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**(2011) 07 KAR CK 0137**  
**In the Karnataka High Court**  
**Case No : Income Tax A. No. 3010 of 2005**

CIT

APPELLANT

Vs

Late H.R. Basavaraj

RESPONDENT

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**Date of Decision :** 15-07-2011

**Acts Referred:**

Income Tax Act, 1961 — Section 131, 132, 132 (4), 143 (3), 158 BC

**Citation :** (2011) 339 ITR 63

**Hon'ble Judges :** V.G. Sabhahit, J;Ravi Malimath, J

**Bench :** Division Bench

**Advocate :** E.R. Indra Kumar, for the Appellant; A. Shankar and Lava, for the Respondent

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## Judgement

Ravi Malimath, J.—This appeal is by the Revenue being aggrieved by the order of the Tribunal wherein the appeals filed by the assessee were partly allowed and the appeals filed by the Revenue were dismissed. The late Sri H. R. Basavaraj was an assessee. Search and seizure were conducted under the provisions of section 132 of the income tax Act, 1961, at his residential premises and that of his associates. In the course of the search, receipts, agreements and other documents were found. His statement was recorded as well as of other concerned persons. During the course of the search by his letter dated March 4, 1998, he offered a total undisclosed income of Rs. 1.26 crores. Thereafter, a notice u/s 158BC was issued to him. He filed the return of income for the block period on September 28, 1998, disclosing therein an undisclosed income of a sum of Rs. 34,51,960. During the pendency of the assessment proceedings he died on September 6, 1999, Accordingly, the Assessing Officer by his letter dated November 12, 1999, proposed to treat his wife, sons and grandsons as his legal representatives. However, vide letter dated November 17, 1999, these persons informed the assessing authority that on the demise of Sri H. R. Basavaraj, the entire estate passed on to the H. R. B. Family Trust in terms of his last will and testament. Accordingly, the assessing authority proceeded to complete the assessment represented by the legal representatives, namely, the HRB Family

Trust.

2. The assessing authority after affording adequate opportunities of hearing on various dates passed an assessment order on December 30, 1999, determining the total undisclosed income in a sum of Rs. 2,66,67,510 which included the admitted undisclosed income of a sum of Rs. 34,51,960. Aggrieved by the same, the assessee preferred an appeal before the Commissioner assailing the additions made in the course of block assessment including the admitted undisclosed income. By the order dated May 10, 2002, the Commissioner confirmed some of the additions made by the assessing authority and so far as the remaining additions are concerned rejected the same. Aggrieved by the same, three appeals each were filed by the assessee and the Revenue arising out of the block assessments and one appeal each by the assessee and the Revenue were filed arising out of the regular assessment u/s 143(3). The Tribunal partly allowed the appeals of the assessee whereby some of the additions made by the assessing authority are confirmed by the appellate authority were deleted. Hence, the present appeal by the Revenue assailing the deletions made by the Tribunal and on other grounds.

3. The appeal was admitted to consider the following substantial questions of law:--

(1) Whether the income tax Appellate Tribunal (ITAT) is correct in law in deleting the undisclosed income admitted and declared for taxation in the block return filed under the provisions of section 158BC of the income tax Act, 1961 ?

(2) Whether the income tax Appellate Tribunal is correct in law in deleting the admitted undisclosed income declared in the block return when such undisclosed income is admitted by the assessee in the statements recorded under the provisions of sections 131 and 132(4) of the income tax Act, 1961, and also when such admitted income was not disputed by the assessee himself before the assessing authority at the stage of assessment ?

(3) Whether the income tax Appellate Tribunal is correct in law in deleting the admitted undisclosed income of Rs. 17.5 lakhs relating to investment in Normandy Distilleries representing cash paid by the assessee when such unaccounted investment is evident from the seized material, confirmed by the assessee in his statement on oath and offered for tax in the block return ?

(4) Whether there is evidence and material justifying the income tax Appellate Tribunal to delete the admitted undisclosed income of the sum of Rs. 17.5 lakhs relating to investment in Normandy Distilleries brought to taxation in the block assessment ?

