

(AFR)

Reserved on 17.11.2017**Delivered on 11.01.2018****Case :- INCOME TAX APPEAL No. - 3 of 2000****Appellant :-** M/S Verma Roadways Through its Partner R.K.Verma**Respondent :-** Assistant Commissioner Of Income Tax**Counsel for Appellant :-** A.P. Singh, S.P. Gupta,**Counsel for Respondent :-** Ashish Agarwal, Manish Goel

And

Case :- INCOME TAX APPEAL No. - 4 of 2000**Appellant :-** The Commissioner Of Income Tax, Kanpur & Another**Respondent :-** M/S Verma Roadways .133/225 Transport
Nagar,Kanpur**Counsel for Appellant :-** Ashish Agrawal,C.S.C., Manish Goel**Counsel for Respondent :-** Ravi Kant, Senior Advocate, A.P. Singh,
Tanmay Sadh, Rahul Agarwal, Advocates**Hon'ble Sudhir Agarwal,J.****Hon'ble Dr. Kaushal Jayendra Thaker,J.**

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Both these appeals filed under Section 260A of Income Tax Act, 1961 (hereinafter referred to as "Act 1961") have arisen from the same judgment dated 15.9.1999 passed by Income Tax Appellate Tribunal, Allahabad Bench 'A', Allahabad(hereinafter referred to as 'Tribunal') in ITA No. 1551(Ald) of 1997 relating to Block period from 1.4.1994 to 28.11.1996. Assessee as well as Commissioner of Income Tax (hereinafter referred to as 'Revenue') both have come in appeal before this Court and hence both appeals have been heard together and are being decided by this common judgment.

2. Sri Ravi Kant, Senior Advocate assisted by Sri Rahul Agarwal, Advocate have appeared on behalf of Assessee and Sri Manish Goel, Advocate has put in appearance on behalf of Revenue.

3. Revenue's appeal was admitted on the following substantial questions of law:-

(1) Whether on the facts and in the circumstances of the case, Tribunal was right in holding that authorization for search

issued under section 132 and on the basis of which search was conducted against Assessee, was invalid, and if so, whether notice issued under section 158 BC of Act, 1961 to Assessee was invalid?

- (2) Whether notice dated 8.5.1997 issued under section 158 BC was invalid because material requisitioned under section 132-A of Act, 1961 was not available to Income Tax Department till that date?*
- (3) Whether Appellate Tribunal was right in holding that notice dated 8.5.1997 was invalid because it did not specify status of Assessee?*
- (4) Whether Appellate Tribunal was right in holding that notice dated 8.5.1997 was invalid because it did not indicate, whether it was issued on the basis of search or requisition or both?*
- (5) Whether Appellate Tribunal was right in holding that notice dated 8.5.1997 was invalid because it mentioned block period as 1.4.1986 to 28.12.1996 while assessment has been made for the period 1.4.1994 to 28.11.1996 ?*
- (6) Whether Appellate Tribunal was right in holding that power under section 132 of Act, 1961 was not exercised in the case of Assessee, M/s. Verma Roadways, and no warrant of authorisation was issued against Assessee, therefore, seizure and issue of notice under Section 158 BC and consequential block assessment against M/s. Verma Roadways was illegal?*
- (7) Whether Appellate Tribunal was right in holding that there existed no requisitioned material before issue of notice under section 158 BC and hence notice under section 158 BC issued against Assessee was illegal?*
- (8) Whether Appellate Tribunal was right in holding that Commissioner did not properly apply his mind to the matter before granting approval for assessment under section 158 BC and, therefore, approval was invalid?*
- (9) Whether Appellate Tribunal was right in holding that addition of Rs.10,50,000/- on account of investment in trucks could not be made under Section 158 BA and 158 BB of Act, 1961?*
- (10) Whether Appellate Tribunal had no jurisdiction to examine validity of proceedings of search carried out against Assessee under section 132 of Act, 1961?*

4. Assessee's appeal was admitted on following two substantial questions of law:-

- (1) Whether Tribunal having held that the assessment was bad in law and void-ab-initio, was justified in not quashing assessment but remanding to Assessing Officer on various*

issues?

(2) Whether Tribunal's finding that Assessee failed to establish that amount of Rs.65,59,302/- belong to Late Rameshwar Dayal Shiksha Samiti is based on no evidence, therefore, perverse?

5. The fact in brief giving rise to these appeals are that Assistant Director (Anti Evasion), Central Excise, Kanpur conducted a search on 27.11.1996 on the premises no.133/225 & 133/283, Transport Nagar, Kanpur. Assessee had its Head Office at 133/225, Transport Nagar, Kanpur and Branch office at 133/283 Transport Nagar, Kanpur. Excise authorities seized a number of documents and materials i.e. Bilty books, ledgers, Gunny bags of Supari etc. Search commenced at 11:30 hours on 27.11.1996 and completed at 17:30 hours on the same day.
6. A punchnama was prepared by Central Excise authorities after making search at premise No. 133/283. This search had taken place at 11 hours on 27.11.1996 and concluded at 20 hours on the same day. Cash of Rs.1,70,20,000/- was also found by Central Excise authorities.
7. Third premises i.e. 133/174, A.T.P. Nagar, Kanpur Nagar was also searched by the said authorities. Then another premises No. 133/111 M Block, Kidwai Nagar, Kanpur was also searched on 27.11.1996 and Panchnama was prepared.
8. Assessee is a partnership firm engaged in the business of transportation of goods. Its Head Office is situated at 133/225 Transport Nagar, Kanpur and Branch at 133/283 Transport Nagar, Kanpur. Besides, Assessee has Branches spread over across the country.
9. A warrant of authorisation was issued on 28.11.1996 for conducting search under Section 132 of Act, 1961 at the premises of M/s. Verma Transport Company and Lucknow Banda Transport Company.
10. Income Tax Authorities searched at the premises of Assessee at 133/283 Transport Nagar, Kanpur, Godown between Sugam Parivahan and Bombay General Freight Carriers, T.P. Nagar, Kanpur and prepared panchnama. Search began at 3:30 P.M. and concluded at

7:45 P.M. on 28.11.1996. In respect of search conducted at premises of Assessee at 133/225 Transport Nagar, Panchnama was prepared showing commencement of search at 6 A.M. and concluded at 4:45 A.M. on 29.11.1996. In the Godown 914 bags of 'Supari' were found.

