

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.810/PUN/2016
निर्धारणवर्ष / Block Period : 1988-89 to 10.07.1997

Mahendra Auto Services (AOP), C/o.Gopinath Manohar Wadi, 29, Vaibhav Road, Dhule-424001. PAN: AAAAM 6249 C	Vs	The Assistant Commissioner of Income Tax, Circle-3(1), Dhule.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Sanket Milind Joshi – AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	04/05/2022
Date of pronouncement	07/07/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-1, Nashik, dated 15.02.2016for the Block Period 01.04.1987 to 10.07.1997.The Assessee raised following grounds of appeal:

“1. In the facts and circumstances of the case and in law, the learned C.I.T.[A] has failed to appreciate that since the satisfaction recorded by ADIT [Inv] before issuance of search warrant was in the name of AOP consisting of four persons, the impugned assessment made on deemed AOP consisting of six persons u/s 158 BC[c] of the I.T. Act 1961 was contrary to the provisions of law. The impugned assessment order passed by the learned Assessing Officer being bad in law, void ab initio, null and void and being without jurisdiction the learned CIT [A] ought to have be annulled the same.

2. The learned CIT [A] has failed to appreciate that the search warrant dt.28/04/1997 was issued in the name of M/s Mahendra Auto Service without specifying the status and the name of the owner/s. In the circumstances the impugned assessment order framed by the learned Assessing Officer on deemed AOP consisting of six persons u/s 158 BC[c] of the I.T. Act 1961 was bad in law, void ab initio, null and void and being without jurisdiction the learned CIT[A] ought to have annulled the said assessment order.

3. Since there was no search warrant in the name of the appellant assessee, the impugned block assessment order framed by the learned

Assessing Officer u/s 158BC[c] r.w.s. 143[3] of the I.T. Act 1961, without following the procedure as prescribed u/s 158BD of the I. T. Act 1961 was patently illegal, bad in law and without jurisdiction and the entire assessment proceedings being vitiated the learned C.I.T.[A] ought to have annulled the said assessment order.

4. *In the facts and circumstances of the case and in law, the learned C.I.T.[A] has erred in holding that an amount of Rs.35.00 lacs was income of the appellant assessee as was allegedly evidenced by seized diaries for the period 01/04/1997 to 10/07/1997, in spite of the fact that the said income was offered for taxation by the individual members in their respective hands in addition to their other incomes. The said addition being arbitrary, perverse, and devoid of merits the same may please be deleted.*

5. *In the facts and circumstances of the case and in law, the learned C.I.T.[A] has erred in holding that an amount of Rs.35.00 lacs was income of the appellant assessee as was allegedly evidenced by seized diaries for the period 01/04/1997 to 10/07/1997, in spite of the fact that the said income was offered for taxation by the individual members in their respective hands in addition to their other incomes. The said addition being arbitrary, perverse, and devoid of merits the same may please be deleted.*

6. *The appellant submits that the learned CIT [A] in his appellate order dt.10/03/2005 vide Para No. 17.1 on Page No. 18 held that since there was no AOP in existence prior to 01/04/1997, the income disclosed by the individual members of the AOP in their individual returns cannot be taxed as undisclosed income of the AOP the same should be deleted. In the circumstances the observation of learned CIT[A] in Para No. 18 on Page No.30 that in the result, the appeal is dismissed is erroneous and hence the same may please be deleted with all consequential reliefs.*

7. *Without prejudice to the above grounds of appeal and by way of an alternate submission the appellant submits that since the learned Assessing Officer has failed to issue and serve notice u/s 158BC[c] of the I.T.Act 1961, upon all the alleged six members of the deemed AOP, the impugned block assessment order framed by the learned Assessing Officer is bad in law, patently illegal, void ab initio and null and void and without jurisdiction and hence the same may please be annulled.*

8. *The appellant craves the permission to add, amend, modify, alter, revise, substitute, delete any or all grounds of appeal, if deemed necessary at the time of hearing of the appeal.”*

Additional Ground of appeal:

Since there was no valid Panchanama in the case of the appellant at the time of alleged search and seizure action, the impugned assessment order is bad in law, void ab initio, null and void and without jurisdiction and hence the same may please be annulled.

