supports the assessee. In that case, the Hon'ble High Court noticed: 'It is not in dispute that the plea of the jurisdiction was not raised by the assessee at all *within one month from the date on which he was served notice u/s 158BD* of the Act.' Reference to the one month period in this judgment has been made from the date of notice u/s 158BD and not the notice under sections 142(1) and 143(2) of the Act. There is no dispute that the assessee did raise objection within one month from the date of notice u/s 153A. As such, we are not inclined to accept the contention advanced by the ld. DR in this regard.

17. Now we take up the reasoning in the impugned order rejecting the contention of the assessee of invalidity of notice u/s 153A. The ld. CIT(A) recorded in para 3.2 of the impugned order that the assessee never raised the issue of alleged invalidity of search or notice u/s 153A at the assessment stage. We have referred to the correspondence between the assessee and the Assessing Officer, which amply shows that the assessee did raise objection before the Assessing Officer in this regard. Thereafter, the ld. CIT(A) relied on the judgment of the Hon'ble Delhi High Court in the case of *CIT vs. Anil Kumar Bhatia (2013) 352 ITR 493 (Del)* for rejecting the assessee's contention. This judgment, in our considered opinion, has no application to the facts of the instant case inasmuch as the proposition laid down in that case is that the Assessing Officer has power u/s 153A to make assessment for all the six years and compute total income including undisclosed income notwithstanding that the assessee filed return before the date of the search. Admittedly, in that case,

the search was conducted on the assessee, but, no document or incriminating material except one unsigned undertaking for the loan was found. Contrary to that, the case of the assessee before us is that no search was conducted at all on it. Thus, this judgment is not applicable. Thereafter, the ld. CIT(A) relied on the case of *Ashok Chadha vs. ITO (2011) 337 ITR 399 (Del)*. That judgment is, again, of no consequence because of the proposition laid down therein to the effect that no notice was required to be issued u/s 143(2) of the Act which is obviously not an issue before us. The last reliance of the ld. CIT(A) is on the judgment of the Hon'ble Supreme Court in the case of *Pooran Mal (supra)* in which it has been laid down that even though search and seizure was in contravention of the provisions of section 132, but, the material seized can be used against the person from whose custody it was seized. This judgment, again, does not support the case of the Revenue any further for the reason that no incriminating material worth the name could have been seized

from the assessee as the search itself was not conducted. Ergo, it is abundantly clear that the view canvassed by the ld. CIT(A) in validating the issue of notice u/s 153A followed by the assessment under this section, cannot be countenanced.

18. In view of the foregoing discussion, it is clear beyond any shadow of doubt that the notice u/s 153A of the Act was issued without any jurisdiction. The natural corollary, which therefore, follows is that all the proceedings flowing from such invalid notice, including the resultant assessment order, are bad in law and hence liable to be quashed. We order accordingly.

19. *Qua* the appeal of the Revenue, without prejudice to the argument about the invalidity of notice and the resultant assessment order, the ld. AR submitted that pursuant to the mandate of section 268A, the CBDT has issued Circular No. 21 of 2015 dated 10.12.2015 with retrospective effect, revising the monetary limit to Rs.10,00,000/- for not filing appeal by

the Revenue before the Tribunal. He further submitted that as the tax effect involved in the appeal of the Revenue is less than Rs.10,00,000/-, the extant appeal is not maintainable. The ld. D.R., although supported the order of the Assessing Officer, but could not controvert the fact that tax effect involved in this appeal is less than Rs.10,00,000/-. Going by the prescription of the aforenoted Circular, we are of the view that the Revenue should have either not filed the instant appeal before the Tribunal or withdrawn the same as the tax effect in this appeal is admittedly less than the prescribed limit for not filing the appeals. From para 10 of the above Circular it is overt that the Instruction is applicable to the pending appeals also with retrospective effect and there is a clear-cut direction to the Department to withdraw or not press such appeals filed before the ITAT wherein tax effect is less than Rs.10,00,000/-. *Ex conseqeunti,* we dismiss the instant appeal on this score as well.

20. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order Pronounced in the open Court on 28.04.2017.

Sd/-	Sd/-
[SUCHITRA KAMBLE] JUDICIAL MEMBER	[R.S. SYAL] VICE PRESIDENT

Dated, 28th April, 2017.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

NEW DELHI.