11. In the light of documents seized by Income Tax Authorities, a notice under 158 BC was issued on 8.5.1997 in the name of "M/s.Verma Roadways" at 133/283, Transport Nagar, Kanpur which was served on 15.5.1997. M/s. Verma Roadways (Assessee) was required to file return for block period 1.4.1986 to 28.12.1996 in the prescribed form 2B. Assessee through its counsel vide letter dated 16.5.1997 requested Assessing Officer to issue Form 2B which was issued on 16.5.1997 itself.

12. Vide letter dated 16.5.1997 Assessee also requested to furnish photostat copy of seized record. Permission was granted on the same date and communicated to Assessee through counsel. Another letter dated 29.5.1997 was sent by Assessee stating that since photocopy of record is taking time, it may be allowed two months' time to file return. The request was accepted and time to file return was extended upto 13.6.1997. Assessee again sought further time vide letter received by Assessing Officer on 13.6.1997 whereupon 15 days further time was granted. However, no return was filed.

13. Reminder notice dated 29.7.1997 under Section 142(1) was served upon Assessee requiring it to file return by 8.8.1997. In response thereto, Assessee filed statement that most record of Assessee are lying with Central Excise Department, hence it is not in a position to file return of Income Tax. Thereafter, Income Tax Authorities contacted Excise Authorities and made efforts to obtain record seized by them from Assessee's premises. Photocopies of seized record was obtained and made available to Assessee with acknowledgment for filing return. Still Assessee failed to submit return. Hence, Assistant Commissioner, Income Tax, Circle -1, Kanpur i.e. "Assessing Authority" (hereinafter referred to ACIT/AA') proceeded to make assessment on the basis of seized material and information received from Excise Department, on best judgment basis, and passed Assessment order dated 28.11.1997.

14. Assessee filed regular return on 11.11.1997 for the period 1.4.1996 to 26.11.1996 for Assessment Year(hereinafter referred to as 'A.Y.') 1997-98.

15. ACIT/AA made assessment order dated 28.11.1997 under Section 158 BC/144 of Act, 1961 at total income of Rs.3,12,97,430/-. The undisclosed income assessed by ACIT/AA is as under:

(a) Cash found by Central Excise Department in the raid conducted on 27.11.1996 from premises No. 133/283.	Rs.1,70,20,000/-
Cash Found during search by the Income-tax Department on 28.11.1996 from the same premises, i.e. 133/283.	Rs.13,05,180/-
Total	Rs.1,83,25,180/-
(b) Excess of cash to the extent of Rs.1,08,195/- seized by the Central Excise Department.	Rs. 1,08,195/-
(c) Unreconciled stock of Supari	Rs. 70,99,839/-
(d) Unexplained investment in cloth	Rs. 5,04,000/-
(e) Unexplained investment in trucks	Rs. 10,50,000/-
(f) Income of the assessee from 1.4.96 to 28.11.1996	Rs. 38,70,219/-
(g) Unexplained investment in house property No. 133/225	Rs. 3,40,000/-

16. Assessee preferred appeal against aforesaid order of assessment which has been partly allowed by Tribunal vide impugned judgment. Both parties have filed respective appeals to the extent order of Tribunal is against them.

17. Tribunal has considered various issues of Assessee and returned findings, in brief, as under:-

(a) Warrant of authorisation was issued in Form 45(as per Rule 112 of Income Tax Rules, 1952(hereinafter referred to 'Rules, 1952') in the name of "M/s. Verma Transport Company, Lucknow Banda Transport Company". Panchnama dated 29.11.1996 was also prepared in the name of "M/s. Verma Transport Company 133/225, Transport Nagar, Kanpur". Assessee formed title as "M/s. Verma Roadways" which is an independent and separate entity, a

partnership firm. Hence there was no valid warrant of authorisation in the name of Assessee. Therefore, there was no valid search under Section 132(1) of Act, 1961 at the premises of Assessee.

(b) All consequential actions such as, seizure, issue of notice under Section 158 BC and consequential Block Assessment in the hands of Assessee i.e. “M/s. Verma Roadways” are illegal. Mere fact that actual search was conducted at the premises of Assessee would not validate warrant of authorisation which was not issued in the name of Assessee.

(c) Notice dated 8.5.1997 issued under Section 158 BC was also not valid, firstly, for the reason that no valid authorisation or search under Section 132(1) was made in the name of Assessee and secondly, no information was available with Income Tax Authorities, necessary for forming opinion by competent authority to issue authorisation for search for the reason that seized documents etc. from Central Excise were requisitioned by Income Tax Authorities on 11.12.1996; thirdly, notice is not mere procedural but jurisdictional since it was necessary for initiating Block Assessment proceedings; fourthly, status of Assessee was not mentioned in the notice; fifthly, notice did not indicate material particulars and information, whether it was issued for search or requisition or both though it was necessary; and lastly, notice mentioned wrong Block period i.e. 1.4.1986 to 28.12.1996.

(d) A valid notice under Section 158 BC is mandatory and illegality therein would vitiate entire proceedings.

(e) Approval by Commissioner shows non-application of mind inasmuch as alleged documents seized by Central Excise Authorities related to M/s. Verma Roadways i.e. Assessee, while authorisation and other documents prepared by Income Tax authorities were in the name of “M/s. Verma Transport Company”.

(f) Computation by ACIT/AA ought to be year wise but it has made computation for the entire Block period which is illegal.

(g) ACIT/AA made additions without permitting Assessee to participate in investigation/enquiry and without supplying documents relied for making such additions.

(h) Assessee failed to explain Rs.65,59,302/- to prove that same related to Rameshwar Dayal Shiksha Samiti and therefore, ACIT/AA rightly made addition of said amount.

(i) No proper and thorough enquiry was made by ACIT/AA, may be on account of paucity of time or carelessness or non-cooperation by Assessee.

(j) In case of Block Assessment, Section 145 is not applicable and hence there was no scope of best judgment assessment.

18. Sri Manish Goel, learned counsel for Revenue assailed order of Tribunal contending that it has erred in law in observing that there was no valid warrant of authorisation for making search at the premises of Assessee and findings in this regard are perverse. He submitted that there may be error in mentioning/title of Assessee or its firm but details of premises mentioned in warrant of authorisation was correct. Search was also made at the premises which admittedly belong to Assessee. At no point of time, any such objection was raised by Assessee that search conducted by Income Tax Authorities was not at the premises of Assessee. Documents and other material seized by Income Tax Authorities were also from premises belong to Assessee. Hence, there was no such illegality in warrant of authorisation for search so as to hold entire assessment bad merely for the reason of wrong mention of name or title of Assessee.

