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T.C.A.Nos.263 & 264 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	04.11.2024
Pronounced on	09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.Nos.263 and 264 of 2015andM.P.No.1 of 2015

The Commissioner of Income Tax,
Mumbai.

... Appellant / Respondent in both T.C.As.

Vs.

M/s.Vedanta Limited,
5th Floor, Dhanraj Mahal,
CSM Road, Apollo Bunder
Mumbai – 400 039.

(Cause Title amended vide order of this Court
dated 02.09.2024 made in

T.C.A.Nos.263 and 264 of 2015) ... Respondent / Appellant in both T.C.As.

Common Prayer: Appeal under Section 260A of the Income Tax Act, 1961,
against the order of the Income Tax Appellate Tribunal, Madras “C” Bench,
Chennai dated 08.07.2011 in I.T.A.No.182/Mds/2004.



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T.C.A.Nos.263 & 264 of 2015

For Appellant : Mr.Avinash Krishnan Ravi
(in both T.C.As) Junior Standing Counsel
for Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.R.V.Eashwar
(in both T.C.As) Senior Counsel
for Mr.G.Baskar

COMMON JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

These Tax Case Appeals filed under Section **260A** of the Income Tax Act, 1961 are directed against the **Impugned Order** dated **08.07.2011** passed by the Income Tax Appellate Tribunal (hereinafter referred to as “Appellate Tribunal”) in **Appeal No.I.T.(SS) A.No.182/Mds/2004** and **C.O.No.336/Mds/2005**.

2. At the time of admission of these appeals, the following substantial questions of law were framed on **28.03.2016** by this Court:-

“The above tax case appeals are admitted on the following substantial questions of law:

“(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right



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in holding that the block assessment made under Section 158 is barred by limitation?

(ii) Whether the Tribunal is right in holding that the prohibitory order passed under Section 132(3) is illegal without considering the fact that practical administrative difficulty faced by the Department during search and seizure operation done wherein voluminous documents nearly 500 kgs contained in 12 large trunks was recovered and one record room of the size of 30000 sq.ft was to be searched before seizure could be made? and

(iii) Is not the finding of the Tribunal bad by holding that the material detected in survey which was subsequently converted into search operation would not come within the scope of block assessment made in terms of Section 158BC of the Income Tax Act? ””

3. By the **Impugned Order** dated **08.07.2011**, the Appellate Tribunal has dismissed the Appellant Income Tax Department's appeal and allowed the Respondent-Assessee's Cross-Objection, against the Order dated **15.04.2004** of the Commissioner of Income Tax (Appeals) in **Appeal No.CIT(A)XXXIII/Rg-2(3)/IT/13-S/02-03**.

4. Earlier, Block Assessment was completed by the Assessing Officer vide Order dated **28.03.2002** for the block period ending on **08.12.1999** [i.e., the period between **1990-1991** to **1999-2000** and part of the **Assessment**



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Year 2000-2001] under Section **143(3)** read with Section **158BC** of the
Income Tax Act, 1961.

5. The brief facts of the case are that a search was conducted at the premises of the respondent assessee on **08.12.1999**. On the date of the search on **08.12.1999**, about **108 files** were seized from the custody of the Respondent-Assessee. However, the search was not completed on **08.12.1999**.

6. Therefore, a **Prohibitory Order** was passed under Section **132(3)** of the Income Tax Act, 1961 on **09.12.1999** which prohibited the Respondent-Assessee from removing or otherwise dealing with the books of accounts or other documents etc., (i) in the **record room** and (ii) **almirah of GM(F&A)**, without prior permission of the search team of the Appellant Income Tax Department. Seals were placed at the door of the record room at M/s.Statelite Industry (India) Ltd, Tuticorin and on the **almirah of GM(F&A)**.



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7. The Annexure to the aforesaid **Prohibitory Order** dated **09.12.1999**, enjoined the Respondent-Assessee, not to remove the following:-

- (i) Documents in the record room and almirah in the room of GM (F and A).*
- (ii) A Seal placed in the record room's door.*

8. Subsequently, the search was continued on **21.01.2000**. About 14 items were seized. The search was however inconclusive on **21.01.2000**. An inventory was drawn in the **Panchnama** on **21.01.2000**. Once again another **Prohibitory Order** was also passed on the same day i.e., on **21.01.2000** by the Respondent-Assessee in respect of documents in **almirah** in the room of the **GM (F&A)**.

9. After **Prohibitory Orders** dated **09.12.1999** and **21.01.2000** were passed, the search was continued on **02.03.2000**. The search was ultimately concluded on **02.03.2000**. Thus, on **02.03.2000**, the **Prohibitory Order** dated **21.01.2000** was lifted. No fresh material was recovered during the search conducted on **02.03.2000**.



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10. In this background, a Notice dated **08.06.2000** was issued under

Section 158BC of the Income Tax Act, 1961 in response to which the Respondent-Assessee filed a **Return of Income** on **24.07.2000**. The aforesaid proceedings thus culminated in the aforesaid **Block Assessment Order** dated **28.03.2002** under Section **143(3)** read with Section **158BC** of the Income Tax Act, 1961 as it stood then. A sum of **Rs.44,56,14,656/-** was added to the income of the Respondent-Assessee as “**undisclosed income**” as tabulated below:-

<i>Sl. No.</i>	<i>Computation of undisclosed income</i>	<i>Amount (Rs.)</i>
1.	Disallowance of Depreciation at Tuticorin on the amount of steel consumption for the Copper Smelter and Sulphuric Acid Plant (as discussed in para 2)	34,39,37,070
2.	Disallowance of depreciation in case of steel consumption at other plants (as discussed in para 3)	60,21,808
3.	Depreciation on proportionate exchange fluctuation on indigenous capital expenditure (as discussed in para 4)	3,70,27,309
4.	Cash Expenses (as discussed in para 5)	13,21,591



<i>Sl. No.</i>	<i>Computation of undisclosed income</i>	<i>Amount (Rs.)</i>
5.	Travel Expenses of family members (as discussed in para 6)	19,00,000
6.	Cash Salary (as discussed in para 7)	7,20,000
7.	INDAL takeover Expenses (as discussed in para 8)	3,81,36,878
8.	Estimate value of painting (as discussed in para 9)	5,00,000
9.	Unexplained payment – Silvassa (as discussed in para 10)	6,90,000
10.	Cash payment (as discussed in para 11)	1,48,60,000
11.	Payment to Adivasi Vikas Sanghtan (as discussed in para 12)	5,00,000
	Total	44,56,14,656

11. The Respondent-Assessee thus filed Appeal No.CIT(A)XXXIII/Rg-2(3)/IT/13-S/02-03 before the Appellate Commissioner under Section 246A of the Income Tax Act, 1961. The Appellate Commissioner vide Order dated 15.04.2004, partly allowed the appeal under Section 250 of the Income Tax Act, 1961.



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12. Amongst various grounds canvassed by the Respondent-Assessee, one of the ground pertained to limitation under Section **158BE(1)(b)** of the Income Tax Act, 1961 which stipulated that **Order** under Section **158BC** of the Income Tax Act, 1961 shall be passed within two years from the end of the month in which the last of the authorizations for search under Section **132** or for requisition under Section **132A**, as the case may be, was executed in cases where a search is initiated or books of accounts or other documents or any assets are requisitioned on or after the **1st day of January, 1997**.

13. In Paragraph 4.3 of the **Appellate Order** dated **15.04.2004**, the Appellate Commissioner observed as under:-

“4.3. The search at Tuticorin was then concluded on 02.03.2000 on which occasion also certain further records were seized. It is, thus, clear that the continuation of the search was not a mere formality for the purpose of extending the period of the search. Thus, the last panchanama in this case which came to be made on 02.03.2000 truly represents the conclusion of the process of search and seizure and consequently, the passing of the Block Assessment Order on 28.03.2002 is clearly, within the period of limitation prescribed in the Income-tax Act, 1961.”



14. In Paragraph 4.5 of the **Appellate Order** dated **15.04.2004**, the

Appellate Commissioner ultimately concluded as under:-

“4.5. I have considered these decisions but found that in these cases, there was a question mark as to the validity of the continuation of the search and the ground that it was really unnecessary to issue Prohibitory Orders and that the search could, in fact, have been concluded earlier. In the case of the search of the Appellant's premises at Tuticorin, no such case has been made out by the Appellant. It is unable to demonstrate that it was, in fact, possible for the Department to have seized all the records lying the record room and thereby conclude the search. Thus, it is apparent that in the present case, facts are entirely different from the facts of the cases relied on by the assessee. There is, therefore, no case to hold that the continuation of the search was illegal or ineffective. As a corollary, it must be held that the search was, in fact, concluded on 02.03.2000 and that the Assessment Order has been passed within the prescribed period of limitation of two years from the end of the month in which the search is concluded. I, therefore, reject these Grounds of Appeal, namely, Grounds 1 to 4.”

15. The Appellate Commissioner also dealt with the merits and thus partly allowed the appeal of the Respondent-Assessee vide **Appellate Order** dated **15.04.2004** which was impugned by the Respondent-Assessee before the Appellate Tribunal in **I.T.(SS) A.No.182/Mds/2004**.



16. The Appellate Tribunal vide its **Impugned Order** dated **08.07.2011**, has allowed the appeal of the Respondent-Assessee and thereby accepted the submission of the Respondent-Assessee on the ground of limitation under Section **158BE(1)(b)** of the Income Tax Act, 1961.

Relevant portion of the **Impugned Order** dated **08.07.2011** reads as under:-

“22. The warrant of authorization dated 08-12-1999 issued by the Joint Commissioner of Income Tax, Tirunelveli resulted in the conversion of a survey into a search at the factory premises of the assessee dated 08-12-1999. Thus, these are two separate search proceedings. Only one assessment order has been passed. If the assessment order passed on 28-03-2002 is treated as a consequence of the search conducted on the assessee on 08-12-1999 as a consequence of the warrant of authorization issued by the Joint Commissioner of Income Tax, Tirunelveli, then as we have held before, the assessment order ought to have been passed by 31-12-2001 and the assessment order barred by limitation. If the assessment order is deemed to have been passed as a consequence of the warrant of authorization issued by the Deputy Director of Income-tax (Inv.), Mumbai on 02-12-1999, which resulted into a search at the Mumbai premises of the assessee on 08-12-1999, as it is noticed that the Prohibitory Orders have been placed on the cabin of Shri Anil Agarwal and Navil Agarwal and in the cabin of Shri Tarun Jain and the computer server room and as it is noticed that there is no impracticability in regard to the seizure which has resulted in the issuance of a Prohibitory Order under Section 132(3) of the Act, the search would have to be deemed to have been completed



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on 08-12-1999 in which case also the limitation for completing the assessment is on 31-12-2001 and consequently the assessment order passed on 28-03-2002 is barred by limitation.

23.

24.

25.

26. *Coming to the submission of the learned senior counsel that the assessment has not been completed on the basis of the provisions of Section 158BB(1) insofar as year-wise computation of undisclosed income has not been done for the purpose of aggregation of the undisclosed income, we are of the view that it is only an irregularity in regard to the computation of the undisclosed income which is curable in view of the decision of the Hon'ble Supreme Court in the case of M/s.Deepak Agro Foods, referred to supra. In the circumstances, the grounds No.I(1 & 2) and II (1 & 2) stand allowed and ground No.III (1 & 2) stands dismissed.*

27. *In the circumstances, the cross objection filed by the assessee on the technical grounds stands allowed insofar as (i) what has been found in the course of survey cannot be included in the block assessment and (ii) the assessment order dated 28-03-2002 is barred by limitation. As we have quashed the assessment order as barred by limitation, we are not going into the merits of each of the additions. As we have quashed the assessment as barred by limitation, the appeal filed by the Revenue in respect of the additions which have been deleted by the learned CIT(A) is not being disposed of on merits and the appeal is dismissed."*



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WEB COPY 17. Before the Appellate Tribunal, Letter dated **07.11.2011** of **Mr.P.Selvaganesh**, the **Additional Commissioner of Income Tax, TDS Range – 1, Chennai – 34** addressed to the Senior Department's Representative, Office of the Commissioner of Income Tax, Appellate Tribunal, regarding the events surrounding the search between **December 1999** and **March 2000** under Section **132** of the Income Tax Act, 1961, was referred to when he acted as the Deputy Director of Income Tax (Investigation), Tirunelveli during the search operations.

18. The Appellate Tribunal has questioned as to how a search team that left for Tuticorin on the early morning on **08.12.1999** recorded statements, verifying documents and vouchers, contacted the Deputy Director of Income Tax, Mumbai and obtained a Warrant of Authorization from the Joint Commissioner of Income Tax, Tirunelveli and was able to initiate the proceedings at Tuticorin on the same premises at **08.30 a.m.**

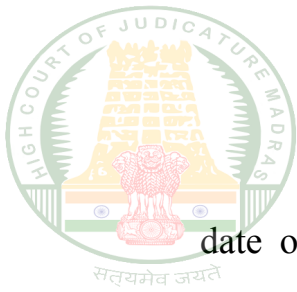


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WEB COPY 19. The Appellate Tribunal has further observed that two **Warrants of Authorization** were issued on **02.12.1999** which resulted in simultaneous search at Mumbai on **08.12.1999** which was temporarily concluded on the same day at about **11.30 p.m.** and another on the basis of a **Warrant of Authorization** dated **08.12.1999** issued by the Joint Commissioner of Income Tax, Tirunelveli was implausible.

