REORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 345-350 OF 2012

Anil Minda and Others …Appellants

Versus

Commissioner of Income Tax …Respondent

J U D G M E N T

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 14.09.2010 passed by the High Court of Delhi at New Delhi in ITA No. 582 of 2009 and other allied appeals, by which the Division Bench of the High Court has allowed the said appeals preferred by the Revenue and set aside the orders passed by the Income Tax Appellate Tribunal, New Delhi (for short, 'ITAT') holding that

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the assessment orders passed in the case of the respective assessees were time barred as the assessments were not completed within two years from the end of the month in which the last authorisation for search under Section 132 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') was issued, the respective assessees have preferred the present appeals.

2. For the sake of convenience, the facts arising out of the impugned judgment and order passed by the High Court in ITA No. 582/2009 are narrated, which in nutshell are as under:

2.1 That the two warrants of authorization under section 132(1) of the Act for carrying out the search at bank locker with Canara Bank, Kamla Nagar were issued on 13.03.2001 and 26.03.2001. Warrants which were executed on 13.03.2001 were executed on various dates, which are as under:

1.	13.03.2001	1st Authorization/search warrant issued
2.	19.03.2001, 20.03.2001, 26.03.2001, 27.03.2001, 28.03.2001 & 11.04.2001	Panchnama drawn/executed and search completed in regard to 1st search warrant

2.2 During the execution of the search warrants dated 13.03.2001, the Income Tax authorities got the information about a locker belonging to the assessee in a bank. Therefore on 26.03.2001,second authorization was issued for searching the said locker and the same was executed on 26.03.2001 itself. Therefore, the first authorization came on 13.03.2001 was for search at the office and residence of the assessee and it continued for some time and culminated only on 11.04.2001 and the second search authorization dated 26.03.2001 came to be executed on the same date and the Panchnama was drawn on 26.03.2001.

2.3 Thereafter, notice under Section 158 BC for filing block assessment was issued. The assessee filed his return and the assessment was completed by passing assessment order in April, 2003. Similar assessment orders were passed in case of other assessees. The respondents – assessees filed appeals challenging the assessment orders, inter alia, on the ground that the assessment was time barred. According to the assessees, limitation of two years as prescribed under section 158BE of the Act, which was to be computed when Panchnama in respect of the second authorization was executed, i.e., on 26.03.2001. Since that Panchnama was drawn on 26.03.2001, two years period as prescribed under Section 158BE(b) of the Act came to an end by March, 2003 and the assessment order was passed in April, 2003, which

according to the assessee was thus time barred. On the other hand, the plea of the department was that since the last Panchnama through related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from that date and therefore the assessment was passed was well within the prescribed limitation.

2.4 The CIT(A) dismissed the appeals. However, the ITAT allowed the appeals and held that the respective assessment orders were barred by limitation since the Panchnama with respect to last authorization was drawn on 26.03.2001. Against the order passed by the ITAT setting aside the assessment orders on the ground that the same were beyond the period of two years, the Revenue preferred the present appeals before the High Court. By the impugned common judgment and order, the Division Bench of the High Court has allowed the said appeals and has set aside the order passed by the ITAT by holding that as the last Panchnama though related to search authorization dated 13.03.2001 was executed on 11.04.2001, limitation of two years was to be computed from 11.04.2001. The impugned common judgment and order passed by the High Court is the subject matter of present appeals.

3. Dr. Rakesh Gupta, learned counsel has appeared on behalf of the appellants – assessees and Shri Balbir Singh, learned ASG has appeared on behalf of the Revenue.

3.1 Learned counsel appearing on behalf of the respective assessees has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in holding that the respective assessment orders were within the period of two years and therefore not barred by limitation.

3.2 It is submitted that in the present case the last authorization was on 26.03.2001 and therefore as per Explanation 2 to Section 158BE of the Act the last authorization would be the starting point of limitation. It is submitted that therefore even if the first authorization dated 13.03.2001 was executed on a later date i.e., on 11.04.2001, that would be of no consequence and for the purpose of reckoning the limitation period, the first authorization is irrelevant and it is the "last of the authorization" which has to be kept in mind. It is submitted that in the present case, the last authorization is dated 26.03.2001 which was executed on the same date and therefore the period of two years is to be counted from that date.

3.3 Learned counsel appearing on behalf of the respective assessees has relied upon the decision of the Karnataka High Court in the case of

C.Ramaiah Reddy v. Assistant Commissioner of Income Tax, (2011) 244 CTR 126 (Karn.) (para 47) in support of his submission.