19. He further argued that premises was common. Assessee has not disclosed anywhere that its office was at a place differently identifiable from that whose name was mentioned in warrant of authorisation. Premises was common. Even this was not shown that there was any firm in the name and title of M/s. Verma Transport Company and Lucknow-Banda Transport Company having distinguished identifiable premises or place. Hence it cannot be said that authorisation of search was bad or search was not validly conducted at the premises of

Assessee. Sri Goel in support of submissions placed reliance on a Division Bench judgments of this Court in **Civil Misc. Writ Petition (Tax) No. 451 of 2012 Harbhajan Singh Chadha And Others vs. Director of Income Tax And Others** decided on **27.3.2015**; **Commissioner of Income-Tax vs. Dr. A.K. Bansal (2013) 355 ITR 513 (All)**; Punjab and Haryana High Court judgment in **Commissioner of Income-Tax vs. Paras Rice Mills (2009) 313 ITR 182 (P&H)**; Delhi High Court's Judgment in **M.B. Lal vs. Commissioner of Income-Tax (2005) 279 ITR 298 (Del)** and Chhattisgarh High Court's judgment in **Trilok Singh Dhillon vs. Commissioner of Income-Tax (2011) 332 ITR 185 (Chhattisgarh)**.

20. Sri Manish Goel further submitted that no material was placed before Tribunal that “M/s. Verma Transport Company, Lucknow-Banda Transport Company” are two different entities. Tribunal has proceeded on certain assumptions without having any material in support thereof. Assessee never raised any objection before ACIT/AA when notice under Section 158 BC of Act, 1961 was issued and instead participated. In the circumstances, material collected in such search and seizure can validly be used against Assessee. It has valid evidentiary value. The warrant was not supposed to be served upon Assessee. It is for the guidance and information of search team so that they may conduct search at the requisite place. In the present case, search was authorised to be conducted at the premises of Assessee which was actually conducted and material seized therein belong to Assessee. Therefore, Tribunal erred in holding that warrant of authorisation under Section 132 of Act, 1961 was not validly issued. He also contended that warrant of authorisation of search and seizure is an administrative function and not open for judicial review before Tribunal, hence, Tribunal had no jurisdiction to examine proceedings of search carried out by Income Tax Authorities at the premises of Assessee under Section 132 of Act, 1961.

21. It was lastly contended that on the basis of information received from Central Excise Authorities when they found incriminating material and also huge cash at the premises of Assessee, in search conducted

on 27.11.1996, Commissioner of Income Tax validly issued warrant of authorisation for search under Section 132(1) and it can not be said that there was non-application of mind on the part of Commissioner. He argued that Tribunal in recording otherwise has erred in law.

22. Sri Ravi Kant, learned Senior Counsel supported judgment of Tribunal in so far as findings have been recorded against Revenue and repelled arguments advanced by Sri Manish Goel. In support of Assessee-appellant, learned Senior Counsel argued that once search and seizure itself was held illegal, material collected therein could not be used against Assessee and entire assessment was illegal. That being so, there was no occasion for Tribunal to remand matter to ACIT/AA and hence to this extent, order of Tribunal is illegal and liable to be set aside.

23. He further contended that in any case, observation of Tribunal that there was no evidence to establish that Rs.65,59,302/- belong to Rameshwar Dayal Shiksha Samiti, is patently illegal and perverse.

24. We have heard respective submissions, perused record and various authorities cited at the Bar.

25. Search was conducted pursuant to warrant of authorization under Section 132(1) of Act, 1961 and Block Assessment has been made under Chapter XIV B; in particular, Section 158 BC of Act, 1961. It would be appropriate to have a glance over Section 132(1) and 158 BC of Act, 1961:-

132. Search and seizure.- (1) *Where the Director General or Director or the Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board, 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), then,—

(A) the Director General or Director or the Chief Commissioner or Commissioner, as the case may be, **may authorise** any Deputy Director, Deputy Commissioner, Assistant Director, Assistant Commissioner or Income-tax Officer, or

(B) such Deputy Director, or Deputy Commissioner, as the case may be, may authorise any Assistant Director, Assistant Commissioner or Income-tax Officer,

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—

(i) **enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;**

(ii) **break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (i) where the keys thereof are not available;**

(iia) **search any person** who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, **if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;**

(iii) **seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:**

(iv) **place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;**

(v) **make a note or an inventory of any such money, bullion,**

jewellery or other valuable article or thing :

Provided that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any Chief Commissioner or Commissioner, but such Chief Commissioner or Commissioner has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section 120, it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the Chief Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the interests of the revenue :

Provided further that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised officer shall be deemed to be seizure of such valuable article or thing under clause (iii):

(1A) Where any Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the Director General or Director or any other Chief Commissioner or Commissioner or any such Deputy Director or Deputy Commissioner as may be empowered in this behalf by the Board to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such Chief Commissioner or Commissioner may, notwithstanding anything contained in section 120, authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.” (emphasis added)

Procedure for block assessment.

158BC. *Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,*

(a) the Assessing Officer shall serve a notice to such person requiring him to furnish, within such time, not being less than fifteen day, as may be specified in the notice, a return in the prescribed form and verified in the same manner as a return

under clause (i) of sub-section (1) of section 142, setting forth his total income including the undisclosed income for the block period:

Provided that no notice under section 148 is required to be issued for the purpose of proceeding under this Chapter ;

(b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143 , 144 shall, so far as may be, apply;

(c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

(d) the assets seized under section 132 or requisitioned under section 132A shall be retained to the extent necessary and the provisions of section 132B shall apply subject to such modifications as may be necessary and the references to “regular assessment” or “reassessment” in Section 132B shall be construed as references to “block assessment” .

(emphasis applied)

26. Photocopy of warrant of authorisation issued in Form 45 under Section 112(I) of Income Tax Rules, pursuant where to search was conducted at Assessee's premises on 28.11.1996 was produced before Tribunal, which are quoted in para 11.2 of Tribunal's order and relevant extract thereof reads as under:-

“FORM NO.45”

Warrant of authorisation under section 132 of the Income-tax Act, 1961, and rule 112(1) of the Income-tax Rules, 1952.

Whereas information has been laid before me on the consideration thereof I have reason to believe that

If a summon under sub-section(1) of section 37 of the Indian Income-tax Act, 1922, or 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 Verma Transport Co., Lucknow Banda Transport Co.(name of person) to produce or cause to be produced, such books account or other documents as required by such summons or notice-SARVSHRI/SHRI/SHRIMATI M/S. VERMA TRANSPORT CO.,LUCKNOW BANDA TRANSPORT CO. are/is in possession of any money, bullion, 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, or the Income-tax Act, 1961

And whereas I have reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing have been kept and are to be found in godown 133/225 Transport Nagar, Kanpur (specify particulars of the building/place/vessel/vehicle/aircraft); This is to authorise and require you as per reverse.....”