20. The Appellate Tribunal has observed that the **Warrant of Authorization** dated **08.12.1999** was issued by the Joint Commissioner of Income Tax, Tirunelveli which resulted in conversion of a “**Survey**” into a “**Search**” at the factory premises of the Respondent-Assessee on the same day.

21. Thus, the Appellate Tribunal has ultimately concluded that the Assessment Order dated **28.03.2002** that was passed pursuant to the **Warrant of Authorization** dated **08.12.1999** was time-barred as the limitation under Section **158BE** of the Income Tax Act, 1961 was to be reckoned from the



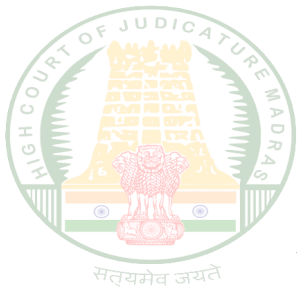
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date of search on **08.12.1999** and not from **02.03.2000** being the date of conclusion of the search. Therefore, the Assessment Order ought to have been passed on or before **31.12.2001** i.e., two years from the end of the month of the search.

22. If the search and seizure is deemed to have been completed and concluded on **08.12.1999** as was held by the Appellate Tribunal, the limitation for completing the assessment was **31.12.2001** in terms of Section **158BE** of the Income Tax Act, 1961, in which case, these appeals have to be dismissed.

23. On the other hand, if the limitation was to be computed from **02.03.2000** being the date of conclusion of the search, the limitation for completing the assessment would get barred on **31.03.2002** as the limitation under Section **158BE** of the Income Tax Act, 1961 has to be reckoned **two years from the end of March 2000**.



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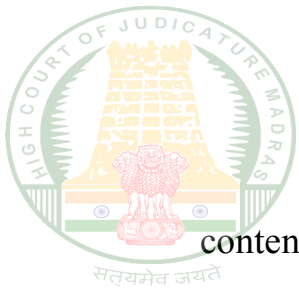
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24. Since, the Assessment Order was passed on **28.03.2002**, it is the contention of the Appellant Income Tax Department that it was within the period of limitation as **the last date for passing the Block Assessment Order was 31.03.2002**, since the search was not completed till **02.03.2000**. It is therefore submitted that since the **Block Assessment Order** was passed on **28.03.2002**, it cannot be said to be time-barred.

25. As far as the issue on merits are concerned, there are no discussion on the same, as the Appellant Income Tax Department's Appeal in **I.T.(SS) A.No.182/Mds/2004** was dismissed by the Appellate Tribunal. The Cross-objection of the Respondent-Assessee in **C.O.No.336/Mds/2005** was allowed on the ground of limitation. Operative portion of the **Impugned Order** dated **08.07.2011** of the Appellate Tribunal reads as under:-

“28. In the result, the appeal filed by the Revenue is dismissed and the cross objection filed by the assessee is allowed.”

26. Thus, the only point for consideration before us is whether the search can be said to have been completed on **08.12.1999** as was the



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contention of the Respondent-Assessee or on **21.01.2000** or on **02.03.2000** as is the contention of the Appellant Income Tax Department i.e., the dates on which search was further conducted by the Department pursuant to the **Warrant of Authorization** dated **02.12.1999**.

27. In support of the plea that the limitation under Section **158BE(1)(b)** for passing the **Block Assessment Order** under Section **143(3)** read with Section **158BC** of the Income Tax Act, 1961, the learned Junior Standing Counsel for the Appellant Income Tax Department has relied on the decision of the Hon'ble Supreme Court in “**Anil Minda and others Vs. Commissioner of Income Tax**”, 2023 331 CTR (SC) 705 / [2023] 453 ITR1 (SC) which upheld the view of the Delhi High Court in “**The Commissioner of Income Tax Vs. Anil Minda**”, (2010) 235 CTR (Del) 1.

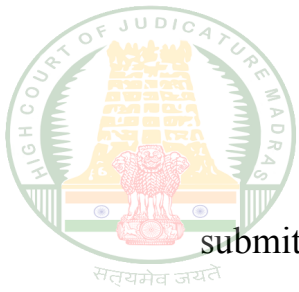
28. The learned Junior Standing Counsel for the Appellant would also refer to a decision of the Hon'ble Supreme Court in “**VLS Finance Limited and others Vs. Commissioner of Income Tax and Others**”, (2016) 384 ITR 1 (SC). It is submitted that in the aforesaid case, Panchnama was recorded



and the search was temporarily concluded which meant a search had not been concluded on the date of Panchnama. Apart from the above, the learned Junior Standing Counsel for the Appellant drew attention to the following decisions:-

- “(i) *The Commissioner of Income Tax Vs. Anil Minda* (2010) 235 CTR (Del)1;
- (ii) *Deputy Commissioner of Income Tax and Ors. Vs. Rakesh Sarin* [2014] 362 ITR 619(Mad);
- (iii) *Navin Kumar Agarwal Vs. Commissioner of Income Tax-XII* [2015] 375 ITR 541(Cal);
- (iv) *Bharat Mehta and Ors. Vs. Deputy Commissioner of Income Tax and Ors* [2020] 423 ITR 568(Mad);
- (v) *Trilok Singh Dhillon Vs. Commissioner of Income Tax* [2011] 332 ITR 185 (Chattisgarh)
- (vi) *CIT Jaipur Vs. Smt.Umlesh Goel D.B.* Income Tax Appeal No.153/2003;
- (vii) *Commissioner of Income Tax Vs. Vatika Township Private Limited* [2014] 3 ITR 466 (SC);
- (viii) *K.V.Padmanabhan Vs. Assistant Commissioner of Income Tax* [2019] 412 ITR 55 (ker);
- (ix) *Principal Director of Income Tax (Investigation) and Ors. Vs. Laljibhai Kanjibhai Mandalia* [2022] 446 ITR 18 (SC);
- (x) *Commissioner of Income Tax, Chennai Vs. S.Ajit Kumar* [2018] 404 ITR 526 (SC);
- (xi) *Commissioner of Income Tax (Central – I) Vs. Golden Refineries P.Ltd.* MANU/TN/4982/2022.”

29. Defending the **Impugned Order** dated **08.07.2011** of the Appellate Tribunal, the learned Senior Counsel for the Respondent-Assessee would



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submit that the search was completed on **08.12.1999** and therefore, the **Block Assessment Order** dated **28.03.2002** was time-barred. It is submitted that no additional material was recovered after **08.12.1999**. It is therefore submitted that for the purpose of computation of limitation under Section **158BE(1)(b)**, the limitation would have expired on **31.03.2001**, whereas, the **Block Assessment Order** was passed on **28.03.2002** long after the expiry of limitation prescribed for passing such order under Section **158BC** of the Income Tax Act, 1961. It is submitted that it would have been different if based on the search that was conducted on **21.01.2000** and **02.03.2000**, new and tangible materials were seized and recovered from the Respondent-Assessee.

30. It is submitted that however no additional tangible materials were recovered in further search conducted on these two days on **21.01.2000** and **02.03.2000** and since the assessment was based on the items identified on the date of Panchnama dated **09.12.1999** pursuant to search on **08.12.1999** at the Respondent-Assessee's premises on Tuticorin, the **Block Assessment Order** dated **28.03.2002** was correctly interfered with by the Appellate Tribunal.



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WEB COPY 31. That apart, it is submitted that the same Officer who was part of the search on the respective dates i.e., on **08.12.1999**, **21.01.2000** and **02.03.2000** has confirmed that the Deputy Director of Income Tax was going to come and conclude the search. However, on account of tight schedule and enquiry at Mumbai, they could not come in time and therefore, deputed officers from Mumbai who arrived on **01.03.2000**.

32. It is submitted that in the letter that was filed before the Appellate Tribunal by the Department on **07.01.2011**, the concerned Officer has further confirmed that arriving on **02.03.2000**, a search was conducted and it was further confirmed that during the course of time, they had examined the record rooms, seized documents from the Almirah of DGM (F&A) where certain materials and loose sheets were kept and on arrival of the team from Mumbai, the search was finally concluded. It is submitted that no additional material was found on these two days.



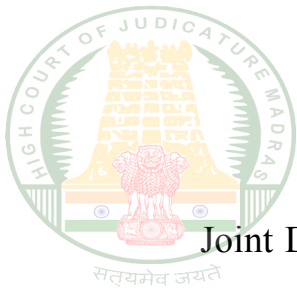
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33. We have considered the arguments advanced by the learned Junior Standing Counsel for the Appellant Income Tax Department and the learned Senior Counsel for the Respondent-Assessee. We have perused the Assessment Order passed by the Assessing Officer on **28.03.2002** under Section **143(3)** read with Section **158BC** of the Income Tax Act, 1961, order of the Appellate Commissioner dated **15.04.2004** and the Impugned Order dated **08.07.2011** of the Appellate Tribunal.

34. We have also perused the decisions cited by the learned Junior Standing Counsel for the Appellant Income Tax Department. We have also perused the copies of the Panchnama inventorizing the documents or materials seized and the **Prohibitory Orders** dated **09.12.1999** and **21.01.2000** passed under Section **132(3)** of the Income Tax Act, 1961 pursuant to searches conducted at the premises of the Respondent-Assessee on **08.12.1999**, **21.01.2000** and **02.03.2000**.

35. As per **Section 132(1)** of the Income Tax Act, 1961, the other named Officers therein namely, the Chief Commissioner or Commissioner or

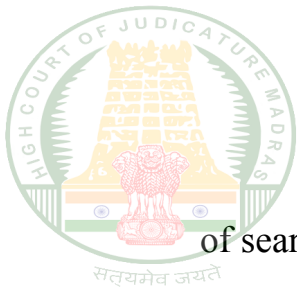


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Joint Director of Joint Commissioner, as the case may be, may authorize any Joint Director, Joint Commissioner, Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer or Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer to:-

- i. enter and search any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- ii. break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- iiia. Search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- iii. **seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;**
- iv. place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- v. make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

36. Section **132(1)** of the Income Tax Act, 1961 as it stood at the time



of search is reproduced below:-

WEB COPY “132. Search and Seizure:

(1) Where the Director General or Director or the Chief Commissioner or Commissioner or any such Joint Director of Joint Commissioner as may be empowered in this behalf by the Board, in consequence of information in his possession, has reason to believe that,-

- (a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or
- (b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or
- (c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this Section referred to as the undisclosed income or property),
then,-

A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be,



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may authorise any Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer, or

B) such Joint Director or Joint Commissioner, as the case may be, may authorise any Assistant Director of Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer,

(the officer so authorised in all case being hereinafter referred to as the authorised officer) to-]

- i. enter and search any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;
- ii. break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;
- iiia. Search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;
- iii. seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;
- iv. place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;
- v. make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the



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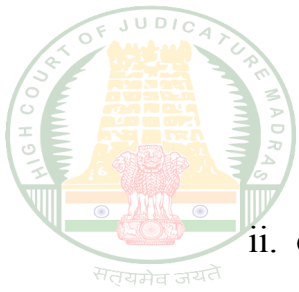
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area of jurisdiction of any [Chief Commissioner or Commissioner], but such [Chief Commissioner or Commissioner] has not jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in Section [120], it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [Chief Commissioner or Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue:

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii)."

37. As per the **second Proviso** to Section **132** of the Income Tax Act, 1961 where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its:-

- i. volume, weight; or



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ii. other physical characteristics or;

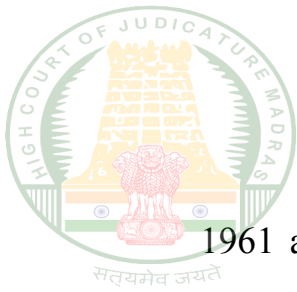
iii. due to its being of a dangerous nature,

the Authorized Officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer. Such action of the authorised officer shall be deemed to be “seizure” of such valuable article or thing under clause (iii).

38. Second *Proviso* to Section 132 of the Income Tax Act, 1961 reads as under:-

“Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii)”.

39. There is a difference between “**deemed seizure**” that is contemplated under second *Proviso* to Section 132(1) of the Income Tax Act,



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1961 and the **Restraint Order** or **Prohibitory Order** that is contemplated under Section **132(3)** of the Income Tax Act, 1961. A **Restraint Order** or **Prohibitory Order** under Section **132(3)** of the Income Tax Act, 1961 is not be confused with the seizure under Section **132** of the Income Tax Act, 1961.

40. Sub-Section 3 to Section **132** reads as under:-

“3.The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.”

41. **Restraint Order** or **Prohibitory Order** under Section **132(3)** has been explained in **Volume-I** of the **Search and Seizure Manual, 2007**, as under:-

“3.115 The Authorised Officer has the power to issue an order under section 132(3) where it is not practicable to seize any books of accounts, other documents, money, bullion, jewellery or other valuable article or thing found in the course of search. This power can be invoked for the reasons



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other than those mentioned in the second proviso to section 132(1). This is not deemed to be a seizure. Contravention of an order under section 132(3) entails prosecution under section 275A.

3.116 An order under section 132(3) can be issued only in respect of such books of accounts, other documents, money bullion, jewellery or other valuable articles or things as fall within the ambit of section 132(1). It, therefore, follows that an asset, which does not represent any undisclosed income or property of a person, can neither be seized nor subjected to an order under section 132(3).

