IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.10.2018

Pronounced on : 31.12.2019

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.20999 of 2003
and W.P.M.P.No.26089 of 2003

1. Dr.Bharat Mehta (Deceased)

2. Mehul Metha ..... Petitioner

-vs-

1. Deputy Commissioner of Income Tax
   Central Circle I (3)
   Chennai - 600 034.

2. Deputy Commissioner of Income Tax
   Central Circle I (5)
   Chennai - 600 034.

3. Deputy Director of Income Tax
   Unit I (2)
   Chennai - 600 034.

4. Additional Commissioner of Income Tax
   Central Range I
   Chennai - 600 034. ..... Respondents

(P2 substituted as LRs of deceased P1 Dr.Bharat Mehta, as per order, dated 12.09.2017 by TSSJ in W.M.P.No.21611 of 2017 in W.P.No.20999 of 2003

Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records in No.PA/GI No.AADPH7768C, dated 30th June 2003 and quash the same.

For Petitioner : Mr.M.P.Senthil Kumar

For Respondents : Mr.A.P.Srinivas

ORDER

This writ petition has been filed seeking for a writ of certiorari to call for the records in No.PA/GI No.AADPH7768C, dated 30.06.2003 and quash the same.

2. The necessary facts which are required to be noticed for the disposal of this writ petition are as follows :

(i) The petitioner (Dr.Bharat Mehta), who died during the pendency of the writ petition, in whose place his legal representative, one Mehul Mehta has been substituted as P2, hence the term petitioner denotes only the original petitioner, i.e., P1-Dr.Bharat Mehta (for the sake of convenience),who was a medical practitioner and also he was doing some business along with some of his family members. The petitioner was the income tax assessee from 1978-79 onwards. He was residing at No.4/181, Kodambakkam High Road, Chennai - 34 and

he was having a clinic at No.87, N.S.C.Bose Road, Chennai along with his father Dr.M.J.Mehta.

(ii) The said residential premises, i.e., No.4/181, Kodambakkam High Road, Chennai - 34 seems to be the joint family property, where some family business also is being undertaken by the family members including the petitioner and his brother one Hemant Mehta.

(iii) While so, in the year 2001, i.e., in January 2001, on 25.01.2001, the premises of the petitioner was searched for the block period from 01.04.1990 to 31.03.2000 and 01.04.2000 to 24.01.2001 under the warrant / authorisation issued in this regard, by the team of respondents / Revenue and on 25.01.2001, a panchanama were recorded, where according to the petitioner, the search was concluded on 25.01.2001, however, on that day, under Section 132(3) of the Income Tax Act 1961 (herein after referred to as "the Act"), a prohibitory order was issued by the Revenue.

(iv) Simultaneously the other premises, i.e., at No.23, Noor Veeraswamy Street, Chennai - 34 also was searched on the same day, i.e., on 25.01.2001. Thereafter pursuant to the prohibitory order

issued by the Revenue, subsequent searches were taken place on various dates during January, February, March, April, May and June 2001 and last such search operations was completed on 12.06.2001 and on that date also, a panchanama was drawn.

(v) Subsequent to the said search operations and seizure made under Section 132 of the Act, a notice under Section 158BC of the Act was issued on 05.10.2001 by the Revenue and pursuant to which, the petitioner filed a return for the block period from 01.04.1990 to 24.01.2001 on 23.10.2001. Thereafter there had been number of correspondences between the petitioner and the Revenue and ultimately the Block Assessment Order for the said block period from 01.04.1990 to 31.03.2000 and from 01.04.2000 to 24.01.2001 was issued by the Revenue on 30.06.2003, computing the tax, surcharge and interest payable on the undisclosed income by the petitioner to the extent of Rs.5,23,08,245/-. In the said block assessment order, the Revenue also initiated penalty proceedings as per proviso to Section 158BFA (2) of the Act.

(vi) Though an appeal remedy is available to the petitioner to assail the said Block Assessment Order, the petitioner has chosen to

file this writ petition on the ground that, the very Block Assessment Order itself is barred by limitation under the provision, i.e., 158BE(1)(b) and also on the ground that there was no notice under Section 143(2) of the Act issued and even if it was issued, that was also barred by limitation and there had been no prior approval of the Joint Commissioner of Income Tax which ought to have been obtained under Section 158BG of the Act and there had been a violation of principles of natural justice. Therefore on these grounds, instead of filing a regular appeal, the petitioner filed the present writ petition, challenging the Block Assessment Order, which is impugned herein, dated 30.06.2003 issued by the Revenue, to quash the same as prayed therein. That is how this writ petition has come up before this Court.

(vii) During the pendency of the writ petition, the original writ petitioner, Dr.Bharat Mehta deceased and in whose place the legal representative of the deceased, Dr.Bharat Mehta, one Mr.Mehul Mehta has been substituted by the orders of this Court, dated 12.09.2017 and who contested this case.

3. Mr.M.P.Senthil Kumar, learned counsel appearing for the petitioner has raised the following grounds in order to assail the impugned Block Assessment Order :

> *(a) The Block Assessment Order under Section 158BC r/w Section 158BD is barred by limitation as per Section 158BE (1)(b).*
>
> *(b) The notice under Section 143(2) which is mandatorily to be issued even in respect of 158BC proceedings, had not been issued and assuming if it is issued belatedly, that is also barred by limitation.*
>
> *(c) Under Section 158BG, prior approval was to be obtained to proceed, from JCIT, which was not obtained and the learned counsel also raised the ground that, there has been no opportunity given to the petitioner during the entire proceedings, which ended in the impugned Block Assessment Order, thereby the Revenue violated the principles of natural justice.*

4. By raising the aforesaid grounds, the learned counsel tried to assail the impugned Block Assessment Order. In support of his

contention, the learned counsel for the petitioner would contend that, totally two premises of the petitioner was searched and documents were seized and according to the Revenue, the said search was conducted in both the premises on 25.01.2001 pursuant to the authorisation given on 25.01.2001 itself and the search was over on that day and in the panchanama issued on that day by the Revenue, they have clearly mentioned that, the search was concluded.

5. When that being the position, thereafter, the question of issuing prohibitory order under Section 132(3) of the Act does not arise, however, prohibitory order was issued and on the strength of the prohibitory order, after a long gap, several times search and seizure operations taken place at the premises of the petitioner and according to the Revenue, it was a continuous search and which was over only on 12.06.2001, therefore the said date, namely 12.06.2001 shall be reckoned as the date for commencing the limitation period, within the meaning of Section 158BE (1)(b) of the Act, thereby the impugned order, i.e., Block Assessment Order, dated 30.06.2003 is within the limitation period of two years, thereby the impugned order is not hit by the limitation under Section 158BE (1) (b).

