HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT JAIPUR

D.B. Income Tax Appeal No. 65 / 2003

Commissioner of Income Tax Jaipur-I, Jaipur. Income Tax Department, statue Circle, Jaipur.

----Appellant

Versus

V. K. Rana, 4-Ka-16, Jawahar Nagar, Jaipur.

----Respondent

<u>Connected With</u>

D.B.INCOME TAX APPEAL No. 97 / 2003

M/S Ratan Mandir, 11 Rudra Mahadev Ka Mandir, Hohari Bazar, Jaipur through its Partner Shri Raj Kumar Sharma.

----Appellant

Versus

The Assistant Commissioner of Income Tax, Circile 1, Jaipur Earlier Known as the Deputy Commissioner of Income-Tax, Investigation Circle 1(1), Jaipur.

----Respondent

D.B.INCOME TAX APPEAL No. 119 / 2003

Commissioner of Income Tax-I, Jaipur, Central Revenue Building, Near Statue Circle, Bhagwan Dass Road, Jaipur.

----Appellant

Versus

M/S Ratan Mandir, 11, Rudra Mahadev Mandir, Johari Bazar, Jaipur.

----Respondent

D.B.INCOME TAX APPEAL No. 122 / 2003

Commissioner of Income Tax-I, Jaipur, Central Revenue Building, near Statue Circile, Bhagwan Dass Road, Jaipur.

----Appellant

Versus

M/S Ratan Mandir, 11, Rudra Mahadev Mandir, Johari Bazar, Jaipur.

----Respondent

D.B.INCOME TAX APPEAL No. 189 / 2003

M/S Ratan Mandir, 11 Rudra Mahadev Ka Mandir, Johari Bazar, Jaipur.

----Appellant

Versus

1. The Assistant Commissioner of Income- Tax, Circle 1, Jaipur earlier Known as the Deputy Commissioner of Income Tax, Investigation Circle 1(1), Jaipur.

2. The Income-Tax Appellate Tribunal, Jaipur Bench Jaipur through the Assistant Registrar, Chamber Bhawan, M.I. Road, Opp. Ram Niwas Garden, Jaipur.

----Respondents

D.B.INCOME TAX APPEAL No. 9 / 2005

Dharmendra Kumar Rana, Ex-partner of M/s Ratan Mandir, R/o 4-K-40, Jawahar Nagar, Jaipur.

----Appellant

Versus

1. Commissioner of Income Tax, Range-I, New Central Revenue Bldg., Statue Circle, Jaipur.

2. Deputy Commissioner of Income Tax (TDS), New Central Revenue Bldg., Statue Circle, Jaipur having concurrent jurisdiction with Deputy Commissioner of Income Tax (Inv.) Cir. 1(1), Jaipur.

----Respondents

For Appellant(s)	:	Mr. N.M. Ranka, Senior Counsel with Mr. N.K. Jain & Mr. Dharmendra Kumar Rana, present in person in I.T. Appeal No.9/2005.
For Respondent(s)	:	Mr. R.P. Garg, Mr. Anuroop Singhi, Mr. Arijit Chakravarty & Mr. Rahul Sharma.

HON'BLE MR. JUSTICE K.S. JHAVERI

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR

Judgment

Per Hon'ble Jhaveri J.

10/01/2017

1. All these appeals are against the judgment and order of the Tribunal whereby the Tribunal has decided the matter partly in favour of the department and partly in favour of some of the parties.

2. This Court while admitting the appeals and framed the following substantial questions of law:

D.B. Income Tax Appeal No. 65 / 2003

"1. Whether on the facts and circumstances of the case, the learned ITAT was justified in upholding the deletion of Rs.72,16,435/- made by CIT(A)?

2. Whether on the facts and circumstances of the case, the learned ITAT was right and justified in upholding the deletion of Rs.2,02,925/- made by CIT(A)?"

D.B.INCOME TAX APPEAL No. 97 / 2003

"1. Whether the learned Tribunal had material and was right in law in holding that Shri Raj Kumar Sharma has not rebutted the presumption u/s. 132 (4A) of the Act in respect of Annexure A-8?

2. Whether the learned Tribunal had material and was right in law in holding that Annexure A-8 was of Shri Rajkumar Sharma individual?"