(5) Whether the Tribunal is correct in law in confining the undisclosed income declared in the block return to the sum of Rs. 5 lakhs as against the admitted undisclosed income of Rs. 6.15 lakhs relating to unaccounted investment purchased from Smt. Fatima Bai and others ?

(6) Whether the income tax Appellate Tribunal is justified in deleting an addition of Rs. 5 lakhs representing unaccounted loan advanced by the assessee to Sri H. N. Raghavendra which fact has been voluntarily admitted by the assessee by means of letter filed before the assessing authority and has also been offered as undisclosed income for taxation in the block return ? And whether the income tax Appellate Tribunals approach is based upon material warranting such deletion ?

(7) Whether the income tax Appellate Tribunal is justified in deleting an addition of Rs. 15 lakhs representing unexplained credit voluntarily admitted by the assessee. In the letter filed before the assessing authority in the course of assessment proceedings ? And whether the Tribunal is correct in law in deleting this income on the ground that it does not constitute undisclosed income so as to be included in the block assessment ?

(8) Whether the income tax Appellate Tribunal is correct in law in deleting the undisclosed income of the sum of Rs. 18,41,159 representing the undisclosed income in respect of deposits in Vysya Bank ? And whether the Tribunals approach for deleting the addition is based on any material ?

(9) Whether, on the facts and circumstances of the case, the income tax Appellate Tribunal is justified in deleting the addition of Rs. 60 lakhs representing unexplained payments by the assessee to Sri Devaraj and Sri Bhatkal for acquiring the property when such position is evidenced from the seized material and whether the deletion so made by the Tribunal is based upon the relevant consideration and material to sustain such deletion ?

(10) Whether, on the facts and circumstances of the case, the income tax Appellate Tribunal is correct in law in deleting the addition of a sum of Rs. 39,68,357 representing unexplained cash credit on the ground that it does not represent undisclosed income so as to be subjected to taxation in the block assessment ?

(11) Whether the income tax Appellate Tribunal is correct in law in deleting the undisclosed income of a sum of Rs. 8,16,000 made in the block assessment representing the appellants benami investment in the purchase of land in the name of Sri H. M. Joshi and whether the Tribunals approach in deleting this undisclosed income is based upon material and relevant consideration to sustain the deletion ?

(12) Whether the income tax Appellate Tribunal is justified in deleting the foregoing undisclosed income brought to tax when the determination of such undisclosed income is based upon concurrent findings of the assessing authority and the first appellate authority and whether the income tax Appellate Tribunals approach in deleting the additions is based on the relevant considerations and supportable on any evidentiary material as against the seized material and other related material considered and dealt with by the assessing authority as well as the appellate authority in sustaining such addition ?

(13) Whether the income tax Appellate Tribunals approach in deleting the said undisclosed income brought to tax is vitiated by element of perversity and subjectiveness ?

(14) Whether the income tax Appellate Tribunal is justified in deleting the income of Rs. 13,51,130 brought to tax in the block assessment being the income admitted by the assessee in the return filed after the due date of filing of the return of income and also after the search conducted by the Department ?

(15) Whether the income tax Appellate Tribunal is right in holding that the capital gains in the assessee's case arising out of the sale of shares of M/s. Kurechermala Plantation Ltd., Kerala, brought to tax in the block assessment cannot be considered as undisclosed income ?

(16) Whether the income tax Appellate Tribunal's conclusion in its appellate order to the effect that the capital gains brought to tax in the assessee's case under the block assessment cannot be considered as undisclosed income is supportable in law being based on any valid reason, evidence and material when the assessing authority as well as the Appellate Commissioner have sustained the determination of the capital gains on the basis of relevant related facts, grounds and material as referred to in the respective orders ?

(17) Whether, on the facts and circumstances of the case, the Tribunal is correct in law in holding the transfer of shares to be void despite the position that the shares have been transferred during the financial year 1996-97 and when the board of directors of the company have also ratified the transfer of shares and such transfer is recorded in the registers of the company ?

(18) Whether the Tribunal is correct in law in holding that the transfer of shares has not taken place during the financial year 1996-97 on the basis of unsubstantiated contention of the assessee that the transfer was on contravention of the memorandum of understanding and that no consent has been given for the transfer of shares?

