

IN THE HIGH COURT OF DELHI

AT NEW DELHI

**IT(SS)A.No.267/Del/2002
Block Period : 1990-91 to 2000-01**

**COMMISSIONER OF INCOME TAX
DELHI-I, NEW DELHI**

Vs

**SHRI PREM GANDHI
2352, SECTOR-9, FARIDABAD**

MEMO OF PARTIES

ITA No.90/2009 & C M No.19981/2010

**COMMISSIONER OF INCOME TAX
DELHI-I, NEW DELHI**

Vs

**SHRI PREM GANDHI
2352, SECTOR-9, FARIDABAD**

A K Sikri and M L Mehta, JJ

Dated: May 5, 2011

JUDGEMENT

ITA No.90/2009 & C M No.19981/2010

The appeal filed by the assessee before the Tribunal was allowed only on the ground that the warrant for authorization of search under Section 132 can be issued by the Additional Director of Income Tax (Investigation) but he had no power to issue such authorization under Section 132(1) of the Income Tax Act.

In view of the amendment to Section 132(1) of the Income Tax Act which has retrospective effect from 1.6.1994, this ground does not survive. As per this amendment, Additional Director of Income Tax (Investigation) is duly authorized to issue warrants of search. Thus, the impugned order passed by the Tribunal is set aside and the matter is remitted back to the Tribunal to decide the appeal of the respondent herein on merits.

Learned counsel for the respondent/assessee has also submitted that there is another jurisdictional plea which though not raised by the assessee but be permitted to raise the same before the Tribunal. He claims that on the ground of appeal before

the Tribunal, jurisdictional plea that notice under Section 143(2) was not served has not been taken by inadvertence though it was taken before the CIT(A) and the assessee should be allowed to make such a request before the ITAT and it will be for the ITAT to decide as to whether this plea is to be allowed or not.

In view thereof, the present appeal stands disposed of along with pending application.