2. Brief facts of the case are that this is the second round of litigation before the ITAT. There was a search under section 132 of the Act on 10.07.1997 in Mahendra Auto Services. In this case, the assessment order was passed in the name of M/s.Mahindra Auto Services, Avdhan, Dhule in the status of AOP under section 158BC r.w.s 143(3) of the Act for the Block Period 01.04.1987 to 10.07.1997. The following persons were held as Members of the AOP in the assessment order:

1. Shri Prithviraj Chandrakant Shinde
2. Shri Bhikan Bapurao Shelke
3. Shri Rajendra Popat Shinde
4. Shri Bharat Maharupawar
5. Shri Gopinath M.Wadi
6. Shri Ashokkumar Bhavandas Sangtani

The total undisclosed income was Rs.1,60,39,500/- as per the assessment order.

2.1 Mr. Mahendrakumar Jamnadas Mehta was made dealer by Hindustan Petroleum Corporation Ltd for Petrol and Diesel Pump. As per the statement of Mahendra J Mehta he was having Petrol Pump at Chalisgaon Cross Road Dhule, and Diesel Pump at Mumbai Agra Road Dhule. He had given it to Mr.Rajendra Shinde in 1995 and then to Gopinath wadi for running.

3. Aggrieved by the Assessment Order, the assessee filed an appeal before the Id.CIT(A)-II, Aurangabad. The Id.CIT(A) passed the order on 10.03.2005.

4. Aggrieved by the order of Id.CIT(A), the assessee filed an appeal before the ITAT Pune Bench. Before the ITAT, the assessee raised legal ground that since there was no search warrant in the name of appellant

assessee the impugned block assessment order is bad in law. The Id.Co-ordinate Bench admitted the additional ground which was legal ground. The Id.Co-ordinate Bench vide its order dated 31.03.2009 in ITA 1302/PN/2005 restored the issue to the Id.CIT(A) to ascertain all the relevant facts and information as the confidential information related to the satisfaction recorded prior to the search was with the Department.

5. The Id.CIT(A) vide its order dated 15.02.2016 held as under:

“Information given by the ADIT & AO clearly states that the satisfaction was recorded by the authorities. In view of this fact, it is clear that there was specific material in the knowledge of Revenue authorities to initiate search proceedings and the material indicated that there was association of 4 persons in the activity that was carried out. The action of the AO is upheld.”

6. Aggrieved by the said order of the Id.CIT(A), the assessee has filed appeal before this Tribunal.

7. The Id.Authorised Representative(Id.AR) for the assessee submitted written submission:

“2) A search action u/s 132(1) was conducted on the premises of a Diesel Pump owned by ‘M/s. Mahendra Auto Services’ at Highway No.3, Avdhan, Dhule on 10.07.1997. The search warrant is enclosed on pages 25 & 26 of Paper Book whereas the Panchanama drawn in the name of ‘M/s. Mahendra Auto Services’ is enclosed on pages 38 - 44 of P.B.

3) As per the legal records, ‘M/s. Mahendra Auto Services’ was the proprietary concern of one, Mr. Mahendra J. Mehta. Copy of agreement entered by Mr. Mahendra J. Mehta in the capacity of Proprietor of ‘M/s. Mahendra Auto Services’ with M/s. Hindustan Petroleum Corporation Ltd. is enclosed on pages 76 - 86 of P.B.

4) In the course of search action conducted on ‘M/s. Mahendra Auto Services’, the Dept.-recorded the statement of the owner of the diesel pump, Mr. Mahendra J. Mehta u/s 132(4) of the Act (refer pages 54 - 62 of P.B.). In his statement, Mr. Mehta (Proprietor of ‘M/s. Mahendra Auto Services’) stated that although he was the owner of the searched diesel pump named ‘M/s. Mahendra Auto Services’, due to his ill health, he had let out the operations of the Diesel Pump to one, Mr. Rajendra Shinde from the year 1995 onwards upto 12.01.1997 and subsequently, vide agreement dated 13.01.1997, he had let out the operations of the Pump to one, Mr. Gopinath

Wadi at a monthly rent of Rs.3,000/- received by his proprietary concern, 'M/s. Mahendra Auto Services'.

5) In the course of the search action, certain diaries were seized which contained notings of unaccounted profit earned from the operations of the said Diesel Pump for three months i.e. May, June and July, 1997. As per the said notings, the above undisclosed profit from Diesel Pump in each of the three months, was distributed among six individuals (not including Mr. Mahendra Mehta) in a fixed ratio as under:

Sr.	Name of Individual	Profit Percentage
1	Prithviraj C. Shinde	20%
2	Bhikan B. Shelke	20%
3	Rajendra P.Shinde	20%
4	Bharat M.Pawar	20%
5	Gopinath M. Wadi	10%
6	Ashokkumar B. Sangtani	10%
	Total	100%

8) In the meanwhile, after more than a period one year after initiating proceedings u/s 158BC in the case of Mr. Mahendra Mehta (Proprietor of 'Ms. Mahendra Auto Services'), the A.O. issued a notice u/s 158BC on 17.05.1999 to the Deemed A.O.P. consisting of six persons named in the seized material who were running the diesel pump owned by 'M/s. Mahendra Auto Services'. The said notice u/s 158BC dated 17.05.1999 was issued in the name of 'M/s. Mahendra Auto Services - A.O.P.' and the names of the six individuals along with their profit sharing ratio as mentioned in the seized diaries found during search action, were specifically mentioned by A.O. in the said notice, copy of which is enclosed on page 64 of P.B.

10) Vide concise ground nos. 1 to 3, the assessee is challenging the legal validity of asst. order passed u/s 158BC, in the absence of any search warrant issued in the name of the assessee [Deemed] A.O.P. The said legal proposition is supported by various judicial decisions enclosed at Sr. Nos. 1 to 13 of the Legal Compilation. The CIT(A) in the first round of appellate proceedings, has dismissed the said contention on two grounds viz., (i) The search warrant issued in the name of 'M/s. Mahendra Auto Services' without mentioning the status of the entity as 'A.O.P.' in fact referred to the assessee A.O.P. i.e. 'M/s. Mahendra Auto Services [Deemed] A.O.P' and (ii) The search warrant was premises-specific and not person-specific and therefore, the notice u/s 158BC issued in name of the assessee A.O.P. on the basis of the search warrant issued for the premises whereon the assessee A.O.P. was conducting its business activities (although not issued in the name of assessee A.O.P.) was a valid one.

11) At the time of recording the search warrant, the only legal entity existing by the name of 'M/s. Mahendra Auto Services' as mentioned in the search warrant, was the proprietary concern of Mr. Mahendra J. Mehta who was the owner of the searched diesel pump as per legal records. Copy of agreement entered by Mr. Mahendra J. Mehta in the capacity of Proprietor of 'M/s. Mahendra Auto Services' with M/s. Hindustan Petroleum Corporation Ltd. is enclosed on pages 76-86 of P.B.

The fact that the searched impugned diesel pump owned by 'M/s. Mahendra Auto Services' was operated jointly by six individuals and not by Mr. Mehta (Proprietor of 'M/s. Mahendra Auto Services') came to the notice of the Dept, only during search and post search proceedings, after considering the statement of Mr. Mahendra Mehta (Proprietor of M/s. Mahendra Auto Services) which was recorded u/s 132(4) and on the basis of the diaries seized during search action.

The assessee was an unregistered/ Deemed A.O.P. and prior to search action, the assessee (Deemed) A.O.P. had not registered itself by any joint venture agreement etc. and it had also not filed any ITR or any correspondence in any Office by the name of 'M/s. Mahendra Auto Services - A.O.P.'. Thus, prior to search action, there was no entity by name of 'M/s. Mahendra Auto Services - A.O.P' and hence, it is not possible by any means that the search warrant recorded in the name of 'M/s. Mahendra Auto Services' [which was a Proprietary Concern of Mr. Mahendra J. Mehta and was the legal owner of the Searched Diesel Pump] in fact, referred to the search warrant issued in the name of the assessee [Deemed] A.O.P. i.e. 'M/s. Mahendra Auto Services - A.O.P.'