6. However the learned counsel for the petitioner would contend that, once the search was over on 25.01.2001 itself pursuant to the authorisation given in this regard and there has been no further authorisation given by the Revenue to continue the search, the very issuance of prohibitory order under Section 132(3) itself was unwarranted and therefore on that strength, there could be no further search on the very same authorisation. Therefore for the purpose of computing the limitation under Section 158BE(1)(b), the authorisation dated 25.01.2001 and the panchanama dated 25.01.2001 shall alone be treated as starting point of the limitation and if that is taken into account, the two years period from the end of the month in which the last of the authorisation of search under Section 132 was issued would be over by 31.01.2003 and therefore the impugned Block Assessment Order dated 30.06.2003 is certainly beyond the two years limitation period, thereby it is barred by limitation under Section 158BE(1)(b).

7. The learned counsel would further submit that, in respect of Block Assessment under Section 158BC, 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 Sections 142 and 143(2) and (3) so far as may be applied, which means that,

whenever Section 158BC proceedings is initiated to proceed to determine the undisclosed income of block period, the provisions which includes Section 143 of the Act would apply, therefore, a notice under Section 143(2) should have been issued, which has either not been issued or if it is issued, which is beyond the limitation.

8. The learned counsel would further submit that, under Section 158BG, the order of Assessment for the block period shall be passed by an Assessing Officer not below the rank of Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director as the case may be, however such order shall not be passed without the previous approval of the Principal Commissioner or Principal Director or Director in case of search initiated under Section 132.

9. Here in the case in hand, since it is after 1st January 1997, Section 158BG proviso (b) shall apply, under which, the Joint Commissioner or the Joint Director, as the case may be has to give approval.

10. The learned counsel in this context would submit that, no such approval seems to have been obtained by the Revenue and such approval order has not been served or produced to the petitioner.

11. The learned counsel for the petitioner would further submit that, throughout the assessment proceedings, no proper opportunity, as has been contemplated under various provisions of the Income Tax Act, have been given to the petitioner and therefore, the very principle of natural justice has been glaringly violated by the Revenue and therefore on that ground itself, the impugned Block Assessment Order has to be interfered with, he contended.

12. In support of these contentions, the learned counsel for the petitioner has relied upon various judgments, among them, he heavily relied upon the following judgments :

1. A.Rakesh Kumar Jain v. Joint Commissioner of Income tax, (2012) 254 CTC 0576 : (2012) 80 DTR 0257

2. C.Ramaiah Reddy v. Assistant Commissioner of Income Tax, (2011) 339 ITR 210 (Karnataka) : (2011) 244 CTR 126 (Karnataka)

13. Per contra, Mr.A.P.Srinivas, learned standing counsel appearing for the Revenue, by relying upon the averments made in the counter affidavit filed by the Revenue would contend that, the petitioner was subjected to a search under Section 132 of the Act on 25.01.2001. The search was carried out in the places of the petitioner

and his family members, who run a family business, namely a company called M/s. Emcorp Finance Ltd., on the basis of separate warrants of authorisation issued in each case by the Director of Income Tax (Investigation), Chennai. At the time of commencement of the search operation, the warrant of authorisation in the name of the petitioner was produced to him and he has affixed his signature thereon for having seen the same.

14. He would further submit that, in so far as the conclusion of the search on 25.01.2001 and therefore there was no necessity to issue a prohibitory order is concerned, in so far as the premises at No.4/181, Kodambakkam High Road, Chennai - 34 is concerned, the search was inconclusive and it was not concluded, therefore prohibitory order was issued. He would further submit that, the search was initiated on 25.01.2001 at No.4/181, Kodambakkam High Road and it continued on 30.01.2001, 02.02.2001, 08.02.2001, 20.02.2001, 23.02.2001, 14.03.2001, 04.04.2001, 22.05.2001 and finally on 12.06.2001. Only on 12.06.2001, the search was finally concluded and on that date also, panchanama had been drawn and each and every time when the search was conducted on the aforesaid dates, separate panchanama were drawn and prohibitory orders were issued.

15. In so far as the long continuation of search starting from 25.01.2001 and ends up on 12.06.2001, the learned standing counsel for Revenue would contend that, during the search, certain electronic devices were found, where lot of documents were uploaded or saved by the assessee / petitioner and when the same was questioned, the petitioner, till the last search, was not co-operating with the Revenue to disclose the password to have access with those documents, therefore for these kind of purposes, the search operation was continued in the premises at No.4/181, Kodambakkam High Road, Chennai - 34 and it ended only on 12.06.2001, where the Revenue was able to access with the software documents stored in the computer and thereafter only the search operation was completed and the Revenue proceeded to further.

16. The learned standing counsel would also submit that, the search at No.23, Noor Veeraswamy Street, Chennai - 34 was commenced at 1 p.m, on 25.01.2001 and concluded at 1.45 p.m, on the same date and therefore in so far as the said search is concerned at that premises, it was concluded on the same day itself. However in so far as the search at No.4/181, Kodambakkam High Road, Chennai - 600 034 is concerned, it commenced at about 1 p.m, on 25.01.2001

and concluded on 09.50 p.m on 25.01.2001, that means, the search was inconclusive on 25.01.2001 and therefore based on the panchanama, prohibitory orders were issued in respect of that premises.

17. He would further submit that, ultimately on 05.10.2001, notice under Section 158BC was issued to the petitioner to file the return of his undisclosed income for the block period in Form 2B and pursuant to which, the petitioner also filed the requisite return in Form 2B on 23.10.2001.

18. The learned standing counsel on the point of notice under Section 143(2) of the Act, has submitted that, the said notice under Section 143(2) of the Act was issued on 06.06.2003 and served by way of affixture on 10.06.2003. The attempt to serve the notice to the assessee / petitioner was unsuccessful on the first three successive occasions, as there was nobody willing to receive the same, therefore the Revenue had no option except to serve it by way of affixture. In this context, the detailed averment made by the Revenue in the counter affidavit has been relied upon by the learned standing counsel.

19. The learned standing counsel would therefore submit that, the limitation for the purpose of Section 158BE(1)(b) would not commence from 01.02.2001 and it would commence only from 01.07.2001, since the last search was conducted only on 12.06.2001 and the month of last such search ends only on 30.06.2001, therefore the impugned Assessment Order which was issued on 30.06.2003 is saved within the limitation period of 158BE(1)(b).

20. The learned standing counsel would also submit that, prior approval of the Joint Commissioner of Income Tax was obtained under Section 158BG and throughout the proceedings till the end of the Assessment Order, several times notices were issued and several correspondences had been made by the petitioner and the procedure contemplated under various provisions of the Act had been scrupulously followed by giving opportunity as has been contemplated under the provisions of the Act to the petitioner. Therefore the allegation made against the Revenue by the petitioner that, there has been violation of principles of natural justice is only an allegation for the sake of making it to approach this Court by filing writ petition under Article 226 of the Constitution of India, since the petitioner is very well aware that, there is a statutory alternative efficacious

appellate remedy, which admittedly the petitioner has not availed and has approached straight away this Court by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution and only for the sake of approaching this Court by invoking the writ jurisdiction, the said allegation of violation of principles of natural justice has been made.

