65

* **HIGH COURT OF DELHI : NEW DELHI**

\+ **Writ Petition (C) No.4685 of 2000**

Judgment reserved on: August 4, 2006

% Judgment delivered on: December 15, 2006

1. M/s. VLS Finance Ltd.
C-489, Defence Colony
New Delhi.

2. M/s. South Asian Enterprises Ltd.
C-489, Defence Colony
New Delhi. ..... Petitioners

Through Mr. O.S. Bajpai with
Mr. V.N. Jha, Advocates

versus

1. The Commissioner of Income Tax (Central-II)
5th Floor, Mayur Bhawan
Connaught Place, New Delhi.

2. Deputy Commissioner of Income Tax
Central Circle-XXI
7th Floor, Mayur Bhawan
Connaught Place, New Delhi. ..... Respondents

Through Mr. P.P. Malhotra, ASG with
Mr. R.D. Jolly, Mr.Chetan Chawla
and Mr.Gaurav Sharma, Advocates

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

A writ petition under Article 226 of the Constitution has been filed by two companies sharing the same address. Though from the record it is not very explicit, but it appears that the Directors in both the companies are common.

2. Initially, the writ petition was filed primarily challenging an order dated 29th June, 2000 issued by Respondent No.2 directing that a special audit be conducted in respect of the Petitioners under Section 142 (2A) of the Income Tax Act, 1961 (the Act) by M/s. Khanna and Anandam & Co., Chartered Accountants. A

challenge was also made to an order dated 10th August, 2000 which clarified that the special audit in respect of Petitioner No.1 covers the period from the assessment year 1994-95 to assessment year 1998-99 and in respect of Petitioner No.2 it covers the period from the assessment year 1994-95 to assessment year 1996-97.

3. Subsequently, the Petitioners sought to amend the writ petition by including a prayer challenging a notice dated 28th August, 2000 issued under Section 143 (2) of the Act. That amendment application (CM No.10173/2000) has not yet been allowed although the writ petition was admitted for final hearing. We now allow the amendment application and dispense with the filing of a formal amended writ petition.

4. A further application for amendment (CM No.9305/2006) was made by the Petitioners seeking to add some additional grounds and also a prayer to the effect that the block assessment proceedings under Section 158 BC (c) of the Act may be held as

time barred. This amendment was allowed by us on 1st August, 2006 and the filing of a formal writ petition was dispensed with.

5. The Respondents have filed their affidavits in response to the various allegations made in the writ petition as also to the applications filed by the Petitioners.

6. According to the Petitioners, a search and seizure took place in their business premises and at the residential premises of the promoters and Directors of the Petitioner companies. The search and seizure operations commenced and concluded on 22nd June, 1998 but were illegally continued till 5th August, 1998.

7. It is submitted that the time limit for completing the block assessment expired on 30th June, 2000 in terms of Section 158BC of the Act since the two year period expired on that date. This contention of the Petitioners is based on the premise that the search authorization, having been executed on 22nd June, 1998,

could not have been utilized for conducting further searches till 5th August, 1998.

8. The Petitioners further submit that on 29th June, 2000, that is, a day before the period of limitation was to expire as per the calculation of the Petitioners, an order was passed by Respondent No.2 under Section 142 (2A) of the Act, which was communicated to them on 19th July, 2000, that is after expiry of the limitation period for making the block assessment. Nevertheless, the Petitioners filed their block returns on 10th September, 1999 and thereafter no further notices have been received by them for initiation of block assessment proceedings.

9. The Petitioners contend that the order passed under Section 142 (2A) of the Act was issued without complying with the principles of natural justice and without any application of mind in as much as there is no complexity in the accounts of the Petitioners and that the Assessing Officer only desired the accounts to be re-written and instead of explicitly saying so,

perhaps because the assessments were likely to become time barred, an order was passed under Section 142 (2A) of the Act.

10. It is submitted that in the case of Petitioner No.1 regular assessment for the assessment year 1997-98 was completed on 31st March, 2000 without the need for a special audit and that this assessment year also falls in the block period. Similarly, in the case of Petitioner No.2, a regular assessment was made for the assessment years 1996-97 and 1997-98 on 30th March, 1999 and 31st March, 2000 respectively again without the need for a special audit and both these assessment years are included in the period covered by the special audit.

11. The principal preliminary contention of learned counsel for the Petitioners is that the block assessment had become time barred on 30th June, 2000 and that continued searches and seizures by the Respondents until 5th August, 1998 were not only mala fide but were not authorized by law. These illegal searches and seizures could not extend the period of limitation and the

Respondents have proceeded on a wrong understanding of the legal position in this regard.

