

Case :- INCOME TAX APPEAL No. - 99 of 2010

Petitioner :- Commissioner Of Income Tax, Aayakar Bhawan, Kanpur

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

Connected with

1. Case :- INCOME TAX APPEAL No. - 100 of 2010

Petitioner :- Commissioner Of Income Tax, (Central) Aayakar Bhawan

Respondent :- Sri Yogendra Singh

Petitioner Counsel :- D.D. Chopra

2. Case :- INCOME TAX APPEAL No. - 101 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

3. Case :- INCOME TAX APPEAL No. - 102 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Yogenda Singh

Petitioner Counsel :- D.D. Chopra

4. Case :- INCOME TAX APPEAL No. - 103 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

5. Case :- INCOME TAX APPEAL No. - 104 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

6. Case :- INCOME TAX APPEAL No. - 105 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Yogendra Singh

Petitioner Counsel :- D.D. Chopra

7. Case :- INCOME TAX APPEAL No. - 106 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Yogendra Singh

Petitioner Counsel :- D.D. Chopra

8. Case :- INCOME TAX APPEAL No. - 107 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Yogendra Singh

Petitioner Counsel :- D.D. Chopra

9. Case :- INCOME TAX APPEAL No. - 108 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Yogendra Singh

Petitioner Counsel :- D.D. Chopra

10. Case :- INCOME TAX APPEAL No. - 109 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

11. Case :- INCOME TAX APPEAL No. - 110 of 2010

Petitioner :- The Commissioner Of Income Tax (Central) Aayakar Bhawan

Respondent :- Sri Devesh Singh

Petitioner Counsel :- D.D. Chopra

Hon'ble R.K. Agrawal, J.

Hon'ble Devi Prasad Singh, J.

Hon'ble (Dr.) Satish Chandra, J.

(Delivered by R.K. Agrawal, J.)

Finding conflict of views expressed in two sets of cases decided by different coordinate Bench of this Court, a Division Bench vide order dated 20th October, 2011 had referred these cases to the Larger Bench to resolve the controversy in question, which is of public importance.

In Writ Petition No.5731(MB) of 2004, **Raghuraj Pratap Singh vs. Assistant Commissioner of Income Tax**, decided on 14th July, 2006 a

Division Bench of this Court had held that warrant issued in joint name does not suffer from any infirmity and it could have been done. On the other hand another Division Bench of this Court in Income Tax Appeal No.21 of 2009, **Commissioner of Income Tax (Central), Ayakar Bhawan, Kanpur vs. Smt. Vandana Verma**, decided on 9th October, 2009, had held that joint warrant could not have been issued and it would be incumbent upon the authority to issue warrant in individual name and if the warrant has been issued in the joint name, the assessment will have to be made collectively in the names of both the persons in the status of AOP(Association of Persons)/BOI(Body of Individuals). The decision rendered in the case of **Smt. Vandana Verma**(supra) has been followed by this Court in Income Tax Appeal No.30 of 2011, **Commissioner of Income Tax , Kanpur vs. Smt. Madhu Chawla**, decided on 23rd August, 2011.

The Hon'ble Chief Justice vide order dated 15th December, 2011 has been pleased to constitute this Bench to decide the matter.

FACTS OF THE CASE.

Income Tax Appeal Nos.99, 101, 103, 104, 109 and 110 of 2010 have been filed by the Revenue against the order dated 25.5.2010 passed by the Tribunal in favour of Sri Devesh Singh whereas Income Tax Appeal Nos. 100, 102 and 105 to 108 of 2010 have been filed against the Tribunal's order dated 25.5.2010 passed in favour of Sri Yogendra Singh. All the appeals relate to the Assessment Years 2001-02 to 2006-07.