(19) Whether the Tribunal is correct in law in holding that the transfer of shares is to be treated as void as the assessee has not given his consent for the transfer of shares and whether such view is sustainable when the transfer is actually effected as evident from the ratification of the transfer by the board of directors and such transfer being recorded in the company's registers and records ?

4. Sri Indrakumar, the learned senior counsel appearing on behalf of the appellant contends that the order passed by the Tribunal is erroneous and liable to be set aside. He contends that the Tribunal committed a grave error in holding that even though the assessee has admitted to the undisclosed income, the assessee is entitled to retract his admission. The Tribunal fell in error in accepting the assessee's contention by overriding the admissions made by the assessee. That various incriminating documents have been unearthed during the search operations and as a result of which various undisclosed income have come to

light. The Tribunal fell in error in holding that no incriminating material was unearthed at the time of search and consequently granted relief to the assessee. The Tribunal has failed to consider the materials obtained during the search. He accordingly pleads that the appeal be allowed and the questions of law be answered in favour of the Revenue.

5. Sri A. Shankar, the learned counsel appearing for the respondents, contends that even though the undisclosed income was admitted by late Sri H. R. Basavaraj, the same can be allowed to be explained/redressed by the legal representatives. He contends that there can be no estoppel against the assessee. That he is entitled to contend that he is not liable to be taxed in law, even though admissions have been made. That the liability to tax is determined by law and not by admissions.

6. Heard counsel.

Regarding questions Nos. 1 to 6,12 and 13

7. These questions pertain to the deletion of the admitted undisclosed income of the assessee. Since they raise a common question of law, they are taken up for consideration together.

8. The learned counsel for the Revenue contends that the assessee has declared his undisclosed income. Having once admitted the undisclosed income it is not open for him to go behind the same. He further contends that notwithstanding the admitted amounts, the admission does not preclude the Revenue from assessing the said income.

9. On the other hand, the learned counsel for the assessee relies on Commissioner of Income Tax, Madras Vs. V. Mr. P. Firm, Muar, wherein it was held that (headnote) : "The doctrine of approbate and reprobate is only a species of estoppel; it applies only to the conduct of parties. As in the case of estoppel, it cannot operate against the provisions of a statute. If a particular income is not taxable under the income tax Act, it cannot be taxed on the basis of estoppel or any other equitable doctrine. Equity is out of place in tax law; a particular income is either exigible to tax under the taxing statute or it is not. If it is not, the income tax Officer has no power to impose tax on the said income".

10. It was further held by the Supreme Court as follows (page 74):

The decision in Amarendra Narayan Roy Vs. Commr. of Income Tax, West Bengal and Others, has no bearing on the question raised before us. There the concessional scheme tempted the assessee to disclose voluntarily all his concealed income and he agreed to pay the proper tax upon it. The agreement there related to the quantification of taxable income but in the present case what is sought to be taxed is not a taxable income. The assessee in such a case can certainly raise the plea that his income is not taxable under the Act. We, therefore, reject this plea.

11. The right of an assessee to prefer an appeal cannot be denied to him. It is a right granted under law. He is also entitled to contend that the returns submitted by him contains errors in law and, consequently, he is not exigible to tax. Under these circumstances, the authorities are duty bound under law to examine the matter and determine the question as to whether or not the assessee is liable to tax in law since the doctrine of estoppel does not arise.

12. The right of the assessee to file an appeal challenging the order of the assessing authority has not been denied to him and on the contrary the same has been entertained. Therefore, the principle of estoppel has not been held against the assessee in order to prevent him from filing an appeal.

