

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITAs No.6675, 6676 & 6677/Del/2017
Assessment Years: 2008-09, 2009-10 & 2010-11

Aerens Jai Realty Pvt. Ltd.,
(Formerly known as Aerens Builders
Pvt. Ltd.),
H-16/A/947, Block-H, Gali No.16,
Sangam Vihar,
New Delhi.

Vs. ACIT,
Central Circle-9,
New Delhi.

PAN: AACCA6440P

(Appellant)

(Respondent)

Assessee by	:	Shri I.P. Bansal, Shri Vivek Bansal & Shri Vivek Banga, Advocates
Revenue by	:	Shri P. Praveen Sidharth, CIT-DR
Date of Hearing	:	28.11.2022
Date of Pronouncement	:	23.02.2023

ORDER

PER C.M. GARG, JM:

These appeals filed by the assessee are directed against the separate orders dated 22.06.2016 of the CIT(A)-25, Delhi, relating to Assessment Years 2008-09, 2009-10 & 2010-11, raising various grounds.

2. First of all we proceed to decide the legal ground of the assessee which reads as follows:-

"2. *That on the facts and in the circumstances of the case Ld. CIT(A) has erred in law as much as in fact in holding that the impugned assessment framed u/s 153A r.w.s 143(3) of the Act was fully justified.*

The conclusion can be found only in Para 11 of the impugned order for which no reason whatsoever has been given. He has failed to appreciate that no such assessment could be framed u/s 153A of the Act as there was complete absence of incriminating material belonging to the Appellant and the proceedings were not abated. Thus, the order passed by CIT(A) on this issue should be reversed and this ground of appeal of the assessee should be allowed."

3. Apropos said ground of appeal the Id. Assessee's representative (AR) submitted that there was no search in the business premises of the assessee and, in fact, there was a survey operation on the assessee u/s 133A of the Income-tax Act, 1961 (for short, 'the Act'). Therefore, the assessment orders passed u/s 153A r.w.s. 143(3) of the Act are *void ab initio* being bad in law. The Id. Counsel submitted that before the Id.CIT(A), the assessee raised ground No.1 and 7 to agitate the legal issue that the AO has erred on facts and in law in completing the assessment u/s 153A r.w.s. 143(3) of the Act despite the fact that no search operation had taken place on the assessee. Therefore, the impugned assessment order is arbitrary, illegal and bad in law and in violation of rudimentary principles of contemporary jurisprudence. The Id. Counsel vehemently pointed out that the Id. CIT(A) in para 11 of the impugned order, without considering the legal contention of the assessee, has dismissed the grounds merely by observing that the assessee could not submit any justification or evidence for the claims made in ground No.1 and 7 pertaining to the claim that the AO have not erred in completing the assessment u/s 153A r.w.s 143(3) of the Act.

4. Reiterating the written submissions, in response to the written submissions of the Department dated 30.08.2022, the Id. Counsel submitted that even from the copies of the documents submitted by the Department, it is vivid that no search was conducted on the assessee. As the warrant of authorization has been signed on

16.08.2011 in Form No.45, which was issued in three names including the name of the assessee, the address of place of execution of search warrant has been shown as 301-303, Bakshi House, 40-41, Nehru Place, New Delhi and *panchnama* was also signed on 18.08.2011 on the same address. The Id. Counsel submitted that the said address was belonging to M/s AEZ Infratech Pvt. Ltd., one of the entities mentioned in the warrant as well as *panchnama* and, therefore, the assessment order dated 31.03.2014 for AY 2008-09 was framed u/s 153A r.w.s. 143(3) of the Act in the case of the said company M/s AEZ Infratech Pvt. Ltd, in pursuance of search and seizure operation and, in the assessment order also the said address has been mentioned which was noted by the search team in the warrant of authorization and *panchnama*. Drawing our attention to pages 1-51 of the assessee's paper book, the Id. Counsel submitted that these glaring facts are very clear from the documents filed by the Department as well as by the assessee in its paper book. He vehemently submitted that said address does not belong to assessee

5. The Id. Counsel further submitted that actually a survey operation was conducted u/s 133A of the Act on the assessee on 17.08.2011 and statement of Shri Kailash J Aeren was recorded by the survey team and Annexure A-1 to Annexure A-5 were also found and impounded u/s 133A(3)(ia) of the Act on conclusion of survey on 18.08.2011 which clearly reveals that there was a survey operation only on the premises of the assessee situated at 1411, ChiranjivI Tower, 43, Nehru Place, New Delhi and no search and seizure operation was conducted on the assessee. Therefore, the assessment order passed by the AO u/s 153A r.w.s. 143(3) of the Act dated 30.03.2014 is *void ab initio* and bad in law as the AO did not assume valid

jurisdiction to frame such assessment without any search and seizure operation on the assessee.

