

Court No. - 21

Case :- WRIT TAX No. - 866 of 2010

Petitioner :- Smt. Sandhya Kesarwani

Respondent :- Union Of India & Others

Petitioner Counsel :- Krishna Agrawal

Respondent Counsel :- A.S.G.I.

Hon'ble Sabhajeet Yadav,J.

Heard learned counsel for the parties.

By this petition, the petitioner has challenged the notice issued under Section 153-A of Income Tax Act, 1961 on the ground that the search was carried out against the firm but notices have been issued against individual person of the firm, as such, he submitted that in view of law laid down by Division Bench of this Court in Commissioner Income Tax (Central) Vs. Smt. Vandana Verma, such notices under Section 153-A of Indian Income Tax can not be issued individually unless the individual seizure was authorized by the said department. Whereas, the learned counsel appearing for Income Tax department has submitted that the case cited by learned counsel for the petitioner (supra) is distinguishable and has no material bearing with the facts and circumstances of the instant case for two reasons, firstly petitioner did not challenge the seizure already carried by the department of Income Tax and unless the seizure is challenged, the consequential action of assessment through notice issued by department can not be challenged by the individual members of the firm and, secondly the case cited by learned counsel for the petitioner was in respect of husband and wife whereas in the instant case the notices referred above have been issued by the concerned authority are against the individual person who are members of the firm, in respect of which seizure has already been carried out by the department.

The submissions of learned counsel appearing for Income Tax Department in my opinion appears to have some substance and deserve to be accepted by this Court. There is yet another reason for not entertaining this petition. Since the petitioner has challenged merely notice issued to her under the Income Tax Act and her rights and interests have yet not been finally adjudicated by the concerned authority, therefore, in given facts and circumstances of the case, I am not inclined to interfere in the matter at this stage. The writ petition accordingly stands dismissed.

Order Date :- 9.6.2010

Kamlesh Maurya