3.117 With effect from 01.06.2002, an order issued under section 132(3) by an Authorised Officer will remain in force for a maximum period of sixty days from the date of issue. The Board has issued instruction to the effect that search and seizure work should be completed as early as possible and restraint order under section 132(3) should be lifted within one month from the date of passing such order(s).

3.118. Some situations in which an order under section 132(3) can be issued are as under:

(1) Where a warrant of authorisation for search of a bank locker has been obtained following its detection during a search, but it is not possible to search the locker immediately. In such a situation, an order under section 132(3) should be issued and served on the Bank Manager and the hirer of the bank locker and the locker itself should be sealed. The Board have issued administrative instructions that search of such a locker should be completed within seven days.

(2) Where a search remained inconclusive on the day of its initiation and its further continuation is required to be postponed for a subsequent day on



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account of some valid reason.

(3) Where verification and valuation of stock could not be completed and is required to be postponed for a subsequent day on account of some valid reason.

(4) Where it is not practicable to seize any books of account or other documents or assets because some special arrangements are required to be made for carrying or storing it.

(5) Where any Fixed Deposit Receipt or a Term deposit Receipt or any other valuable article or a thing of a similar nature is found and seized, it is also advisable to issue an order under section 132 (3) and serve the same on the assessee/person in whose possession and control, the FDRs were found and the Manager of the branch of the bank, or as the case may be the body or the person that issued the FDR or receipt of a similar nature to guard against any possibility of the issuance of duplicate receipts. While doing so, the point made at S.No.(6) below may also be kept in view. However, since with effect from 01.06.2002, an order issued under section 132(3) by an Authorised Officer remains in force for a maximum period of sixty days from the date of issue, it is advisable that if the retention continues after the expiry of the said period, the Manager/person-in-charge of the Bank or the body or institution that issued the FDR, Term Deposit Receipt, etc. is informed that the retention of the seized FDR is continuing in accordance with the law.

(6) The question whether an order under section 132(3) can be served on a bank prohibiting it from removing, parting with or otherwise dealing with the money in an account standing in the name of an assessee, whose premises has been searched, has been considered in the Board's Instruction No.1108 dated 06.10.1977. As stated in this letter, the



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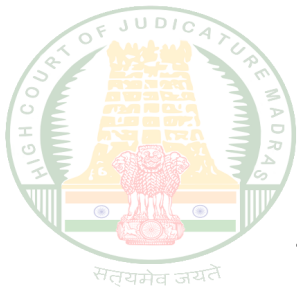


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Authorised Officer should, wherever an order under section 132(3) is warranted, serve the order on the bank concerned, and endorse a copy to the assessee. He should simultaneously also serve an order under section 132(3) on the assessee, endorsing a copy to the bank. Such a course will preclude avoidable controversies about "ownership", "control", etc. of the assets, which are sought to be covered by the prohibitory order. Wherever the facts of the case justify, the powers available under section 281B may also be resorted to, without prejudice to the action taken under Section 132(3)."

42. The power under Section **132(3)** of the Income Tax Act, 1961 is exercised where it is not practicable to seize any books of accounts, other documents, money, bullion, jewellery or other valuable article or thing found in the course of search. This power can be invoked for the reason other than those mentioned in the second *Proviso* to Section **132(1)** of the Income Tax Act, 1961. This is not deemed to be a seizure.

43. A **Restraint Order** or **Prohibitory Order** under Section **132(3)** can be issued only in respect of such books of accounts, other documents, money bullion, jewellery or other valuable articles or things as fall within the ambit of Section **132(1)** of the Income Tax Act, 1961.



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44. Therefore, the expression “**such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii)**” in the second *Proviso* to Section 132(1) of the Income Tax Act, 1961, cannot be equated with a **Restraint Order** or **Prohibitory Order** of the Authorized Officer, restraining the owner or the person in immediate control thereof not to remove or part with or otherwise deal with it except with the previous permission of such Authorized Officer.

45. Even as per the **Search and Seizure Manual, 2007 (Volume-I)** which was subsequently published on **30.05.2007** by the Central Board of Direct Taxes (CBDT) also it has been clarified that as far as possible search of premises, once started should continue till it is concluded.

46. In Paragraph 3.142 of the **Search and Seizure Manual, 2007 (Volume-I)**, it has been clarified by the Central Board of Direct Taxes (CBDT) It has been further clarified that, where because of any unavoidable and compelling reason, it is not possible to do so and it is considered necessary, in consultation with the Control Room, to temporarily conclude



the search for the day and continue the same on a subsequent day, the

WEB COPY Authorised Officer should take the following steps:-

- (1) The premises should be properly sealed in the presence of atleast two witnesses and placed under armed police guards along with some responsible persons of the Income Tax Department. In a case where only a part of the premises could not be searched, the decision whether to seal the entire premises or only that portion which is yet to be searched should be taken after a careful consideration of all the relevant factors, if possible in consultation with the Control Room. As far as possible only that portion of the premises should be sealed, which is yet to be searched so that minimum inconvenience is caused to its occupants.
- (2) The Authorised Officer should issue an order under Section 132(3) and serve the same on the person-in-charge of the premises or, as the case may be, of that part of the premises which has been sealed. Where the premises sealed are one where search could not commence because it was found to be locked, without any occupant, the procedure explained at paragraphs (3.12) and (3.13) above may be followed.
- (3) A panchnama should be prepared even if the search is temporarily concluded. This should clearly indicate that the search was temporarily concluded and not finally concluded. If search has been concluded in respect of a part of the premises, this fact should also be clearly recorded in the panchnama.
- (4) It is not necessary that seizure of books of account, documents, bullion, other valuable articles or things, etc., should be made only on conclusion of the search. Seizure can also be made even if the search has been suspended and is to continue on a subsequent day. Where search of a part of the premises has been concluded, inventors of the



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books of account, documents, bullion, jewellery, other valuable articles or things, etc., found as a result of the search and seizures made should be prepared in the usual manner.

- (5) On the subsequent day when the search is to be resumed, the seals should be opened in the presence of witnesses. As far as possible the same persons who witnessed the search on the day it was suspended should be called upon to witness its continuation. However, if they are not available, the authorised officer should select two or more other respectable inhabitants of the locality in which the building or place to be searched is situate to attend and witness the search. The Authorised Officer should issue an order in writing to the persons selected to attend and witness continuation of the search, even if they are the same person who witnessed the search on the day it was suspended.
- (6) Where on continuation of the search earlier suspended, any seal is found to be broken or tampered with, the matter should be immediately reported to the Control Room. A complaint to the police should also be lodged immediately. Contravention of an order under Section 132(3) also entails prosecution under Section 275A.
- (7) The search may resume after the aforesaid actions have been taken.

