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**(2013) 05 AHC CK 0096**  
**In the Allahabad High Court**  
**Case No : Income Tax Appeal No. 50 of 2003**

Commissioner of Income Tax

APPELLANT

Vs

Dr. Ratan Kumar Singh

RESPONDENT

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**Date of Decision :** 29-05-2013

**Acts Referred:**

Income Tax Act, 1961 — Section 133A, 158BB, 158BC, 260A

**Citation :** (2014) 265 CTR 103 : (2013) 357 ITR 35

**Hon'ble Judges :** Satish Chandra, J;Rajiv Sharma, J

**Bench :** Division Bench

**Advocate :** D.D. Chopra, for the Appellant; Jaideep Narain Mathur and Mudit Agarwal, for the Respondent

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## Judgement

Satish Chandra, J.—The present appeal u/s 260A of the income tax Act, 1961, has been preferred by the Department against the judgment and order dated May 31, 2003, passed by the income tax Appellate Tribunal Lucknow, in I.T.A. No. 1401/Alld/1997, for the block period April 1, 1986, to June 26, 1996. On April 29, 2008, a co-ordinate Bench of this hon'ble court has admitted the instant appeal on the following substantial question of law:

Whether the view of the Tribunal deleting the two additions of Rs. 40,58,000 and Rs. 20,38,274 aggregating to Rs. 60,96,274 is legally justified and is in accordance to the law?

2. The brief facts of the case are that the assessee is a practising medical doctor having different sources of income such as income from agricultural activities, medical profession and pathology, etc. On September 25, 1996, a search at the residential premises of the assessee as well as a survey u/s 133A of the Act simultaneously was conducted at the business premises situated at Tulsidas Marg, Lucknow, where Charak X-Ray Clinic and blood bank are located. During the survey, register marked as "B-4" and "B-5" pertaining to the blood bank were found and seized. Another register marked as "A-23", was also seized pertaining to the Charak X-Ray. No search was conducted at the business premises of the

assessee from where these registers were impounded.

3. In the above circumstances, the Assessing Officer has made the additions u/s 158BC of the Act for the block period mentioned above, pertaining to the blood bank; and Charak X-Ray, as per the following details given herein under:

4. The additions made by the Assessing Officer were upheld by the first appellate authority. However, the Tribunal has deleted both the additions. Being aggrieved, the Department has filed the present appeal.

5. With this background, Sri D.D. Chopra, learned counsel for the Department, submits that the materials found during the course of survey is quite relevant as the survey was only a follow up action after a search. So, the registers and documents seized from the business premises during the course of survey gives the fair indication about the suppression of receipts and inflation of expenses by the assessee. He further submits that on the basis of the materials found from the business premises of the assessee, a valid estimate was made by the Assessing Officer. Regarding the lease of Charak X-Ray, he submits that the details of the business activity and agreement were not known. The profit rate of 45 per cent. was rightly estimated by the Assessing Officer.

6. Learned counsel further submits that the Tribunal has failed to take into consideration the amendment incorporated by the Finance Act, 2002, in the definition of "undisclosed income" u/s 158BC of the Act, which has enlarged the meaning of undisclosed income and, as such, now the block assessment of undisclosed income is to be based on the evidence found in search and the material or information gathered in post-search inquiries made on the basis of evidence found in search. He has drawn attention to Circular No. 8 of 2002 dated August 27, 2002, pertaining to the undisclosed income. It reads as under (see [2002] 258 ITR (St.) 13, 58):

Some appellate authorities have held that income which can be included in the block assessment is only such income, which is directly evidenced by material found during the search and does not include income which has been discovered on the basis of post-search inquiries made during the block assessment proceedings. This is contrary to the intention that any undisclosed income discovered as a result of search is to be included in the block assessment as long as such income has been detected as a result of evidence gathered during the search.

7. He also relied on the ratio laid down in the case of Pooran Mal Vs. The Director of Inspection (Investigation), New Delhi and Others, He submits that regarding X-Ray, the alleged lease agreement is just a sham document and in actual, the assessee was running X-Ray Clinic since 1993. So, the impounded register is relevant.

8. On the other hand, Sri J.N. Mathur, learned senior counsel, assisted by Sri Mudit Agarwal, learned counsel for the assessee has justified the order passed by

the Tribunal. He submits that the income from the head "Profits and gains" of the business or profession was being shown as derived from running a blood bank and also from medical practice. Earlier, the assessee had also derived income from an X-ray unit known as Charak X-Ray. The said X-ray unit was being run by the assessee himself till the assessment year 1987-88 and, therefore, till that period, the income was declared by the assessee as his own income. However, by means of the lease agreement dated April 16, 1993, the said X-ray unit was given by the assessee on lease. The assessee thereafter, declared the lease income in his return, which was accepted by the Department. He also submits that the additions were made on estimate basis, which is a question of fact and the same cannot be challenged before the hon'ble High Court u/s 260A of the income tax Act. For this purpose, he has relied on the ratio laid down in the following cases:

1. Commissioner of Income Tax Vs. Khushlal Chand Nirmal Kumar,
2. Commissioner of Income Tax Vs. S. Ajit Kumar,
3. Commissioner of Income Tax Vs. V.B. Aggarwal,
4. Commissioner of Income Tax Vs. R.M.L. Mehrotra,
5. Commissioner of Income Tax Vs. B.K. Agarwal,
6. Commissioner of Income Tax Vs. Usha Tripathi, and
7. The Commissioner of Income Tax, Central I Vs. R.M. Patel (Huf),
9. Lastly, he made a request that the appeal filed by the Department may kindly be dismissed.
10. After hearing both the parties and on a perusal of record, it appears that a search was conducted at the residential premises of the assessee and survey was conducted at the business premises. During the search, no cash, bullion, Jewellery or any material including the investment were found, which can be considered as undisclosed income. The additions were made on estimate basis after seizing the register from the business premises of the assessee.
11. Regarding the addition pertaining to the blood bank, it appears that the same was made on estimate basis. No document, register or material was found except the registers mentioned herein above. The Assessing Officer has estimated the profit and made the addition without rejecting the books of account. Hence, in this regard, there is no reason to interfere in the impugned order passed by the Tribunal. The same is confirmed.
12. Regarding the Charak X-Ray, it appears that the same was leased out and the assessee was showing the income in its return since April 16, 1993, which was accepted by the Department. So, no double addition can be made out. Therefore, in this regard also, there is no reason to interfere with the impugned order. The impugned order is hereby sustained.

13. Needless to mention that in the case of Commissioner of Income Tax Vs. S. Ajit Kumar, , it was observed that (page 155):

In the course of survey operation, the Revenue found that the assessee had paid cash over and above the amount paid by cheque. It is an indisputable fact that the cost of construction and interior decoration through M/s. Elegant Constructions, was known to the Department even before the date of search. Admittedly, no material was found during the course of search operation in respect of amount said to be paid in cash over and above the cheque payment. Hence, the Tribunal correctly come to the conclusion that the information or material found during the course of survey operation at the premises of M/s. Elegant Constructions, were not relatable to any material found during the course of search operation. Therefore, the Tribunal is right in its view that material or information found at the premises of M/s. Elegant Constructions, in the course of survey proceeding could not be a basis for making any addition in the block assessment. The block assessment provides for specific methods of computation and the Revenue is bound to follow the statutory procedures provided u/s 158BB of the Act. The Tribunal correctly followed the principles enunciated by the judgment of this court, in the case of Commissioner of Income Tax Vs. G.K. Senniappan, . The court considered the scope of sections 133A and 158BB of the Act and held as follows (page 221):

Section 158BB occurs in Chapter XIV-B, which provides for special procedure for assessment of search cases. The computation of undisclosed income of the block period is contemplated u/s 158BB. As per the section, the undisclosed income of the block period should be the aggregate of the total income of the previous years falling within the block period computed in accordance with the provisions of this Act, on the basis of the evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years.

A mere reading of the above provision clearly indicates that the sentence "such other materials or information as are available with the Assessing Officer" cannot be bisected or taken in isolation for the purpose of computation. Such other materials or information as are available with the Assessing Officer, should as per the section relatable to such evidence. The word "such" used as a prefix to the word "evidence" assumes much significance, in this provision, as it indicates only the evidence found, as a result of search or requisition of books of account or other documents, at the time of search. Any other material cannot form basis for computation of undisclosed income of the block period. Hence, we are of the view that the Commissioner as well as the Tribunal have the issue in accordance with the statutory provisions, and requires no interference. The appeal is accordingly dismissed.

Applying the above ratio, we find there is no error or legal infirmity in the order

of the Tribunal and the reasons given by the Tribunal are based on relevant materials and evidence.

14. Similarly, in the case of Commissioner of Income Tax Vs. R.M.L. Mehrotra, this hon'ble court at Allahabad observed that (page 407):

Under section 158BB of the Act, the procedure for computing the undisclosed income of the block period has been given. It provides that the undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of this Act, on the basis of evidence found as the result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence with certain other conditions. The emphasis has been given for determination of total income on the basis of evidence found as the result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence.

15. In the light of the above discussion, and by considering the totality of the facts and circumstances of the case, it appears that "undisclosed income" of the block period has to be determined on the basis of evidence found as the result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence with certain other conditions. It is not open for the Assessing Officer to compute the income on the basis of best judgment.

16. In view of the above, no substantial question of law is emerging from the impugned order passed by the Tribunal. Thus, the appeal filed by the Department has no merit and the same is liable to be dismissed. The answer to the substantial question of law is in affirmative, i.e., against the Department.

17. Thus, the appeal is dismissed. No cost.