As all these appeals relate to the joint warrant issued in the names of Sri Yogendra Singh alias Maniya Singh, Sri Devesh Singh and Sri Devendra Singh alias Lalu Singh and the appeals before us relate to only Sri Devesh Singh and Sri Yogendra Singh and the facts being common, we give the facts of Income Tax Appeal No.99 of 2010 relating to Sri Devesh Singh.

A search and seizure operation under Section 132 of the Income-tax Act, 1961, hereinafter referred to as "the Act", was carried out in the premises of Singh Group of cases, Singh Niwas, Nawabganj, Unnao on 10th November,

2006. Residential premises of Sri Yogendra Singh alias Maniya Singh, Devendra Singh alias Lalu Singh and Devesh Singh were searched in which warrant was issued jointly in the name of aforementioned three persons. Several incriminating material and documents were found during search operation and they were seized. An inventory was prepared and the Panchnama was drawn jointly in the names of all the three persons mentioned above. Pursuant to the search and seizure operation, a notice under Section 153A of the Act was issued to the respondent-assessee on 13th September, 2007. Photostat copies of the documents and papers seized during the search and seizure operation were also provided to the respondent-assessee. In response to the notice under Section 153A of the Act, the respondent-assessee filed his return of income. The assessment for the Assessment Year 2002-03 was completed at Rs.9,94,350/-.

Feeling aggrieved the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) III, Lucknow. The Commissioner of Income Tax (Appeals) vide order dated 24th December, 2009 had allowed the appeal on the preliminary ground that as the warrant of authorisation was issued in the joint names of the assessee and two other persons and the proceeding under Section 153A of the Act was initiated in the case of the appellant as individual and the assessment has also been made in the capacity of an individual, in view of the law laid down by this Court in the case of **Smt. Vandana Verma**(supra), the warrant having been issued in the names of all the three persons jointly, the assessment could not have taken place in the name of an individual.

Feeling aggrieved, the Revenue preferred an appeal before the Income Tax Appellate Tribunal, Lucknow Bench "A", Lucknow, hereinafter referred to as "the Tribunal", which vide order dated 25th May, 2010 had dismissed the appeal. The assessments in respect of other years as also of other person named in the warrant of authorisation met with the same fate in the appeals preferred by the respective assessee before the Commissioner of Income Tax

(Appeals), who allowed the appeals on this preliminary ground, which order has also been upheld by the Tribunal.

All the appeals have been admitted vide order dated 9th December, 2010 on the following substantial question of law.

“Whether the warrant of authorisation could have been issued jointly and if so, assessment could have been made against AOP or individually?”

RIVAL SUBMISSIONS

We have heard Sri D.D. Chopra, learned counsel appearing for the Revenue.

Sri Chopra submitted that by the Finance Act, 2012, Section 292CC has been inserted with retrospective effect from 1st April, 1976, which provides that it shall not be necessary to issue an authorisation under Section 132 of the Act separately in the name of each person where the authorisation has been issued mentioning therein more than one person. He, thus, submitted that the order passed by the Commissioner of Income Tax (Appeals) as also by the Tribunal ought to be set aside and the Commissioner of Income Tax (Appeals) should decide all the appeals on merits.

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,-

(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.”

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 authorisation 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 authorisation under section 132 or make a requisition under section 132A separately in the name of each person.

It is further proposed that 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.

It is also proposed to provide that 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 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: **Commissioner of Income Tax vs. Dewan Bahadur Ram Gopal Mills Ltd.**, (1961) 41 ITR 280(SC), **State of Uttar Pradesh and others vs. Raja Syed Mohammad Saadat Ali Khan and others**, (1961) 41 ITR 737(SC) and **Commissioner of Income Tax vs. Indian Telephone Industries Ltd.**, (1991) 187 ITR 181]

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.

23.7.2012

mt.

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Hon'ble R.K. Agrawal, J.

Hon'ble Devi Prasad Singh, J.

Hon'ble (Dr.) Satish Chandra, J.

Disposed of.

For order see order of date passed on the separate sheets.

23.7.2012

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