

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "जे" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "J" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T(SS).A. No.05/Mum/2004
(निर्धारण वर्ष / **Block** Assessment Period : 1.4.1989 to 17.12.1999)

Shri Rajendra Agarwal, 304, Atlanta Arcade, Marol Church Lane, Andheri (E), Mumbai-400059	बनाम/ Vs.	Dy. Commissioner of Income Tax -Range 8(2), Mumbai 2 nd floor, Aayakar Bhavan, M K Road, Mumbai-400020
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स्थायी लेखा सं./ PAN : **AABPA9611N**

अपीलार्थी ओर से / Assessee by	Shri R C Jain
प्रत्यर्थी की ओर से/Assessee by	Shri Ashok Johri

सुनवाई की तारीख / **Date of Hearing** : **26.8.2016**

घोषणा की तारीख /**Date of Pronouncement** : **15.09.2016**

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the assessee challenging the order of the Id.CIT(A) dated 28.10.2003 for the block assessment period 1.4.1989 to 17.12.2099.

2. Grounds of appeal taken by the assessee are as under :

"A. VALIDITY OF ASSESSMENT:

1. The Ld. CIT (Appeals) erred in holding that the assessment was not barred by limitation of time.

2. The Ld. CIT (Appeals) in doing so did not appreciate that the order u/s 132 (3) passed on 17.12.1999 and vacated on 14.02.2000 was a futile excise not supported by any evidence as held by the jurisdictional and other High Courts in the matter.

B. MERITS:

3. The Ld. CIT (Appeals) erred in confirming the addition of Rs.3,35,000/- as undisclosed income in respect of certain electronics items.

3.1 In any event the LO. CIT (Appeals) ought to have held that the estimate adopted by the Assessing Officer was on high side and that too without any material.

4. The Ld. CIT (Appeals) erred in confirming the addition in respect unaccounted jewellery as undisclosed income to the extent of Rs.76,115/ - out of the addition of Rs. 1,58,598/ - made by the Assessing Officer.

4.1 In so doing the Ld. CIT (Appeals) did not appreciate the facts material on record.

5. The Ld. CIT (Appeals) erred in confirming the addition I of Rs.22,50,000/- as undisclosed income in respect of 1,50,000 shares Arrochem Silvassa Ltd.

6. The Ld.CIT (A) in confirming the addition did not appreciate the facts, material and evidence on record.

6. The Ld. CIT(A) erred in confirming the addition of Rs.60,85,800/- out of the addition of Rs. 82,27,100/- as undisclosed income in respect of 1,12,500 shares of Phar East Laboratories Ltd.

6.1 In confirming the said addition the Ld. CIT (Appeals) did not consider the facts, material and evidence on record.

7. The Ld. eIT (Appeals) erred in confirming the addition u/s 68 of Rs.74,200/ - out of Rs. 1,51,404/ - made by the Assessing Officer.

7. 1 In confirming the same the Ld. CIT (Appeals) did not appreciate the facts, material, evidence on record and provisions of law in this regard."

3. Brief facts of the case are that the assessee was a Director of M/s Macleods Pharmaceutical Ltd. A search action was conducted at the residence of assessee on 17.12.1999 and during the course of search action one key of locker No.554 of SBI Malad (W) Branch, Mumbai in the name of assessee and his wife Smt Anju Agarwal was seized and other valuables articles or things were inventorised as per annexures 2 to 8 which were found during the course of search but not seized. The locker no.554 was sealed on 23.12.1999 and the same was searched on 14.2.2000 and jewellery of Rs.45100/- were found but was not seized by the department. The notice u/s 158BC of the Act dated 25.5.2000 was issued to the assessee which was complied with by the assessee by filing return of income in Form No.2B on 12.6.2000 declaring an income of Rs.7 lakhs for the block period commencing from 1.4.1989 to 12.12.1999 along with the copy of self assessment tax chalan for Rs.4,62,000/-. Finally, the AO completed the assessment u/s 143(3) read with section 158BC of the Act vide order dated 27.2.2002 at an amount of Rs.1,39,96,439/- and tax thereon worked out to Rs.92,37,650/-.