12. The Respondents filed an affidavit in answer to show cause in which it is contended that the search and seizure proceedings that continued till 5th August, 1998 were valid in law and that the period of completion of the block assessment was to expire on 31st August, 2000 and not on 30th June, 2000, as alleged by the Petitioners.

13. It is stated by the Respondents by way of background facts that on 28th April, 2000 Respondent No.2 had sent a detailed proposal to the Commissioner of Income Tax, Delhi (Central)-II giving the reasons for seeking approval of a special audit under Section 142 (2A) of the Act. It was explained that the accounts maintained by the Petitioners were intricate and complex and involved a huge revenue, which is why a special audit was necessary. Paraphrasing the reasons, it has been stated on affidavit as follows: -

"The deponent had mentioned that the petitioner had manipulated their figures in such a manner that heavy book profits have eventually been converted to heavy losses. It was mentioned by the Assessing Officer that the initial enquiries at Madras as well as the perusal report by DDIT has shown a bogus claim of 100% depreciation by the petitioner. The evidence in possession of the Department indicated that the alleged loss transactions were in fact sham transactions and these transactions actually involved re-routing of money through third parties, through circular entries, after payment of minor amount for assistance in the dubious activities. Various expenses have been claimed which are to be disallowed and in fact the Balance Sheet will have to undergo a see (sic) change because of over-valuation of the assets and change of other important heads. It was also mentioned by the deponent that basically all the entries relating to the loss have to be put backtracked and fresh position has to be ascertained, therefore, the entire financial statements are to be re-drawn. The deponent was of the view that the entire exercise is very complex and require inputs from a professional Chartered Accountant. The deponent therefore made a proposal vide its letter dated 28.4.2000 to the CIT seeking approval of Special audit."

14. The matter was then examined by the Commissioner of Income Tax who made certain enquiries from Respondent No.2 and thereafter on 24th May, 2000 he granted approval to have the accounts of the Petitioners audited through a special audit. It is

stated on affidavit that the order was eventually passed by Respondent No.2 on 29th June, 2000 and it was sent to the Petitioners by registered post on 17th July, 2000. On 19th July, 2000, the Chartered Accountant of the Petitioners contacted Respondent No.2 and received another copy of the order passed under Section 142 (2A) of the Act. It was stated that the special auditor appointed by Respondent No.2 had raised certain queries and in answer to those queries and to keep the Petitioners informed, Respondent No.2 issued the letter dated 10th August, 2000 clarifying the assessment years for which the special audit was required to be carried out.

15. The Petitioners have refuted the averments made by the Respondents and have denied receipt of the order dated 29th June, 2000, alleged to have been sent by registered post on 30th June, 2000. It is stated that the order was sent on 17th July, 2000, after the period of limitation for making the block assessment had expired.

16. As can be seen from the above, the broad issues that need consideration, and this is what was argued before us, are whether the search of the premises could be conducted until 5th August, 1998 on the basis of a single search authorization which was executed on 22nd June, 1998 and whether the period of limitation for completing the block assessment had expired on 30th June, 2000, as contended by learned counsel for the Petitioners or that the period of limitation was to expire on 31st August, 2000, as contended by the Respondents. The third issue in this case is whether the principles of natural justice were complied with and whether the accounts of the Petitioners were complex enough to justify the ordering of a special audit under Section 142 (2A) of the Act.

17. It may be mentioned that in the writ petition the Petitioners have also challenged the constitutional validity of Explanation (2) to Section 158BE of the Act but no arguments were addressed in this regard and indeed no such issue was urged before us.

18. Section 158 BE (1)(b) and Explanation (2) to Section 158 BE of the Act read as follows: -

> "**158 BE** (1) The order under section 158 BC shall be passed -
>
> (a) xxx xxx xxx
>
> (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.
>
> (2) xxx xxx xxx
>
> *Explanation 1.* xxx xxx xxx
>
> *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."

19. On a plain reading of this section as well as the explanation, it is quite clear that a search under Section 132 of the Act will conclude on the day the last panchnama is drawn. This is also the view taken by a Division Bench of this Court in ***B.M. Lal v. CIT (Delhi), [2005] 279 ITR 298*** wherein it was observed and we quote:

> "11. From a plain reading of Explanation 2(a), it is evident that an authorization referred to in sub-section (1) is deemed to have been executed on the conclusion of the search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorization has been issued. What is note worthy is that the time-limit for the making of an order under Section 158BC read with Section 158BE(1) will start from the last of panchnamas."