27. The contents of warrant of authorisation except the underlined portion which is hand written, are in Printed form.

28. Copies of *Panchnama* dated 29.11.1996, order under Section 132(3) and order under Second proviso to section 132(1) of Act, 1961(Provision of Act, 1961) were also placed before Tribunal, wherein address mentioned reads as under:-

“M/s. Verma Transport Company(Roadways) 133/225 Transport Nagar(Kanpur)”

29. Tribunal has observed that since warrant of authorisation was in the name of M/s. Verma Transport Company, M/s. Lucknow-Banda Transport Company, hence, documents, books of Accounts, money or other assets in possession of such person i.e. M/s. Verma Transport Company, Lucknow-Banda Transport Company could have been searched in the premises specified in the warrant. If in the said premises any material or documents were found in respect to another person, namely M/s Verma Roadways and on that basis Assessing Officer, being satisfied that M/s. Verma Roadways has undisclosed money, he could have proceeded under Section 158 BD of Act, 1961 and not Section 158BC. Panchnama and seizure memo were prepared in the name of “M/s.Verma Transport Company” and “Lucknow-Banda Transport Company” and not in the name of “M/s. Verma Roadways” i.e. Assessee. The word “Roadways” was mentioned to make an attempt that everything was related to Assessee but it is this addition which is subsequent when notice was issued by department. Details of documents in which **title/reference** was mentioned, have been dealt in 14.1 of order of Tribunal and these observations are reproduced as

under:-

“(I) Panchnama dated 29.11.96 (page 124 of the paper book of the department) which mentions as follows:

A. Warrant in the case – M/s Verma Transport Co./ Lucknow Banda Co.(Verma Roadways):

B. Warrant to Search- Godown at 133/235, Transport Nagar, Kanpur.

(ii) Order under proviso 2nd to section 132 (1) (pages 7-8) which is addressed as follows:

To-M/s Verma Transport Co.(Roadways, 173/225, Transport Nagar, Kanpur)

(iii) Inventory of stock seized/restrained at the premises in the case of M/s. Verma Transport Co. 133/225, Transport Nagar,Kanpur (page-14 of the Paper Book of the Deptt.)

(iv) Panchnama dated 28.11.96(Paper Nos. 54-57 of the Paper Book of the deptt.) in which the following entries made:

(A) Warrant in the case of M/s Verma Transport Co. and Lucknow Banda Transport Co., 133/283, Transport Nagar, Kanpur.

(B) Warrant to Search – M/s Verma Transport Co. and M/s Lucknow Banda Transport Co.'s godown.

(v) Panchnama dated 28-11-96 (Papers 59-62 of paper book) which contains following entries:

(A) Warrant in the case of M/s Verma Transport Co. and Lucknow Banda Transport Co., 133/283, Transport Nagar, Kanpur.

(B) Warrant to Search – M/s Verma Transport Co. and M/s Lucknow Banda Transport Co.'s godown.

(vi) Panchnama dated 28.11.96 (paper 67-70 of the Paper Book of the deptt.), which contains following entries:

(A) Warrant in the case of M/s Verma Transport Co. and Lucknow Banda Transport Co., 133/283, Transport Nagar, Kanpur.

(B) Warrant to Search – M/s Verma Transport Co. and Lucknow Banda Transport Co. 133/283, Transport Nagar, Kanpur.”

30. It is in this background that Tribunal held that no search was conducted at “M/s. Verma Roadways” on the basis of warrant of authorization issued in the name of “M/s. Verma Transport Company, Lucknow-Banda Transport Company” and there was no warrant of search under Section 132(1) against Assessee. It has also noticed that so far as Department of Excise was concerned, admittedly search was conducted at the premises of “M/s. Verma Roadways” and entire material, cash collected, related to “M/s. Verma Roadways” i.e. “Assessee”. Tribunal accordingly held that no warrant of authorization

for conducting search under Section 132(1) of Act, 1961, was issued in the name of Assessee i.e. "M/s. Verma Roadways" and hence all consequential action such as seizure, notice under Section 158BC of Act, 1961 and Block Assessment in the hands of "M/s. Verma Roadways" are illegal. Tribunal has recorded its conclusion as under:-

*"In view of the above, we hold that power u/s 132 was not exercised in the case of the appellant-assessee, i.e. M/s Verma Roadways, as **no warrant of authorization was issued against the assessee**. The consequence will be that the assessment has to be declared bad in law and void ab initio on these grounds and the same are liable to be quashed. The submissions raised on behalf of the assessee-appellant, relating to ground Nos. 1 & 5, therefore, are accepted and those of the revenue are not accepted. Ground No.1 & 5 are, therefore, allowed in favour of the assessee."*

31. Search and seizure are not something unknown earlier or came to be resorted for the first time in 1961. It is well recognized process in all civilized countries in various fields even in Criminal Procedure Code. There are provisions for search and seizure authorizing police authorities.

32. The power of search and seizure and procedure under Section 132(1) read with Rule 112 is against a person who is believed, on good ground, to have illegally evaded or likely to evade payment of tax on its income and property.

33. The scheme of Block Assessment was introduced and inserted under Chapter XIV-B of Act, 1961 with effect from 1.7.1995. This Chapter deals with special procedure for assessment of search cases. The main provision of Chapter XIV B was to curb tax evasion and simplify assessment in search cases. Undisclosed income have to be related in different years in which income was earned in Block Assessment. The essence of new procedure prescribed under Chapter XIV B therefore, is separate. Single assessment of undisclosed income detected as a result of search and this separate assessment is to be added to the normal assessment covering same period. With this intention separate return covering years of Block period is pre-requisite for making Block Assessment.

34. On the question of power of search and seizure, time and again,

various issues have been raised and Courts have repeatedly examined the matter and laid down certain principles which would be necessary to understand the backdrop in which provisions pertaining to search and seizure and material collected thereunder have been made.

35. In **M.P. Sharma vs. Satish Chandra**, AIR 1954 SC 300 validity of power and seizure under Section 96(1) of Code of Criminal Procedure 1898 was upheld observing that a power of search and seizure is in any system of jurisprudence an overriding power of State for the protection of social security and that power is necessarily regulated by law. A search by itself is not a restriction on the right to hold and enjoy property though a seizure is a restriction on the right of possession and enjoyment of property seized. Rather, that is only temporary and for the limited purpose of investigation. A Bench of 8 Judges of Supreme Court in the judgment delivered by Hon'ble B. Jagannadhadas observed that power of search and seizure is in any system of jurisprudence an overriding power of the State for protection of social security and that power is necessarily regulated by law.

