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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 163/2015

COMMISSIONER OF INCOME
TAX-20 (ERSTWHILE CIT-XII)

..... Appellant

Through: Ms. Suruchi Aggarwal, Senior Standing
Counsel with Ms. Lakshmi Gurung, Advocate.

versus

SMT. PRIYANKA SINGHANIA

..... Respondent

Through: Mr. Arvind Kumar, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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02.09.2015

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 21st January 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4767/Del/2013 for the Assessment Year ('AY') 2005-06.

2. The background to the present appeal is that search warrant notice under Section 132 of the Act was issued against Mr. Raj Kumar Singhania, the father of the Respondent Assessee who was unmarried at the relevant time. The Court has been shown a copy of the *panchnama* drawn on the date of the search i.e. 23rd June 2006. It shows that the warrant was issued in the name of Mr. Raj Kumar Singhania and the place to be searched indicated as 104, New Rajdhani Enclave, Delhi. The search appears to have commenced

at 8.15 am and concluded at 5.15 pm on that very date. *Inter alia*, during the course of the search, certain keys of bank lockers were found in the said residential premises. One of the keys pertained to locker No.111, Canara Bank, Laxmi Nagar, Delhi in the name of the Respondent Assessee. It appears that on that date itself the said locker was not opened by the raiding party.

3. Thereafter on 7th July 2006, the Department in the presence of both Mr. Raj Kumar Singhania and the Respondent opened the said locker and drew up a *panchnama*, a copy of which has been placed before the Court by the Assessee with the compilation of documents filed on 13th May 2015. This *panchnama* shows that the warrant was in the case of "Raj Kumar Singhania and Priyanka Singhania, locker No. 111, Canara Bank, Laxmi Nagar, Delhi." The *panchnama*, drawn contains the signatures of the Respondent with the date of 7th July 2006, stating that she has received a copy thereof along with key of the locker which by then had been opened. It is also stated in page No.13 of the *panchnama* in an endorsement across the page that "locker found vacant/empty". Therefore, nothing was found in the locker belonging to the Respondent. It was stated in para 2 of the *panchnama* that the search of the locker No. 111 was in continuation of the proceedings of 23rd June 2006.

4. The question that has arisen is whether any proceedings at all could have been initiated against the Respondent Assessee under Section 153A of the Act, without there being a search warrant in her name issued in terms of Section 132 read with Rule 112 of the Income Tax Rules 1962 and Form 45

thereof? This question is significant since it goes to the root of the matter. If there was no search warrant in the name of the Respondent then the question of there being any proceedings at all against her under Section 153A of the Act would not arise.

5. It is seen from the order of both Commissioner of Income Tax (Appeals) [‘CIT (A)’] and the ITAT that this issue was specifically raised by the Assessee throughout the proceedings. It was for this reason that on the previous date i.e. 10th August 2015, this Court passed the following order:

“1. The contention of the learned counsel for the Respondent is that in terms of Section 153A of the Income Tax Act, 1961 read with Rule 112 of the Income Tax Rules 1962 it was incumbent on the Appellant to demonstrate, by producing the relevant file that there was a separate search warrant issued in the name of Respondent Assessee under Section 132. He submits that it is not sufficient that only a *Panchnama* showing the name of the Assessee along with the name of her father, in whose name the search warrant was issued on 23rd June, 2006 is produced.

3. The Appellant is directed to produce the relevant original files for perusal of the Court on the next date of hearing.”

6. Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Revenue, informs the Court that the file that has been brought today in the Court is the file containing the assessment proceedings and not the relevant file concerning the issuance of the search warrant.

7. It is seen that even on the first date of hearing i.e. 2nd March 2015, the Revenue had produced from the Assessing Officer’s file a copy of the *panchnama* drawn on 7th July 2006 and not the warrant of search, if any

issued in the name of the Respondent. The Court therefore proceeds on the basis that there is no search warrant issued in the name of the Respondent.

8. It is evident from Rule 112 read with Form 45 that the search warrant has to be issued in the name of the person. The search warrant will also have to indicate the place of search. The documents placed on record by the Respondent Assessee shows that while there was search warrant in the name of Mr. Raj Kumar Singhania, the father of the Respondent, there was no separate search warrant in the name of the Respondent. The *panchnama* dated 7th July 2006 with reference to search of locker No. 111 of the Respondent, refers to the said proceedings being in continuation of the earlier search proceedings which took place on 23rd June 2006. The search proceedings on 23rd June 2006 was on the basis of the search warrant issued in the name of the father of the Respondent and not the Respondent. As already noted, the Revenue has been unable to produce till date any record to show that there was any search warrant issued in the name of the Respondent.

9. This Court is of the view that the Respondent's contention is correct that with the Department not having proceeded to search the locker No. 111 on 23rd June 2006 itself and having completed the search proceedings on that date by 5.15 pm, if it thereafter proposed to search locker No. 111 belonging to the Respondent, it ought to have issued a separate search warrant in her name, specifying the place of search that was undertaken on 7th July 2006. Alternatively, if the Department wanted to continue with the search warrant issued on 23rd June 2006 in the name of Mr. Raj Kumar Singhania and

proceed to open locker No.111, then they could not have instituted separate proceedings against the Respondent under Section 153A without there being any separate search warrant in her name.

10. It is another matter that if anything incriminating had been found against the Respondent when the locker was opened on 7th July 2006, the proceedings could have been initiated against her under Section 153C of the Act. However, there was no occasion in the present case to do so since nothing was found in the locker.

11. Consequently, the Court is satisfied that apart from other reasons mentioned in the impugned order of the ITAT, the proceedings under Section 153A against the Respondent was itself without the authority of law.

12. No substantial question of law arises from the impugned order of the ITAT. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 02, 2015

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