20. A similar view has also been taken by the Kerala High Court in ***T.O. Abraham and Co. and Another v. Assistant Director of Income Tax (Investigation) and others, [1999] 238 ITR 501***.

21. The Petitioner has annexed as Annexures C to C-15, a total of 16 panchnamas that were prepared as a result of the search conducted on various dates starting from 23rd June, 1998 till 5th

August, 1998. The last panchnama having been drawn on 5th August, 1998, in terms of Section 158BE (1)(b) of the Act, the period of two years will come to an end in the end of August, 2000.

22. A perusal of these panchnamas clearly shows that a warrant of authorization was signed and shown each time the search was conducted and the contents thereof were explained to the person present at the premises to be searched. Therefore, it is not as if the officers of the Respondents conducted the search without any valid authorization. That it took several days for the search to be concluded is an indication of the fact, as contended by the learned Additional Solicitor General, that a large number of documents had to be gone through. In fact, we were told during the course of oral submissions that the Respondents had to go through as many as 5000 documents and this was not controverted by learned counsel for the Petitioners. Of course, we would have been much happier if this had been so stated by the Respondents on affidavit, but in the absence of any denial by learned counsel for the

Petitioners, we will assume that what we are told at the Bar is correct and that the Respondents inspected as many as 5000 documents.

23. During the course of hearing we were also shown the search authorization. It has been 'revalidated', as it were, before conducting the search, although the panchnamas do not so indicate. We would only comment, in this regard, that it would be procedurally much healthier if a separate search authorization is issued on every occasion or at the least the panchnama should make a reference to the subsequent dates of issue of the search authorization.

24. Learned counsel for the Petitioners relied upon ***B.K. Nowlakha v. Union of India, [1991] 192 ITR 436*** to contend that the Respondents could have, and if it was necessary, ought to have, seized the books of account rather than pass a restraint order and return several times to go through the accounts of the Petitioners. We are not able to appreciate the relevance of this

decision to the facts of this case. If it is practicable to seize the books of account under Section 132(1) of the Act, then the authorized officer should do so. If it is not possible or practicable to do so, the authorized officer may then pass a restraint order under Section 132(3) of the Act. Prior to its amendment in 2002 (the period with which we are concerned), Section 132(8A) of the Act provided that an order passed under Section 132(3) shall not be in force for a period exceeding 60 days, except where an extension is granted for reasons to be recorded in writing. In ***Nowlakha*** the articles in question, some antiques, were believed to represent undisclosed income and could be seized but were not. Instead, restraint orders were passed in respect thereof "solely with a view to circumvent the provisions of section 132(8A)". In view of these facts, it was held that continuation of the restraint order under Section 132(3) of the Act was not warranted and a direction was given to the authorized officer to release the articles in question. This issue does not at all arise in the present case. Assuming for the sake of argument that the books of account of the Petitioners could be seized but were not seized (wrongly), the

seizure could have been affected on 22nd June, 1998 (the first day). The last panchnama was drawn on 5th August, 1998 well before the 60 day period was to expire. Therefore, no ulterior motives can be attributed to the Respondents in failing to seize the books of account and instead passing a restraint order in their respect. Learned counsel for the Petitioners has not been able to show us any prejudice caused to his clients.

25. Similarly, reliance on ***C.I.T. v. Mrs. Sandhya P. Naik, [2002] 253 ITR 534*** is misplaced. In that case, the Income Tax Appellate Tribunal found as a matter of fact that the search was concluded on 20th October, 1996. It was in this context that the High Court observed that by merely stating in the panchnama that the search is temporarily suspended, the authorized officer could not keep the search proceedings alive by passing a restraint order under Section 132(3) of the Act. No doubt the assessee requested for the release of some articles for pooja etc. and this request was granted and on 26th October, 1996 some articles were released. But the High Court held, agreeing with the Income Tax Appellate

Tribunal that the proceedings on 26th October, 1996 were not in continuation of the proceedings that had already concluded on 20th October, 1996.

26. The question that therefore arises for our consideration is whether the search, subject matter of this writ petition, had concluded on 22nd June, 1998 or not? If it did not, was it unreasonably prolonged for some collateral reason? If it did, (as contended by learned counsel for the Petitioners), then the limitation period for making the assessment order would end on 30th June, 2000. However, if the search proceedings did not end on 22nd June, 1998 but on 5th August, 1998 as contended by the learned Additional Solicitor General, then the limitation period for making the assessment order would end on 31st August, 2000.

27. The answer to these questions lies in the averments made in the writ petition itself, the Respondents being completely silent on these issues in their affidavits. It has been stated in the writ petition that the Respondents had drawn up 16 panchnamas in

respect of the visits that they had made to the premises of the Respondents. No seizures were made on 10 occasions, meaning thereby that the Respondents had affected seizures on 6 occasions. It must be remembered that the Respondents were concerned with the books of account of the Petitioners and documents to confirm that they had undisclosed income – the Respondents were not concerned with articles representing undisclosed income, unlike in ***Nowlakha*** and ***Sandhya P. Naik***. What appears to have happened, from a perusal of the various panchnamas, is that the Respondents went through the books and seized only those documents that were necessary, rather than seizing all the books and documents of the Petitioners. Can the Respondents be faulted for following a less drastic procedure? We do not think so.

28. That the task of examining the documents relevant for seizure was quite cumbersome is clear from an illustration given by the Respondents in their additional affidavit filed on 18th August, 2001. On 29th June, 1998 (Annexure C-2) the Respondents seized books of account and documents as per

inventory in Annexure AAA-1 to AAA-5. A perusal of the documents (which run into at least 215 pages) as per Annexure AAA-3 shows, as stated on affidavit that,

> "From the perusal of the above, it is seen that M/s Divya Films International has identified 11 films to be purchased from M/s Ganesh Enterprises and has asked M/s VLS Finance Ltd. to purchase them for R.2,11,54,551.11 and that M/s Divya Films International would take these films on lease from M/s VLS Finance Ltd. for quarterly lease rental of Rs.20,80,200/- for 12 quarters aggregated to Rs.2,49,62,400/-for which M/s Divya Films International Ltd. have given promissory notes. These promissory notes have again been discounted by M/s VLS Finance Ltd. from M/s Flex Finance Ltd. Thus the money originally spent by M/s VLS Finance Ltd. has again circulated back to it only."

The Respondents could have, on the very first day of the search, seized all relevant and irrelevant documents and books of the Petitioners, but they did not do so. We are of the view that their decision on this (in favour of the Petitioners) cannot be used against them. We have also kept in mind two facts, namely, that even by adopting this procedure, the Respondents did not exceed the 60 day limit as provided by Section 132(8A) of the Act and that for making the assessment order the Respondents had still

more than adequate time available, making it unnecessary for them to resort to any subterfuge so early on. Consequently, we are of the opinion that the Respondents did not complete the search on 22nd June, 1998 as alleged by the Petitioners, nor did they unduly prolong it. The search concluded on 5th August, 1998 and so in terms of Explanation 2 to Section 158 BE of the Act the period of limitation would begin from the end of August, 1998, that is, 31st August, 1998 onwards. [See ***B.M. Lal***]. The second issue raised by learned counsel for the Petitioners would stand answered accordingly.

29. The final issue is with regard to the validity of the order passed by the Respondents on 29th June, 2000 under Section 142 (2A) of the Act. According to learned counsel for the Petitioners, the principles of natural justice were not complied with before passing that order. Moreover, the accounts of his clients were not complex nor was there any meaningful interaction between the Respondents and the Petitioners which could lead the

Respondents to conclude that the accounts were complex and necessitated a special audit.

30. After we had concluded hearing, the decision of the Supreme Court in ***Rajesh Kumar & Others v. Deputy Commissioner of Income Tax & Others, [2006] 287 ITR 91*** came to our notice and it appeared to have a material bearing on this issue. Consequently, we thought it appropriate to list the matter for directions so that we could explain the position to learned counsel for the parties and hear them on the applicability of the decision before pronouncing judgment.

31. Accordingly, the matter was listed for directions on 24th November, 2006 and after the position was explained to learned counsel, it was adjourned to 1st December, 2006 for further hearing. On 1st December, 2006, the matter was adjourned to 8th December, 2006 on which date learned counsel for the parties

addressed arguments on the applicability of the decision of the Supreme Court.