36. Similar power of search and seizure under Section 41 of Madras General Sales Tax of 1969 was upheld in **Commissioner of Commercial Taxes vs. Ramkishan Shrikishan Jhaver**, (1967) 66 ITR 664. Court held that an officer empowered by Government was entitled to effect search and seize goods and articles as provided in that section. It also held that in the taxing statute, Legislature is empowered to make provisions which would check evasion of tax. The provision for search and seizure is one of such provision. While upholding legislative power, Court said that implementation of such power must accompany by safeguards so as to protect a genuine person against its undue and improper exercise. Some such safeguards are (i) empowered officer must have reasonable grounds for believing that anything necessary for the purpose of recovery of tax may be found in any place within his jurisdiction, (ii) he must be of the opinion that such thing is not got without any undue delay, (iii) he must record in writing the ground of his belief, and (iv) he must specify in such writing so far as possible the thing for which search is to be made.

37. Scope of Section 132 of Act, 1961 was considered in **ITR vs. Seth Brothers 1969 (74) ITR 836 SC** Court said that this provision does not confer any arbitrary authority upon Revenue Officers. Commissioner or Director (Investigation) must have, as a consequence of information, reason to believe that statutory conditions for exercise of power to order search exists. He must record reason for such belief and issue an authorisation in favour of designated officer to search premises and exercise power set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the Officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by exercise of power, a serious invasion is made upon rights, privacy and freedom of tax-payer, power must be exercised strictly in accordance with law and only for the purposes for which law authorizes it to be exercised. If action of the officer issuing authorization, or of the designated officer is challenged, officer concerned must satisfy Court about the regularity of his action. If action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by Court. If the conditions for exercise of the power are not satisfied, proceeding is liable to be quashed. But where power is exercised bona fide, and in furtherance of statutory duties of Tax Officers, any error of judgment on the part of Officers will not vitiate the exercise of power. Act and Rules do not require that warrant of authorization should specify particulars of documents and books of accounts. A general authorization to search for and seize documents and books of account relevant to or useful for any proceeding complies with the requirements of Act and Rules. It is for the officer making search, to exercise his judgment and seize or not to seize any documents or books of account.

38. In Pooran Mal Etc. vs. Director of Inspection(Investigation) of Income Tax Mayur, (1974) 93 ITR 505 (SC) constituted validity of Section 132 was challenged. While upholding its validity Court observed:-Court held that it is a well-known fact of our economic life that huge sums of unaccounted money are in circulation endangering its very fabric. In a country which has adopted high rates, of taxation, a major portion of unaccounted money should normally fill the Government coffers. Instead of doing so it distorts the economy. Therefore, in the interest of the community it is only right that fiscal authorities should have sufficient powers to prevent tax evasion.

39. Court in Pooran Mal Vs. Director of Inspection(supra) also held that power to order search and seizure is vested in the highest officers of the department. Exercise of power can only follow a reasonable belief entertained by such officer that any of the three conditions mentioned in Section 132(1) (a),(b) and (c) exists. The authority concerned has to record reasons before authorization is issued to the officers mentioned in Sub Section (1). Authorization cannot be in favour of any officer below the rank of Income Tax Officer. The authorization is for specific purposes given in Clauses (i) to (v) in sub Section (1). An argument was raised that Section 132 may cause harassment in personal liberty to an innocent person who may possess any material without knowing that it is concealed income. This argument was repelled by Court. It held that the object is to get concealed income. Any person who is in custody without enquiring about its true nature, exposes himself to search. Court observed that if person is innocent, Section 132(4) takes care of such person in telling true facts to the searching officer explaining on whose behalf he held custody of valuables. Court also noticed that purpose and object of Section 132 of Act, 1961 can be achieved when a timely action is taken without giving any opportunity to the person concerned to destroy material, remove it or manufacture the things available. Therefore, competent authority before issuing warrant of authorisation, if gets timely reliable information about undisclosed income and its location, can direct search and seizure otherwise it would be futile exercise of

search and seizure since things can be manoeuvred by the person concerned and entire effort on the part of Revenue would be fruitless. The provision for seizure is designed with the object of getting at the income which has been concealed illegally by the Assessee.

40. It would be useful to notice at this stage, when mere exposition of law is substituted to facts in **Pooran Mal vs. Director of Inspection(supra)**, that even if search and seizure was illegal, evidence or material collected therein can be used as a valid piece of evidence and there is neither any provision in statute nor support of the Constitution contemplating exclusion of material collected in an illegal search.

41. Court referred to an earlier Constitution Bench decision in **A.K. Gopalan vs. State of Madras, AIR 1950 SC 27** that where fundamental law is not limited, either in terms or by necessary implication, general powers conferred upon legislature cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. Referring to Evidence Act, 1871, Court observed that neither said Act nor any other similar law in force does exclude relevant evidence on the ground that it was obtained under an illegal search or seizure.

42. What is important, therefore from the above authorities, is that emphasis of Court was on the necessity of recording reasons in support of reasonable belief contemplated by Section 132. Law does not require even disclosure or communication of such reasons to a person in respect whereof such reasonable belief is suggested to be recorded by the concerned authorities.

43. In **Kuruma vs. Queen, (1955) A.C. 197 (Privy Council)** it was observed that evidence is admissible if relevant and Court is not concerned with how it was obtained.

44. In **Emperor vs. Allahdad Khan, (1913) I.L.R. 35 All.358** Superintendent of Police and a Sub Inspector searched house of a person suspected of being in illicit possession of excisable articles and such articles have been found in house search. Court held that conviction of owner of the house under Section 63 of United Provinces

Excise Act, 1910 would not be binding on account of fact that no warrant was issued for search though under Section 63 it was necessary that a search warrant should have been obtained before hand i.e. before proceeding to search a house. A Constitution Bench ultimately held:-

“it would thus be seen that in India , as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the Constitution or other law of evidence obtained as a result of illegal search or seizure is not liable to be shut out.

