

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "B", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL AT AHMEDABAD,  
"B" BENCH

सर्वश्री डी.के.त्यागी, न्यायिक सदस्य एवं श्री ए.के.गरोडिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI D.K. TYAGI, JUDICIAL MEMBER  
AND  
A.K. GARODIA, ACCOUNTANT MEMBER

IT(SS)A. No.37/Ahd/2005  
[Block Period ending 21<sup>st</sup> Deceber, 1999]

Jaydeep Enterprises  
Prop. Dilip V. Patel  
303, Loha Bhavan  
Nr. Old High Court  
Ahmedabad.

बनाम/Vs. ACIT, Cent.Cir.1(4)  
Ahmedabad.

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से/

: Shri Sanjay R. Shah

Assessee by

राजस्व की ओर से/

: Shri D.S. Kalyan, CIT-DR

Revenue by

सुनवाई की तारीख/

: 2<sup>nd</sup> January, 2013

Date of Hearing

घोषणा की तारीख/

: 24-01-2013

Date of Pronouncement

आदेश / ORDER

**PER A.K. GARODIA, ACCOUNTANT MEMBER:** This is assessee's appeal against the order of the learned CIT(A)-I, Ahmedabad dated 24.11.2004 for the block period ending on 21<sup>st</sup> December, 1999.

2. In addition to various grounds raised in the appeal memo, the assessee had also raised four additional grounds, which were admitted by the Tribunal as per the noting in order sheet dated 1.2.2012. Out of these four additional grounds, we feel that additional ground no.3 should be decided first. This ground reads as under:

*“3. The order passed by the learned AO is bad in law as there was no requisite satisfaction recorded in order to assume jurisdiction u/s.158BD of the Act.”*

3. In this regard, a query was raised by the Bench as to whether any finding is given by the learned CIT(A) on this aspect regarding satisfaction recorded by the AO of the searched person, and in reply, it was submitted by the learned AR of the assessee that no such finding was given by the learned CIT(A). We also find that no such specific ground was raised before the learned CIT(A), although this ground was raised before him that order passed by the AO is bad in law and should be quashed. Under this factual position, we are of the considered opinion that this matter should go back to the file of the learned CIT(A) for deciding this issue as to whether requisite satisfaction was recorded by the AO of the searched person in order to assume jurisdiction by the AO of the assessee under Section 158BD, and if it is found that no such requisite satisfaction was recorded by the AO of searched person, then no proceeding can be initiated in the present case under Section 158BD, and hence order passed by the AO deserves to be quashed. But if it is found that requisite satisfaction was recorded by the AO of searched person, then various other grounds on merit and technical ground also require decision. We set aside the order of the learned CIT(A) and restore the entire matter back to his file for fresh decision. He should first decide the technical aspect as to whether requisite satisfaction was recorded by the AO of searched person or not in order to decide as to whether the AO has properly assumed jurisdictional under Section 158BD of the Act or not. If it is found that the AO has not assumed proper jurisdiction under Section 158BD of the Act, then the assessment order deserves to be quashed, and in case, it is found that proper satisfaction was recorded and assumption of jurisdictional under Section 158BD of the Act by the AO is proper, then various other issues including technical and issues on merits should be decided by the learned CIT(A)

afresh. Needless to say, the learned CIT(A) should pass a speaking order after providing reasonable opportunity of hearing to both the sides. This additional ground of the assessee is allowed for statistical purpose.

4. In view of our decision in respect of additional ground no.3, other issues raised by the assessee by way of additional grounds and original grounds as per the memo of appeal do not call for any adjudication at this stage, because after deciding the technical aspect, the learned CIT(A) has to decide the entire issues again.

5. In the result, the appeal of the assessee stands allowed for statistical purpose in terms as indicated above.

*Order pronounced in Open Court on the date mentioned hereinabove.*

Sd/-  
(**डी.के.त्यागी/D.K.TYAGI**)  
**न्यायिक सदस्य /JUDICIAL MEMBER**

Sd/-  
(**ए.के.गरोडिया /A.K. GARODIA**)  
**लेखा सदस्य /ACCOUNTANT MEMBER**

*Copy of the order forwarded to:*

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER  
DR/AR, ITAT, AHMEDABAD