32. Having examined the decision of the Supreme Court, we find that it has been held by the Supreme Court that an order passed under Section 142(2A) of the Act is not an administrative order but a judicial order which affects the rights of the assessee. Consequently, it is necessary that notice is given to the assessee before an order is passed under Section 142(2A) of the Act. The operative portion of the decision of the Supreme Court reads as follows:-

> "The hearing given, however, need not be elaborate. The notice issued may only contain briefly the issues which the Assessing Officer thinks to be necessary. The reasons assigned therefor need not be detailed ones. But, that would not mean that the principles of justice are not required to be complied with. Only because certain consequences would ensue if the principles of natural justice are required to be complied with, the same by itself would not mean that the court would not insist on complying with the fundamental principles of law. If the principles of natural justice are to be excluded, Parliament could have said so expressly. The hearing given is only in terms of section 142(3) which is limited only to the

findings of the special auditor. The order of assessment would be based upon the findings of the special auditor subject of course to their acceptance by the Assessing Officer. Even at that stage the assessee cannot (can?) put forward a case that power under section 142(2A) of the Act had wrongly been exercised and he has unnecessarily been saddled with a heavy expenditure. An appeal against the order of assessment, as noticed hereinbefore, would not serve any real purpose as the appellate authority would not go into such a question since the direction issued under section 142(2A) of the Act is not an appealable order."

33. In view of the decision rendered by the Supreme Court, it must be held that the order dated 29th June, 2000 passed under Section 142(2A) of the Act could have been passed only after a notice was issued to the Petitioner which has not been done in this case. Consequently, the order dated 29th June, 2000 must be, and is, set aside. We propose to consider the effect of this a little later.

34. One of the issues canvassed by learned counsel for the Petitioners was that even if it is assumed that the period of limitation was to expire on 31st August, 2000 that date is long

since over and there being no order restraining the Respondents from completing the assessment, and the Respondents not having completed it, the assessment proceedings are now time barred. We cannot agree with learned counsel. On 29th June, 2000 the Respondents had passed an order under Section 142(2A) of the Act directing the Petitioners to get their accounts audited through a special auditor. By a subsequent order dated 10th August, 2000 the period of the special audit was mentioned. When the Petitioners challenged these orders, a Division Bench passed an order on 24th August, 2000 stating, inter alia:

> "Interim stay of the orders dated 29.6.2000 Annexure-A read with Annexure-B dated 10.8.2000."

On 17th October, 2000 the interim order was made absolute and has continued till date.

35. What is the effect of the interim order granted by this Court? As a result of the orders passed by this Court, the Respondents were restrained from insisting upon a special audit being

conducted. Consequently, the assessment order, which is dependent on the completion of the special audit, could not be made. It is not correct to say that the assessment order could have been made notwithstanding that no special audit is carried out. In the given facts of the case, a special audit is not only a step in the assessment proceedings, but it is an important and integral step, in the absence of which an assessment order cannot be made. It would, therefore, be a little facetious to say that the assessment proceedings could have gone on without the special audit having been conducted and if the Respondents did not make an assessment order, it was at their peril. In ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Assn., (1992) 3 SCC 1*** the Supreme Court considered the effect of an interim order passed by a Court and held,

> "While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be

> operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

In a slightly different context, the Supreme Court considered the issue in ***BPL Ltd. v. R. Sudhakar, (2004) 7 SCC 219*** and observed:

> "If in a pending proceeding operation of order is stayed pending disposal of the main matter such as an appeal or revision, obviously the impugned order does not get quashed or wiped out. It only remains suspended."

36. In ***Raj Kumar Dey & Ors. v. Tarapada Dey & Ors., AIR 1987 SC 2195***, the Supreme Court examined the scope of a stay order on calculation of time/limitation. In this case, an award could not be registered within the time stipulated by the Registration Act owing to an interim injunction and an order directing the award to be deposited in Court. The Supreme Court allowed the entire period during which the stay order was in operation to be excluded while applying the maxim ***lex non cogit***

ad impossibilia or the law does not compel a man to do that which he cannot possibly perform.

37. Explanation 1 to Section 158BE (2) of the Act enlists the various periods that would be excluded in the computation of the period of limitation for the purpose of that section. In so far as it is relevant, Explanation 1 reads as follows:-

> "*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 (2A) 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) & (iv) xxx xxx xxx
>
> shall be excluded:
>
> Provided xxx xxx xxx"

38. This leads us to examine the meaning of the expression "assessment proceedings".

39. The Supreme Court in ***Auto and Metal Engineers & Ors. v. Union of India & Ors., [1998] 229 ITR 399*** has examined in detail as to what constitutes assessment proceeding. The Apex Court, while interpreting a provision pari materia to Explanation 1 to Section 158BE (2) of the Act, which also provides for extension of limitation for completion of assessment in certain contingencies, observed and we quote:

> "Sub-section (1) of section 153 prescribed the period of limitation within which an order of assessment could be passed. For the assessment years in question the last date for making the order of assessment under the said provision was March 31, 1972. By *Explanation 1* to section 153 the period of limitation prescribed under sub-section (1) for making the order of assessment was extended by the period during which the assessment proceeding was stayed by an order or injunction of any court. The object of the *Explanation* seems to be that if the Assessing Officer was unable to complete the assessment on account of an order or injunction staying the assessment proceeding passed by a court the period during which such order or injunction was in operation should be excluded for the purpose of computing the period of limitation for making the assessment order."

