

(2018) 04 DEL CK 0205

In the Delhi High Court

Case No : INCOME TAX APPEAL No. 169 of 2005

COMMISSIONER OF INCOME TAX

APPELLANT

Vs

M S AGGARWAL

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Income Tax Act, 1961 — Section 68, 131, 132, 132(4), 158BC, 158BB, 158B, 158BH, 158B(b), 158BFA(2), 260A
Indian Evidence Act, 1872 — Section 17, 21, 57, 114
Transfer of Property Act, 1882 — Section 122

Citation : (2018) 04 DEL CK 0205

Hon'ble Judges : SANJIV KHANNA, PRATHIBA M. SINGH

Bench : Division Bench

Advocate : Asheesh Jain, Shahrukh Ejaz, Prashant Bhargava, Salil Kapoor, Sanat Kapoor, Ananya Kapoor, Soumya Singh, Sumit Lal Chandani

Judgement

SANJIV KHANNA, J. :

1. Afore-stated appeals under Section 260-A of the Income Tax Act, 1961 (Actâ?? for short) have been preferred by the Revenue, the Commissioner

of Income Tax, Delhi (Central)-III.

2. ITA No.169/2005 challenges order of the Income Tax Appellate Tribunal (the Tribunal, for short) in IT(SS)A. No.52/Delhi/2003 dated 19th January,

2003 deleting addition of Rs.61,80,000/- as undisclosed income on merits and also on the ground that this addition could not have been made in the

Block Assessment Order for the period from 1st April, 1989 to 15th January, 2000.

3. ITA No.895/2008 arises from order of the Tribunal dated 12th October, 2007 in IT(SS)A No.400/Del/2005, whereby the Tribunal has deleted the

penalty imposed by the assessing officer under Section 158 BFA (2) of the Act on

the ground that the additions made in the Block Assessment Order were set aside by the Tribunal vide order dated 19th January, 2003.

4. By order dated 23rd May, 2005 ITA 169/2005 was admitted and the following substantial question of law was framed:-

Whether the Income Tax Appellate Tribunal was correct in law in deleting an addition of Rs.51,00,000/- being the undisclosed income although the assessee himself admitted in his statement before the Income Tax Authorities that he had paid money to buy these gifts?

5. By order dated 6th September, 2010 ITA 895/2008 was admitted and the following substantial question of law was framed for consideration, with the direction that the two ITAs would be heard together:-

Whether the ITAT was correct in law in deleting an addition of Rs.51,10,000/- being the undisclosed income although the assessee himself admitted in his statement before the Income Tax Authorities that he had paid money to buy these gifts??

6. With the consent of counsels for the parties, we had reframed the substantial question of law vide order dated 31st October, 2017 to the following effect:-

1. Whether the Income Tax Appellate Tribunal was correct in law in deleting the addition of Rs.51,00,000/- (Rupees Fifty One Lacs) as undisclosed income and accepting the case of the assessee that he has been able to establish genuineness of the gift?

2, Whether the Income Tax Appellate Tribunal was right in holding that the Assessing Officer could not have added the income of Rs.51,00,000/- as undisclosed income in the Block assessment proceedings under chapter XIV B of the Income Tax Act, 1961?

It was also clarified in the said order that the first question includes the issue whether the decision and reasoning of the tribunal is perverse or not.

Substantial questions of law primarily relate to and arise in ITA No.169/2005. Decision in ITA No.895/2008 would be consequential to the decision of

this Court in ITA No.169/2005. The substantial question of law in ITA No. 895/2008 should appropriately read as under:-

Whether ITAT was correct in law in deleting the penalty imposed by the Assessing Officer under section 158 BFA(2) of the Act

7. Search and seizure operations under Section 132 of the Act were conducted on

25th November, 1999 in the case of BSL Group and Mr. M.S.

Aggarwal, who has been hereinafter referred to the respondent/ assessee.

8. During the course of search, several incriminating documents and material were found and seized. The respondent /assessee was carrying on

benami business in the name of M/s. Universal Enterprises, M/s. Vishal Vyapar, M/s. Kumar Traders, M/s. Nutan Enterprises, M/s. Krishna Traders

and M/s. Evergreen Corporation, which were not accounted for and reflected in the books of accounts. These firms were trading in acrylic sheets,

off-cuts and scrap. As per the Revenue on the basis of the papers and documents found during search, these benami entities belonging to the

respondent/assessee had unaccounted for turn-over of over Rs.26,35,25,144/-.