*The A.O. was also well aware of the above facts and this fact was also accepted by the A.O. as is evident from the fact that on the basis of the said search warrant issued in the name of 'M/s. Mahendra Auto Services', the A.O. issued notice u/s 15BBC on **09.01.1998** to Mr. Mahendra J. Mehta, who was the Proprietor of 'M/s. Mahendra Auto Services'. The asst, order u/s 158BC was also passed on 22.07.1999 in the name of the assessee : **'Shri Mahendra Jamnadas Mehta, Prop. Messrs. Mahendra Auto Services'**, copy of which is enclosed on pages 45 - 52 of P.B wherein all the relevant facts have been mentioned. Thus, since the A.O. himself had initiated proceedings u/s 158BC in name of Mr. Mahendra Mehta (Proprietor of 'M/s. Mahendra Auto /Services') on the basis of the said search warrant, the subsequent notice and asst, order passed u/s 158BC in case of the assessee A.O.P. on the basis of the same search warrant is not sustainable in law.*

*12) As per the categorical finding given by the CIT(A) after carrying detailed verification from the Investigation Wing and A.O., prior to search action, the Dept, was not in possession of any information/ material which could have led the Dept, to issue a Search Warrant in the name of the assessee A.O.P. consisting of impugned six individuals. On the basis of the said finding given by CIT(A), what can at the most be inferred is that the impugned search warrant referred to an A.O.P. consisting of four persons as named above and not to the assessee A.O.P. consisting of six persons. It is a settled law that an A.O.P. consisting of four persons is different and distinct entity than an A.O.P. consisting of six persons, although some of the members may be common. The said distinction has also been laid down by **Hon'ble IT AT, Pune in the case of Mrs. S. W. Chaudhari & Anr. V. ITO [82 ITD 725 (Pune)] [Para 15 on page 115 of Legal Compilation]**. Accordingly, it is submitted that the impugned search warrant may at the most, have referred to the A.O.P. consisting of four persons as mentioned in the CIT(A) Order and the said warrant would certainly not have referred to the assessee A.O.P. consisting of impugned six persons. Thus, the contention of the CIT(A) is apparently incorrect and contrary to the facts available on record.*

13) *Even otherwise, the alleged 'omission' on the part of the Dept, to mention the / status of M/s. Mahendra Auto Services as 'AOP' in the Search Warrant coupled with the omission to mention the names of the six members forming the impugned A.O.P. is a grave omission, particularly, in view of the fact that there l was a registered Proprietary Concern already existing in the name of 'M/s. Mahendra Auto Services' which was owned by Mr. Mahendra Mehta and there was no entity registered by the name of M/s. Mahendra Auto Services A.O.K at time of recording search warrant."*

8. The Ld.Departmental representative explained that there was a warrant of Authorisation in the name of Mahendra Auto Services,Awdhan, Dhule. This is the entity which was searched. He also argued that the Search is place specific. At Mahendra Auto Services, Awdhan, Dhule, the 6 persons were carrying the business hence AO has assessed them as AOP. Ld.DR strongly relied on the orders of the lower authorities.

9. We have heard both the parties, studied the material available on records. The appellant assessee has raised a legal ground that there was no APO of 6 persons at the time of search, hence the assessment is bad in law. The additional grounds are admitted as they are legal grounds. We are adjudicating on legal grounds. The Ld.CIT(A) has reproduced the ADIT(INV)'s report in her order which is reproduced here as under :

"2.1.1 He also appended the letter of ADIT(Inv.) which is reproduced as under:

- 1) *The warrant of Authorisation was issued in the name of "M/s Mahendra Auto Services, Awdhan, Highway No.3, Dhule.*
- 2) *As per the satisfaction recorded by the authorities it is clear that Mr.Prithviraj Chandrakant shinde has acquired 4 petrol pumps for maintenance. This activity is being carried out in collaboration with the three persons namely Mr. Rajendra Popat Shinde, Mr. BhikanBapurao Shelke and Mr. Bharat Maharu Pawar.*
- 3) *As per the above satisfaction is clear that the association of four persons (above mentioned) is recorded by the authorities."*

9.1. As per the said report of the ADIT(INV), the satisfaction recorded by the appropriate Authority i.e., Director of Income Tax (Investigation) Pune, there was business activity carried by four persons namely:

- Prithviraj Chandrakant Shinde
- Rajendra Popat Shinde
- BhikanBapurao Shelke
- Bharat Maharu Pawar

It means at the time of satisfaction the department was only aware about the business activity carried out by above four persons. Based on that satisfaction the department had issued Warrant of Authorisation in the names of different persons.

Copies of Warrant of Authorisation has been submitted by the Ld.AR in the paper book at page 19-36. The said Warrant of Authorisations were issued in following names:

- M/s Mahendra Auto Service
Address mentioned in the Warrant: Near Shivaji Statue, Chalisgaon crossing, Dhule.
- Mahendra Auto Services
Address on warrant :Awadhan, Highway No 3, Dhule
- Prithviraj Chandrakant Shinde, Rajendra Popat Shinde
Address on warrant :Residential bungalow Deopur Dhule.
- BhikamBapura Shelke
Address: Residential bungalow Yashwan Nagar Dhule
- Bharat Maharu Pawar, Sanjay Maharu Pawar
Address on warrant: Residential premises nera Maruti Mandir MohadiUpnagar, Mohadi, Dhule.
- Arun & CO Shri. Prithviraj Chandrakant Shinde
Address on warrant: Business premises of Petrol Pump at KhedBhyar Shahada.

Thus, there was a warrant in the name of Mahendra Auto Services, Awadhan, Dhule. But the said warrant of authorisation does not contain

“status” in which it was issued. It has been admitted by the department that at the time of search the satisfaction was only about four persons carrying business activity. Thus, nowhere before the search or during the search there is mention of business activity being carried out by 6 persons whose names appear in the impugned assessment order.

Out of those 6 people the names of following persons do not appear in any of the warrant of authorisation:

Gopinath M Wadi

Ashok Kumar Sangtani

It means the department had no knowledge of business connection of these two persons before the search or at the time of search.

However, the Assessing Officer had issued the notice u/s 158BC(a) of the Act dated 17/05/1999 in the name of “Mahendra Auto Services AOP of Prithviraj C Shinde Share 20%, BhikamBapura Shelke share 20%, Rajendra Popat Shinde Share 20%, Bharat Maharu Pawar share20%, Gopinath M Wadi share 10%, Ashokkumar Sangtani shar 10%.”.

The assessment order u/s 158BC was completed for the impugned AOP of 6 persons.

But there was no warrant of authorisation in the name of Mahendra Auto Service AOP of Prithviraj C Shinde Share 20%, BhikamBapura Shelke share 20%, Rajendra Popat Shinde Share 20%, Bharat Maharu Pawar share20%, Gopinath M Wadi share 10%, Ashokkumar Sangtani share 10%.

The Ld.DR has not disputed this fact that there was no warrant in the name of impugned AOP.

It is also important to mention here that the HPCL had allotted Petrol & Diesel Pump to Mahendra J Mehta. Mahendra J Mehta have a proprietary concern called Mahendra Auto Services which was separately assessed u/s 158BC of the Act. It is a fact that two separate

Warrant of Authorisation were issued in the name of “Mahendra Auto Services”, but from the warrants one cannot infer whether the warrants were for the Proprietary concern or AOP. It may not be inappropriate to mention that on the same day there was search in the case of Arun & Co, the warrant of authorisation issued for the said search specifically mentions “Arun& Co, Shri Prithviraj Chandrakant Shinde”. However, in the case of Mahendra Auto Services in the warrant no individual persons names have been mentioned. Therefore, there is no means to understand whether the warrant is in the name of Proprietary Concern or AOP.

9.2. The Hon’ble High Court of Rajasthan in the case of CIT Vs. Umlesh Goel 387 ITR 575 (RAJ) has held as under :

Quote, “13. On analysing the provisions of Section 132(1) read with Section 158-BC and 158-BD, while Section 132(1) authorises to carry out search and seizure operation where the Revenue comes into possession of information that an assessee may be evading tax or has reason to suspect that a person has money, bullion and jewellery and other valuable articles or things, books of account etc. which does not depict true income, then a search is necessitated or got conducted.