47. As far as the conclusion of search is concerned, it has been clarified as under:-

“Conclusion of search:

3.148 Some main steps that should be taken before concluding the search or temporarily concluding the same for



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being carried on a subsequent day are, in brief, as under:

- (1) A copy of the panchnama along with all its annexures should be provided to the person in whose case the search was conducted or, as the case may be, the person in-charge of the building, place, vessel, vehicle or aircraft searched, where such person is different from the former and acknowledgement for the same obtained on the original copy of the panchnama.
- (2) In case, personal search of any person has been taken under section 132(1)(ii)(a) of the Act, a copy of the inventory or the list of all the things taken possession of, should be given to such person and acknowledgement thereof obtained on the original copy of the inventory/list. A copy of this list is also required to be forwarded to the concerned Chief Commissioner of Income Tax or the Commissioner of Income Tax or where the authorisation is issued by any officer other than the Chief Commissioner or Commissioner, also to that officer.
- (3) The members of the search team should offer themselves for search by the person whose premises, is being searched or, as the case may be, the person in-charge of or in occupation of premises. This should be done in the presence of the witnesses. Search of lady members of the search team should be allowed to be made only by a lady present in, or occupying, the premises with a strict regard to decency. The fact that personal search of the members of the search team was offered both before the commencement of the search and on its temporary conclusion or, as the case may be, conclusion should be recorded in the panchnama, along with the fact whether such personal search was taken or declined.
- (4) The leader of the search team should ensure that none of the things brought by the team and required to be taken back by it, like kit bags, stationery, forms, brass



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seal and mobile phones is left behind.

- (5) No search should be suspended or concluded without getting a clearance for doing so from the Control Room. The officer manning the Control Room should obtain instructions in the matter from the concerned Additional/Joint Director and communicate the same to the search team.

48. Thus, it is evident that seizure of the documents will coincide with the conclusion of the search. **Restraint Order** or **Prohibitory Order** under Section 132(3) of the Income Tax Act, 1961 will not tantamount to “**deemed seizure**”. In this case, search was concluded on **02.03.2000** while the **Prohibitory Order** dated **21.01.2000** was lifted.

49. The law has been settled otherwise by the Hon'ble Supreme Court in “**VLS Finance Limited and others Vs. Commissioner of Income Tax and others**”, (2016) 384 ITR 1 (SC).

50. In Paragraphs 27, 28, 29, 30 and 31, the Hon'ble Supreme Court observed as under:-

“27. We may point out that the appellants never challenged subsequent visits and searches of their premises by the respondents on the ground that in the



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absence of a fresh authorisation those searches were illegal, null and void. Notwithstanding the same, it was argued that at least for the purpose of limitation the subsequent searches could not be taken into consideration, as according to the learned counsel, the legal position was that the authorisation dated 19th June, 1998, was executed on 22nd June, 1998 and the search came to an end with that when the search party left the premises on 23rd June, 1998 after making seizure of certain documents etc and issuing restraint order under Section 132(3) of the Act in respect of certain items which they allegedly could not seize due to impracticability on that day. Some judgments of various High Courts are relied upon to support this proposition. It was also argued that there was no concept of 'revalidation of authorisation' provided under the Act, which has been applied by the High Court in the impugned judgment, which according to the learned counsel for the appellants, amounts to legislating a new concept which is contrary to law.

28. The learned Additional Solicitor General, refuting the aforesaid contention, submitted that as per explanation (2) to Section 158BE, when it is a case of search, period of limitation is to be counted 'on the conclusion of search as recorded in the last panchnama drawn.....' It was argued that last panchnama was admittedly drawn on 5th August, 1998 and, therefore, period of limitation is to be counted from that date.

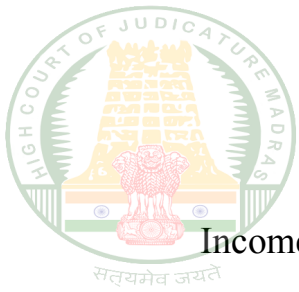
29. After considering the respective submissions, we are of the opinion that on the facts of this case, the issue also has to be answered in favour of the Revenue without going into the legal niceties.



30. *As noticed above, the revenue authorities visited and searched the premises of the appellants for the first time on 22nd June, 1998. In the panchnama drawn on that date, it was remarked 'temporarily concluded', meaning thereby, according to the revenue authorities, search had not been concluded. For this reason, the respondent authorities visited many times on subsequent occasions and every time panchnama was drawn with the same remarks, i.e. 'temporarily concluded'. It is only on 5th August, 1998 when the premises were searched last, the panchnama drawn on that date recorded the remarks that the search was 'finally concluded'. Thus, according to the respondents, the search had finally been completed only on 5th August, 1998 and panchnama was duly drawn on the said date as well. The appellants, in the writ petition filed, had nowhere challenged the validity of searches on the subsequent dates raising a plea that the same was illegal in the absence of any fresh and valid authorisation. On the contrary, the appellants proceeded on the basis that search was conducted from 22nd June, 1998 and finally concluded on 5th August, 1998.*

31. *On the aforesaid facts and in the absence of any challenge laid by the appellants to the subsequent searches, we cannot countenance the arguments of the appellants that limitation period is not to be counted from the last date of search when the search operation completed, i.e. 5th August, 1998. Therefore, this issue is also decided in favour of the respondents."*

51. In the present case, a Notice was issued on **08.06.2000** to the Respondent-Assessee. A **Return of Income** was thereafter filed by the Respondent-Assessee on **24.07.2000** in terms of Section **158BC(a)(ii)** of the



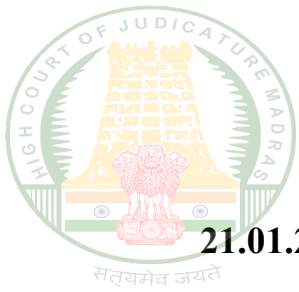
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Income Tax Act, 1961. In this background, a **Block Assessment Order** dated **28.03.2002** was passed within the period prescribed under Section **158BE(1)(b)** of the Income Tax Act, 1961.

52. The initiation of search and conclusion of the search and seizure need not necessarily be concluded on the same day. In these cases, the factory premises of the Respondent-Assessee where search was conducted is disclosed to be approximately 30,000 sq.ft.

53. Therefore, it may not have been possible for the search team of the Department to conclude the search on the same day itself. It is in this background, the **Panchnama** that was drawn on **09.12.1999** was also followed by a Prohibitory Orders dated **09.12.1999**, **21.01.2000** and **02.03.2000** in respect of the three items mentioned above after the search proceedings were held on **08.12.1999**, **21.01.2000** and on **02.03.2000**.