4. The assessee challenged the validity of reopening of the assessment in ground no.1 and 2 that the Id.CIT(A) has erred on law and facts in holding that the assessment was not barred by limitation. The issue has been challenged by the assessee before the Id. CIT(A) vide ground no.1

which was dismissed by the Id. CIT(A) after considering the submissions and argument of the assessee by holding and observing as under :

"4. In ground No.1, the appellant has contested the action of the Assessing Officer in passing the order under section 158BC read with section 143(3) of the Act under appeal dated 27.02.2002 on the ground that the said order was passed beyond the period specified in section 158BE of the Act. It was submitted that in the instant case, the search initiated on 17.12.1999 was concluded on the same date. Thereafter, prohibitory order was only served on the appellant which was finally lifted on 14/02/2000 when a portion of the residence and the locker previously placed under the prohibitory order were searched. It was submitted that the prohibitory order under section 132(3) was passed which was subsequently removed on 14.02.2000 was in respect of the premises that were not such as to envisage any practical difficulty for search on the first date of the search on 17.12.1999 so as to put a restrained order in terms of section 132(3) as has been done in this case. In doing so, in pursuance to the search action under section 132J), the search party had circumvented the provisions of law. Hence, it cannot be taken into account so as to prolong the effective date for the completion of block assessment proceeding. Such action is not permissible as per law.

5. In this regard, the appellant's representative has relied upon the decision in the case of CIT V/s Mrs.Sandhya B. Nayak & Others 253 ITR 534 (Born); CIT Vs. Dr C Balakrishnan Nair and othes 237 ITR 70 (Ker.) and certain tribunal decisions. It was submitted that in view of the the judicial decisions, the search proceedings cannot be held to have continued beyond 17/12/1999 and, therefore, the Assessing Officer was under legal obligation to complete the assessment proceedings and pass the assessment order under section 158BC of the Act on or before 31.12.2001. It was submitted that under the circumstance, the impugned assessment order made on 27/02/2002 has been passed beyond the limitation and hence is illegal being bad and therefore, required to be annulled.

6. The submission made by the appellant's representative has been considered. A perusal of Chapter XIV -B of the IT Act providing the procedure for

Completion of an assessment in a case where search and seizure action taken place reveals that the assessment is to be completed within the time frame provided in section 158BE of the Act. The time limit for completion of the proceedings under section 158BC as applicable to the case of the appellant is provided in clause (b) of subsection (1) of section 158BE of the Act i.e. two years from the end of the month in which the last of the authorization for search under section 132 was executed. Explanation 2 below the said section lays down that the authorization referred to shall be deemed to have been executed on the conclusion of the search as recorded in the panchanama drawn in relation to any person in whose case warrant of authorization has been issued. The law is, therefore, clear that the date of execution of authorization tantamount to the date of conclusion of the search by the drawing of last panchanama and, therefore, so long as such panchanama is validly drawn the time limit for the conclusion of block assessment proceedings is required to be taken and reckoned from the said date only. That date cannot be taken for considering the period of limitation only if the panchanama was not validly drawn.

7. If the case of Mrs. Sandhya B. Nayak is examined, the ratio-decendi of which has been relied upon by the appellant's representative, it is true that the Hon'ble IT AT had held that the block assessment order passed was void having been passed on a date beyond the prescribed time limit. That decision was taken primarily on the ground that the last panchanama drawn was defective in many respects and hence, cannot be taken into account in the determination of time limit under section 158BE of the Act. This is however, not so in the instant case. The appellant cannot sit over the judgement of the Authorised Officer to invoke the provisions of section 132(3) of the Act on the temporary conclusion of the search on 17.12.1999 that was again started on 14.02.2000 and concluded on the same date. Moreover, the fact that the order under section 132(3) of the Act does not tantamount to seizure has been clarified in the Explanation below the said sub-section.