13. Admissions have been made by the late Sri H. R. Basavaraj. It is his legal representatives, namely, the H. R. B. Family Trust who seek to retract and go behind the admissions made by late Sri H. R. Basavaraj. They contend that they are entitled to go behind the admissions made and bring it to the notice of the authority that they are not exigible to tax. We are unable to accept the said contention. The admissions made cannot be retracted by the legal representatives of the person who made the admission. In the instant case, the admissions made by the late Sri H. R. Basavaraj cannot be retracted by his legal representatives on the various grounds that are sought to be urged. In view of the admissions made, the same become binding. It also binds the legal representatives. Even though the admissions are sought to be retracted not by the person who made it but, by the legal representatives, it would still amount to an admission and would bind the legal representatives. Section 159 of the Act postulates that the legal representatives are liable to pay such sums as the deceased would be liable to pay. That any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representatives and may be continued against the legal representatives from the stage at which it stood on the date of death. Therefore, in terms of section 159 the legal representatives get into the shoes of the deceased.

14. They are bound by the admissions made. Therefore, they cannot retract the admissions made.

15. In the case of Pullangode Rubber Produce Co. Ltd. Vs. State of Kerala and Another, the Hon"ble Supreme Court held as follows (page 20):

An admission is an extremely important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect.

16. Therefore, if at all there is any admission that is sought to be retracted it can so be done by "the person who made the admission" and not by anybody else. Hence, the said judgment is aptly applicable to the case on hand.

17. The search u/s 132 of the Act was conducted on December 5, 1997. Sri H. R. Basavaraj gave his statement on February 26, 1998, and March 4, 1998. He died

on April 6, 1999. If the late Sri H. R. Basavaraj was of the very same view as that of his legal representatives with regard to the undisclosed income admitted by him, he would have retracted from his statement before his death. However, he has participated in the proceedings for almost one and half years and has even given his statement. In the statement he has volunteered that if on further scrutiny and examination, if any representation is required by him he is willing to make those representations and pay the enhanced taxes accordingly. The tenor of the statement would clearly indicate that there was no specific stand by him with regard to the quantum of the undisclosed income. Therefore, he has stated that he was willing to accept any such additions or alterations that were likely to be made by the Assessing Officer. The entire reading of the statement would also indicate that he would honour the assessments made by the Assessing Officer. Therefore, he continued to stand by the admissions made by him.

18. The legal representatives of the deceased H. R. Basavaraj is a trust and not an individual. The trust being a beneficiary can, therefore, dispute only so far as the unadmitted portions are concerned and cannot contest the admitted amounts. However, they can still contend that even though admissions have been made, they are contrary to law. That in law, there is no liability to pay tax. However, that is not the case. The retractions are sought to be made not on questions of law, but on facts. On facts, there have been admissions by the late Sri H. R. Basavaraj. Statements on fact could have been made only by the late Sri H. R. Basavaraj. It was he alone who was best suited to state on facts. The legal representatives of the deceased is a trust. It was, therefore, not possible for the trust to retract statements of fact made by the deceased Sri H. R. Basavaraj. Consequently, on facts, the legal representatives cannot retract the admissions made by late Sri H. R. Basavaraj. A retraction can be made only on an error of law and not on facts.

19. The computations have been made based on the search and seizure. They are not solely based on the admissions made. The admissions made have been considered only as a circumstance while computing the undisclosed income. Under these circumstances, the reasoning of the Tribunal is unsustainable. It is contrary to law. Therefore, we have no hesitation to hold that the Tribunal was not justified in deleting the admitted undisclosed income of the assessee. Accordingly, questions Nos. 1 to 6, 12 and 13 are answered in favour of the Revenue and against the assessee.

Regarding question No. 7

(7) Whether the income tax Appellate Tribunal is justified in deleting an addition of Rs. 15 lakhs representing unexplained credit voluntarily admitted by the assessee in the letter filed before the assessing authority in the course of assessment proceedings ? And whether the Tribunal is correct in law in deleting this income on the ground that it does not constitute undisclosed income so as to be included in the block assessment ?

