

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E” NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1016/DEL/2018
Assessment Year: 2014-15

ACIT, Central Circle-4, New Delhi.	vs.	Nagina Judge, House No.84, Sector-9A, Chandigarh.
TAN/PAN: AJAPJ1175G		
(Appellant)		(Respondent)

CO No.51/DEL/2021
(Arising out of ITA No.1016/Del/2018)
Assessment Year: 2014-15

Nagina Judge, House No.84, Sector-9A, Chandigarh.	vs.	ACIT, Central Circle-4, New Delhi.
TAN/PAN: AJAPJ1175G		
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, CA Shri Satyajeet Goel, CA		
Respondent by:	Ms. Sarita Kumar, CIT-DR		
Date of hearing:	02	02	2022
Date of pronouncement:	09	02	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-XXIII, New Delhi [‘CIT(A)’ in short] dated 28.11.2017 arising from the assessment order dated 10.03.2017 passed by the Assessing Officer (AO) u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2014-15. The assessee has also filed Cross Objection.

2. The grounds of appeal raised by the Revenue read as under:

1. *The order of the Ld.CIT(A) is not correct in law and facts.*
 2. *On the facts and circumstances of the case, the Id.CIT(A) has erred in deleting the addition of Rs.2,53,96,020/- (EUROs 300,000 received from Sh. Shashi Singh in Account No.193232-006-000-978) made by the Assessing Officer on account of undisclosed income.*
 3. *On the facts and circumstances of the case, the Id.CIT(A) has erred in deleting the addition of Rs.63,97,000/- (US\$ 100,000 received from M/s Orient Links Co. in Account No.193232-006-000-840) made by the Assessing Officer on account of undisclosed income.”*
3. The grounds in the Cross Objection by the assessee read as under:
- 1(i) *That the search authorisation warrant and consequential search conducted u/s 132 of the Income Tax Act, 1961 is without any basis, information or material and as such the issue of search warrant was illegal and unjustified.*
 - (ii) *That in respect of very same search case of the sister of the Appellant; the Hon'ble Delhi High Court has quashed the search warrant as it was issued merely on the basis of reasons to suspect and not in conformity with the provisions of section 132 of the Income Tax Act, 1961.*
 - (iii) *That in absence of any information or material relating to the undisclosed income/asset held by the Appellant in the bank lockers searched, the search warrant authorisation issued by the Additional Director is arbitrary and irrational.*
 - (iv) *That there being no incriminating material available with the Additional Director relating to the foreign bank account in the name of the Appellant, the search warrant issued and consequential assessment order passed u/s 153A of the Act is merely on the basis of presumption & surmises.*
- 2 *That the assessments order having been passed without proper approval u/ s 153D, the same is void-ab-initio.*
- 3 *That orders passed by lower authority are not justified on facts and same are bad in law.*

4 That the appellant craves leaves to add, alter, amend, and forego any of the grounds of appeal at the time of hearing.

4. Briefly stated, search and seizure operation was conducted on Jaiswal Group of cases under Section 132 of the Act on 06.05.2014. A warrant of authorization for search was also issued in the name of the assessee (Ms. Nagina Judge) for her Locker No.7325 at The Delhi Safe Deposit Co. Ltd., Connaught Place, New Delhi. Pursuant thereto, a notice dated 03.05.2016 u/s.153A was issued to the assessee. In response to the notice under Section 153A, the assessee filed return of income declaring total income at Rs.5,65,120/-. The assessment of the return was carried out by the Assessing Officer wherein the addition of Rs.3,17,93,020/- was added to the total income of the assessee on account of certain foreign bank transactions carried out by the assessee.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) analyzed the factual matrix and deleted the impugned addition in toto on merits.

6. Aggrieved by the relief granted by the CIT(A) on merits, the Revenue preferred appeal before the Tribunal. The assessee also simultaneously impugned the order of the CIT(A) on legal aspects in its Cross Objection.