6. The Id. Counsel submitted that on the very same date i.e., 17.08.2011 a search and seizure operation was conducted on AEZ Infratech Pvt.. Ltd., and Aeren Buildwell Pvt. Ltd., at their addresses 301-303, Bakshi House, 40-41, Nehru Place, New Delhi, and this address is mentioned in Form No.35, warrant of authorization, panchnama and assessment order framed u/s 153A r.w.s. 143(3) of the Act. The Id. Counsel also explained that from the copy of the authorization u/s 133A of the Act, it is clear that a survey operation u/s 133A was conducted on the assessee at its address 1411, Chiranjivi Tower, 43, Nehru Place, New Delhi, which was concluded on 18.08.2011 by preparing impounding order on 18.08.2011, therefore, the documents submitted by the Department itself reveals that there was only survey operation u/s 133A of the Act on the assessee and there was no search and seizure operation on the assessee u/s 132 of the Act and merely because the name of the assessee was mentioned in the warrant of authorization does not establish that there was a search and seizure operation u/s 132 of the Act on the assessee on the actual address which is differently located at 1411, Chiranjivi Tower, 43, Nehru Place, New Delhi. Therefore, the assessment orders for AYs 2008-09, 2009-10 & 2010-11 may kindly be quashed being passed without assuming valid jurisdiction u/s 153A of the Act being *void ab initio* and bad in law.

7. Replying to the above, the Id.CIT-DR strongly supported the action of the AO as well as the findings arrived at by the Id.CIT(A) in para 11 of the first appellate order and submitted that the warrant of authorization dated 16.08.2011 issued by the

Director of Income-tax (Inv.), New Delhi, along with *panchnama* drawn thereon reveals that the search was commenced on 17.08.2011 and was concluded on 18.08.2011. The Id.CIT-DR also submitted that the books of account and documents as per Annexure A were seized and inventory of bank accounts was prepared. Statements of persons listed in the *panchnama* were also recorded. The Id.CIT-DR submitted that since the name of the assessee is clearly discernible in the warrant of authorization and *panchnama*, therefore, it has to be presumed that search and seizure operation was conducted on the assessee and the AO has assumed valid jurisdiction to issue notice u/s 153A of the Act and to pass the assessment order u/s 153A r.w.s. 143(3) of the Act which cannot be alleged as *void ab initio* and bad in law. The Id.CIT-DR supported the orders of the authorities below and submitted that the legal ground of the assessee may kindly be dismissed.

8. Placing rejoinder to the above, the Id. Counsel again drew our attention to pages 373-375 of the assessee's paper book I and pages 276-290, pages 369 & 370 of the assessee's paper Book II and submitted that the authorization order u/s 133A(3)(ia) of the Act dated 17.08.2011 and inventory of books of account/documents found and impounded during the survey operation dated 17.08.2011 available at pages 273-275, copy of statement of Shri Kailash Jai Aeren at pages 276-290, impounding order and inventory thereto dated 18.08.2011 u/s 133A(3)(ia) of the Act clearly reveals that the survey operation was commenced on 17.08.2011 and concluded on 18.08.2011 by impounding certain documents, hard discs, etc. and, during the said survey operation, statement of Shri Kailash Jai Aeren, Vice Chairman and Managing Director of the assessee company was recorded, therefore, it is amply clear that there was only a survey operation on the assessee.

Coincidentally on the very same date search operation was conducted on other entities namely M/s AEZ Infratech Pvt. Ltd. and Aeren Buildwell Pvt. Ltd., and there was no search and seizure operation u/s 132(4) of the Act on the assessee. In absence of any search and seizure operation, the AO did not assume valid jurisdiction to issue notice u/s 153A of the Act and to frame assessment order u/s 153A r.w.s. 143(3) of the Act. Therefore, the impugned assessment order as well as the first appellate order may kindly be quashed being *void ab initio* and bad in law.