D.B.INCOME TAX APPEAL No. 119 / 2003

"1. Whether in the facts and circumstances of the case, the learned Tribunal is right and justified in holding that there was no search conducted in the case of the assessee u/s. 132 of the IT Act and there was no requisition of books of accounts, other documents & assets requisition u/s. 132A of the IT Act.

2. Whether in the facts and circumstances of the case, the learned Tribunal is right and justified in holding that Annexure A8 has no evidentiary value and no undisclosed income can be computed with the help of it?

3. Whether in the facts and circumstances of the case, the learned Tribunal is right and justified in setting aside the assessment order and upholding the computation of undisclosed income amounting to Rs.5,36,51,537/-?

4. Whether in the facts and circumstances of the case, the learned Tribunal is right and justified in annulling the assessment on the ground that assessment should be u/s. 158BD of the IT Act instead of S.158BC and in not setting aside the same and dierected the A.O. to make the assessment?"

D.B.INCOME TAX APPEAL No. 122/ 2003

"1. Whether on the facts and circumstances of the case, the learned Tribunal is right and justified in upholding the order of the worthy CIT(A) who had set aside the addition amounting to Rs.4,91,14,412/- as unexplained cash credit?

2. Whether on the facts and

circumstances of the case, the learned Tribunal is right and justified in upholding the order of the worthy CIT(A) who had set aside the assessment and directing the A.O. to work out closing stock for assessment year 1994-95 after taking into ac count the credits entries?

3. Whether on the facts and circumstances of the case, the learned Tribunal is right and justified in annulling the assessment on the ground that assessment should be under Section 158B of the IT Act instead of Section 158B and not set aside the same and directed the A.O. to make the assessment."

D.B.INCOME TAX APPEAL No. 189 / 2003

"1. Whether the learned ITAT had material and was right in law in not holding the stock found of Rs.13,85,000/- as that of Shri R.K. Sharma Individual?"

D.B.INCOME TAX APPEAL No. 9 / 2005

"1. Whether the appellant, who is a partner of M/s. Ratan Mandir, can be held liable to pay income tax on account of seized goods, which seizure had been made from the residential premises of one of the partners of the firm, so as to infer that the goods seized were not the personal property of the partner, from whose premises the goods had been seized and that it belonged to the firm?

2. Whether an appeal filed by one of the partners of the firm can be held maintainable on behalf of the other partners as also the firm?"

3. Counsel for the appellant Mr. N.M. Ranka has mainly submitted that search was conducted 12.11.1997 at Vijay Gopalji Ka Mandir, 11, Rudra Mahadev, Johari Bazar, Jaipur, which is business premises of M/s. Ratan Mandir and residence/ business of its partner Shjri Raj Kumar Sharma. During the search, papers and documents as per Annexure 'A' & 'AA' to the panchnama were found and seized. Notice u/s. 158BC of the Act was served on its four partners namely Shri Raj Kumar Sharma, Shri Mukul Rana, Shri D.K. Rana & Shri Y.K. Rana. Shri Mukul Rana filed retunn on 21.10.1999 at NIL. Most of the papers relating to M/s. Ratan Mandir were found and seized as per exhibit A-8 during the course of search proceedings at the business premises of one of the partners Shri Raj Kumar Sharma. Shri Sharma stated he was a working partner and does not knew anything about accounts and that the explanation on the same may be obtained from other partners. Statement of Shri Yognedra Rana was recorded on 30.09.1999. Some entries contained in exhibit A-8 tallies with entries contained in the regular books particularly, bank entries,

therefore, the admission by Shri Yogender Rana in this regard confirms the fact and exhibit A-8 contains the entries relating to M/s. Ratan Mandir. There appears to be a deliberate effort on the part of all partners toa-void explanation by resorting to game of shifting the burden. Out of seized, Exhibit 'A-8' related to Ratan Mandir. Shri Mukul Rana filed a letter on 19.11.1999, wherein it confirmed that the papers in A-8 shows the details of purchases, sales and cash credits of business of M/s. Ratan Mandir.

4. Mr. Ranka contended that in view of this, the issue No.1 & 2 requires to be decided in favour of the assessee and the issue No.3 also requires to be decided in favour of the assessee.

5. Counsel for the department has mainly contended that the form No.45 under Rule 112 it has been mentioned as under:

> "A summons under sub-section (1) of section 131 of the Income Tax Act 1961, 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 the Income Tax Act, 1961 is issued to M/s. Rana Saree Emporium, Rana Sons, Rana's, Ratan Mandir, their partners and their family members (name of the person) to produce, or caused to be produced, books of accounts or other documents which will be useful for, or relevant to, proceedings under the Indian Income Tax Act, 1922, or under the Income Tax Act 1961, he would not produced, or caused to be produced such books of accounts or other documents as required by such summons or notice."