In that view, even assuming, as was done by the High Court, that the search and seizure were in contravention of the provisions of section 132 of the Income-Tax, still the material seized was liable to be used subject to law before the income-tax authorities against the person from whose custody it was seized and, therefore, no writ of prohibition in restraint of such use could be granted.” (emphasis added)

45. Going further to widen the scope of Section 132 in **Dr. Pratap Singh vs. Director of Enforcement 1985 (155) ITR 166 (SC)**, Court observed that material of which officer has reason to believe may have been obtained through intelligence, or even conveyed orally by informant. Court also said that it is open to the court to examine the question whether reasons for belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section.

46. In **M/s. Spacewood Furnishers Pvt. Ltd. vs. Director General of Income Tax(Investigation), (2015) 374 ITR 595 (SC)** Court summarised principle from its various earlier judgments, paragraph 9 whereof reads as under:-

*“9. In the case of **L.R. Gupta & Others vs. Union of India & others**(supra), the Hon'ble Division Bench of Delhi High Court has considered the provisions of Section 132(1) of the Act. In para 3, Division Bench has noticed that search was authorized because of information allegedly gathered about receipt of approximately Rs.30 crores by assessee from land acquisition department. Discreet enquiries were made and it was revealed to the department that house property at Anand Lok was under demolition and an apartment building was to be constructed there. For those apartments, secret bookings were alleged to have been made and money was received by family members of the petitioners. The note of Respondents No. 2 & 3 there stated that*

the petitioners did not disclose receipt of compensation in income tax returns. The High Court noticed that the receipt of money by the petitioners was known to department and failure to return income because of the belief of the petitioner that it was not taxable, could not have been a ground for issuing an authorization under Section 132(1) of the Act. It is noticed that non filing of return may give right or jurisdiction to the respondents to invoke provisions of Section 147 and 148 but it was not a case where money was received surreptitiously or the department did not have knowledge. The other ground about failure to disclose immovable properties in the return has been found equally misconceived as it was not the case of the department that the properties were purchased from the funds which were not known to the department.

*In para 22, Delhi High Court has relied upon the judgment of Punjab & Haryana High Court in the case of **H.L. Sibal vs. Commissioner of Income Tax**, reported at (1975) 101 ITR 112 (P & H). In that judgment, the Punjab & Haryana High Court has made the following observations:*

"The applicability of S. 165, Cr. P.C, to the searches made under S. 132(1) gives an indication that this section is intended to apply in limited circumstances to persons of a particular bent of mind, who are either not expected to co-operate with the authorities for the production of the relevant books or who are in possession of undisclosed money, bullion and jewellery, etc. Take for instance, a particular assessee who has utilized his undisclosed income in constructing a spacious building. His premises cannot be subjected to a search under this section on this score alone. A search would be authorised only if information is given to the CIT that such a person is keeping money, bullion, jewellery, etc., in this building or elsewhere. Further, if an assessee has been regularly producing his books of account before the assessing authorities who have been accepting these books as having maintained in the proper course of business, it would be some-what unjustified use of power on the part of the CIT to issue a search warrant for the production of these books of account unless of course there is information to the effect that he has been keeping some secret account books also. He has to arrive at a decision in the back-ground of the mental make up of an individual of individuals jointly interested in a transaction or a venture. A blanket condemnation of persons of diverse activities unconnected with each other on the odd chance that if their premises are searched from incriminating material might be found is wholly outside the scope of S. 165, Cr. P.C. This power has to be exercised in an honest manner and search warrants cannot be indiscriminately issued purely as a matter of policy."

In para 15 of this judgment, the Delhi High Court has also

found that in his satisfaction note, the Director of Investigation had recorded only one reason and it was that the petitioners were not disclosing true income and wealth. This reason was found not in addition to reasons contained in note of recommendation put up by other respondents and Delhi High Court has found that satisfaction of said authority only was relevant and needed to be examined.”

47. In Union of India vs. Agarwal Iron Industries (2015) 370 ITR 180 (SC) validity of warrant of authorization issued under Section 132 was challenged on the ground that it was issued mechanically, arbitrarily and for total non-application of mind. Court held that competent authority is to issue warrant for authorisation for seizure on the basis of formation of opinion which is reasonable, prudent and would form for arriving at a conclusion to issue a warrant. It is done by way of an interim measure. The search and seizure is not confiscation. Articles seized, are the subject matter of enquiry by Competent Authority after affording opportunity of hearing to the person from whose custody the same has been seized.

48. From the aforesaid discussion what transpires is that search and seizure operations which were conducted in the light of powers exercised in the statute are controlled by such statute. For the purpose of Section 132, competent authority while authorizing search and seizure must only have a material to form belief and such material may be collected or available to such person in any manner, may be, through intelligence or conveyed orally etc. Only thing which has to be seen is whether there is a reasonable connection or relevance of such information for formation of belief and powers of exercise are not for extraneous and irrelevant purposes. Moreover, material collected can be used for further enquiry and mere fact that there was some default or irregularity in the process of authorization or search and seizure operations, such defect will not denude the material etc. collected and seized of its evidentiary value for further proceedings.

49. Coming to the next aspect, whether Assessing Officer or Appellate Authority or Tribunal can examine validity of search and seizure proceedings, we find that answer is contained in the authorities cited at the Bar.

50. In Trilok Singh Dhillon vs. Commissioner of Income-Tax(supra) Chhattisgarh High Court held that validity of search proceeding cannot be examined either by Assessing Authority or in an appeal by the Tribunal, since it would not have jurisdictional effect within the parameters of assessment proceeding or in appeal arising therefrom. Court referred to judgment of Delhi High Court in **M.B. Lal Vs. Commissioner of Income Tax(supra)**; **Commissioner of Income-Tax vs. Paras Rice Mills(supra)** and Madhya Pradesh High Court judgment in **Gaya Prasad Pathak vs. Assistant Commissioner of Income-Tax (2007) 290 ITR 128(MP)**. Court in **Trilok Singh Dhillon (supra)**, also held that it was not open to Assessee to question legality and validity of search and Seizure proceedings during assessment before Assessing Officer or in appeal before Commissioner of Income-Tax or Tribunal when he participated in assessment proceedings but did not challenge validity of search and seizure by filing a writ petition in High Court, since such validity can be examined in writ Court and not by Assessing Authorities or Appellate Authorities.