21. On the side of the citations referred to by the learned counsel for the petitioner, the learned standing counsel for the Revenue would submit that, the two Judgments, namely Rakesh Kumar Jain as well as Ramaiah Reddy cases (*cited supra*) cannot be made applicable to the facts of the present case, instead, a Division Bench of this Court order made in Deputy Commissioner of Income-Tax, Central Circle II(1) v. Rakesh Sarin, reported in (2014) 222 Taxman 84 (Madras) : (2014) 362 ITR 619 (Madras) would apply to the facts of the present case, where the earlier two decisions, namely Rakesh Kumar Jain and Ramaiah Reddy cases (*cited supra*) had been considered. Therefore on the strength of the aforesaid two decisions, the petitioner /assessee cannot make out a case to state that, the limitation under Section 158BE(1)(b) would commence from the end of the month of the last panchanama, which according to the petitioner

was 25.01.2001 and not from June 2001, as the Revenue claimed the last panchanama was 12.06.2001 and therefore the said decisions cited by the petitioner side, according to the learned standing counsel for the Revenue, would no way enhance the winability of the petitioner's case. Therefore the learned standing counsel would submit that, the impugned Block Assessment Order is sustainable and the very invocation of the provisions of Article 226 by the petitioner without taking the route of the appellate remedy would itself fatal to the case of the petitioner and therefore the writ petition is liable to be dismissed, he contended.

22. I have given my anxious consideration to the rival submissions made by the learned respective counsel appearing for the petitioner as well as the Revenue and have perused the materials placed before this Court.

23. The Revenue though raised an objection that, the writ petition cannot be entertained as it is not maintainable in view of the appellate remedy available under the Act to the petitioner, however, since the writ petition is of the year 2003, where the point of alleged violation of principles of natural justice as well as the limitation point

under Section 158BE(1)(b) and also the alleged non-issuance of notice under Section 143(2) of the Act since had been raised, probably on these grounds, the writ petition would have been admitted already and therefore at this length of time, during the final hearing, this Court is not impressed with the said ground raised by the Revenue side to dismiss the writ petition on the ground of availability of appellate remedy. Therefore this Court feel that, the writ petition can be entertained in view of the grounds raised by the petitioner.

24. The ground that, there has been no approval from the Joint Commissioner of Income Tax as contemplated under Section 158BG is concerned, it has been specifically averred in the counter affidavit filed by the respondent that, as per the Notification, dated 16.04.2003, the Commissioner of Income-Tax, Central-I, Chennai, had transferred the case to the DCIT, Central Circle I(5), Chennai to DCIT, Central Circle I(3) Chennai, w.e.f., 16.04.2003. Though no specific averment has been made that, the initial approval was given by JCIT under Section 158BG, it is the vehement contention on the part of the Revenue that, only pursuant to the approval given by the JCIT, the search in the premises of the assessee / petitioner was made, of course on specific authorisation. Taking into account of these factors, since it is an

allegation and the denial and the Revenue has maintained that Section 158BG has been complied with, this Court accept the same.

25. In so far as the allegation that, there was no notice under Section 143(2) served on the petitioner is concerned, the specific averment made in the counter affidavit reads thus :

> "33. The notice u/s 158BC was issued in this case on 05.10.2001 requiring the petitioner to file a return of his undisclosed income for the block period in Form 2B. In this connection, the allegation that the block period was not specified in the said notice is not correct in so far as in the notice itself it is made known that the "block period" is as mentioned in section 158B(a) of the Income Tax Act. Further, the petitioner filed the requisite return in Form 2B on 23.10.2001. I state that the notice u/s 143(2) of the Income Tax Act was issued on 6.6.2003 and served (by affixture) on 10.6.2003.
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> 34. The allegation that no valid notice u/s 143(2) was issued to the petitioner is factually incorrect. The notice was issued on 6.6.2003. The attempts to serve the notice was not successful on the first three successive

occasions since there was nobody willing to receive the same. Accordingly, it had to be served by affixture on the fourth occasion. The allegation regarding harassment of any sort with ulterior motive is totally baseless and it is only a fiction to justify the filing of writ petition.

35. I submit that the allegation that a notice u/s 143(2) was not issued and that a notice u/s 142(1) only was issued is not correct since the notices u/s 143(2) and 142(1) were issued on the same date (6.6.2003) and also served on the same date (10.6.2003). In the above assessment order, the Assessing Officer was mentioning the reason why the notice u/s 142(1) was issued "only on 6.6.2003" whereas the petitioner attempts to read the word "only" in connection with the words "notice u/s 142(1)" to present as if only the notice u/s 142(1) was issued. This is not correct and the petitioner is well aware of the same. The allegation that no notice u/s 143(2) was issued and that the petitioner represented his case before the first respondent only on the basis of oral requirement is factually incorrect.

36. The allegation that adequate opportunity was not given to the petitioner before the completion of the block assessment is factually

incorrect since the case was discussed with the petitioner and his representatives on as much as six occasions. Further Further, written submissions filed by the petitioner were also duly considered."

26. In view of the said factual matrix as has been averred in the counter affidavit, which is not denied by the petitioner / assessee, the said ground raised by the petitioner that, no notice under Section 143(2) was issued, cannot be accepted.

27. Now the main issue, as raised by the petitioner side, as to whether the Block Assessment Proceedings, i.e., the Assessment Order under Section 158BC r/w 158BD is barred by limitation under Section 158BE (1) (b) or not, can be gone into.

28. In this context, the contention of the petitioner side is that, on 25.01.2001, first search was made in both the premises and on that date, a panchanama was drawn, where it has been specifically mentioned that, "search concluded", however on the very same date, the prohibitory order under Section 132(3) of the Act was issued by the Revenue which is unwarranted. Therefore on the strength of the

said prohibitory order continuous search was made on various dates till June 2001 and therefore by taking advantage of those subsequent searches, which are unauthorised, the Revenue cannot claim that, the last panchanama was drawn only on 12.06.2001 and therefore the limitation for the purpose of Section 158BE(1)(b) would commence only after the end of the month where the last such panchanama was drawn, i.e., 30.06.2001 and therefore the impugned order, since was passed on 30.06.2003, is within the limitation, cannot be accepted, is concerned, as has been pointed out by the learned standing counsel for the Revenue, the search was conducted on 25.01.2001 in two premises, one is at 23, Noor Veeraswamy Street, Chennai - 34 and another one is at No.4/181, Kodambakkam High Road, Chennai - 34.