7. When the matter was called for hearing, the Id. counsel for the assessee in the Revenue's appeal adverted to the Cross Objection filed by the assessee and pointed out that the basis of issue of notice under Section 153A is search of Locker No.7325 which is held in the joint names of the assessee, i.e., Ms. Nagina Judge and her sister, namely, Shah-E-Naaz Judge. It was further pointed out that both the assessee and her sister are a non resident of India. The sister Shah-E-Naaz Judge challenged the action taken under Section 132 of the Act as well as the consequential notice issued under Section 153A of the Act on the ground that the whole proceedings are illegal, bad in law and without jurisdiction before the Hon'ble Delhi High Court by way of Writ Petition (Civil) Nos.5937, 11847 and 11848 of 2016. The Hon'ble Delh High Court on evaluation of facts and

evidences found merit in the writ petitions and held that warrants of authorization for search and seizure operation in respect of three lockers including the joint locker in question are vitiated and illegal. The warrant of authorization against the petitioner, i.e., sister of the assessee holding the joint locker was eventually quashed and set aside. Consequently, the proceedings under Section 153A of the Act was also set aside and quashed by the Hon'ble Delhi High Court. It was thus pointed out that when search warrant issued in respect of the joint locker was found to be lacking in any legal basis, the conclusion drawn in the case of the sister applies *mutatis mutandis* to the case of the assessee being holder of the locker in question jointly along with sister. Ld. counsel thus pointed out that apart from merits of the case as concluded by the Id. CIT(A) in its favour, there is no legally sound basis available to the Department for assumption of jurisdiction under Section 153A and consequently assessment order passed under Section 153A is bad in law at the threshold and thus cannot survive in the light of the decision of the Hon'ble Delhi High Court in the case of Shah-E-Naaz Judge vs. Additional Director of Income Tax (Inv.)-Unit-VI, (2018) 100 taxmann.com 346 (Delhi).

8. Ld. Counsel thus urged for the dismissal of the Revenue's appeal at the threshold and upholding the Ground no.1 of the Cross Objection raising the legal ground. Ld. Counsel further submitted that ground no.2 is not being pressed and grounds no.3 and 4 are general in nature and does not call for any specific adjudication.

9. Ld. Department Representative for the Revenue, on the other hand, referred to the observations in paragraph 32 of the said judgment and submitted that the Hon'ble Delhi High Court itself has clarified that it is not commenting on the quality of the evidence if any collected during the search and whether such an evidence or material can be used in any proceedings initiated by the Income Tax Authorities in accordance with law. It was thus contented that a room was given by the Hon'ble High Court to the Income Tax Authorities to proceed on the basis

of evidences collected in the search in respect of other assessee. Ld. Department Representative accordingly justified the action of the Revenue in so far as the assessee herein is concerned.

10. We have carefully considered the rival submissions and perused the orders of the authorities below. As pointed out on behalf of the assessee, the assessment under Section 153A was completed in the instant case on the basis of joint locker held by the assessee jointly with her sister Shah-E-Naaz Judge. It is the contention of the assessee that no incriminating material was found or seized during the course of search relating to the issue of deposits in the foreign bank account of the appellant resulting in the impugned addition of Rs.3,17,93,020/-.

10.1 Without going into the merits of the case, we straightaway find that the search warrant issued on the locker so jointly held and consequential proceedings under Section 153A was found to be illegal and consequentially set aside in the case of one of the joint holder, i.e., sister Shah-E-Naaz Judge. The ratio of the decision would naturally apply *mutatis mutandis* in the case of other holder of the locker namely, the assessee herein where the search warrant on such locker was found to be in violation of Section 132(1) of the Act. The search warrant and consequential assessment u/s.153A in the case of other joint holder thus cannot be seen differently. Hence, on the basis of judgment rendered in the case of Shah E Naaz Judge vs. Additional Director of Income Tax (Inv)-Unit-VI, (2018) 100 taxamann.com 346 (Delhi), we find merit in the Ground no.1 of the Cross Objection. Consequently, we hold that the search authorization warrant issued u/s.132 of the Act and consequential assessment framed under Section 153A of the Act is arbitrary and devoid of any legal basis and thus wholly unsustainable in law. This being so, the entire assessment order in question requires to be set aside and quashed at the threshold.

10.2. The ground no.1 of the Cross Objection is thus allowed.

10.3 The grounds no.2 to 4 of the Cross Objection are dismissed as not pressed.

11. In the light of the observations in respect of Ground no.1 of the Cross Objection of the assessee, the challenge of the Revenue to the order of the CIT(A) on merits as per its grounds of appeal does not survive and consequently does not call for adjudication.

12. The appeal of the Revenue is dismissed.

13. In the result, the appeal of the Revenue is dismissed whereas the Cross Objection of the assessee is partly allowed.

Order pronounced in the open Court on 09/02/2022.

Sd/-
[KUL BHARAT]
JUDICIAL MEMBER

DATED: 09/02/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER