

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : G : NEW DELHI

BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.1713/Del/2020
Assessment Year: 2017-18

Sunil Kumar,
C/o Rupinder Kumar Aggarwal,
Advocate,
B1 A/22, Sector 51, Noida,
Uttar Pradesh – 201301.

Vs ITO,
Ward-9(2),
New Delhi.

PAN: AAUPJ0002F

(Appellant)

(Respondent)

Assessee by : Shri Rupender Kumar Agarwal, Adv.
Revenue by : Shri Anuj Garg, Sr. DR

Date of Hearing : 30.11.2023
Date of Pronouncement : 11.01.2024

ORDER

PER ANUBHAV SHARMA, JM:

This is appeal preferred by the Assessee against the order dated 20.08.2020 of the Commissioner of Income Tax (Appeals)-3, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No.3/10076/2019-20 arising out of the appeal before it against the order dated 26.12.2018 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter

referred as 'the Act') by the ITO, Ward-9(2), New Delhi (hereinafter referred to as the Ld. AO).

2. As the two Members have raised points of difference, the matter was referred by the Hon'ble President, ITAT to the Third Member of ITAT for consideration and disposal u/s 255(4) of the Act.

3. The learned Third Member, vide order dated 31.10.2023 considered the following questions arisen from the difference of opinion between the two Members in this case:-

“(i) Whether imposition of penalty under Section 271AAB of the Act by the Assessing Officer is permissible in law where the income has been assessed under Section 143(3) in pursuance of requisition proceedings under Section 132A of the Act?”

“(ii) Whether in the facts and circumstances of this case, penalty is leviable @ 10% u/s 271AAB(1)(a)(iii) or 60% u/s 271AAB(1)(C) of the Act?”

4. After hearing the arguments of both the sides, the Learned Third Member held as under:-

“14. I have heard Ld. Sr. DR and perused the written submissions filed by the Ld. Counsel for the Assessee. I have gone through the assessment order, the penalty order and the order of the ld. CIT(A) against the penalty order. I have also perused the different orders passed by the Ld. Accountant Member and Ld. Judicial Member referred before me but could not find difference of opinion in the orders.

15. Admitted facts are that a search u/s 132 of the Act was conducted by issuing a Warrant of Authorization on 01.12.2016 under the seal and signature of the Director of Income Tax (Investigation), Pune. Accordingly, cash of Rs. 5 lacs was seized vide Panchnama dated 01.12.2016 of the Income Tax Department. It means that the assessee is a

searched person u/s. 132 of the Act. The provisions of section 271AAB of the Act applies where search has been initiated u/s. 132 of the Act on or after the 1st day of July, 2012, but before the date on which Taxation Laws (Second Amendment Bill 2016) receives the assent of the President and that date is w.e.f. 15,12,2016 and on this date assent of the President was received. The relevant provisions reads as under:-

“271AAB. (1) The Assessing Officer [or the Commissioner (Appeals) may, Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 (but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President), the assessee shall by way of penalty, in addition to tax, if any, payable by him- ”

15.1 From the above, it is clear that wherever a search is initiated u/s, 132 of the Act during the period mentioned in the provisions of section 271AAB of the Act, as in the present case of the assessee, search was initiated u/s. 132 of the Act by issuance of Warrant of Authorization in the name of Sunil Kumar Jindal on 01.12.2016 and it means that the assessee is squarely covered by the provisions of section 132 of the Act and consequently, the provisions of section 271AAB of the Act clearly applies to the present case of the assessee. The provisions of section 132A of the Act where requisition of books of accounts etc., are made by the Income Tax Department and noted by Ld. Accountant Member is not emanating from the facts of the case. Because in the present case, the Department has not issued requisition u/s. 132A of the Act, but carried out search after issuance of Warrant u/s. 132 of the Act, Hence, I do not agree with the view expressed by Ld, Accountant Member in holding the view that the Department has made requisition u/s. 132A of the Act. Accordingly, I do not agree with the question framed by Ld. Accountant Member on the given facts and circumstances of the case.

16. Accordingly, I agree with the question raised by Ld. Judicial Member and agree with the order of Ld. Judicial Member. I do not agree with the question raised by Ld. Accountant Member and do not agree with the order framed by Ld. Accountant Member on the given facts and circumstances of the case.

17. In the light of the above discussion, the matter may now be placed before the regular bench for an appropriate order, in accordance with law.”

5. In the light of the aforesaid decision of the learned Third Member, the majority view is followed and ITA No.1712 & 1714/Del/2020 are allowed whereas ITA No.1713/Del/2020 is partly allowed.

Order pronounced in the open court on 11.01.2024.

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11th January, 2024.

dk

Copy forwarded to:

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

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Asstt. Registrar, ITAT, New Delhi