29. I have perused the copy of the panchanamas issued in respect of both premises, dated 25.01.2001 and a copy of which also had been filed by the petitioner in the typedset of papers which discloses that, in so far as the panchanama in respect of No.23, Noor Veeraswamy Street, Chennai - 34 is concerned, it has been specifically written in the panchanama by the Revenue that "search concluded".

30. However in respect of panchanama issued on the same date, i.e., on 25.01.2001 in respect of the premises at No.4/181, Kodambakkam High Road, Chennai - 34, the panchanama specifically mentions that "search continues" and on that date, prohibitory order was issued only in respect of No.4/181, Kodambakkam High Road, Chennai - 34 premises and not in respect of No.23, Noor Veeraswamy Street, Chennai - 34.

31. Even on subsequent dates also, i.e., in the months of February to June, each time when the panchanamas were drawn as a proof for having searched the premises at No.4/181, Kodambakkam High Road, Chennai - 34 is concerned, according to the Revenue, the search continued, therefore every time, prohibitory order under Section 132(3) of Income Tax Act was issued and lastly the search was completed on 12.06.2001. Therefore the panchanama drawn on 12.06.2001 is the culmination of continuation of panchanamas in respect of the same premises, i.e., No.4/181, Kodambakkam High Road, Chennai-34 and therefore that should alone be treated as a last panchanama drawn by the Revenue in respect of the said premises.

32. With these factual matrix, the relevant provisions of the Act can be looked into.

33. Section 158BE, which contemplate the limitation, reads thus:

> "Time limit for completion of block assessment
> 158BE (1) The order under section 158BC shall be passed -
> (a) within one year from the end of the month in which the last of the authorisation for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997.
> (b) within two years from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997."

34. Explanation (2) to Section 158BE is very relevant, that is also extracted hereunder for easy reference :

> "Explanation 2 - For the removal of doubts, it is hereby declared that the authorisation

referred to in sub-section (1) shall be deemed to have been executed -

(a) in the case of search, on the conclusion of search as recorded in the last panchanama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer."

35. For any assessment under Section 158BC, there must be a search under Section 132 and if a search is conducted under Section 132, on the conclusion of such search, as recorded in the last panchanama drawn, it shall be deemed to have been executed as authorisation for the purpose of limitation as contemplated under Section 158BE(1) (a) & (b) and in this case, 158BE(1)(b) would apply since it is a case after 1st January 1997.

36. This provision of Section 158BE with the explanation (2) has been widely discussed and interpreted by the Karnataka High Court in **C.Ramaiah Reddy v. Assistant Commissioner of Income Tax,** reported in **(2011) 339 ITR 210 (Karnataka) : (2011) 244 CTR**

126 (Karnataka). In order to appreciate the same, the relevant portion of Ramaiah Reddy's case of Karnataka High Court is extracted hereunder :

> *"77. The panchnama referred to in Explanation 2 to the said section specifically refers to search under section 132 and section 132 specifically refers to authorisation to enter and search and it has no reference to entering and searching the premises which are the subject-matter of prohibitory order or restraint order. No authorisation is required to enter the premises and inspect the materials which are the subject-matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials which are the subject-matter of those orders and it also empower them to seize any incriminating material. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for the purpose of the block assessment in pursuance of search under section 132(1) of the Act. The panchnama*

evidencing such inspection and seizure would be the last panchnama in respect of the said premises. But for the purpose of limitation under section 158BE, it would not be the last panchnama drawn in proof of conclusion of search, as defined in Explanation 2 to section 158BE. For the purpose of limitation, there can be only one search and one panchnama.

78. The law expressly provides for more than one authorisation. A search authorisation could specify only one building / place / vessel / vehicle/aircraft. This is clear from the use of the building, etc., in the singular sense. Section 132(1) uses building / place / vessel / vehicle / aircraft in singular sense. Further, clause (a) in Form 45 uses the word, "to enter and search, the said building / place /vessel / vehicle / aircraft. When there are multiple places to search and such places are far off, it is impractical to have a single authorisation. Different persons will be carrying out search and each one of them is required to be authorised through the search authorisation. In other words, search authorisation should authorise a particular official for executing the search. Therefore, when there are different places to be searched, separate search

authorisation should be drawn with reference to each place of search. The said authorisations may be issued on different dates in which case, the last of such authorisations is to be looked into for the purpose of limitation. However, it is possible that there may be more than one authorisation on the same day. Then the question is which is the last of such authorisations for the purpose of limitation. When all the authorisations are executed there will be one panchnama in respect of each such authorisation. The authorisations may be executed on different dates also. Then the doubt would arise regarding which authorisation to be looked into for the purpose of limitation as all of them are last authorisation. It is for removal of that doubts that the Explanation is inserted. For the purpose of computing the limitation, it is the one year from the end of the month in which the last of the authorisations was executed. If there are more than one authorisation issued on the same day, then the last panchnama drawn in relation to the warrant of authorisation issued on the same day. As the period commences from the end of the month of the execution of the authorisation, the law has provided for the authorised officer

to visit the premises for the purpose of inspection regarding the material which is the subject-matter of prohibitory order or the restraint order, even after search. However, the said exercise has to be done expeditiously, as the period of limitation starts from the date of search was concluded as evidenced by the panchnama, as otherwise the very object with which these provisions was introduced would be defeated.

79. Circular No. 772, dated 23rd December, 1998, issued by Central Board of Direct Taxes explains this position as under ([1999] 235 ITR (St.) 35):

"According to section 158BE, limitation of 2 years has to be counted from the end of the month in which last of the authorisations was executed. Use of the word 'authorisations' implies issue of more than one authorisation. Supposingly two authorisations are issued one after the other and the last authorisation is executed first while the authorisation issued earlier is executed later on. In such case, limitation should be counted from the date of issue of the execution of the last authorisation, though it is executed earlier and not from the execution of the earlier authorisation which is

executed later. This anomalous situation is intended to be removed by insertion of Explanation 2 below section 158BE with effect from July 1, 1995, by the Finance (No. 2) Act, 1998. This Explanation reads as follows:

'Explanation 2. —For the removal of doubts, it is hereby declared that the authorisation referred to in sub-section (1) shall be deemed to have been executed, —

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued;

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.'

According to this Explanation, limitation is to be counted with reference to the last panchnama drawn on execution of a warrant of authorisation as referred to in section 158BE. The main attribute of the panchnama is stated to be that it should record the conclusion of search."