51. A Special Bench of Tribunal in **C. Ramaiah Reddy vs. Assistant CIT(2004) 268 ITR (AT) 49(Banglore)** held that validity of action taken under Section 132 of Act, 1961 cannot be examined in appeal filed before it. This judgment has been affirmed by **Delhi High Court in M.B. Lal vs. CIT(supra)** rendered by a Division Bench consisting of Hon'ble T.S. Thakur, J. and Hon'ble Badar Durrez Ahmed, J. (as their Lordships then were). Court in **M.B. Lal Vs. Commissioner of Income-Tax (supra)** held:-

“Any appeal before the Tribunal against the block assessment made under section 158BC does not take within its fold questions touching the validity of the search conducted under section 132 of the Act. Whether or not the conditions precedent for a search stipulated under clauses (a), (b) and (c) of section 132(1) of the Act were satisfied in a given case falls beyond the scope of assessment proceedings instituted under section 158 BC of the Act or any statutory appeal preferred against the order made under that provision. If the petitioner was keen to test the validity of the said proceedings, his remedy lay in a writ petition under article 226 of the Constitution.”

52. A Division Bench of this Court also in **CIT vs. Dr. A.K.**

Bansal(supra) considered this very question, whether correctness of search and seizure under Section 132 can be raised before Assessing Officer or Appellate Authorities, and agreeing with five-members Bench of Income-Tax Appellate Tribunal, Delhi's judgment in **Promain Ltd. vs. Deputy CIT(2006) 281 ITR(AT) 107(Delhi)(SB)**, it held that Tribunal while deciding appeal against Assessee can only look into correctness of assessment order and not validity of search. This Court in paragraph-22 has said:-

“The initiation of search by issue of warrant of authorisation is not a subject matter of the assessment. The assessing authority cannot go into such questions and consequently the appellate authority which has to look into the validity of the assessment order cannot question the validity of the search.”

53. This Court clearly said that neither assessing officer nor tribunal in appeal can examine warrant of authorization for the purpose of examining whether there existed reasons to believe on material before competent authority to order search under Section 132(1) of Act, 1961. Agreeing with 5 Member Bench of Tribunal's finding in **Promain Ltd. Vs. Deputy CIT(supra)**, Court detail as to what can be looked into by Tribunal and what not and these are detailed in paragraph 24 and 25, which are reproduced as under:

“24. The Five Member Bench of the Tribunal held that the Tribunal cannot adjudicate upon the action of the Director of Investigation/Commissioner of Income-tax under section 132(1). It may look into the point, if it was raised before the Assessing Officer regarding the later stages, namely issuance of notice under section 158BC and preparation of panchnama to satisfy itself that the search was initiated and carried out in case of the person on whom the notice was served. If the Assessing Officer does not satisfy himself in this regard, then the assessee has the right to object to the validity of the assessment in appeal on the ground that no search was initiated/conducted in the case of the appellant. The Assessing Officer can look into these aspects under section 148BA unless the case is covered under section

158BD of the Act.

25. The Five Member Bench further held that the Tribunal can also look into the findings recorded by the Assessing Officer on the examination of the seized material, and validity of the order under section 158BB which requires the Assessing Officer to determine the total undisclosed income with reference to the evidence found as a result of search and such other material/information relatable to the search and this evidence will include the statements recorded in the course of search. The Tribunal can also look into the consequence of the search namely the completion of assessment for the purpose of computing the period of limitation under section 158BE. It may also examine as to when the last of the authorizations was executed for the purpose of calculating the limitation. The Tribunal may also look into the findings of the Assessing Officer on the action of the search party, namely, identification, preparation of inventory, seizure, etc. The Assessing Officer or the Appellate authority, however, cannot look into the validity of the search by calling for the warrant of authorization and examining the records authorising search for the purpose of an enquiry whether the search was valid.”

54. The findings recorded in paragraphs 24 and 25 have been agreed in paragraph- 26 in entirety. Paragraph 26 of the judgment in **CIT vs. AK Bansal(supra)** :

“26. We entirely agree with the reasoning given in Promain Ltd. vs. Deputy CIT 2006 (281) ITR (80) 107 Delhi [SB], the Deputy Commission of Income-tax as well as the decisions of Punjab and Haryana High Court, Madhya Pradesh High Court, Rajasthan High Court and the Delhi High Court which have on more than on occasion held that in hearing an appeal against the order of the assessment, the Tribunal cannot go into the question of validity or otherwise of any decisions for conducting search and seizure. This decision

can be challenged in an independent proceeding where the question of validity of order may be gone into.”

55. Upon exposition of law, discussed above, we find ourselves in respectful agreement but the question would be whether aforesaid proposition has application in the case in hand. Here Tribunal has not examined validity of search and seizure operation under Section 132(1) but what has been considered, whether there was any search and seizure authorization against Assessee in question or not.

56. Before Assessing Authority, Assessee never challenged correctness of warrant of authorisation pursuant where to Assessee's premises were searched and documents etc. were seized by Income Tax Authorities.

57. In the present case, interesting fact is that warrant of authorisation is in the name of “M/s. Verma Transport Company, Lucknow Banda Transport Company” containing address as 133/225 Transport Nagar, Kanpur. Said title and address was also shown in Panchnama dated 29.11.1996, Under Section 132(3) and under Second proviso to 132(1) it is also true that before issuing such warrant of authorisation, competent authority must record its reason to believe that in books of accounts or other documents, which will be useful for, or relevant for any proceedings, may be found etc. Language of Section 132 also shows that warrant of authorisation is to be issued against a person or any person who is in possession of any money etc. which has not been or could not disclose for the purpose of income Tax Act and referred to as undisclosed income for searching out its premises like building, place, vessel, vehicle etc. Thus, neither authorization under Section 132(1) shows correctly the name of Assessee nor *panchnama*, etc. was prepared showing the name of Assessee. But the interesting fact is that premises which was searched and documents were seized belong to Assessee. Material and documents collected pertain to Assessee. No evidence has been placed before authorities below or before this Court that material and documents collected, the office and godown belong to any other person and not the assessee. It is virtually admitted that premises which was shown in the authorization as also *Panchnama* etc.

is the same where the Assessee had its office or godown, as the case may be, search and seizure operation was conducted at the premises of assessee and material, documents, cash etc. collected also belong to assessee. Assessee never raised any objection either at the time of search and seizure or thereafter. Moreover, even before the Assessing Officer, when notices were issued, Assessee sought time to file return. Thus, here is not a case where the validity of search and seizure itself was in question but the question is whether authorization, search and seizure and subsequent proceedings all relate to assessee or not and if there was any difference in mention of title/name of Assessee in authorization or Panchnama, whether it will be of any substance and would vitiate entire proceedings against the Assessee. We may reiterate again that premises is same. Title/name of the person mentioned in the authorization issued by competent authority has some similarity but description is not that of assessee but it is different. The title mentioned in authorization as also in *Panchnama* prepared by search and seizure team though different, but search was conducted at the premises of assessee and documents etc. also belong to assessee.