9. On careful consideration of above submissions, first of all, we note that the Id.CIT-DR did not controvert the fact that the address of the assessee is 1411, Chiranjivi Tower, 43, Nehru Place, New Delhi and 1603, Chiranjiv Tower, 43, Nehru Place, New Delhi and the documents placed by the Department along with the written submission dated 30.08.2022 and documents submitted by the assessee at pages 272-275 of the assessee's paper book I and documents from pages 276-290 and 369-370 clearly reveals that there was a survey operation on the assessee at their two addresses, 1411, Chiranjivi Tower, 43, Nehru Place, New Delhi and 1603, Chiranjivi Tower, 43, Nehru Place, New Delhi, and during that survey proceedings the statement of Shri Kailash J. Aeren, Vice Chairman and Managing Director of the company was recorded and, therefore, we safely observe and thus, incline to hold that there was a survey operation u/s 133A of the Act on the assessee entity at their two business addresses at Chiranjivi Tower, which was commenced on 17.08.2011 and concluded on 18.08.2011 by preparing an inventory of impounded documents, etc.

10. *Per contra*, from the copy of warrant of authorization u/s 132 of the Act dated 16.08.2011 and panchnama dated 18.08.2011, we note that in the warrant of authorization and panchnama, the name of the assessee along with two other entities viz., AEZ Infratech Pvt. Ltd. and Aerens Buildwell Pvt. Ltd, have been mentioned and address of search and seizure operation has been noted therein as 301-303, Bakshi House, 40-41, Nehru Place, New Delhi. Therefore, it is amply clear that the search and seizure operation was commenced by way of issuing warrant of authorization on 16.08.2011 of three entities including the assessee, but, in the panchnama prepared on conclusion of the said search and seizure operation clearly reveals that the panchnama was signed by Mr. Mohinder Singh Sapra, Vice President, Security, at the address 301-303, Bakshi House, 40-41, Nehru Place, New Delhi. In view of the above factual findings noted by us from the documents submitted by the Department itself, we are inclined to hold that although the name of the assessee was mentioned in the warrant of authorization dated 16.08.2011 and panchnama was prepared on 18.08.2011 along with other two entities, but, in fact, the address mentioned in the said documents was not belonging to the assessee company and, during the course of search and seizure operation, no office bearer or staff member of the assessee company participated in the said operation which was conducted on differently located place which was not the address of the present assessee company.

11. The Id. Counsel of the assessee has placed vehement reliance on the following orders of the coordinate Benches of the Tribunal:

- (i) Regency Mahavir Properties vs. ACIT, ITA No.682/Mum/2016, order dated 04.01.2018;

(ii) Dr. Mansukh Kanjibhai Shah vs. ACIT, ITA No.2878/Ahd/2007, order dated 21.05.2010;

(iii) Lords Distilleries vs. DCIT, MANU/ID/1256/2018.

12. In the case of Regency Mahavir Properties (supra), the coordinate Bench of the Tribunal, in the identical facts and circumstances, held as follows:-

"6. The learned AR before us submitted that the assessee has taken this ground before the CIT(A) but the CIT(A) dismissed the ground mentioning that this ground does not emanate from the order of the Assessing Officer as the assessee has not taken this issue before the Assessing Officer. It was contended that this ground is a legal ground and has to be admitted. The learned DR, on the other hand, relied on the order of the CIT(A) and submitted that there has been search carried out in assessee's case at 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar- 2, which is the address and the business place of partner of the assessee firm. The law nowhere mentions that in case of a partnership firm search can be carried out only at the address mentioned in the partnership deed and in this regard our attention was drawn towards the assessment order where the address of the assessee is mentioned as 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar- 2, which was covered by the search conducted u/s. 132(1). The assessee had never objected with regard to the address mentioned by the Assessing Officer in the assessment order. In the appeal Memo, the address mentioned is 2418 East Street, Thakkar House, 1st Wing, 2nd Floor, Camp, Pune 411 001 and the same is mentioned in the power of attorney given in favour of the counsel. The appeal fees of ` 1000 has also been paid from the bank account at Ulhasnagar. The notice u/s. 143(2) sent to Ulhasnagar address was duly acknowledged by the assessee. The assessee itself is not using the address 5th Avenue, Dhole Patil Road, Pune for many purposes. This address has been used for the first time in the appellate proceedings in the letter filed on 10.02.2014. Whatever may be the assessee's registered address or correspondence address or address for any other purpose, the fact is admitted that the assessee's name was included in the warrant issued to search the premises at 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2. Besides the assessee, other persons to be searched as per this warrant of authorization were M/s. Konark Project Ltd., M/s Konark Infrastructure Pvt. Ltd., M/s. Regency Investment, M/s. Regency Realities, M/s. Regency Properties, M/s. Regency Nirman Pvt. Ltd. and M/s. Regency Ispat Pvt. Ltd. Referring to [section 292CC](#) of I.T Act inserted in the statute by the [Finance Act 2012](#) with retrospective effect from 01.04.1976, it was submitted that where the authorization is