8. Further, in respect of the order of restraint under section 132(3) of the Act dated 17.12.1999 as well as the conclusion of the search proceedings vide the panchanama dated 14.2.2000 the appellant at no stage had challenged the proceedings of the Department under section 132(3) of the Act. Even before the Assessing Officer, the proceeding after December 1999 when as per the appellant's

representative's version, the proceedings ought to have been concluded was not challenged and the appellant had from time to time given reply and furnished the details called for by the Assessing Officer in this regard. Hence, the case of the appellant is clearly distinguishable on facts from the case of Mrs. Sandhya B.Nayak (Supra) in respect of which the decision has been rendered which has been sought to be relied upon by the appellant's representative to submit that the assessment order under appeal is barred by limitation.

9. In their decision in the case of CIT Vs. Sun Engineering Works (P) Ltd 197 ITR 297 (SC), the Hon'ble Apex court have held that it is neither desirable nor permissible to pick out a word or sentence from the judgment divorced from the context of the question under consideration. The judgement must be read on the whole and the observation from the judgement have to be considered in the light of the question which were before the court. A decision of the court takes the colour from the question involved in the case of which it is rendered and while applying decision to a later case, the court must carefully try to ascertain the true principle laid down in the decision. In view thereof, the decision in the case of Mrs. Sandhya BNayak (supra) mutatis mutandis cannot be made applicable to the case of the appellant where there is no infirmity in drawing of the last panchanama on the basis of which the AO has reckoned the limitation for the completion of the block assessment proceedings, The order passed by the Assessing Officer, having been passed within the time limit provided in section 158BE(1)(b) of the Act is therefore, held as a legally valid order. The appeal in respect of ground No. 1 is therefore, dismissed."

5. The Id.AR vehemently argued before us that the assessment as made by the AO and upheld by the Id. CIT(A) was totally wrong and invalid as the assessment was barred by limitation in terms of provisions of section 158BE(1)(b) of the Act. The Id. AR submitted that search was conducted u/s 132(1) on 17.12.1999 at the residence of the assessee in terms of warrant of authorisation dated 16.12.1999 which was in the name of

assessee and his brother Shri Banwarilal Bawri. Similarly, a search was carried out at the premises of M/s Macleods Pharmaceutical Ltd. in terms of separate warrant of authorizing in which the appellant was Director. The Id. Counsel submitted that nothing was seized in the search action at the residential premises of the assessee whereas the authorized officer Shri R.K. Vishwakarma inventorised jewellery found at the residence of assessee which value at Rs.4,23,354/- by the department's valuer and was stored in the small cupboard in the residence of the assessee in the appellant's daughter and a prohibitory order u/s 132(3) of the Act the was passed sealing the cupboard in the search proceedings. The key of the SBI Bank locker was also seized and sealed. Besides search team inventorised various articles like shares and list of bank accounts and the search was concluded accordingly. The bank locker with State Bank of India was sealed by an order passed u/s 132(3) of the Act on 23.12.1999 in pursuance of the order dated 12.12.1999 issued in the name of bank. The counsel of the assessee further submitted that bank locker was opened and operated on 14.02.2000 and the contents(jewellery) of the locker were got valued at Rs. 45,100/- from the departmental valuer in the presence of assessee's wife by the Shri M.V Patil. The prohibitory order u/s 132(3) dated 23.12.1999 was vacated on 14.02.2000. The jewellery found in the bank locker as well as kept at the residence aggregating to Rs.4,68,954/- was handed over to the assessee's wife in

terms of Panchnama dated 14.2.2002. The Id. Counsel submitted that panchanama dated 14.2.2000 vacated the prohibitory order resultantly list of jewellery was prepared and signed by Mr.M V Patil who was authorised officer to search bank locker and to pass the prohibitory order dated 23.12.1999. His role got over as soon as the bank locker was opened and operated. On 14.2.2000 nothing was seized and therefore the search has concluded on 17.12.1999 or at the most on 23.12.1999 and can not be extended to 14.02.2000 when only bank locker was opened and nothing was seized. The Id. Counsel argued that thereafter block assessment was initiated by the AO and framed assessment at an amount of Rs. 1,39,96,439/- against the returned income of Rs.7 lakhs and a demand of Rs.92,32,650/- was raised. The Id. Counsel vehemently submitted that the assessment order as framed by the AO and confirmed by the Id. CIT(A) was invalid , illegal and non-est as the same was not framed within a period of two years from the date of conclusion of search . The prohibitory order was vacated on 14.2.2000 by the officer who was authorized in terms of authorization letter dated 16.12.1999. In support of the same, the Id. counsel relied on the decision of the jurisdictional High Court in the case of CIT V/s Mrs. Sandhya B. Naik & Others 253 ITR 534. The Id. counsel submitted that nothing was seized on 14.2.2000 and it was only the bank locker was opened and operated and after valuing the jewellery found in the locker same was valued and handed over to the

wife of the assessee. On the same date the prohibitory order placed on the assessee on 17.12.1999 and the bank locker on 23.12.1999 were vacated. The Id submitted that the search was concluded on 17.12.1999 or latest on 23.12.1999 and therefore block assessment order passed on 27.2.2000 was barred by limitation for the reasons that as prohibitory orders was not seizer in terms of provision of section 132(3) of the Act which has been adequately explained in the case of Mrs.Sandhya B. Nayak & Others (supra). The Id. Counsel submitted that the prohibitory order could not continued for longer period if the facts did not warrant such continuation. In the present case the whole process got concluded which has been specified in the panchnama adequately. It was pointed out that nothing was seized in the last panchanam dated 14.2.2000 and it was only to vacate the order passed u/s 132(3) of the Act. Therefore the block assessment order dated 27.2.2002 was barred by limitation as provided in section 158BE(1)(b) of the Act. The said order should have been passed with reference to first panchnama dated 17.12.1999 or at the most 2nd panchanama dated 23.12.1999. Lastly the Id AR prayed that the assessment order passed by the AO be quashed on the ground of barred by limitation.

6. The Id. DR reiterated the facts as mentioned in the appellate order and heavily relied on the orders of authorities below. The Id Dr ,while

vehemently opposing the arguments of the Id AR, submitted that the assessment was made well within time as the last punchnama was drawn on 14.2.2000 and therefore the search was concluded on 14.02.2000 and not on 17.12.1999 or 23.12.1999 as submitted by the Id AR. The Id Dr submitted that on 14.02.2000 the locker was operated and jewellery found therein and valued at Rs. 45,100/- . The entire jewellery which was found at the residence of the assessee on 17.12.1999 and 14.02.2000 was handed over to the assessee on 14.02.2000. Taking the above facts in totality , the search started on 17.02.2000 was concluded on 14.02.2000 and the assessment was framed on 27.02.2000 which was well within limitation in terms of section 158BE(1)(b) of the Act. In defence of his arguments the Id DR relied on a number of decisions namely (i) VLS Finance Ltd Vs Commissioner of Income Tax (2016) 68 Taxman.com 368(SC) (ii) Navin Kumar Aggarwal Vs CIT ITA No 11 of 2005 dated 12.05.2015 and (iii)CIT Vs Mukund ray Shah. Finally the Id Dr prayed that the order of CITA) be upheld.

7. We have heard the rival parties and perused the relevant records placed before us including the judicial decisions referred and relied by the parties. The search u/s 132 of the Act was conducted on 17.12.1999 pursuant to warrant of authorisation dated 16.12.1999. Simultaneous search was also carried out on the company M/S Macleods