20. During the course of the proceedings, the assessee was asked to furnish details to an extent Rs. 15 lakhs which were shown under the head other loans. In the reply dated November 22, 1999, the appellant admitted that the impugned sum of Rs. 15 lakhs could not be explained and hence offered the same as undisclosed income for the block period. Subsequently, before the Assessing Officer it was contended that the said sum was received by the appellant by way of demand draft/cheque and credited to the bank account. The assessee was asked to furnish confirmation letters from the loanees. However, the assessee was not able to explain the same. Since the assessee was not able to show from whom these amounts were received, they were shown in the computer generated balance-sheet as sundry sums, whereas in fact, they are merely recoveries of sums advanced or investments from the firms. The Assessing Officer came to the conclusion that the amount received by way of bank draft or cheque will not prove either the identity of the payer or the capacity to lend. Under these circumstances, the appellant could not furnish the details. Therefore, the said amount was treated as undisclosed income. The appellate authority confirmed the said finding. However, the Tribunal came to the conclusion that the addition is not based on any search material and, hence, the same cannot be sustained, merely on the basis of certain entries in the books of account. By placing reliance on the judgment of the Gujarat High Court in the case of S.R. Koshti Vs. Commissioner of Income Tax, it held that what can be considered as undisclosed income is necessarily on the basis of the material gathered during the course of the search. However, the Revenue contends that the assessee having failed to account for the said amount of Rs. 15 lakhs the deletion made by the Tribunal is erroneous.

21. The appellant has admitted that the amount of Rs. 15 lakhs could not be explained and has since offered it as undisclosed income for the block period. It is relevant to note that the undisclosed income has been admitted by the legal representatives and not by the late Sri H R. Basavaraj. Under the provisions of Chapter XIV-B, the authorities are not computing or recomputing the income as a result of the search but only to compute the undisclosed income that has been found at the time of search. The explanation offered by the assessee was not corroborated by the persons mentioned by him. Hence, the assessing authority rightly treated it as undisclosed income. Under these circumstances, we are unable to support the view of the Tribunal that the addition of Rs. 15 lakhs is as a result of the examination of the balance-sheet in the course of block assessment proceedings. When the assessee-trust has offered the undisclosed income, the Tribunal grossly fell in error in holding that the addition of Rs. 15 lakhs is as a result of the examination of the balance-sheet. The Tribunal failed to notice that the admission was not made by the late Sri H. R. Basavaraj, but the legal representatives themselves. The finding recorded by the Tribunal is wholly unjust and opposed to the material available on record. Under these circumstances, we are of the considered view that the order of the Tribunal is erroneous and liable to be set aside. Accordingly, the question is answered in



favour of the Revenue and against the assessee.

Regarding question No. 8

(8) Whether the income tax Appellate Tribunal is correct in law in deleting the undisclosed income of the sum of Rs. 18,41,159 representing the undisclosed income in respect of deposits in Vysya Bank ? And whether the Tribunal's approach for deleting the addition is based on any material ?

22. During search operations the material revealed that certain fixed deposits were made by the assessee in benami names amounting to Rs. 83 lakhs in Vysya Bank, Sadashivnagar Branch. That on the maturity of the fixed deposits, the proceeds of the fixed deposits were credited to such benami persons. It was, however, contended before the Assessing Officer that the fixed deposit of Rs. 83 lakhs made in Vysya Bank was duly reflected in the funds flow statement and that the principal amount of Rs. 18,41,159 was deposited during the financial year 1992-93 which came back in the financial year 1993-94 and during that period the assessee was having more than Rs. 1 crore as cash balance with him. That the principal amount has been invested from the said balance and, therefore, should not have been treated as income for the block period. On the other hand, the Revenue contends that the source of investment has remained unexplained and therefore has to be treated as undisclosed income.

23. The Tribunal deleted the sum of Rs. 18,41,159 because the same was out of the proceeds of the maturity of the fixed deposits and that a sum of Rs. 83 lakhs was reflected in the fund flow. So far as the amount of interest of Rs. 2,87,861 is concerned the addition was confirmed.

24. We find no error committed by the Tribunal in coming to the said conclusion. It is not the case of the Revenue that the addition is based upon any specific search material in respect of addition which were not disclosed in the books of account. Further, the assessee was in possession of Rs. 1 crore as cash balance. Therefore, an extent of Rs. 18,41,159 was clearly explainable. So far as the interest portion is concerned the addition was confirmed. Under these circumstances, the Tribunal was justified in deleting the addition of Rs. 18,41,159 while confirming the addition of the interest portion to an extent of Rs. 2,87,861. Accordingly, question No. 8 is answered in favour of the assessee and against the Revenue.

