

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'A' NEW DELHI  
BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER  
I.T.A .No.-505/DEL/2010 (A.Y 2001-02)  
I.T.A .No.-506/DEL/2010 (A.Y 2002-03)  
I.T.A .No.-507/DEL/2010 (A.Y 2003-04)  
I.T.A .No.-508/DEL/2010 (A.Y 2004-05)  
I.T.A. No.-509/DEL/2010 (A.Y. 2005-06)**

ACIT Cent. Circle 15, Room No. 354, ARA Centre, E-2, Jhandewalan Extn. New Delhi  <b>(APPELLANT)</b>	vs	Balaji Perfumes 1/429/23, Friends Colony, Gali NI. 1. G. T. Road, Shahdara Delhi AADFB533G  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Ravi Jain, CIT DR.</b>
<b>Respondent by</b>	<b>Sh. A. K. Jain, C.A</b>

<b>Date of Hearing</b>	<b>16.08.2016</b>
<b>Date of Pronouncement</b>	<b>19.10.2016</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

These appeals are filed by the Revenue against the order dated 12/11/2009 passed by CIT(A)-II New Delhi.

2. The ground in all the appeals is as follows:-

*“1(a) On the facts and in law and in the circumstances of the case, the Ld.CIT(A) has erred in holding that no valid notice u/s 153A of the I.T Act, 1961 has been issued and annulling the assessment so made.*

2. *The order of the Ld.CIT(A) is erroneous and not tenable in law and on facts.*

3. A search & seizure action u/s 132(1) of the Act took place on 22/3/2006 at the business premises of M/s Balaji Perfumes group which is in the business of manufacturing and trading of Gutka under the brand name of 'Maruti' 'Ajeet' & Kaveri'. As mentioned by A.O in the assessment order, the group belongs to the family of late Sh. Bishan Sarup Gupta who has three sons namely Sh. Abhay Gupta, Sh. Ajay Gupta & Sh. Anoop Gupta. The whole business of manufacturing of gutka and sale/purchase of arcanut, according to the A.O is looked after by three brothers through the firm M/s Balaji Perfumes and M/s Assam Supari Traders.

4. The Assessing Officer observed that the spectrum of manufacturing concerns is as under:

- i) M/s Balaji Products (a partnership firm of Sh. Ajay Gupta and Sh. Anoop Gupta from 1/4/1995 to 25/11/2000).
- ii) M/s Balaji Products ( a proprietary concern of Sh. Ajay Gupta from 1/5/1999 to 25/11/2000 and even continued thereafter).
- iii) M/s Balaji Perfumes (a partnership firm of Sh. Varun Gupta s/o Sh. Abhay Gupta and Smt. Deepta Gupta w/o Sh. Anoop Gupta 5/2/2001 to 27/7/2005).

- iv) M/s Balaji Perfumes (stated to be a proprietary concern of Sh. Varun Gupta from 28/7/2005 onwards).
- v) M/s Balaji Pouches (a partnership concern of Sh. Ajay Gupta and erstwhile employee Sh. Vivek Mishra-18/5/2006 onwards).

5. The Assessing Officer has mentioned in Para 8 of the assessment order (for all the years) that notice u/s 153A was issued on 12/11/2007 and the assessee has filed a photocopy of return of income. It is worth mentioning that the A.O has mentioned in the same para that no return of income for the proprietary firm has been filed. He has issued notice u/s 143(2) along with questionnaire fixing the case for hearing on 12/11/2007 but nobody attended on this date. However, subsequently on 4/12/2007 the case was fixed and there had been part compliance.

6. In the same para 8 of the assessment order (for all the years) the A.O has mentioned that photocopy of partnership deed was also filed showing that Smt. Deepa Gupta and Sh. Varun Gupta as partners. He has also mentioned that books of account of M/s Balaji Perfumes were also produced though no vouchers were produced. Before the A.O. the issue of validity of 153A proceedings was not raised. However, these issues were raised only during appellate proceedings.

7. Before the CIT(A) the assessee has taken the contention that the proceedings under 153A of the Income-tax Act 1961 was not valid in the assessee's case. The CIT(A) called for remand report which was received on 5/2/2009. The CIT(A) has held that the proceedings initiated by the Assessing Officer for passing order u/s 143 (3) read with Section 153A cannot be held as valid and thus allowed the appeal of the assessee.