80.The law does not contemplate the authorised officer to set out in any of the panchnama that he has finally concluded the

search. If for any reason the authorised officer wants to search the premises again, it could be done by obtaining a fresh authorisation. There is no prohibition in respect of the same premises. It is open to the empowered authority to issue authorisation but when the authorisation is issued once, the authorised officer cannot go on visiting the premises under the guise of search. Therefore, it is clear once in pursuance of an authorisation issued the search commences, it comes to an end with the drawing of a panchnama. When the authorised officer enters the premises, normally, the panchnama is written when he comes out of the premises after completing the job entrusted to him. Even if after such search he visits the premises again, for investigation or inspection of the subject-matter of restraint order or prohibitory order, if a panchnama is written, that would not be the panchnama which has to be looked into for the purpose of computing the period of limitation. But, such a panchnama would only record what transpires on a re-visit to the premises and the incriminating material seized would become part of the search conducted in pursuance of the authorisation and would become the subject-matter of block

assessment proceedings. But, such a panchnama would not extend the period of limitation. It is because the limitation is prescribed under the statute. If proceedings are not initiated within the time prescribed, the remedy is lost. The assessee would acquire a valuable right. Such a right cannot be at the mercy of the officials, who do not discharge their duties in accordance with law. The procedure prescribed under section 132 of the Act is elaborate and exhaustive. The said substantive provision expressly provides for search and seizure. In the entire provision there is no indication of that search once commenced can be postponed. What can be postponed is only seizure of the articles. Therefore, once search commences it has to come to an end with the search party leaving the premises whether any seizure is made or not. The limitation for completion of block assessment is expressly provided under section 158BE which clearly declares that it is the execution of the last of authorisation which is to be taken into consideration. The word "seizure" is conspicuously missing in the said section. The same cannot be read into the section for the purpose of limitation. Then it amounts to

rewriting the section by the court, which is impermissible in law.

81. The aforesaid Circular No. 772, dated December 23, 1998 (see [1999] 235 ITR (St.) 35) refers to this dilemma faced by the Department.

"127. Execution of last of the authorisation or requisition

The word 'execute' is defined in Black's Law Dictionary, fifth edition, page 509 as follows:

'to complete; to make; to sign; to perform; to do; to carry out according to its terms; to follow up; to fulfil the command or purpose of; to perform all necessary formalities; to make and sign a contract; to sign and deliver a notes.'

The word 'execution' is defined at page 510 of the said Law Dictionary as follows:

'Carry out some act or course of conduct to its completion. Northwest Steel Rolling Mills v. Commissioner of Internal Revenue, C.C.A. Wash., 110 F. 2d 286, 290: completion of an act: putting into force: completion fulfilment: perfecting of anything or carrying it into operation and effect. "Execution" a process in action to carry into effect the directions in a decree or judgment—Foust v. Foust, 47 Cal. 2d 121, 302 p. 2d 11, 13.'

In the light of the above definition of the words 'execute' and 'execution', one may argue that until and unless the final act is performed, the warrant of authorisation should not be treated as executed and the mere initiation of the search followed by an interregnum consequent upon restraint order or for any other reason may not be treated as 'execution' of the warrant. But this interpretation would be hypertechnical and it needs detailed discussion as is done in the following paras.

The question arises as to whether execution of a warrant of authorisation or requisition refers to the conclusion of the proceedings under section 132 and/or 132A or it refers only to the execution of the warrant even though as a result of such execution the proceedings under section 132 or 132A are yet to he completed. The latter situation will include a case in which a restraint order under section 132(3) is passed. In such a case, it can be said that though the warrant of authorisation has been executed, proceedings under section 132(3) are pending. Since the word 'execute', also means 'to complete', one has to wait for conclusion of the proceedings under section 132(3) for the purpose of computation of limitation under

section 158BE(1) and the period of one year has to be computed from the end of the month in which the proceeding under section 132(3) are concluded. If there are more than one warrant limitation will be counted from the execution of the last one.

A contrary view is as much possible if one were to consider the spirit of the scheme which envisages expeditious disposal of the search cases and it would be reasonable to interpret that execution of warrant is not tantamount to completion of proceedings under section 132 or 132A the period during which the proceedings under section 132(3) remained pending has to be excluded for the purpose of counting limitation of one or two years under section 158BE. Otherwise, it may lead to absurd results as it may take several years before restraint under section 132(3) is lifted and it may thus extend the period of one or two years by all those years during which proceedings under section 132(3) remained pending it may be agreed against this view that section 132(8A) takes care that there is no extension of proceedings under section 132(3) and that the view can-, not be taken without doing violence to the language of the Act."

82.Therefore, the Explanation added to remove a doubt cannot be construed, as a provision providing a longer period of limitation than the one prescribed in the main section. When under the scheme of the section there is no indication of a second search on the basis of the same authorisation issued under the said provision, the legislative intention is clear and plain and the interpretation to be placed by the courts should be in harmony with such an intention. Therefore, one authorisation is to be issued in respect of one premises in pursuance of which there can be only one search and such a search is concluded, when the searching party comes out of the premises, which is evidenced by drawing up a panchnama. When there are multiple places to search and when multiple authorisations are issued, on different dates or on the same date or in respect of the same premises more than one authorisation is issued on different dates, the last panchnama drawn in proof of conclusion of search in respect of the authorisation is to be taken into consideration for the purpose of limitation for block assessment."

37. The said position of C.Ramaiah Reddy case was in fact accepted by a Division Bench of this Court in the case of **A.Rakesh Kumar Jain v. Joint Commissioner of Income tax** reported in **(2012) 254 CTC 0576 : (2012) 80 DTR 0257** and in order to understand the said decision, the relevant portion of the said Judgment is extracted hereunder :

> *"11. Before going into the merits of the contention, sub-clause (1) of Section158BE reads as under:*
> *"Time limit for completion of block assessment 158BE (1). The order under Section 158BC shall be passed—[a) within one year from the end of the month in which the last of the authorisations for search under s. 132 or for requisition under s. 132A as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th June 1995, but before the 1st Jan., 1997;*
> *(b) within two years from the end of the month in which the last of the authorisations for search under s. 132 or for requisition under s. 132A, as the case may be, was executed in cases where a search is initiated or books of*

account or other documents, or any assets are requisitioned on or after the 1st day of January, 1997."

A reading of the above section shows that it consciously takes note of the cases of more than one authorisation for search issued. In such cases, the Explanation provided for the deemed conclusion to the execution of the warrant as extended to the last of the Panchanamas in relation to the person, in whose case authorisation was issued. But, could the Explanation be extended to a case of single authorisation issued but with Panchanamas of more than one drawn?

12. We do not subscribe to the view of the Revenue based on the Explanation that several of the authorisations drawn and executed on different dates and the several Panchanamas drawn would have bearing to a case of single authorisation for search, but showing several Panchanamas. In this connection, reasoning of the Karnataka High Court in the case of C. Ramaiah Reddy (cited supra) in paragraph 77 would be of relevance.

The Panchnama referred to in Explanation 2 to the said section specifically refers to search under Section 132 and Section 132 specifically

refers to authorisation to enter and search and it has no reference to entering and searching the premises which are the subject-matter of prohibitory order or restraint order. No authorisation is required to enter the premises and inspect the materials which are the subject-matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials which are the subject-matter of those orders and it also empower them to seize any incriminating material. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for the purpose of the block assessment in pursuance of search under s. 132(1) of the Act. The Panchnama evidencing such inspection and seizure would be the last Panchnama in respect of the said premises. But for the purpose of limitation under Section 158BE, it would not be the last Panchnama drawn in proof of conclusion of search, as defined in Explanation 2 to Section 158BE. For

the purpose of limitation, there can be only one search and one Panchnama."

13. As reasoned out therein, there could be only one authorisation and a Panchanama drawn as regards the conduct of the search, i.e., once when the search party concluded the search and leaves the premises after carrying with them the seized material, the authorisation for the search is fully implemented upon and execution completed. There afterwards, if the Department has to enter the premises again, as by way of search, certainly, one requires fresh authorisation; however, as stated by the Karnataka High Court, no such authorisation is required to enter the premises to inspect the materials, which are the subject-matter of prohibitory order or restraint order. The said order itself acts as an authorisation to enter the premises and inspect the materials, which are the subject-matter of those orders. However, after entering the premises of such person, he has to confine his actions only for inspection of the subject-matter of prohibitory order or restraint order. He cannot search the premises over again. Any material seized after such inspection would be the undisclosed income for

the purpose of the block assessment in pursuance of search under s. 132(1) of the Act. Thus, the Panchanama evidencing such inspection and seizure would be the last Panchanama in respect of the said premises. But for the purpose of limitation under s. 158BE, it would not be the last Panchanama drawn in proof of conclusion of search, as defined in Explanation 2 to Section158BE. For the purpose of limitation, there can be only one search and one Panchnama as reasoned out by the Karnataka High Court.

14. Referring to the Kerala High Court decision in the case of Dr. C. Balakrishna Nair v. CIT, (1999) 237 ITR 70 (Ker), the Karnataka High Court held that there is no provision in the Criminal Procedure Code or in the Income Tax Act therein, for postponing the search for such a long period. It is worthwhile to extract the decision of the Karnataka High Court, which in clear terms brings out the concept of search and validity of the authorisation issued for the search.

"Similarly, in circumstances not covered under those provisions, it is open for him to pass a prohibitory order under sub-section (3) not amounting to seizure which order will be in

force for a period of 60 days after securing the possession of the materials, articles etc., in the aforesaid manner. Action under Section 132(3) of the Income Tax Act can be resorted to only if there is any practical difficulty in seizing the item which is liable to be seized. When there is no such practical difficulty the officer is left with no other alternative but to seize the item, if he is of the view that it represented undisclosed income. Power under Section 132(1)(iii) of the Income Tax Act thus cannot be exercised, so as to circumvent the provisions of Section 132(1)(iii) r/w Section 132(1)(v) of the Income Tax Act. It is open for the authorised officer to visit the place for the purpose of investigation securing further particulars. Under the scheme, the law provides for such procedure. But not when he visits the premises for further investigation for the materials already secured. It does not amount to search as the materials to be looks into and investigated is already known and is the subject-matter of a prohibitory order or a restraint order. Though it is not seizure or deemed seizure, it amounts to deemed possession. What is in your possession is to be looked into to find out, is there any

incriminating material. It does not amount to search as understood under Section 132 of the Act. It is only because of paucity of time he has gone back and wants to come back and look into the matter leisurely. There is no provision in the Criminal Procedure Code or in the Income-tax Act or the Rules for postponing the search for a long period. Then, the concept of search as understood either under the provisions of the Criminal Procedure Code or the Act which are made applicable expressly, would lose its meaning."

15. As already seen, merely because, more than one Panchanama is drawn in the given case on one authorisation, one cannot construe that the subsequent and the last of the Panchanama issued as one flowing out of the search as a last of the Panchanama referable to Explanation 2 to Section 158BE. Once the warrant of authorisation has been issued and the premises is searched and the search party leaves the premises, there is the end of the search and what could be postponed is only seizure of the articles and issuance of prohibitory order; however, limitation for the completion of the block assessment begins on the conclusion of the search and issuance of

Panchanama and in case of single authorisation, the moment such party leaves the premises by drawing of the Panchanama noting conclusion of the search, the limitation period begins.

16. Going by the facts herein, viz., as to the search completed on 13.12.2001 with drawing of the Panchanama and the search party leaving the premises, the mere fact that the Panchanama contains the observation that "search continues" per se would not enable the search party to keep the search in a suspended animation to carry on the search in future date to contend that the limitation has to be worked out on the last Panchanama drawn i.e., 15.02.2002, thus calculating the limitation from 15.02.2002. We have no hesitation in accepting the case of the assessee that the limitation ends on 31.12.2002. The contention of the Revenue that the limitation has to be taken as 29.02.2004 does not go with the provisions of the Act. In such circumstances, the tax case appeal is allowed. Accordingly, we set aside the order of the Tribunal. No costs."

38. These two decisions have been heavily relied upon by the learned counsel appearing for the petitioner / assessee and he would contend that, there must be one authorisation and one panchanama for one search in one premises and once the search is over, thereafter if at all any prohibitory order under Section 132(3) is issued, such prohibitory order can only be used as an authorisation for the Revenue to re-enter the premises only for the purpose of seizure of the documents and materials and not for continuation of search. In other words, once authorisation is issued and search was conducted and the team of search left the premises after the drawal of panchanama, then the search operation is over and thereafter the only business left to the Revenue team to come back to the premises is for the purpose of seizure of the documents under the strength of prohibitory order since the prohibitory order issued in this regard would itself act as an authorisation for re-entry to the premises for the purpose of seizure and not for the purpose of further continuation of search by the Revenue team without a further authorisation.

39. Only in this context, the Karnataka High Court in Ramaiah Reddy (*cited supra*) followed by a Division Bench of this Court in Rakesh Kumar Jain (*cited supra*), held that, only in case of more than

one authorisation what shall be the last authorisation or pursuant to what shall be the last panchanama of the last authorisation shall be treated as the last authorisation for the purpose of starting point of the limitation under Section 158BE(1)(b) and in case of one authorisation with multiple panchanamas, it cannot be said that, the last such panchanama drawn by the Revenue under one authorisation would be the starting point of the limitation as that has not been intended in Explanation 2 referred to above. This was exactly held by the aforesaid two decisions.