issued in the name of more than one person, the assessment or reassessment shall be made separately in the name of each of persons mentioned in such authorization. Referring to the case law relied on by the assessee, reliance was placed on the decision of the CIT(A) in which the CIT(A) has duly distinguished these case laws.

7. We have heard the rival contentions and have carefully considered the same along with the orders of the authorities below. The question before us in ground no.1 taken by the assessee is whether in the facts and circumstances of the case, in the absence of search being conducted at the place of the business of the assessee, any assessment can be made by issuing notice u/s. 153A of the Act. It is not denied that the search warrant on the basis of which the search has been conducted at the premises 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2, contained the name of the assessee but this premises where the search has been conducted does not belong to the assessee firm nor the assessee firm was carrying on any business from the said place. The premises where the search was conducted relate to Konark Project Ltd., in which one of the assessee's partner is interested. But this is not the address of the assessee firm. The assessee's firm is constituted on 26.08.2005 vide partnership deed dated 26.08.2005 and subsequently amended vide deed dated 30.06.2006 and 3.11.2006. The address in the partnership deed dated 26.08.2005 and 30.06.2006 is 2418, East Street, Thakkar House, 1st Wing Camp, Pune and in the deed dated 3.11.2006, the address is 5th Avenue, Dhole Patil Road, Pune. These are the address of principal place of business of the assessee is constituted. It is also not denied that in Income Tax database i.e. PAN/TIN record the address of the assessee from 2.11.2006 is appearing as 5th Avenue, Dhole Patil Road, Pune. In the notice issued on 5.12.2011 the address of the assessee is shown as 2418, East Street, Thakkar House, 1st Wing Camp, Pune. In the reply to the show cause notice dated 5.12.2011 the address of the assessee is the same. We also noted that in the ITR-5, filed by the assessee on 02.08.2007, the address of the assessee is appearing as 5th floor, 5th Avenue, Dhole Patil Road, Pune. The Assessing Officer even though issued notice u/s. 153A to the assessee at the address 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2, on 29.10.2010, the assessee in reply thereto mentioned address as 5th Avenue, Dhole Patil Road, Pune. In the return filed for A.Y. 2010-11 also the assessee has been given as 5th Avenue, Dhole Patil Road, Pune. In the notice issued u/s. 143(2) although the Assessing Officer has given the address as 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2. In the notice dated 04.10.2011 issued by the Assessing Officer, we noted that the address of the assessee has been mentioned by hand as A3, 5th Avenue, Dhole Patil Road, Pune while in the notice dated 14.11.2010 issued u/s. 142(1) for A.Y. 2010-11 the address of the assessee has been given Thakkar House, 1st Wing Camp, 2nd Floor, East Street, Pune. In the notice issued on 5.12.2011 again the Assessing Officer has addressed the assessee at Thakkar House, 1st Wing

Camp, 2nd Floor, East Street, Pune. We noted that in the notices dated 9.12.2011, 11.12.2011 and 21.12.2011, issued by the Assessing Officer, the address has been mentioned Thakkar House, 1st Wing, Camp, 2nd Floor, East Street, Pune. The same address was mentioned in the notice dated 15.2.2012 issued u/s. 220(6). In the recovery notice dated 27.11.2012 and in the order for attachment the address has been mentioned 5th floor, 5th Avenue, Dhole Patil Road, Pune. Not only this, we noted that although in the assessment order the Assessing Officer has mentioned the address of the assessee to be at 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2, but in the notice of demand issued u/s. 156 the address has been generated on line and mentioned as 5th floor, A3, 5th Avenue, Dhole Patil Road, Pune. All these documents prove that the address of the assessee is not 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2. We also noted that the Panchnama has been drawn showing the search being conducted at the premises of the assessee. In our view, the Assessing Officer assumed the jurisdiction to issue notice u/s. 153A and made assessment in consequence of search action being taken u/s. 132 of the Income tax Act. Before deciding whether the Assessing Officer has validly assumed the jurisdiction u/s. 153A, it is necessary to analyze the provisions of [section 132\(1\)](#) as well as 153A. The provisions of [section 153A](#), [153B](#) and [132\(1\)](#) are reproduced as under:

"153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section-15-1 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years [and for the relevant assessment year or years] referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.