8. The Ld. DR submitted that the assessee has not informed that there is a dissolution of firm, thus warrant of authorities contains the name of Balaji unless and until Department is not known about the dissolution of firm it will proceed as it is. The assessee was never confronted about the CIT(A).

9. The Ld. AR submitted that the CIT(A) has categorically decided the proceedings u/s 153A, he pointed out page 18 of his paper book which was before the Assessing Officer as well as before the CIT(A) that individual Varun Gupta has already been given the notice and the same wordings are reproduced in the notice issued to Balaji Perfumes more specifically mentioning "Individual".

10. The Ld. AR relied on the judgment of CIT Vs. Dimension Apparels Pvt. Ltd. (decided on 08.07.2014 by the Hon'ble Delhi High Court) wherein it is held that with respect to participation by the

previous assessee such participation by the amalgamated company in proceedings did not cure the defect because there can be no stipulating law. The assessee also relied on the Hon'ble Delhi High Court judgment in case of Spice Infotainment Ltd. Vs CIT (2012) 247 CTR 500 (Del) wherein it is held that mere participation by the appellant would be of no effect as there is no estoppel against law.

11. We have heard both the parties and perused all the records. M/s. Balaji Perfums (Partnership Firm) was dissolved on 27.07.2005. This fact was clarified at the time of search itself by Sh. Varun Gupta on 22.03.2006 which is evident in his statement recorded on 22.03.2006. As the firm was dissolved it becomes non-existent entity. A search warrant cannot be executed/served on a person who is not in existence. The Hon'ble Punjab and Haryana High Court in case of CIT Vs. Rakesh Kumar 313 ITR 305 issuance of search warrant in the name of dead person itself is against the law of natural justice and no valid assessment could have been made on the strength of such an invalid search warrant. Balaji Perfumes (Firm) and Balaji Perfumes (Prop. Concern) are two different persons as defined u/s 2(31) of the Income Tax Act, 1961. Both are having different PAN. In the case of Prop. Concern the assessment made in the name of proprietor whereas in the case of Firm, a separate PAN is obtained. Firm being non-existent person, no warrant can be executed on non-existent person. Thus, it was for Prop. Concern and further mentioning the name of M/s. Balaji

Perfumes will indicate search in the case of Varun Gupta as held by ITAT Delhi Bench in case of Dayawanti Prop. M/s. Assam Supari Traders ITA No. 1634/Del/2010. The Hon'ble Bombay High Court also in case of CIT Vs. Tirupati Oil Corporation 248 ITR 194 held that if Assessing Officer wanted to proceed under Chapter XIV-B of the Income Tax Act, 1961 with regard to the undisclosed income of the partner for the purposes of making block assessment on the assessee firm, then the Assessing Officer was required to invoke Section 158BD of the Act and block assessment made on the firm without following the procedure under Section 158BD of the Act was bad in law. In the present case also the Assessing Officer has not followed the procedure while following the incorrect provisions of law under Section 153A of the Act which is not applicable in the assessee's case as the assessee was not in existence at the relevant time. As per Section 153A of the Act, assessment u/s 153A of the Act can be completed only in the case of such person where the warrant u/s 132 of the Act has been executed as held by Hon'ble Punjab and Haryana High Court in case of CIT vs. Ram Singh 351 ITR 331 (P&H). The Hon'ble High Court held that An illegal is no search and as necessary corollary in such a case, Chapter XIV-B would have no application. As regards the mention of the individual in the notice cannot be taken as mistake and the mistake is not curable u/s 292BB or 292B as Section 292BB of the Act is applicable from A.Y. 2008-09. The participation in the assessment will not be treated as estoppel against the law established. As held in case of CIT Vs. Spice Infotainment Ltd. 247 CTR 500 (Delhi)

consent cannot confer jurisdiction. It is pertinent to note that CIT(A) has taken into account all the aspects about the proceedings conducted u/s 153A of the Act. Then he has also given the finding in respect of how the proceedings were conducted in assessee's case. The CIT(A) allowed all the five grounds of the assessee company while holding that no valid notice u/s 153A of the Act was issued. Thus, the CIT(A) is right in allowing the appeals of the assessee.

12. In the result appeals are dismissed.

**The order is pronounced in the open court on 19<sup>th</sup> of October, 2016.**

**Sd/-  
(G. D. AGRAWAL)  
VICE PRESIDENT**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 19/10/2016

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	17.08.2016	PS
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3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	19.10.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	19.10.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		