14. Search and seizure are drastic provisions and does not confer unbridled power to the Revenue Officer. The Revenue must have in consequence of information reason to believe that statutory conditions for the exercise of power to order search exist. The Competent Authority, namely the Commissioner or the Director of Inspection, is supposed to record reason for the belief. Search and seizure under Section 132 of the Act, have a serious invasion upon the right, privacy and freedom of tax payer, it presupposes that powers have to be exercised strictly in accordance with law and in fulfillment of the object & purport of the Act.

15. The right of privacy has been held to be fundamental right of citizens being integral part of Art. 21 of the Constitution of India, and that citizen's right of privacy is not likely to be disturbed. The power of search and seizure under the provisions of the Act should be exercised only when there is sufficient material in possession of the competent authority on the basis of which it can have reasons to believe that there had been assets which could not be disclosed for the purposes of assessment under the Act.

15.1 Provision of Section 158-BC is attracted "where any search has been conducted under Section 132 in the case of any person". In our view from these words it should statutorily mandate that search should have been carried out under Section 132(1) in the name of a person before invoking the provision

of Section 158-BC. "Person" should normally mean name depicted in the warrant of authorisation, and the Authority authorising a search has to have information in his possession in respect of a person and such a person should be specifically named in the search warrant. Though "family" is not defined under the Income Tax Act but could not be stretched to cover all the family members, namely wife, daughter, children etc. Under the Income Tax Act "Person" has been defined in Section 2(31) which reads thus :-

"Person" includes -

- (i) an individual;
- (ii) a Hindu undivided family;"
- (iii) to (vii) xxx xxxxxx'

15.2 All the family members are separate assessable legal entities under the Act and in a case where search warrant has been issued in the name of O.P. Goyal and family, in our view it cannot be stretched to cover all the family members, namely spouse and children. It has to be in the name of specific person to initiate proceedings.

16. The CIT(A) has reproduced copy of warrant in Form No.45 which reads *ad infra* :—

... ".That Form No.45, *inter alia*, includes the following portions:- Whereas information has been laid before me and on the consideration thereof I have reason to believe that -** ** *

If a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 131Rs. of the Income- tax Act, 1961, or a notice under subsection(4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of the Income-tax Act, 1961], is issued to Mr. O.P. Goyal, Mrs. Goyal and family, AK, SK Goyal [name of the person] to produce, or cause to be produced, books of account or other documents which will be useful for, or relevant to, proceedings under the Indian Income-tax Act, 1922, or under the Income-tax Act, 1961, he would not produce, or cause to be produced, such books of account or other documents as required by such summons or notice; Sarvashri/Shri/Shrimati OP Goyal and family, ANANT Goyal and all family members, Sumant Goyal are/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, or the Income-tax Act, 1961, And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable articles or things have been kept and are to be found in E-216A Bhaskar Marg, Bani Park, Jaipur (specify particulars of the building / place / vessel / vehicle / aircraft)."

16.1 The Tribunal, in our view, has come to a correct conclusion that O.P. Goyal and family, Anant Goyal and family, all family members, Sumant Goyal, will not cover the assessee, namely Ms. Umlesh Goyal and Ms. Surbhi Goyal, wife and daughter of Anant Goyal, so as to confer issuance of notice under Section 158- BC, and the Revenue cannot even remotely, cover female members "in family" insofar as proceedings under Section 158-BC or Income-Tax Act is concerned though for all other purposes wife and daughter will always be part of family and would certainly cover them to be part of Shri O.P. Goyal or/and Shri Anant Goyal. Therefore, in our view the AO had no valid jurisdiction

under Section 158-BC to have issued notice and then to proceed ahead in passing an order under Section 158-BC of the Act. We fail to appreciate the reasoning of the Revenue in extending the word "family" to cover all family members when all are distinct and separate entities.