54. Thus, it cannot be expected that the search could be completed either on **08.12.1999** or on **21.01.2000**. The search was continued and completed only on **02.03.2000** when the **Prohibitory Order** dated



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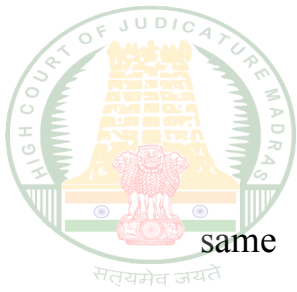
21.01.2000 that was passed after search on **21.01.2000** was lifted.

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55. **Explanation** to Section **132(3)** of the Income Tax Act, 1961 itself also makes it clear for the removal of doubts, it is hereby declared that serving of an order as aforesaid under the said sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1). **Explanation** to **Sub-Section 3** to Section **132** is reproduced below:-

*“**Explanation** – For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under Clause (iii) of sub-section (1)”.*

56. All that is mandated under Section **132(8)** of the Income Tax Act, 1961, is that the books of account or other documents seized under sub-section (1) or sub-section (1A) to Section **132** of the Income Tax Act, 1961 shall not be retained by the authorised officer for a period exceeding **180 days** from the date of the order of seizure unless the reasons for retaining the



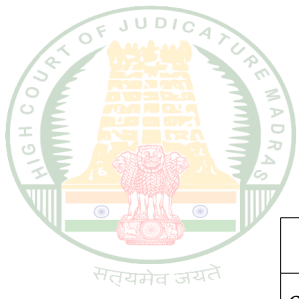
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same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director General or Director for such retention is obtained.

57. In terms of sub-section (8A) to Section 132 of the Income Tax Act, 1961 with effect from **01.06.2002**, an Order passed under Section 132(3) by an Authorized Officer shall not remain in force for the exceeding period of **60 days** from the date of order.

58. For the sake of clarity, Section 132(8) and Section 132(8A) of the Income Tax Act, 1961 are reproduced below:-

Section 132(8)	Section 132(8A)
(8) The books of account or other documents seized under sub-section (1) or sub-section (1A) shall not be retained by the authorised officer for a period exceeding one hundred and eighty days from the date of the seizure unless the reasons for retaining the same are recorded by him in writing and the approval of the Chief Commissioner, Commissioner, Director General or Director for such retention is	(8A) An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order, except where the authorised officer, for reasons to be recorded by him in writing, extends the period of operation of the order beyond sixty days, after obtaining the approval of the Director or, as the case may be, Commissioner for such extension.



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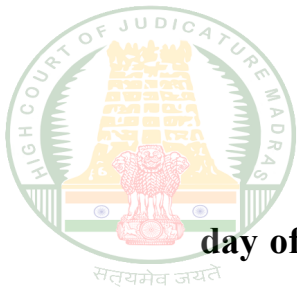
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Section 132(8)	Section 132(8A)
obtained.	

59. The Central Board of Direct Taxes (CBDT) has also issued instruction to the effect that search and seizure work should be completed as early as possible and **Restraint Order** or **Prohibitory Order** under Section **132(3)** should be lifted within the aforesaid period from the date of passing such orders.

60. Section **132(5)** of the Income Tax Act, 1961 that prevailed till **01.06.2006**, contemplated order to be passed within 120 days of the seizure with the previous approval of the Joint Commissioner, estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his Judgment on the basis of such materials as are available with him.

61. However, Section **132(5)** of the Income Tax Act, 1961 pertained to seizure made as a result of a search initiated or requisition made before the 1st



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day of July, 1995 by the Income-Tax Officer. Section **132(5)** of the Income

WEB COPY Tax Act, 1961 was deleted with effect from **01.06.2002** vide Finance Act,

2002. It is therefore no relevant for these appeals. Section **132(5)** of the

Income Tax Act, 1961 as it prevailed till **01.06.2006** reads as under:-

“132. Search and Seizure:

(1).....

(2).....

(3).....

(4).....

(5) Where any money, bullion, jewellery or other valuable article or thing (hereafter in this Section and in Sections 132A and 132B referred to as the assets) is seized under sub-section (1) or sub-section (1A), as a result of a search initiated or requisition made before the **1st day of July, 1995**, the Income-tax Officer, after affording a reasonable opportunity to the person concerned of being heard and making such enquiry as may be prescribed, shall, within one hundred and twenty days of the seizure, make an order, with the previous approval of the Joint Commissioner,-

i. estimating the undisclosed income (including the income from the undisclosed property) in a summary manner to the best of his judgment on the basis of such materials as are available with him;

ii. calculating the amount of tax on the income so estimated in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act;

ia. determining the amount of interest payable



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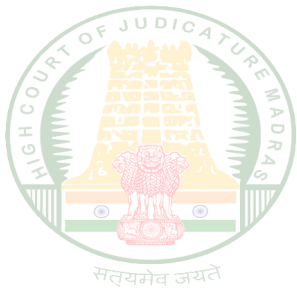
and the amount of penalty imposable in accordance with the provisions of the Indian Income-tax Act, 1922 (11 of 1922), or this Act, as if the order had been the order of regular assessment;

- iii. specifying the amount that will be required to satisfy any existing liability under this Act and any one or more of the Acts specified in clause (a) of sub-section (1) of Section 230A in respect of which such person is in default or is deemed to be in default,

and retain in his custody such assets / or part thereof as are in his opinion sufficient to satisfy the aggregate of the amounts referred to in clauses (ii), (iia) and (iii) and forthwith release the remaining portion, if any, of the assets to the person from whose custody they were seized:

Provided that if, after taking into account the materials available with him, the Income-tax Officer is of the view that it is not possible to ascertain to which particular previous year or years such income or any part thereof relates, he may calculate the tax on such income or part, as the case may be, as if such income or part were the total income chargeable to tax at the rates in force in the financial year in which the assets were seized and may also determine the interest or penalty, if any, payable or imposable accordingly:

Provided further that where a person has paid or made satisfactory arrangements for payment of all the amounts referred to in clauses (ii), (iia) and (iii) or any part thereof, the Income-tax Officer may, with the previous approval of the Chief



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Commissioner or Commissioner, release the assets or such part thereof as he may deem fit in the circumstances of the case.”

62. Therefore, as long as the investigation is incomplete, it cannot be said that the search was completed for the purpose of limitation under Section **158BE** of the Income Tax Act, 1961. Therefore, seizure of all documents cannot be said to have been made on **08.12.1999** for the purpose of computation of limitation.

63. It is clear that the search had remained inconclusive on the day of its initiation on **08.12.1999** and further continuation was required and was therefore postponed to a subsequent day on account of some valid reason.

64. It cannot be said that the search was completed on **08.12.1999** merely because the **Restraint Order** or **Prohibitory Order** was passed on **09.12.1999** in respect of certain items mentioned above while search was continued on **21.01.2000** and on **02.03.2000**.



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65. Seizure of the documents will be complete only after **Restraint Orders** or **Prohibitory Orders** passed are vacated after the search is complete. Therefore, for the purpose of computation of limitation, the date of initial search is not relevant in this case. It is the actual date of completion of the search by the Officers of the Department under Section **132** of the Income Tax Act, 1961 that is relevant.

66. Under Section **158BC(a)(ii)** of the Income Tax Act, 1961, a Notice has to be issued calling upon an Assessee to file Return of Income within 15 to 45 days of such Notice who has been either searched under Section **132** of the Income Tax Act, 1961 or where books of account, other documents or assets were requisitioned under Section **132A** of the Income Tax Act, 1961. Once service of such Notice is effected, no further Notice is required to be issued under Section **148** of the Income Tax Act, 1961. This is evident from a reading of the first *Proviso* to sub-clause (a) to Section **158BC** of the Income Tax Act, 1961.

67. Thereafter, the Assessing Officer has to proceed to determine the undisclosed income of the Block Period in the manner laid down in Section



158BB and the provisions of Section **142**, sub-section (2) and sub-section (3) of Section **143** and Section **144**, shall as far as may apply.

68. Section **158BC** of the Income Tax Act, 1961 reads as under:-

“158BC. Procedure for block assessment.

Where any search has been conducted under Section 132 or books of account, other documents or assets are requisitioned under Section 132A, in the case of any person, then,-

(a) the Assessing Officer shall-

- i. in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;
- ii. **in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days.**

as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of Section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under Section 148 is required to be issued for the purpose of proceeding under this Chapter:



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Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

- (b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158BB and the provisions of Section 142, sub-sections (2) and (3) of Section 143 and Section 144 shall, so far as may be, apply;
- (c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;
- (d) the assets seized under Section 132 of requisitioned under Section 132A shall be retained to the extent necessary and the provisions of Section 132B shall apply subject to such modifications as may be necessary and the references to “regular assessment” or “reassessment” in Section 132B shall be construed as references to “block assessment”.

69. Sub-Section (1) and (2) to Section **158BE** of the Income Tax Act, 1961, prescribes the limitation for the situation covered under Section **158BC** and Section **158BD** of the Income Tax Act, 1961 namely “the searched person” and the “other person.”

70. As far as the petitioner is concerned, the limitation is to be reckoned in terms of Clause (b) to Sub-Section (1) to Section **158BE** of the



Income Tax Act, 1961. Section **158BE** of the Income Tax Act, 1961 reads as

under:-

Section 158BE of the Income Tax Act, 1961	
Sub-Section (1) to Section 158BE	Sub-Section (2) to Section 158BE
(1)The order under Section 158BC shall be passed-	(2)The period of limitation for completion of block assessment in the case of the other person referred to in section 158-BD shall be-
(a)within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132Awithin one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997;	(a)one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997; and
(b)within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132-A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.	(b)two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.



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71. As per the **Explanation No.1** to Section **158BE** of the Income Tax Act, 1961, in computing the period of limitation for the purposes of the said Section, the period-

- i. during which the assessment proceeding is stayed by an order or injunction of any Court, or
- ii. commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of Section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, shall be excluded.

72. As per the **Explanation No.2** to Section **158BE** of the Income Tax Act, 1961, for the removal of doubts, it has declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed,-

- (a) **in the case of search, on the conclusion of search as recorded in the last panchanama drawn in relation to any person in whose case the Warrant of Authorisation has been issued.**
- (b) in the case of requisition under Section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.

73. Section **158BE(1)(b)** has to be read harmoniously with Sub-Section **132(3)** which has been extracted above. This view is also fortified by the Hon'ble Supreme Court in “**VLS Finance Limited and**



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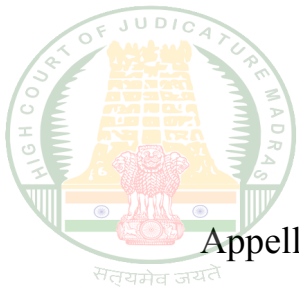
others Vs. Commissioner of Income Tax and others” (2016) 384 ITR 1

WEB C (SC), (*referred to supra*) wherein, the Court rejected the argument, that subsequent searches could not be taken into consideration, for computation of limitation.

74. During subsequent search held on **21.01.2000**, only 14 items from the record rooms were seized. The search was thus incomplete and later continued on **02.03.2000**. The documents from the **almirah** placed in the room of the **DGM (F&A)** which were kept in the custody of the Respondent-Assessee were not seized.

75. Therefore, it has to be held that the Block Assessment Order dated **28.03.2002** passed under Section **143(3)** read with Section **158BC** of the Income Tax Act, 1961 was in time.

76. Since the issue relating to merits has not been touched by the



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Appellate Tribunal in Appellant Income Tax Department's appeal in **Appeal**

No.I.T.(SS) A.No.182/MDS/2004, the Impugned Order dated **08.07.2011** is

liable to be set aside and the cases are therefore remitted back to the Appellate Tribunal by restoring the appeal of the Appellant Income Tax Department in **I.T.(SS) A.No.182/Mds/2004** along with **Cross-Objection** of the Respondent-Assessee in **C.O.No.336/Mds/2005** for deciding the case on merits.

77. Since the dispute pertains to the **Block Period** [i.e., the period between **1990-1991** to **1999-2000** and part of the **Assessment Year 2000-2001**] and more than two decades have lapsed due to the pendency of the litigation, the Appellate Tribunal is expected to dispose the above appeal of the Appellant Income Tax Department and the Cross-Objection of the Respondent-Assessee, as expeditiously as possible as its calendar will permit.

78. These Tax Case Appeals, are thus, allowed by answering the substantial questions of law in favour of the Appellant Income Tax Department and against the Respondent-Assessee with the above direction.



No costs.

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[R.S.K., J.]

[C.S.N., J.]

09.05.2025

Neutral Citation : Yes / No

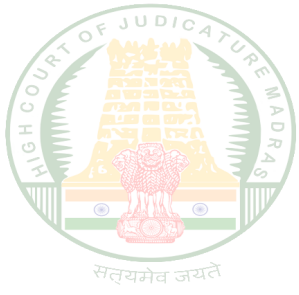
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To:

- 1.The Commissioner of Income Tax,
Mumbai.
- 2.The Income Tax Appellate Tribunal,
Madras “C” Bench, Chennai.

R.SURESH KUMAR, J.
and
C.SARAVANAN, J.

jas / arb



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Pre-delivery Common Judgment in
T.C.A.Nos.263 and 264 of 2015
and
M.P.No.1 of 2015

09.05.2025