6. He has also contended that inspite of the fact that while considering the matter, the CIT(A) at page 113 para 3.2 has considered as under:

" I have carefully considered the facts of the case and the rival submissions. The brief facts of the case are that the firm M/s. Ratan Mandir was formed Vide Partnership deed dated 15.7.1988 and its business commenced on 15.7.98. It was constituted by Shri Raj Kumar Sharma with 25% share in the profits and losses of the firm, Shri Yogendra Kumar Rana with 25% share in profit and 37% in losses. Shri Dharendra kumar Rana with 25% share in the profit and 37.5% share in losses Shri Mukul Rana with 25% share in the profits only. The firm had commenced its business w.e.f. 15.7.88 and continued it upto the FY 93-94. The Firm did not file any intimation regarding the discontinuation of the business as required u/s 176(3) of the IT Act 1961. During the course of search and undated and unsigned copy of the deed of dissolution was found. Thus, it is evident that though the dissolution deed was drafted the same was never executed. AS per partnership deed the business premises of the firm are located at Vijay Gopalji Ka Mandir, also known as 11, Rudra Mahadev Mandir, Johari Bazar, Jaipur, and this premises at that time was being utilised as residence of Shri Raj Kumar Sharma and from his residence certain documents as per annexure A-8 were seized. These documents pertain to the firm M/s. Ratan Mandir and therefore, the prima facie burden u/s. 132 (4A) to explain the seized documents and the transaction contained therein rested of Shri Raj Kumar Sharma, Who was also the main Managing Partner of the firm M/s. Ratan Mandir. The First objection of the appellant is that an order u/s 158 BC of the IT Act, 1961 can be framed in the case of only that person whose premises are searched as a consequences of Warrant of Authorisation issued u/s 132 in form No. 45 only. In the instant case the appellant has contended that no warrant of Authorisation in the case of the appellant u/s 132 had been issued and therefore no assessment u/s 158BC legally could have been framed. During the course of appellate proceedings the AO was directed to verify from the office of the Director Investigation whether a search warrant had been issued in the case of M/s.

> Ratan Mandir u/s 132 of the IT Act, 1961, the AO vide his office letter No. DCIT/ Inv. Cir. 1(1)/99-2000/492 dated 7.3.2000 has enclosed a copy of the letter dated 11.8.99 and 6.3.2000 received from DDIT, Investigation-1, Jaipur, which categorically states that search warrant u/s 132 was issued in the case of M/s. Rattan Mandir. The perusal of the Warrant clearly shows that this contention of the DDIT is correct. As per the partnership deed the appellant was carrying on the business under the name and style of M/s. Ratan Mandir at 11, Rudra Mahadev Ka Mandir, Johari Bazar, Jaipur which are the same premises as mentioned in the search warrant as Vijay Gopaljika Mandir, Johari Bazar, also is the name for 11, Rudra Mahadev Ka Mandir, Johari Bazar, Jaipur. In view of this factual position , the AO has rightly invoked the provisions of section 158BC of the IT Act, 1961 and framed the assessment as per the provisions of this section. The appellant's appeal on this ground of appeal is therefore not maintainable and is dismissed."

7. The Tribunal while considering the matter has observed in para 4 and 5 has set aside the search warrant on the partnership firm.

> "4. Parties have been heard with reference to material on record and case laws relied upon by them. The copy of warrant of authorization was placed at APB p.10 which is stated to have been called for and examined by the ld. Commissioner of Income-tax (Appeals). The perusal of the warrant of authorization under section 132 reveals that the designated officer had reason to suspect that books of account and other documents, money, bullion, jewellery or other valuable article or thing have been kept and to be found in residential house at Vijay Gopalji ka Mandir, Johari Bazar, Jaipur occupied by Shri Raj Kumar Sharma and his family members. He therefore, authorized the officers to enter and search through the

warrant of authorization dated 12.11.97. Thus the warrant of authorization was for searching Shri Raj Kumar sharma.

