

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 3634/Del/2018 : Asstt. Year : 2008-09

M/s SRS Superb Marktrade Pvt. Ltd., [merged with Ms/ BTL Industries Ltd. (later merged with BTL Investment and Securities Ltd, which is now known as M/s BTL Holdings Company Ltd.)], C/o RRA Taxindia, D-28, Saurth Extension, Part-1, New Delhi-110049	Vs	DCIT, Central Circle-II, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AACCB9666L		

**Assessee by : Sh. Somil Aggarwal, Adv. &
Sh. Deepesh Garg, Adv.
Revenue by : Mr. Javed Akhtar, CIT-DR**

Date of Hearing: 20.11.2024	Date of Pronouncement: 26.11.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2008-09, arises against the order of CIT(A)-2, Gurgaon dated 27.02.2018 in Appeal No. 73/CIT(A)-3/GGN/KNL/2015-16 in proceedings u/s 153A(1)(b) r.w.s. 143(3) of the Income Tax Act, 1961 (in short "The Act").

2. Heard both parties at length. Case files perused.
3. Learned counsel representing assessee's first and foremost legal ground that both the lower authorities wherein have erred in law and on facts in initiating and completing section 153A assessment despite the fact that it is not the

searched party. We are taken to assessee's Form 35 filed in the lower appellate proceedings taking the very stand which has not been expressly rejected in the CIT(A) impugned discussion.

4. Faced with this situation, learned counsel invited our attention to pages 14 to 19 in assessee's paper book that even the relevant panchnama drawn by the departmental authorities after concluding search not containing its name.

5. The Revenue's stand on the other hand is that the impugned section 153A proceedings have been rightly initiated against the assessee since its premises formed subject matter of section 132 search in question. We at this stage take note the relevant statutory provisions itself i.e. section 153A of the Act wherein the legislature has itself incorporated the clinching expression "where a search is initiated". Hon'ble jurisdictional high court landmark decision MDLR Resources Pvt. Ltd. Vs. CIT (2013) 40 taxmann.com 365 has settled the issue that the same comes into play when the search commences or is undertaken against a person. Meaning thereby that the searched premises itself does not form the relevant factor for the purpose of initiating section 153A proceedings under the provisions of the Act.

6. Coupled with this, the department has failed to produce any search warrant executed in assessee's name. We, therefore are of the considered view that the assessee's instant legal ground deserves to succeed since it does not happen to be the "searched" person so to attract the section 153A of the Act. Ordered accordingly.

7. All other pleadings on merit stand rendered academic.

8. This assessee's appeal is allowed in above terms.
Order Pronounced in the Open Court on 26/11/2024.

Sd/-

(M. Balaganesh)
Accountant Member

Dated: 26/11/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR