

## HC directs Appellate Authorities to not to go into question of validity of search till pendency of SC decision

**Summary – The High Court of Karnataka in a recent case of Prathibha Jewellery House., (the Assessee) held that In view of pendency of appeal before Supreme Court on question of jurisdiction of Appellate Authorities of Department to go into question of validity of search as also insertion of Explanation in section 132 prohibiting such Authorities to go into reasons recorded by Tax Authority for directing search, Authorities and Courts could not go into said question**

### Facts

- The Tribunal while deciding the earlier appeals filed by the assessee-petitioner, remanded the appeals back to the file of the Commissioner (Appeals) for proper adjudication of the additional ground of appeal relating to the validity of the jurisdiction under section 153A as well as the existence of conditions for issuance of warrant under section 132A on the ground that the Commissioner (Appeals) ought to have at least satisfied herself about the existence of conditions before concluding that the jurisdiction had been validly exercised by the Assessing Officer in view of the judgment of the jurisdictional High Court in the case of *C. Ramaiah Reddy v. Asstt. CIT* [2011] 339 ITR 210/[2012] 20 taxmann.com 781 (Kar.).
- On remand, the Commissioner (Appeals) held that in the case of *C. Ramaiah Reddy (supra)*, the issue was as to whether the Tribunal is competent to look into the issue regarding validity of search? With regard to the said issue, the High Court held that the Tribunal was competent to look into the issue of validity of search. She further held that the said decision of the jurisdictional High Court was pending in appeal before the Supreme Court; and also the Chhattisgarh High Court in the case of *Trilok Singh Dhillon v. CIT* [2011] 332 ITR 185/[2012] 20 taxmann.com 806, on a similar issue, had decided in favour of revenue, and that on the assessee's appeal against the favourable decision of Chhattisgarh High Court, the Supreme Court had dismissed the appeal of the appellant. In effect, the decision favouring Revenue had been upheld. The Commissioner (Appeals) passed the impugned order holding that it could not go into the question of validity of search action against the petitioner under section 132 as she could not sit in judgment over the action authorized by an authority superior to her [in the case of Director General or Chief Commissioner] or an authority equivalent to her [in the case of a Director or Commissioner] authorizing the search action.
- On writ:

### Held

- The present writ petitions deserve to be dismissed for the following reasons:

- (i) That the decision of this court in the case of C. Ramaiah Reddy (supra), which allowed the Appellate Authority to go into the question of validity of search is a subject-matter of pending appeal before the Supreme Court and therefore, not only the Authorities of the department, but even this Court should await the decision of Supreme Court on the said issue and cannot direct the Appellate Authorities below by way of a writ of mandamus to go into the question of validity of search under section 132 and it would be incongruous and not in difference to the pendency of aforesaid Civil Appeal No. 2734/2013 before the Supreme Court.
- (ii) That even the law has been amended by insertion of the aforesaid Explanation by Parliament in section 132 by the Finance Act, 2017 with retrospective effect from 1-4-1962. That Explanation also prohibits the Appellate Authorities to go into the reasons recorded by the concerned Income Tax Authority for directing Search against the assessee or tax payer.
- (iii) That this Amendment came after both, the Tribunal passed the order in the present case on 21-11-2014 as also the Commissioner (Appeals) passed the impugned order on 11-2-2015. Nonetheless, retrospective effect of the said Amendment, will have its effect on the present case as well so long that the said Amendment holds the field. Therefore, the Appellate Authorities of the department cannot be expected to go into the said question. It is only for the Constitutional Courts to examine the vires and validity of such Amendment and for that, a separate writ petition is already said to be pending. However, no such challenge to the Amendment has been made in the present case.
- In these circumstances, the impugned order passed by the Commissioner (Appeals) cannot be faulted and it stands to the reason for the Commissioner (Appeals) to have followed the Chattisgarh High Court's decision and refused to do so.
  - The assessee-petitioner obviously had an alternative, adequate and efficacious remedy against the said order passed by the Commissioner (Appeals) before the Tribunal again under section 253. There appears to be no justification for cutting short that regular remedy at this stage and to entertain these writ petitions on merits.
  - Awaiting the final decision from the Supreme Court in Civil Appeal No. 2734/2013 against the decision of Division Bench of this Court in *C. Ramaiah Reddy's* case (supra) and also in view of fact that the question of validity of *Explanation* is yet to be examined by the Constitutional Courts, the Lower Appellate Authorities of the Income Tax Department cannot be expected to look into these questions of validity of search under section 132 at their own level independently.
  - The writ petitions being devoid of merit are accordingly dismissed.
  - If the assessee-petitioner files an appeal before the Income Tax Tribunal within a period of 30 days from today, the same may be entertained.