40. However, Mr.A.P.Srinivas, learned standing counsel appearing for the Revenue has relied upon **Deputy Commissioner of Income-Tax, Central Circle II(1) v. Rakesh Sarin**, reported in **(2014) 222 Taxman 84 (Madras) : (2014) 362 ITR 619 (Madras)**, which is a decision subsequently made by a Division Bench of this Court after Ramaiah Reddy and Rakesh Kumar Jain cases. In this Judgment, the Division Bench has held as follows :

> "12... As is evident from the reading of the provision to Section 158BE of the Act, in the case of search conducted after 01.01.1996, it was declared that limitation for passing the order under Section 158BE of the Act is given as 2 years from the end of the

month in which last of the authorisation was executed. Explanation 2 clarifies "the authorisation referred to in Sub Section (1) shall be deemed to have been executed (a) in the case of search, on the conclusion of search as recorded in the last panchanama drawn in relation to any person in whose case the warrant of authorisation has been issued." Therefore, for finding out the limitation, all that is required to be seen is as to what is the last panchanama drawn in relation to the assessee, in whose case, warrant of authorisation was issued.

13. It is seen from the facts stated that the authorisation was issued by the Department on 26.03.2003 under Section 132 of the Act to search the residential and office premises of the assessee. In terms of the said authorisation, the premises was searched on 27.03.2003 and 28.03.2003. In the panchanama drawn on 27.03.2003 and 28.03.2003, copies of which have been filed in the typed set of papers, it is seen that the Officer has recorded as ".search continues". (temporarily concluded). Thereafter, we find that another authorisation was issued on 27.08.2003 under Section 132 of the Act to search the Bank, in which the assessee held his account and lockers. Pursuant to such authorisation, a panchanama was drawn on 28.08.2003, wherein, search was commenced on 28.08.2003 at 11.15 a.m., and concluded on 29.08.2003 at 12.05 p.m. In terms

of the panchanama, the search concluded on 29.08.2003. In an unreported decision in Tax Case (Appeal).No.1240 of 2006, by order dated 25.09.2012 (A.Rakesh Kumar Jain Vs. Jt. CIT (2013) 214 Taxman 39), this Court considered the similar question on limitation under Section 158 BE of the Act.

14. A reading of the decision of the Karnataka High Court in the case of C.Ramaiah Reddy v. Asst. CIT (2011) 339 ITR210(Karn), wherein, heavy reliance was placed by the assessee clearly point out that the limitation in the case, where, the prohibitory order was issued following the search and panchanama was drawn, the same could be worked out not with reference to the date of the prohibitory order, but with reference to the panchanama drawn in proof of conclusion of search, as defined in Explanation 2 to Section 158BE of the Act. Applying the said decision of the Karnataka High Court reported in the case of C.Ramaiah Reddy (supra), this Court decided a similar question in the unreported decision in Tax Case (Appeal).No.1240 of 2006 dated 25.09.2012 (A.Rakesh Kumar Jain (supra)). In such circumstances, we do not find that there is any justification to accept the plea of the assessee to confirm the order of learned Single Judge.

15. Learned counsel appearing for the assessee pointed out that in any extent, there is only one search, therefore, limitation has to be worked out taking the search conducted on 27.03.2003 as the date where the last panchanama was drawn; if the Revenue had any case, whatever be the annexures to the contents of the panchanama in the second search, it is open for the Revenue to make such of the assessment based on the materials covered in the course of second search. In the circumstances, the assessment fails in this case.

16. We do no accept the above said line of submission of learned counsel for the assessee. As already pointed out in the preceding paragraphs, in cases where there is more than one authorisation, the starting point of limitation is to be computed from the last of the authorisation which as per Explanation 2 to Sub Section 2 of Section 158 BE of the Act is deemed to have been executed on the conclusion of the search as recorded in the last panchanama drawn. Thus going by Explanation 2 added by the Finance (No.2) Act, 1998 with retrospective effect from 1.07.1995, the contention of the assessee cannot be accepted. Thus, with every panchanama drawn, the search team leaving the premises, the search conducted on 28.03.2003 came to an end as far as that authorisation was concerned. However the

second search was admittedly on a fresh authorisation. Thus, in respect of search conducted on 27.03.2003 and 28.03.2003, panchanama was drawn with observation ".search continues"., thus, considering the fact that the second search was to be carried on the different premises and materials to be seized, in fitness of things, fresh authorisation was issued by the Department on 27.08.2003 and as such under Section 158BE of the Act, limitation has to be worked out from that date, i.e., the end of the month of 28.08.2003 and not with reference to the first search i.e., 27.03.2003 and 28.03.2003.

17. In the background of this, we do not accept the plea of the assessee to uphold the order of learned Single Judge that the assessment is barred by limitation. Consequently, the Writ Appeal is allowed, the order of learned Single Judge is set aside. Thus, the Revenue succeeds on the aspect of limitation as regards the assessment made in this case."

41. This Judgment has been heavily relied upon by the learned standing counsel for the Revenue and who would submit that, the Division Bench of this Court in Rakesh Sarin's case (cited supra), where one of the member of the Division Bench of this Court was the member of the earlier Division Bench of this Court who authored the

Rakesh Kumar Jain's case (cited supra), itself has distinguished the Rakesh Kumar Jain's case depending upon the facts of the case. Therefore the learned standing counsel for the Revenue would vehemently contend that, it is not the hard and fast rule that, the interpretation given to Explanation 2 to Section 158BE would be fit in for all circumstances and all cases falling under the category of Section 158BE(1)(b).

42. I have gone through all these three Judgments, i.e., one Division Bench of Karnataka High Court and two Division Benches of this Court.

43. The said interpretation given in respect of Explanation 2 referred to above of Section 158BE, as has been rightly contended by the learned standing counsel appearing for the Revenue, cannot be applied in respect of all cases in all circumstances and situations falling under Section 158BE(1)(b).

44. In the case in hand, though the authorisation and first search was made on 25.01.2001 and the first panchanama was drawn on 25.01.2001 for two separate premises of the petitioner, for which two

separate authorisation had been made, in respect of one premises, i.e., at No.23, Noor Veeraswamy Street, Chennai - 34, the Revenue concluded the search on the very first day itself and this is evident from the panchanama issued in that premises, dated 25.01.2001. Therefore on the said premises, there was no prohibitory order and no further search was made.

45. However in so far as the second premises, i.e., at No.4/181, Kodambakkam High Road, Chennai - 34 is concerned, where also the search was conducted on 25.01.2001 first time, in the panchanama dated 25.01.2001, the Revenue has made it clear that, "the search continues", therefore they issued the prohibitory order.

46. In this context, by relying upon the interpretation given in the two Division Bench Judgments referred to above in Ramaiah Reddy and Rajesh Kumar Jain cases, the learned counsel appearing for the petitioner would insist that, merely because prohibitory order was issued, under that pretext, the time for search cannot be extended under the same authorisation by drawing several panchanamas on several dates and therefore the subsequent search taken place in the second premises of the petitioner without any specific authorisation

was unauthorised, therefore, for the purpose of limitation, the one and only panchanama, dated 25.01.2001 alone shall be taken into consideration.