Pharmaceuticals Ltd in pursuance of separate warrant of authorisation in which the assessee was a director. During the course of search on the assessee nothing was seized by the search party but the authorised officers Shri K.J. Singh and Shri R.K. Vishwakarma inventorised the jewellery found at the residence of the assessee which was valued by the Deptt valuer at Rs. 4,23,354/- and was put in the cupboard at the residence of the assessee which was sealed by a prohibitory order u/s 132(3) of the Act. Similarly the key of Bank locker of the assessee with State Bank of India found during the search was sealed on 23.12.1999 in terms of warrant of authorisation dated 21.12.1999 and prohibitory order u/s 132(3) was passed. Thereafter the said bank locker was opened on 14.02.2000 and the jewellery found therein was got valued at Rs. 45,100/- from the Deptt valuer by the Shri M.V Patil and the orders u/s 132(3) of the Act dated 17.12.1999 and 23.12.1999 were vacated. As a result jewellery found at the residence of the assessee worth Rs. 4,23,354 and found in the bank locker worth Rs. 45,100/- aggregating to Rs. 4,68,954/- was handed over to the wife of the assessee in term of punchnama dated 14.02.2000. Thus it is apparent from the above that nothing was found and seized on 14.02.2000 in terms of punchnama dated 14.02.2000. Now the legal issue qua the search is whether the block assessment as made by the AO was barred by limitation u/s 158BE(1)(b) of the Act. According to the provisions of section 158BE (1)(b) of the Act order in the block

assessment has to be passed by the AO within two years from the end of the month in which the search was conducted and concluded .Now the issue to be adjudicated is whether the search concluded in 17.12.1999/23.12.1999 or 14.02.2000. From the facts discussed and narrated above it is clear that no seizure was made on 14.02.2000 but only the bank locker was opened at the strength of order dated 14.2.2000 and the prohibitory order u/s 132(3) of the Act were vacated. In view of the said fact it clear that the date of conclusion of search can not be taken as 14.02.2000 and has to be either 17.12.1999 or 23.12.1999 especially when nothing was found and seized on 14.2.2000. Moreover it is also clearly mentioned in the punchnama dated 17.12.1999 and dated 23.12.1999 that the search was finally concluded and not on 14.2.2000. The case of the assessee also find support from the decision in the case of Sandhya P. Naik (supra) that limitation shall not extend to the date of passing order u/s 132(3) of the Act. The time limit for making assessment can not extended to the date of passing a restraint order. In Mrs. Sandhya B. Nailk & Others (supra) the search was conducted and concluded on 16.10.1996 and assessment was completed on 31.12.1997. The assessee challenged the assessment being time barred by limitation on the ground that the same should have been made within one year from the conclusion of the search i.e the assessment should have been completed on or before 31.10.1997 as the search was completed on 20.10.1996. In this case also

an order u/s 132(3) was passed on seizing all articles found in a cupboard and was sealed accordingly. Thereafter some silver items were released and the remaining were again sealed by further order passed u/s 132(3) of the Act on 31.12.1997. The revenue claimed that the search was commenced on 16.10.1996 and was completed on 13.12.1996 when last punchnama was drawn as there was a deemed seizure on 13.12.1996 as per the second proviso to section 132(1) of the Act. In second appeal, the Tribunal quashed the order being barred by limitation. In third appeal, the Hon'ble High Court has dismissed the appeal of the revenue in limine meaning thereby upholding the decision of the tribunal that the assessment was time barred and also invalid. Thus assessment annulled by Tribunal was approved. . The facts of the assessee's case are squarely covered by the decision of Mrs.Sandhya B. Nayak & Others(supra). The decisions relied by the revenue in its support are distinguishable on facts and therefore the ratio decendi of same is not applicable to the facts of the present case .In view of the above facts and the ratio laid down in the case of Sandha P. Naik (supra) we set aside the order of AO and hold the block assessment as barred by limitation as discussed above. Since we have decided assessee's appeal on preliminary technical issue, so the issue raised on merit becomes academic and the same may be agitated as and when situation arises.

9. In the result, the appeal of the assessee is partly allowed).

Order pronounced in the open court on 15.9.2016.

Sd (SHAIENDRA KUMAR YADAV) न्यायिक सदस्य / JUDICIAL MEMBER	sd (RAJESH KUMAR) लेखा सदस्य / ACCOUNTANT MEMBER
मुंबई MUMBAI; दिनांक DATED :16.9..2016	
Sr.PS:SRL:	

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**