58. It is in this backdrop that Tribunal has not examined sufficiency of material on which authorization under Section 132(1) was issued by competent authority but has examined identity of person in respect of whom authorization was issued under Section 132 (1) and search and seizure operations were carried on. Had it been a different person, and there would have been another person in the same premises with the title mentioned in the authorization and also in *panchnama* and material seized also would not have been belonged to Assessee, in our view, difference of identity in that case would have been sufficient to vitiate entire proceedings. We would have answered the question straightaway in favour of Assessee, but here it appears to be more in the nature of clerical mistake than mistake of identity. Reason being that search and seizure actually was conducted at the premises of Assessee and whatever was seized included money and document everything belonged to Assessee. As a matter of fact, these things are not in dispute. Assessee at no point of time, before ACIT/AA raised any such

dispute that authorization as well as *panchnama* prepared by search and seizure team relate to another person than Assessee. On the contrary factum that search and seizure was at the premises of Assessee and material also belonged to Assessee was not disputed. It is in these facts and circumstances, we find that proven facts and truth is that search was actually conducted at the premises belong to Assessee i.e. “M/s. Verma Roadways”, documents etc. were seized from its premises and when Assessee was called upon to explain, he gave various reasons and explanations without raising any dispute that there was no warrant of search validly issued in its respect and therefore, it was not liable to respond to any notice issued under Section 158 BC. In this backdrop and the factual position, we find it difficult to hold that in the present case mention of different title in authorization and *panchnama* would be sufficient to hold that proceedings under Section 132(1) were conducted against different person and not Assessee. That being so proceedings under Section 158BC against Assessee also cannot be held bad. In our view, search and seizure operations must be held to have been conducted against Assessee and, therefore, on the basis of material collected in search and seizure operations, ACIT/AA was justified in proceeding to make assessment under Section 158BC.

59. In **Assistant Commissioner of Income Tax, Chennai vs. A.R. Enterprises, (2013) 350 ITR 489(SC)** Court held that condition precedent for invoking Block Assessment is a search conducted under Section 132 of documents or assets requisitioned under Section 132 A. In respect to the present case, whose search is conducted under Section 132, Block Assessment can be carried out following procedure under Section 158 BC but if in search and seizure of a person, undisclosed income belonging to any other person is found then Section 158 BD has to be resorted.

60. Supreme Court has held in catena of authorities including **CIT vs. Vatika Township (P) Ltd., 2015(372) ITR 392** that Chapter XIV B is a complete code in itself providing for self-contained machinery for assessment of undisclosed income for the block period of 10 years or 6

years, as the case may be. Even, the payment of tax on undisclosed income is governed by Section 113. In view of Section 158BA(2) of Act, 1961 this rate is 60%. The scheme therefore, under Section 143 is integrated, connected and originated from either search and seizure carried out under Section 132 or requisitioned under Section 132A. If the above disclosed sufficient material is about undisclosed income by the Assessee, said procedure under Chapter XIV B could have been resorted to.

61. In VLS Finance Limited & Another vs. Commissioner of Income Tax and others 2016 284 ITR(1) SC, Court declined to interfere in the proceedings where on a single authorisation, repeated searches were made without having separate warrant of authorisation for every subsequent search on the ground that no-objection was taken by Assessee in respect to subsequent searches and therefore, subsequent search cannot be held to be illegal and would be treated to be a valid search.

62. Section 158 BD would have been attracted only when search and seizure was made in the premises of another person and material collected belong to another person as is found therein. In the present case, as we have already discussed above, search and seizure was actually made on the premises of Assessee and documents and material collected therefrom also pertain to it, therefore, Section 158 BD is not attracted. We have no manner of doubt that if premises would have been of any other person, then, what has been argued and also held by the Tribunal that proceedings under Section 158 BD ought to have been conducted and that is mandatory as held in **Manish Maheshwari vs. Assistant Commissioner of Income Tax, 2007 3 SCC 794** and **Assistant Commissioner of Income Tax vs. Hotel Blue Moon, (2010) 3 SCC 259** which have been followed in **Assistant Commissioner, Chennai vs. A.R. Enterprises(supra)**. However, neither aforesaid authorities are applicable in the case in hand nor we find that Section 158 BD is attracted in view of discussion we have already made above.

63. Learned Counsel for the Assessee in this regard has also placed

reliance on Division Bench decisions of this Court in **Commissioner of Income Tax and another Vs. Anil Kumar Chaddha (2015) 374 ITR 10 (All)**; **Commissioner of Income Tax (Central) Vs. Vishwanath Prasad Ashok Kumar Sarraf [2014] 41 Taxmann.com 303 (Allahabad)**; Delhi High Court Judgments in **Commissioner of Income Tax Vs. Ms. Rohini S. Walia and another [2007] 289 ITR 328 (Delhi)**; **Commissioner of Income Tax Vs. Sonal Constructions and another [2013] 359 ITR 532 (Delhi)**; Bombay High Court Judgement in **Commissioner of Income Tax Vs. Tirupati Oil Corporation [2001] 248 ITR 194 (Bom)** and Judgement of Punjab and Haryana High Court in **Commissioner of Income Tax Vs. Ram Singh and others [2013] 351 ITR 391 (P&H)** but we find that none of the aforesaid authorities help the assessee for the reason that the facts in the present case are different and, therefore, aforesaid authorities are not applicable in the cases in hand.

64. In view of the above discussion, we answer questions number 1 to 10 in Revenue's Appeal in favour of Revenue. Consequently, questions no. 1 and 2 in Assessee's Appeal are answered against the Assessee.

65. In the result, Income Tax Appeal No. 4 of 2000 filed by Revenue is hereby allowed and Income Tax Appeal No. 3 of 2000 filed by Assessee is dismissed. Judgement of Tribunal dated 15.9.1999 to this extent is hereby set aside and the judgment of CIT(A) is restored. Consequences shall follow.

Dated: January 11;2018

PP/Akn.

COURT NO.34

Case :- INCOME TAX APPEAL No. - 3 of 2000

Appellant :- M/S Verma Roadways Through its Partner
R.K.Verma

Respondent :- Assistant Commissioner Of Income Tax

Counsel for Appellant :- A.P. Singh, S.P. Gupta,

Counsel for Respondent :- Ashish Agarwal, Manish Goel

Hon'ble Sudhir Agarwal,J.

Hon'ble Dr. Kaushal Jayendra Thaker,J.

Appeal is dismissed.

For details see our judgment of date passed on separate sheets.

Dated: January 11 ;2018

PP/Akn.