5. We have also perused the Panchnama prepared by the authorized officer who has carried out a search at the aforesaid premises, authorized in the warrant of authorization, copy placed at APB 12 &13. The perusal of the Panchnama reveals that ti has been drawn in case of Shri Raj Kumar Sharma, Vijay Gopal Ka Mandir, Johari Bazar, Jaipur and the premises to be searched under the warrant are residence of Shri Raj Kumar Sharma, Johari Bazar, Jaipur and the said Panchnama or Search warrant do not speak of any search under section 132 of the Income-tax Act, 1961 on M/s. Ratan Mandir the assessee before us. The assessing officer himself has stated the fact in the assessment order that search under Section 132 of the Income-tax Act, 1961 was carried out on 12.11.97 at the business premises of Shri Raj Kumar Sharma situated at Vijay Gopal ka Mandir, also known as Rudra Mahadev Mandir, Johari Bazar, Jaipur. It has also been brought to our notice by the Id. Counsel for the eassessee that the authorized officer has found books of account and other documents as inventorised at Annex. B forming part of the Panchnama but the same were not seized. It was also argued that in the event, the search could be said to be on the assessee, then there was no occasion for the authorized officer not to seize the books of account or other documents which were found as a result of search on Shri Raj Kumar Sharma in his individual capacity. The Deptt. Appears to have become wiser subsequently and woken up after about 2 years when the assessment in the case of Shri R.K. Sharma was getting barred by limitation and impounded the books in September, 1999 while the search was carried out in the year November, 1997. No contrary material has been produce dby revenue. We are, therefore, satisfied that the search under section 132 of the Income-tax Act, 1961 has not been conducted in case of the assessee. We also find that books of account, other documents or assets

> have also not been requisitioned under section 132A of the Income-tax Act, 1961 in the case of the assessee before us.

8. Therefore, counsel for the Revenue contended that basically the Tribunal has seriously committed an error in misinterpreting the documents which were produced by him in form No.45 while issuing search warrant under Section 132. All firms were referred ever since Ratan Mandir was carrying out their activities in the residential house at Vijay Gopalji Ka Mandir, Johari Bazar Jaipur. Therefore, the findings arrived at are to be viewed in view of form No.45. We make it clear that these are tentative findings on the basis of zerox copy. While reconsidering the matter, the Tribunal will call for the original record and will examine the documents and will hear both the parties and examine all the parties including Raj Kumar Sharma, Rana and Department.

9. Only on this one point, we are of the opinion that the Tribunal has seriously committed an error in reversing the finding of the CIT(A). It is required to be reappreciated by the Tribunal. We know that the matter is remanded back almost after 13 years but the findings which are arrived at by the Tribunal requires to be arrived at after reappriciation of the evidence and the same will be done after calling for the original documents and after giving opportunity to both sides namely Raj Kumar Sharma and Rana for inspecting the documents and offering their comments.

10. We are not expressing any opinion on the merits of the

matter since, we are remitting the matter back to the Tribunal only on one point that the findings arrived at by the Tribunal that the search was at the only residential premises of Mr. Raj Kumar Sharma which is not supported by the original form. It is required to be revalued and reappreciated after verifying the documents. We are not even commenting on the basic principal of reading the documents on this form No.45 otherwise, the independent conclusion will not be there by the Tribunal. Therefore we are remitting back the matter to the Tribunal. The judgment of the Tribunal based on this is required to be quashed and set aside. We are not giving reasons on other factual matrix since all the parties are agreeable to go back to the Tribunal, therefore, any finding given by the Court on factual matrix will adversely effect the case of either side.

11. Consequently, the judgment of the Tribunal is quashed and set aside and the case is remitted back to the Tribunal. The matter is fixed before the Tribunal on 06.02.2017. All the parties will appear before the Tribunal on that date. The Tribunal may direct the department to produce all the original documents within three weeks and two weeks time will be granted to the parties to inspect the documents and make their submissions on the next date of hearing. All these proceedings may be completed within six months from 06.02.2017 i.e. on or before 06.08.2017. We make it clear that while we are remitting the matter back to the Tribunal, we are not expressing any opinion on the merits of the case either in favour of the department or the assessee. The

Tribunal will consider the same independently after examining the documents and corresponding documents and other documents will be sought to be relied upon by all the sides. However, it will be open for the parties to raise all issues and the same will be decided afresh.

12. All the appeals stand disposed of.

13. A copy of the judgment be placed in each file.

(VINIT KUMAR MATHUR)J. (K.S. JHAVERI)J.

Asheesh Kr. Yadav/8-12 & 14