153B. (1) Notwithstanding anything contained in [section 153](#), the Assessing Officer shall make an order of assessment or reassessment,--

(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :

(2) The authorisation referred to in clause (a) and clause (b) of 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 panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(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.

Section 132(1)

132. (1) Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner 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).

From the reading of these provisions, it is clear that [section 153A\(a\)](#) of the Income tax Act authorized the Assessing Officer to issue notice in a case where search has been initiated and thus, it is only machinery section. [Section 153A\(b\)](#) of the Act also authorizes the Assessing Officer to assessee or reassess the income of six assessment years immediately preceding assessment years relevant to the previous year in which the search has been conducted or requisition is made. The said subsection using the term "search is conducted" had also specified assessment year for which the re- assessment proceedings are triggered after search. It is clear from the above that the provisions of [section 153A](#) of the Act come into play only after search has been conducted. The provisions of [section 153B](#) of the Act provides that authorization of warrant shall be deemed to be executed upon the conclusion of search as recorded in the last panchnama drawn in relation to the persons in whose case the warrant or authorization has been issued. So, in all the sections the term used is important that fresh panchnama drawn in relation to any person. Thus, in order to complete the search there is a initiation of proceedings u/s 132(1) of the Act, conduction of search in terms of search warrant issued which includes search in the premises of the assessee and other places and also the last stage panchnama which is conclusive proof of conclusion of search from which the period of limitation will be calculated as provided u/s 153B of the Act. The provisions of Act very clearly and unambiguously provide for initiation of search, conduct of search and conclusion of search and only then the Assessing Officer can assume jurisdiction u/s [153A of the Act](#). In the present case before us, we noted that the search has been initiated in the name of the assessee along with other assessees appearing on the warrant of authorization issued u/s 132(1) but did not mention the address of the premises from where the assessee conducts business. No incriminating material relating to the assessee was found in the premises where the search was carried out. The search was concluded but no panchnama was drawn in the name of the assessee. Therefore, the conditions as stipulated for assuming the jurisdiction u/s. [153A](#), in our view, have not been satisfied. We, do not agree with the CIT(A) that merely mentioning the address of the premises where the search has

been conduction in the assessment order will validate the action of the Assessing Officer that the assessee was carrying on the business from the same premises. The address mentioned in the notice issued u/s. 143(2) and the demand notice generated on line as well as the PAN/TIN, copies of which were filed before us, clearly prove that 111/112, Anil Complex, New Link Road, Near Regency Marriage Hall, Ulhasnagar-2. , where the search was conducted is not the business address of the assessee. In view of these facts, we are of the opinion that the conditions stipulated u/s. 153A, for the issue of notice, are not satisfied. Until and unless the Assessing Officer assumes the valid jurisdiction u/s. 153A the assessment made in consequence of the notice issued u/s. 153A, in our view is invalid and void ab initio. We accordingly quash the assessment made by the Assessing Officer.”

13. Similar view has been taken by the coordinate Bench of ITAT, Ahmedabad in the case of Dr. Mansukh Kanjibhai Shah (supra). Relevant para 9.5 reads as follows:-

"9.5 Considering the above provisions as noted above in the light of the provisions of section 153A of the Act, it would be clear that once the warrant of authorization or requisition is issued and search is actually conducted, Panchnama is drawn, the completed assessments for all the relevant years would get reopened irrespective of whether any incriminating material is found or not in relation to a particular assessment year. However the warrant of authorization shall have to be executed by the authorized Officer in order to justify invoking of the jurisdiction by the Assessing Officer under section 153A of the Act. Considering section 153A particularly read with sub-clause (b), it is clear that not only initiation of search is mandatory but conduct of the search is also material. The decision of the Allahabad High Court noted above also supports the above findings. As is noted above, it is undisputed fact that though warrant of authorization is issued in the name of the assessee being Managing Trustee of the Trust, but it is admitted fact that no search operation was conducted in the premises of the assessee. Even in the warrant of authorization, the address of the place to be searched is not the address of the assessee individual. Admittedly, no Panchnama is also drawn in pursuance with the warrant of authorization in the case of the assessee. No documents were seized or impounded as such during the course of search from the assessee. The warrant of authorization dated 29.10.2004 in the name of the Trust and the assessee stands unexecuted in the case of assessee individual. Since in this case only survey operation under section 133A is conducted in the premises of the assessee's Trust, it would not satisfy the requirements of section 153A of the Act. As such, the Assessing Officer was not justified in initiating proceedings or assuming valid jurisdiction under section 153A of the Act against the assessee. In view of the above discussions, we do not find these to be the fit cases for initiating the proceedings u/s 153A of the IT Act against the

assessee in his individual status. We accordingly hold that the proceedings u/s153A of the IT Act are invalid and bad in law, resultantly, the orders of the authorities below are set aside and quashed.”