4. Shri Balbir Singh, learned ASG appearing on behalf of the Revenue has vehemently submitted that as per Explanation 2 of Section 158BE of the Act, when it is a case of search, period of limitation is to be counted from the date on which the last Panchnama was drawn. It is submitted that in the present case, the last Panchnama on conclusion of the search was drawn on 11.04.2001 and therefore the limitation period of two years would start from 11.04.2001. It is submitted that if the submission on behalf of the assessees is accepted, in that case, the Explanation 2 to Section 158BE would become nugatory and redundant.

4.1 It is further submitted by the learned ASG appearing on behalf of the Revenue that Explanation 2 to Section 158BE has been specifically inserted with a view to give last of the Panchnama as the starting point of limitation. It is submitted that the time for completion of the block assessment under Section 158BC/158BE is the conclusion of search/drawing of last Panchnama which will be relevant and not the dates of issuance of various authorizations. It is submitted that in a given case where number of authorizations are issued and relevant material/s is/are collected during the search on different dates on the basis of the different authorizations, ultimately the assessment

proceedings would be on the basis of the entire material collected during the search and on the basis of the Panchnama drawn. It is submitted that therefore the date on which the last Panchnama was drawn is the relevant date for the purpose of block assessment. In support of his submission, Shri Balbir Singh, learned ASG has heavily relied upon the decision of this Court in the case of ***VLS Finance Limited & Another v. Commissioner of Income Tax & Another, (2016) 12 SCC 32*** (paragraphs 26 to 28).

5. Having heard learned counsel for the respective parties, the short question which is posed for the consideration of this Court is, whether the period of limitation of two years for the block assessment under Section 158BC/158BE would commence from the date of the Panchnama last drawn or the date of the last authorization?

6. While considering the aforesaid issue, Section 158BE which provides for time limitation for commencement of block assessment is required to be referred to, which is as under:

> "Section 158BE
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> Time Limit for Completion of Block Assessment
>
> (1) The order under Section 158-BC shall be passed—
>
> (*a*) within one year from the end of the month in which the last of the authorisations for search under Section 132 or for requisition under Section 132-A, 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 132-A, 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.

(2) The period of limitation for completion of block assessment in the case of the other person referred to in Section 158-BD shall be—

(*a*) one year from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997; and

(*b*) two years from the end of the month in which the notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

[*Explanation 1*.—In computing the period of limitation for the purposes of this section,—

(*i*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*ii*) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2-A) of Section 142 and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section; or

(*iii*) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to Section 129; or

(*iv*) in a case where an application made before the Settlement Commission under Section 245-C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of Section 245-D is received by the [Principal Commissioner or Commissioner] under sub-section (2) of that section, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-

> section (2) available to the Assessing Officer for making an order under clause (*c*) of Section 158-BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.]
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> [*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 132-A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer.]"

7. In the present case, the first authorization was issued on 13.03.2001 which ultimately and finally concluded and/or culminated into Panchnama on 11.04.2001. However, in between there was one another authorization dated 26.03.2001 with respect to one locker and the same was executed on 26.03.2001 itself and Panchnama for the same was drawn on 26.03.2001. However, Panchnama drawn with respect to authorization dated 13.03.2001 was lastly drawn on 11.04.2001. As observed and held by this Court in the case of ***VLS Finance Limited (supra)***, the relevant date would be the date on which the Panchnama is drawn and not the date on which the authorization/s is/are are issued. It cannot be disputed that the block assessment proceedings are initiated on the basis of the entire material collected during the search/s and on the basis of the respective Panchnama/s

drawn. Therefore, the date of the Panchnama last drawn can be said to be the relevant date and can be said to be the starting point of limitation of two years for completing the block assessment proceedings.

8. If the submission on behalf of the respective assessees that the date of the last authorization is to be considered for the purpose of starting point of limitation of two years, in that case, the entire object and purpose of Explanation 2 to Section 158BE would be frustrated. If the said submission is accepted, in that case, the question which is required to be considered is what would happen to those material collected during the search after the last Panchnama. It cannot be disputed that there may be number of searches. Thus, the view taken by the High Court that the date of the Panchnama last drawn would be the relevant date for considering the period of limitation of two years and not the last date of authorization, we are in complete agreement with the view taken by the High Court.

9. In view of the above and for the reasons stated above, all these appeals fail and the same deserve to be dismissed and are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

……..J.
[M.R. SHAH]

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NEW DELHI; ……..J.
MARCH 24, 2023. [C.T. RAVIKUMAR]