47. However the factual matrix of this case would reveal that, though the search was made by the Revenue team on 25.01.2001, the search was inconclusive at No.4/181, Kodambakkam High Road, Chennai-34, therefore at the panchanama, dated 25.01.2001, it was recorded as "search continues", and prohibitory order was issued. Even thereafter, several occasions when the search continued, it could not be completed or concluded for the peculiar and specific reason in the present case that, number of documents required by the Revenue had been uploaded in the electronic system, i.e., Computer and those documents could not be accessed by the Revenue. In this context, the word "search" as has been employed, could be understood with a connotation as contemplated under the provisions of the Code of Criminal Procedure 1973, relating to search and seizure.

48. In this context Section 132 of the Act deals with Search and seizure, wherein 132 (1) (iib) reads thus :

"(iib) require any person who is found to be in

possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents."

49. This clause (iib) was inserted by the Finance Act, 2002 w.e.f. 01.06.2002. Having in mind of this clause (iib), if we look at the hurdle faced by the Revenue in the present case when they undertook the search operation in the second premises of the petitioner, the Revenue has disclosed those aspect in the counter affidavit, which are relevant to be taken note of. Hence the relevant portion of the counter to that effect are extracted hereunder :

"I state that from the records, on 30.01.2001 some books and documents were seized after verification. Prohibitory orders were placed as the search could not be completed. The volume of books and documents to be seen were huge. They related to various assessees of the group and to various years. The search operations were conducted on the basis of valid warrant of authorisation issued by the

DIT (Inv), Chennai. The search operations continued till 25.06.2001 preciously because of the reason that the petitioner did not provide the password in respect of files contained in the computers and also voluminous books of account found during the course of proceedings. The prohibitory order were issued on various occasions in view of the non completion of the search on the respective dates but not for the purpose of harassing the petitioner. As such there is no truth in the allegation that search proceedings were invalid.

I state that because more time was required to go through the contents of the computers and the books, in order to verify their contents, it was necessary to place prohibitory orders and to continue the search. There was no intention of harassing the petitioner. All the rooms which were prohibited also contained computer(s) which contained password protected files. The petitioner did not divulge the password throughout the continuation of the search proceedings. This can be seen from the sworn statements recorded from the petitioner. In the absence of the passwords, access to the

password protected files were denied and verification work could not be done speedily. They had to be ultimately seized. This utter non-cooperation on the part of the petitioner only delayed the conclusion of the search proceedings. There was no intention of harassing the petitioner as alleged by the petitioner."

50. Therefore it is a factual matrix that, throughout the series of search undertaken by the Revenue from January 2001 till June 2001, the password of the computer of the petitioner / assessee to have access with the documents loaded or fed in, in the computer, had not been divulged by the petitioner and these factor had not been denied by the petitioner. If that being so, it cannot be said that, the Revenue without having access to the electronic documents should have completed their search on the very first day of the search, dated 25.01.2001 itself.

51. Only in order to meet these kind of situations, the aforesaid clause (iib), extracted above, was inserted by the legislature from 01.06.2002, therefore unless and until the necessary facility, to inspect such books of account or other documents maintained in the

form of electronic record, is made available to the Revenue, it cannot be said that, the search was completed, instead, it should only be construed that, the search continues.

52. Here in the case in hand, exactly this situation was confronted by the Revenue and that is the reason why they continued the search on several days and ultimately only in June 2001, the Revenue seems to have been able to get the password or facility to have access to the electronic documents of the petitioner / assessee and thereafter only they concluded the search and further proceedings continued.

53. Therefore, no doubt, in general, the interpretation given in the two Division Bench Judgments, namely Ramaiah Reddy and Rakesh Kumar Jain (*cited supra*), with respect, is to be followed. However, the said interpretation cannot be fit in, in the facts of the present case, in view of the provision, namely clause (iib) of Section 132(1). Therefore within the said provision of (iib) referred to above, it can only be construed that, the search operation commences at the second premises of the petitioner on 25.01.2001, continued till 12.06.2001, therefore each time separate panchanamas were drawn

and prohibitory orders were issued with the endorsement that, "search continues". However it has been misquoted by the petitioner that, even though the panchanama, dated 25.01.2001 discloses with an endorsement of the Revenue that, the "search concluded", subsequent issuance of prohibitory order and on that strength, subsequent searches made till 12.06.2001 was unauthorised. However the fact remains that, in the second premises the search continued and in view of the specific provisions referred to above in Section 132(1)(iib), which, even though came into effect only from 01.06.2002, the continuous search went up to 12.06.2001 can very well said to be authorised and therefore the Revenue cannot be found fault with by compelling them to calculate the limitation within the meaning of Section 158BE(1)(b) from 01.02.2001 by taking into account the panchanama, dated 25.01.2001 as the last panchanama and by not taking the 12.06.2001 panchanama as the last panchanama.

54. Therefore independently, on the basis of Section 132(1)(iib), the Revenue's continuous search operation taken place on various dates from 25.01.2001 till 12.06.2001 can very well be construed as an authorised search operation, therefore the panchanama issued on 12.06.2001 shall be deemed to be the last authorisation within the meaning of Explanation 2 to Section 158BE.

55. If that being the position, the impugned Block Assessment Order, dated 30.06.2003 is within the limitation of two years under Section 158BE(1)(b) commencing from 01.07.2001 since the end of the month in which the last of authorisation for search under Section 132 was to be reckoned only as 30.06.2001.

56. In view of these peculiar facts and circumstances of the case and in view of the discussion made above, the ground raised by the petitioner side in the context of Section 158BE(1)(b) to state that, the impugned order is barred by limitation, is unsustainable.

57. For all these reasons stated above and for the legal position discussed above, this Court is of the considered view that, the impugned Block Assessment Order, dated 30.06.2003 cannot be said to be defective for want of limitation, within the meaning of Section 158BE(1)(b) of the Act and also the other reasons and grounds urged by the petitioner side since cannot be said to be the advancing factor of the petitioner's case, this Court feel that, the impugned order can very well be sustained, that means, on the grounds urged by the petitioner, it cannot be successfully assailed.

Resultantly, the writ petition fails, hence, it is dismissed.

However there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.12.2019

Index : Yes
Speaking order
tsvn
To

1. Deputy Commissioner of Income Tax
   Central Circle I (3)
   Chennai - 600 034.

2. Deputy Commissioner of Income Tax
   Central Circle I (5)
   Chennai - 600 034.

3. Deputy Director of Income Tax
   Unit I (2)
   Chennai - 600 034.

4. Additional Commissioner of Income Tax
   Central Range I
   Chennai - 600 034.

R.SURESH KUMAR, J.

Order in
W.P.No.20999 of 2003

31.12.2019