16.2 We have reproduced Form No.45 dated 23.3.1999 (supra) which is a warrant of authorisation under Section 132 of the Act read with Rule 112(1) of the Income Tax Rules, and perusal of the warrant clearly shows that the names of Ms. Umlesh Goyal and Ms. Surbhi Goyal, has not been written in the warrant of authorisation. Thus, when names of the two assesseees here in does not find mention in the warrant of authorisation, the AO has no jurisdiction to issue notice under Section 158-BC, and the issuance of notice was illegal and has rightly been annulled by the CIT(A) and confirmed by the Tribunal.

16.3 Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with law and only for the purposes for which the law authorises it to be exercised. If the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the correctness of his action. Therefore, in our considered view a search under Section 132(1) has to be "person specific". The Authority authorising search has to have information in his possession in respect of a person and such a person should be specifically named in search warrant and since names of the assesseees having not figured in the authorisation of warrant as having been proved on the basis of Form 45 which has been reproduced by us in para 16 herein before, the AO has exceeded its jurisdiction in issuing the notice under Section 158-BC and initiation of the proceedings being invalid, all subsequent action of A.O. including order of assessment is not sustainable in law." Unquote.

9.2 The ITAT Delhi Bench in the case of Dhiraj Suri vs Addl.CIT has held as under :

Quote "In the case of Nenmal Shankarlal Parmer v. ACIT(Inv.), 195 ITR 582, it has been held by the Karnataka High Court as under: "Therefore, there is no reference at all in the warrant of authorization that such documents or money, bullion, jewellery or other valuable article or thing is in the possession of the petitioner in his individual capacity. As a necessary consequence, the mere mention of residential premises does not enable the Department to effect seizure either of gold, jewellery or other articles or documents and hence it must be held that the petitioner's contention that the warrant of authorisation does not enable the Department to affect search or seizure of the property belonging to him on the basis of a warrant issued in the name of the firm, no warrant in the name of the petitioner at all having been issued, is valid and tenable. This ground itself is sufficient to quash the order impugned in this petition." The above observations show that a search Under Section 132 of the Act is person specific and not premises specific. It follows that if the name of the assessee against whom the block assessment has been made, does not figure in the warrant of authorization issued Under Section 132, the block assessment would be unauthorized, void ab initio. If it is the correct legal position as adumbrated in the judgments cited above, it would follow that the additional

ground taken before us is well founded. If the block assessment itself is without jurisdiction then there is no question of levy of any penalty Under Section 158BFA(2). We may also add reference to a few orders of the Tribunal which have taken a similar view. In *Dr. Mrs. Daya Sharma v. DCIT* (2003) SOT 53, the Jaipur Bench took the view that the mere mention of "family members" in the search warrant would not mean that the search was conducted on the assessee so as to justify the block assessment. In *Microland Ltd. v. ACIT*, 76 ITD 446 @ 470, the Bangalore Bench of the Tribunal held that if the search warrant is not in the name of the assessee company, but is in the case of the CMD of the company at the address of the company, the block assessment was void. In *Mahabir Prasad Rungata (HUF) v. ACIT*, 75 TTJ 309, the Allahabad Bench of the Tribunal held that where there is a search in the case of the firm, but not the partner, a block assessment in the hands of the partner was invalid. A similar view was taken by the Indore Bench of the Tribunal in *Indore Construction (P) Ltd. v. ACIT*, 71 ITD 128. "It is thus clear that the regular assessment order is not the final word upon the pleas taken therein or which might have been taken at that stage. The assessee is entitled to show cause in penalty proceedings and to establish by the material and relevant facts which may go to affect his liability or the quantum of penalty. He cannot be held to be debarred from taking appropriate pleas simply on the ground that such a plea was not taken in the regular assessment proceedings." In view of the importance of the question of validity of the assessment and since the matter involves a pure legal question not involving any investigation into facts, we admit the additional ground for decision. 8. We have heard the rival contentions both with regard to the original grounds of appeal and the additional ground. So far as the additional ground is concerned, the assessee has filed the relevant documents in the paper book. Page 12 is the panchnama in respect of the search of the premises in H-13, Maharani Bagh, New Delhi. The copy of the panchnama is at page 12 of the paper book. It says that the warrant in the case has been issued in the name of Shri J.M.L. Suri who is the assessee's husband. The order Under Section 132(3) passed on 8.8.97, a copy of which is at page 51 of the paper book refers to the fact that the warrant of authorization was issued on 6.8.97 by the Director of Income-tax (Inv.) New Delhi in the case of J.M.L. Suri. The panchnama relating to the search of the locker (page 52 of the paper book) mentions the names of both J.M.L. Suri and the assessee herein. But, this is only because the locker is in the joint names of the assessee and her husband. The search of the locker according to para.2 of this panchnama is a continuation of the proceedings taken on 7.8.97. We have already seen that the initial warrant and the panchnama were in the name of the assessee's husband and not in the name of the assessee. The same is the case relating to the search of the locker in *Canara Bank* on 7.8.97. Thus, it is seen that there is no search warrant in the name of the assessee. Section 158BB(1) says that where a search is initiated Under Section 132 or books of account etc. are requisitioned Under Section 132A "in the case of any person" then the undisclosed income of that person shall be assessed in accordance with Chapter XIVB of the Act. A search is a pre-request for the initiation of block assessment proceedings as held by the Delhi High Court in the case of *Ajit Jain v. Union of India and Ors.*, 242 ITR 302, affirmed by the Supreme Court in 260 ITR 80. In the case of *CIT v. Ms. Pushpa Rani* (2004) 136 Taxman 627, the Hon'ble Delhi High Court has held that if there is no search warrant 9. It, therefore, appears to us be a correct position that the block assessment in the present case is void ab initio since there was no warrant of