Regarding question No. 9

(9) Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is justified in deleting the addition of Rs. 60 lakhs representing unexplained payments by the assessee to Sri Devaraj and Sri Bhatkal for acquiring the property when such position is evidenced from the seized material and whether the deletion so made by the Tribunal is based upon the relevant consideration and material to sustain such deletion ?

(a) On examination of the seized material it was noticed that the assessee has

made a total payment of Rs. 2,48,00,000 to Sri Devaraj and Sri Bhatkal for the purchase of various properties under the Sai Krupa Project. Payments of Rs. 10 lakhs and Rs. 50 lakhs made on June 20, 1995, and on June 21, 1995, respectively, to these two persons was mentioned, though the receipts in respect of such payments were not contained in the seized material. The Assessing Officer came to the view that while preparing the cash flow statement, the assessee had ignored these two payments on the ground that the receipts were not available and thus took into account the total admission of Rs. 1,88,00,000 as against Rs. 2,48,00,000. Accordingly, the Assessing Officer proceeded to make an addition of Rs. 60 lakhs representing the loan amount paid to Sri Devaraj and Sri Bhatkal.

(b) The assessee contends that no payments on June 20, 1995, and June 21, 1995, aggregating Rs. 60 lakhs have been made to these parties. On considering the material, the Tribunal held that no receipts were found during the course of search in respect of the said amount of Rs. 60 lakhs. In view of the deposits of the assessee as well as the outcome of the search operations in the case of Sri Devaraj and Sri Bhatkal, wherein both of them have admitted to having received a sum of Rs. 1,88,00,000 and not a sum of Rs. 2,48,00,000, the Tribunal held that the addition made by the Assessing Officer and confirmed by the Commissioner of income tax (Appeals) is wholly on suspicion and strange to the facts on record. Accordingly, the addition of Rs. 60 lakhs on this account was, therefore, deleted by the Tribunal.

(c) The material on record would clearly show that Sri Devraj and Sri Bhatkal have admitted to have received a sum of Rs. 1,88,00,000. Further, the seized material shows that the assessee had made a total payment of Rs. 2,48,00,000. Hence, this sum of Rs. 60 lakhs has been rightly added by the Assessing Officer and confirmed in appeal. The additions made are based on the seized materials. No receipts were produced for Rs. 60 lakhs. The reasoning of the Tribunal in deleting the addition of Rs. 60 lakhs on this account is wholly unsustainable. The seized material clearly discloses the same. Therefore, we are of the considered view that the deletion made by the Tribunal, is wholly erroneous. Accordingly, question No. 9 is answered in favour of the Revenue and against the assessee.

#### Question No. 10

(10) Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is correct in law in deleting the addition of a sum of Rs. 39,68,357 representing unexplained cash credit on the ground that it does not represent undisclosed income so as to be subjected to taxation in the block assessment ?

25. In the course of assessment proceedings the Assessing Officer has observed that the assessee was a partner in M/s. HRB Syndicate along with a few others. The assessee retired wherein he received a sum of Rs. 39,68,357 representing a sum of Rs. 17,18,357 being the amount standing to his credit as on April 1,

1999, and the repayment of Rs. 25 lakhs advanced by the firm to the assessee on May 16, 1992. On considering the material the Assessing Officer considered the amount of Rs. 39,68,357 as a cash credit and brought the same to tax under the block assessment. The assessee contends that the addition was not based on material on record found during the course of search. That the said amount represents not only the outstanding balance but also that the further advance given by cheque is duly reflected in the books of account and has been confirmed by the parties. The Tribunal on considering the same deleted the addition.

26. The assessing authority held that the impugned amount of Rs. 39,68,357 stands credited as the amount received by the appellant on different dates as debited in the ledger account of M/s. HRB Trust in the seized books of account of the appellant. Hence, the assessing authority considered the same as cash credit. However, the assessing authority felt that the appellant has failed to explain the same. The appellant had claimed the undrawn profits pertaining to him after he retired from the said firm with effect from April 1, 1991. Further, the amount advanced by him for the firm from May 15, 1992, were repaid back to him in the form of cash on different dates and, hence, that is why the amount should be credited in his favour in the ledger accounts of the firm. Accordingly, the confirmation letter from one of the continuing partners that of Sri N. Chandran was also submitted. On further enquiries the Assessing Officer found that the alleged partner denied any repayment made. He along with another partner, Sri N. Natarajan, have stated that they are mere paper partners and did not invest any capital nor received any amount from the said firm at any point of time. Therefore, the onus to prove that cash repayments were genuine were on the assessee, since the person who gave the confirmation has denied the same. Hence, the Assessing Officer was of the view that the money due from the firm in the form of cash and debt dues amounting in all to Rs. 39,68,357 has remained unproved. Hence, the same was treated as unexplained cash credit u/s 68 of the Act. The appellate authority confirmed the said finding. The Tribunal was of the view that the addition cannot be sustained since there was no material during the course of search to indicate that the amount received from M/s. HRB Syndicate is not genuine and that the undisclosed income is to be computed on the basis of the material found during the search. Even otherwise, the ledger accounts clearly shows that these are the transactions with HRB Syndicate and the payment of loan is by way of a cheque. That the provision of section 68 are wholly inapplicable since it is not a case of cash credit. That the addition is purely based on suspicion and accordingly the Tribunal deleted the addition.

27. We are in complete agreement with the findings recorded by the Tribunal. The entire material relied upon by the Assessing Officer is not based on the material found during the course of search. It is a result of the examination and further enquiries made by him which cannot, therefore, form any basis at all. Moreover, the ledger accounts clearly shows that the payment is by way of a cheque drawn on a valid bank and the transactions are that of M/s. HRB Syndicate. The cash credit has been explained. Under these circumstances, to

conclude that it is an unexplained cash credit is wholly without any basis. The order passed by the Tribunal is just and proper and does not call for any interference. Accordingly, the same is answered against the Revenue and in favour of the assessee.

Regarding question No. 11

(11) Whether the income tax Appellate Tribunal is correct in law in deleting the undisclosed income of a sum of Rs. 8,16,000 made in the block assessment representing the appellants benami investment in the purchase of land in the name of Sri H. M. Joshi and whether the Tribunal's approach in deleting this undisclosed income is based upon material and relevant consideration to sustain the deletion ?

28. From the seized material the Assessing Officer noticed that the lands adjoining M/s. Gemini Distilleries were purchased in the name of Sri H. M. Joshi who was working in the group concerns of the assessee. It was contended that the impugned investments were made out of the borrowings of Rs. 6,80,000 given to him from M/s. Gemini Distilleries and the remaining balance from his own sources. The material on record would show that a sum of Rs. 6,80,000 was borrowed from Gemini Distilleries between May 20, 1993, and July 22, 1993. Even prior to the date of borrowing, Sri Joshi had already purchased four items of land on January 30, 1993, January 31, 1993, May 17, 1993, and May 18, 1993, out of his own funds at a cost of Rs. 82,000, Rs. 38,000, Rs. 15,000 and Rs. 90,000, respectively. Thereafter the remaining lands were purchased on June 11, 1993, July 26, 1993, July 26, 1993, January 10, 1994, and January 10, 1994. Under these circumstances, it is clear that a substantial extent of the lands were purchased by Mr. Joshi out of his own funds and only a part of it from the borrowings from Gemini Distilleries. The investment in the agricultural lands made by Sri H. M. Joshi from time to time out of his own funds cannot be construed to be held that these lands were systematically purchased by the assessee in the name of Sri H. M. Joshi. On considering the material, the addition was, therefore, deleted. We find no error committed in arriving at this conclusion. Accordingly, question No. 11 is answered in favour of the assessee and against the Revenue.

Regarding question No. 14

(14) Whether the income tax Appellate Tribunal is justified in deleting the income of Rs. 13,51,130 brought to tax in the block assessment being the income admitted by the assessee in the return filed after the due date of filing of the return of income and also after the search conducted by the Department ?