"The process of assessment thus commences with the filing of the return or where the return is not filed, by the issuance by the Assessing Officer of notice to file the return under section 142 (1) and it culminates with the issuance of the notice of demand under section 156. The making of the order of assessment is, therefore, an integral part of the process of assessment. Having regard to the fact that the object underlying the *Explanation* is to extend the period prescribed for making the order of assessment, the expression "assessment proceeding" in the *Explanation* must be construed to comprehend the entire process of assessment starting from the stage of filing of the return under section 139 or issuance of notice under section 142 (1) till the making of the order of assessment under section 143 (3) or section 144. Since the making of the order of assessment under section 143 (3) or section 144 of the Act is an integral part of the assessment proceeding, it is not possible to split the assessment proceeding and confine it up to the stage of inquiry under sections 142 and 143 and exclude the making of the order of assessment from its ambit. An order staying the passing of the final order of assessment is nothing but an order staying the assessment proceeding. Since the passing of the final order of assessment had been stayed by the Delhi High Court by its order dated November 23, 1971, in the writ petitions, it must be held that there was a stay of assessment proceedings for the purpose of *Explanation 1* to section 153."

40. In ***Commissioner of Income Tax v. Dhariwal Sales Enterprises, [1996] 221 ITR 240,*** a Division Bench of the Madhya Pradesh High Court observed that in a case where special

audit report under 142 (2A) of the Act was called for but could not be submitted, the time period spent for obtaining a copy of the report upto the time when intimation of non submission was given by assessee could be excluded.

41. In the present case, with a stay of the operation of the order dated 29th June, 2000 read with order dated 10th August, 2000, the special audit was stayed, which was an integral part of the assessment proceedings. Moreover, the effect of the stay order dated 24th August, 2000 which was confirmed on 17th October 2000, was that the period which commenced with the issuance of the order dated 29th June, 2000 for the completion of the special audit, was interdicted by the said orders and did not come to an end. Consequently, the period from the date of the first interim order passed by this Court, that is, from 24th August, 2000 till today, will have to be excluded for the purposes of calculating limitation.

42.. Learned counsel for the Petitioners raised a few other ancillary submissions. It was submitted that the order dated 29th June, 2000 was not received till much later and that it was quite vague since the assessment years for which the special audit was required to be made was not mentioned. There is no substance in either of these contentions. Admittedly, the Petitioners received the order dated 29th June 2000 before the cut-off date of 31st August, 2000 and the assessment years for which the special audit was to be made were also specified before that date. No prejudice has been caused to the Petitioners by the alleged delay in communication, as long as the Petitioners received it before 31st August, 2000.

43. It was also submitted by learned counsel that regular assessments had been made in respect of some assessment years covered by the block period. Since for these assessment years a special audit was not necessary, therefore, the entire exercise by the Respondents is vitiated. We are of the view that this is of no significance. Assessment includes reassessment (Section 2(8) of

the Act) and if reassessment was permissible in law, it does not matter at all if a special audit is ordered for that particular year as well.

44. Having quashed the order dated 29th June, 2000, it is not for us to say what the consequence of this will be. All that we can say is that for all practical purposes, the period from 24th August, 2000 until today shall be excluded for any calculations that the Respondents wish to make in respect of the period of limitation. If after exclusion of this period the Respondents are still entitled, in law, to issue a notice to the Petitioners for passing an order under Section 142(2A) of the Act, then of course they may do so. On the other hand, if they are not now entitled to issue a notice for whatever reason, then the result thereof will follow. We are not commenting on this one way or the other since no submissions were made before us in this regard one way or the other.

45. With these observations, we dispose of the writ petition making it clear that the period spent in litigation, that is, from 24th August, 2000 till today will inure to the benefits of the Respondents and will not be included for calculation of time.

46. Dasti.

Madan B. Lokur, J

Vipin Sanghi, J

December 15, 2006
ncg

Certified that a corrected copy of the judgment has been transmitted in the main Server.