authorization Under Section 132 in the name of the assessee. Therefore, the penalty levied cannot be sustained.” Unquote.

9.3 We respectfully follow the proposition of law laid down by Hon’ble High Court and ITAT that block assessment is void ab initio if there is no warrant of authorisation.

Section 158BC. 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,—

89a [(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,*

9.2 Thus, for issuing notice u/s 158BC, there has to be a search in the case of “any person”, then the Assessing officer shall serve a notice to “such person”. It means notice u/s 158BC can be issued to only such person who has been searched u/s 132 of the Act. Search under section 132 of the Act cannot be without warrant of Authorisation. In the case under consideration, as narrated in the earlier paras, there was no warrant of Authorisation in the name of Mahendra Auto Service, AOP of Prithviraj Shinde, Rajendra Shinde, Bhikan Shelke, Bharat Pawar, Gopinath M Wadi, Ashokkumar Sangtani. The department was not aware about any business activity carried on by these 6 persons together. The Department had information only about four persons. Therefore, there is no satisfaction by the department prior to search about

impugned business activity of 6 person together. Without satisfaction there cannot be any warrant of authorization. Therefore, we are of the considered opinion that the department had no information about joint business activity of these impugned 6 persons , department had no information about impugned AOP of 6 person and there was no warrant of Authorisation in the name of Mahendra Auto Service, AOP of Prithviraj Shinde, Rajendra Shinde, Bhikan Shelke, Bharat Pawar, Gopinath M Wadi, Ashokkumar Sangtani, therefore, on the facts and circumstances of this case the impugned notice issued u/s 158BC on the impugned AOP of 6 persons is void ab initio. Therefore, the Assessment order passed u/s 158BC rws 143(3) against the impugned AOP is bad in law. The Warrant of Authorisation issued in the name of Mahendra Auto Service, Avadhan Dhule, at the most may be inferred as warrant against the Mahendra Auto Service AOP of the four persons whose names have been mentioned by the ADIT in his report which is reproduced in earlier para.

9.3 Therefore, the legal ground regarding validity of notice under section 158BC is allowed. Since, we have allowed the legal ground of validity of notice under section 158BC of the Act, we are of the opinion that remaining grounds becomes academic in nature. Hence, the remaining grounds are not adjudicated. Accordingly, the Assessee's Appeal is partly allowed.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open Court on 7th July, 2022.

Sd/-
(S.S.GODARA)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 7th July, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-Central.
4. The Pr. CIT concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, “ए” बेंच,
पुणे / DR, ITAT, “A” Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.