29. An identical question came up for consideration in I. T. A. No. 2840 of 2005 which reads as follows:

1. Whether the Tribunal is justified in law in holding that the income admitted by the appellant in the regular return for the assessment years 1993-94 to 1996-97

is to be assessed as undisclosed income for the block period under the facts and circumstances of the case ?

2. """"""..

30. This court by its order dated April 5, 2010, answered the substantial questions of law in favour of the assessee and against the Revenue. It was held that where a return has been filed, the same income cannot be considered as an undisclosed income in the block assessment. Both counsel submitted that this question of law has since been answered by the said order dated April 5, 2010, passed in I. T. A. No. 2840 of 2010. Accordingly, this question of law is answered in terms of the judgment dated April 5, 2010, passed in I. T. A. No. 2840 of 2010 and, consequently, the question of law is answered in favour of the assessee and against the Revenue.

Regarding questions Nos. 15 to 19

(15) Whether the income tax Appellate Tribunal is right in holding that the capital gains in the assessee's case arising out of the sale of shares of M/s. Kurechermala Plantation Ltd., Kerala, brought to tax in the block assessment cannot be considered as undisclosed income ?

(16) Whether the income tax Appellate Tribunal's conclusion in its appellate order to the effect that the capital gains brought to tax in the assessee's case under the block assessment cannot be considered as undisclosed income is supportable in law being based on any valid reason, evidence and material when the assessing authority as well as the Appellate Commissioner have sustained the determination of the capital gains on the basis of relevant related facts, grounds and material as referred to in the respective orders ?

(17) Whether, on the facts and in the circumstances of the case, the Tribunal is correct in law in holding the transfer of shares to be void despite the position that the shares have been transferred during the financial year 1996-97 and when the board of directors of the company have also ratified the transfer of shares and such transfer is recorded in the registers of the company ?

(18) Whether the Tribunal is correct in law in holding that the transfer of shares has not taken place during financial year 1996-97 on the basis of unsubstantiated contention of the assessee that the transfer was on contravention of the memorandum of understanding and that no consent has been given for the transfer of shares ?

(19) Whether the Tribunal is correct in law in holding that the transfer of shares is to be treated as void as the assessee has not given his consent for the transfer of shares and whether such view is sustainable when the transfer is actually effected as evident from the ratification of the transfer by the board of directors and such transfer being recorded in the company's registers and records ?

31. These questions pertain to capital gains in the assessee's case arising out of

the sale of shares of M/s. Kurechermala Plantation Ltd., Kerala, brought to tax under the block assessment etc. Identical questions of law came up for consideration before this court with reference to the very same assessee in I. T. A. No. 3016 of 2005 and connected matters which reads as follows:

1. Whether, on the facts and in the circumstances of the case, the income tax Appellate Tribunal is correct in law in holding that in as much as the entire capital gains brought to tax in the block assessment was directed to be deleted the Revenues appeal assailing the exclusion of the sum of 20 lakhs directed by the Appellate Commissioner from the computation of the capital gains, was liable to be rejected ?

2. Whether the appellate order passed by the Tribunal dismissing the Revenues appeal without deciding the issue relating to exclusion of the sum of 20 lakhs is sustainable in law ?

3. Whether, on the facts and in the circumstances of the case, that since transfer of shares was completed during the financial year 1996-97 relevant for the assessment year 1997-98 so as to be assessable in the assessee's case, the sum of Rs. 20 lakhs was not liable to be excluded from the computation of such capital gains in the block assessment ?

32. This court by its order dated April 11, 2011, answered the substantial questions of law in favour of the assessee and against the Revenue. Both counsels submitted that these questions of law have since been answered by the said order dated April 11, 2010, passed in I.T.A. No. 3016 of 2006 and connected matters. Accordingly, these questions of law are answered in terms of the judgment dated April 11, 2011, passed in I. T. A. No. 3016 of 2006 and connected matters and, consequently, questions Nos. 15 to 19 are answered in favour of the assessee and against the Revenue. For the aforesaid reasons, questions Nos. 1 to 7, 9, 12 and 13 are answered in favour of the Revenue and against the assessee. Questions Nos. 8, 10, 11 and 14 to 19 are answered in favour of the assessee and against the Revenue.