14. In view of the foregoing discussion, we are inclined to hold that there was a search operation u/s 133A of the Act on the assessee which was started on 17.08.2011 and concluded on 18.08.2011. During the said survey operation, statement of the Vice President and Managing Director of the company Shri Kailash Jai Aeren was recorded and documents were also impounded by the survey team. From the copies of the warrant of authorization u/s 132 of the Act dated 16.08.2011 and panchnama drawn on the conclusion of search and seizure operation on 18.08.2011, we note that though the name of the assessee has been mentioned along with two other entities, but, the address mentioned in the said warrant of authorization and panchnama does not belong to the assessee and, neither any officer bearer or staff member participated in the said search and seizure operation which was concluded on 18.08.2011.

15. Therefore, as per the scheme of the Act and provisions of section 153A of the Act, the AO assumes valid jurisdiction to issue notice u/s 133A of the Act and to frame assessment order u/s 153 r.w.s. 143(3) of the Act only on the entity on which the search u/s 132(4) was initiated, conducted and concluded. In the present case from the warrant of authorization and panchnama although it seems that the name of the assessee has been mentioned therein, but, the address is different and, at the time of initiation of search, during the course of search and on conclusion of the search neither any office bearer nor any staff member of the assessee company participated and the search team did not visit the actual business premises of the assessee

situated at 1411, Chiranjivi Tower and 1603, Chiranjivi Tower, 43, Nehru Place, New Delhi. Therefore, when there was no search and seizure operation on the assessee, then, the AO was not validly entitled and empowered to issue notice u/s 153A of the Act and to frame assessment u/s 153A r.w.s. 143(3) of the Act on the assessee on the strength of such irrelevant warrant of authorization and panchnama.

16. Before we record our final conclusion, we also note that the search team initiated search operation on AEZ Infratech Pvt. Ltd., and its associate Aeren Buildwell Pvt. Ltd., conducted search operation and concluded the search operation by drawing *panchnama* dated 18.08.2011 and assessment orders were also framed thereon u/s 153A r.w.s. 143(3) of the Act and these facts have not been controverted either by the Department or by the assessee in any manner which clearly reveals that actually the search was initiated, conducted and concluded on AEZ Infratech Pvt. Ltd. and Aerens Buildwell Pvt. Ltd. Per contra, the documentary evidence and copy of statement of Shri Kailash Jai Aeren along with warrant of authorization u/s 133A and copy of impounding order dated 18.08.2011 clearly reveals that simultaneously on the said dates there was a search operation on the assessee which was also concluded on 18.08.2011 by preparing two impounding orders u/s 133A(3)(ia) of the Act on two different addresses of the assessee along with inventory of books and documents impounded during the search operation, copy of which is available at pages 372-375 and 369-370 of the assessee' paper book.

17. On the basis of our observations and findings recorded hereinabove, we are inclined to hold that the AO was not validly entitled to issue notice u/s 153A and to frame assessment order u/s 153A r.w.s. 143(3) of the Act for AYs 2008-09, 2009-10

and 2010-11 as there was no search and seizure operation on the assessee. Therefore, the notice u/s 153A of the Act and assessment orders framed in pursuance thereto deserves to be quashed being *void ab initio* and bad in law passed without having valid jurisdiction. Therefore, we quash the same.

18. Accordingly, undisputedly, as the facts and circumstances on this legal issue are identical and similar for all three years, therefore, identically worded legal ground No.2 of assessee for AYs 2008-09, 2009-10 and 2010-11 is allowed and the assessment orders are quashed. Since we have quashed the assessment orders for all three assessment years by allowing legal ground of the assessee, therefore, other grounds of the assessee are not being adjudicated upon as having become academic in nature.

19. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced in the open court on 23.02.2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 23rd February, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

(C.M. GARG)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi