# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Miscellaneous Appeal No.64 of 2011**
**In**
**MA 48 of 2009**

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Dr. B. N. Sharma, son of Late Satya Narain Thakur, presently residing in flat No. 32, Jagat Apartment, Bank Road, P.S. Gandhi Maidan, Patna

.... .... Appellant

Versus

Assistant Commissioner of Income Tax, Central Circle-2, Patna, having his office at 5th Floor, Central Revenue Building (Annexie), Birchand Patel Marg, Patna-800001

.... .... Respondent

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**Appearance :**
For the Appellant/s : Mr. D.V.Pathy with Mrs. Manju Jha, Advocates

For the Respondent/s : Mr. Rishi Raj Sinha, Sr.S.C. with Ms. Archana Prasad, Jr.S.C

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**CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA**
**and**
**HONOURABLE MR. JUSTICE AMARESH KUMAR LAL**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA)**

5 27-07-2015 Heard learned counsel for the appellant and learned counsel for the Income Tax Department.

The appeal has been filed under Section 260A of the Income Tax Act, 1961 against the order dated 9.7.2010 passed in Misc. Application under Section 254(2) of the Act, being consolidated order passed in the case of the appellant and two others.

The application under Section 254(2) of the Act was filed before the Tribunal on the ground that certain specific points of law raised in the appeal before it against the block period assessment order had been left undecided and unadjudicated in the appellate order dated 21.7.2006 passed by the Appellate Tribunal earlier in IT(SS)A.No.73/Pat/1997.

The facts of the case as placed in the memo of appeal and as argued before this Court are that the Central Bureau of Investigation had seized certain books of account, documents and other papers during the course of investigation of a criminal case and a requisition was made by the Income Tax Department under Section 132A of the Act issued by the Director General of Income Tax (Investigation) but the department obtained only photo copies of certain papers and documents and thereafter proceeded to make the block assessment under Section 158BB of the Act.

Learned counsel for the appellant submits that in view of the provisions of Section 158BC of the Act the assessing officer gets jurisdiction only under two circumstances; firstly when there has been a search conducted under Section 132 of the Act by the Department itself and, secondly, when the Department in exercise of authority vested in it under Section 132A of the Act requisitions the documents and records seized by any other authority from the said authority to facilitate assessment of undisclosed income on the basis of documents in the custody of the said authority. It is submitted that the present appeal falls under the second category but instead of books of account, other documents and assets being physically received by the respondent Income Tax Department, only on the basis of photo copies of the same block assessment had been made under Section 158BB which is contrary to the provisions of the Act as is evident from Section 132A(2) and other connected provisions.

In support of the aforesaid stand, learned counsel for the appellant relies upon a decision of the Allahabad High Court in the case of Chandra Prakash Agrawal vs. Assistant Commissioner of Income Tax and others : (2006) 287 ITR 172 (All), in the last part of paragraph-44, paragraphs 45 and 46 of which it has been held as follows :

> "44. xxxxxxxx Thus, one of the meanings which can be assigned to the word "requisition" is taking of actual possession of all the items.
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> 45. We are fortified in our aforesaid view with the provisions made in section 158BE of the Act, which provides for time-limit for completion of block assessment. It specifically provides for counting the limitation from the end of the month in which the last of the authorizations for search under section 132 or for requisition under Section 132A of the Act was executed. Explanation 2 to section 158BE of the Act clarifies that the authorization shall be deemed to have been executed in the case of a search on the conclusion of search as recorded in the last panchnama and in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorized officer. Thus, we are of the considered opinion that the provisions of Chapter XIV-B of the

Act would come into play only when the books of account or other documents or assets are actually received by the Assessing Officer pursuant to the requisition made under section 132A of the Act.

46. Looking at it from another angle also, it is only conclusion which one can arrive at. If the entire books of account and other documents which have been requisitioned under section 132A by the authorized officer are not in the possession of the Department, the proceedings under Chapter XIV-B of the Act would be of no consequence as it does not speak of piecemeal block assessment. The block assessment has to be made for a composite period of 10 years or 6 years, as the case may be, in which the entire evidence collected as a result of the requisition under section 132A of the Act and all other materials or information available with the Assessing Officer relatable to such evidence have to be taken into consideration."

Learned counsel for the Revenue, on the other hand, submits that the facts being relied upon in the memo of appeal do not represent the correct picture rather it is clearly stated in the order under appeal in paragraph-3 thereof that the appellant-assessee was subjected to search and seizure operation by the Income Tax Department under section 132 of the Act on 2.2.1996 and on subsequent days, which led to seizure of cash and jewellery to the extent of Rs.50,58,621/- from the bank accounts/fixed deposits, etc. In addition to the same the designated authority of the Income Tax Department had made a request for the documents and records seized by the CBI and thus it is not a case where the Assessing Officer had no jurisdiction to proceed in the matter. It is submitted that the Tribunal has considered the said facts while dismissing the application of the petitioner and accordingly held that the grounds of appeal made by the assessee cannot be said to be legal grounds and on the basis of grounds and submissions made the assessment order passed by the Tribunal rejecting the first two grounds of appeal and submissions earlier cannot be said to suffer from any mistake on record.

On a consideration of the submissions of learned counsels for the parties and the facts on the record it is evident that the case of the appellant is not one of requisition of documents under Section 132A of the Act rather the requisition made was preceded by an actual search and seizure by the Department. Thus, the submissions of learned counsel for the appellant do not appear to have any merit.

The appeal is, accordingly, dismissed.

**(Ramesh Kumar Datta, J)**

**(Amaresh Kumar Lal, J)**

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