9. Respondent /assessee in his statement recorded on oath under Section 132(4) of the Act on 25th November, 1999 admitted having procured, in the

current year, gifts of Rs.50,00,000/- and Rs.10,00,000/- from Mr. Kamlapati Singhania, resident of Kamla Tower, Kanpur, U.P in his name and in the

name of M/s. Gupta & Sons (HUF). These gifts were arranged by the respondent/ assessee's Chartered Accountant, Mr. V.K Goel of M/s. V.K.

Goel and Co., to whom the respondent/assessee had paid Rs.60,00,000/- in cash. Mr. V.K Goel was also paid 3% commission for arranging the gift.

Respondent/assessee confessed that he had never met Mr. Kamlapati Singhania, an industrialist based in Kanpur and Chairman of J.K. Synthetic and

J.K. Cement. The respondent/assessee or his family members did not know Mr. Kamlapati Singhania personally. Respondent/assessee knew of no

reason why Mr. Kamlapati Singhania had given him and his HUF gifts of Rs. 50,00,000/- and Rs.10,00,000/-, respectively. This was the only gift

which the respondent/assessee had received in the last 10 years. Respondent/ assessee himself had not given gift during the last 10 years.

Respondent/assessee in his subsequent statement recorded under Section 131 of the Act on 6th January, 2000 had again accepted and admitted that

the gifts were bogus and had offered the same to be taxed. For clarity, we have subsequently reproduced entirely or relevant portions of the

statements on oath made by the respondent/assessee on 25th November, 1999, 29th December, 1999 and 6th January, 2000.

10. Pursuant to notice under Section 158 BC dated 20th November, 2001, the respondent assessee filed block return for the block period on 4th

January, 2002 accepting and declaring undisclosed income of Rs.86,82,110/.

11. During the course of the block assessment proceedings, the respondent/ assessee vide letter dated 13th March, 2002 retracted his admission on

bogus gifts, asserting that the gift of Rs.50,00,000/- given to him by Mr. Rama Pati Singhania was genuine and not procured. The gifts were given by

way of two cheques dated 8th May, 1999 and 12th May, 1999 of Rs.25,00,000/- each, drawn on Hong Kong & Shanghai Banking Corporation

Limited. Mr. Rama Pati Singhania, who was a regular assessee with the Income Tax Department, Kanpur, had sold his residential flat at Bombay for

Rs.2,75,00,000/- for which he had obtained clearance from the Income Tax Department. Mr. Rama Pati Singhania had duly disclosed the gift in his

assessment proceedings. Admissions recorded on 25th November, 1999 were dictated confession, extracted and feigned as the respondent/assessee

wanted to be free and leave his residence to attend a family function. His signatures were taken wherever the search party felt necessary.

Respondent/assessee it was stated was ailing, and subsequently on medical advice was admitted to a nursing home and discharged on 3rd December,

1999.

12. The assessing officer rejected the volte face after referring to the statement of the respondent/assessee dated 25th November, 1999 under Section

132 (4) of the Act, admitting that the gifts were sham and subterfuge. He rejected the contention that the confession was extorted under coercion,

pressure and duress observing that the retraction and explanation justifying the gift was given for the first time in March, 2002. Respondent/assessee

in his subsequent statement under Section 131 of the Act recorded in the presence of his counsel on 6th January, 2000, unwilling go into details and

justify the alleged gifts to himself and the HUF had voluntarily offered the gift amounts for taxation. Thus, in January, 2000, 40 days post the search,

the respondent/assessee had again confessed and accepted that the gifts were bogus and should be considered as undisclosed income.

13. The assessing officer vide Block Assessment Order dated 27th March, 2002 made an addition of Rs.61,80,000/- treating gifts of Rs.50,00,000/-

and Rs.10,00,000/- in favour of the respondent /assessee and M/s.Gupta and Sons (HUF), respectively, as bogus and undisclosed income.

Rs.1,80,000/- statedly paid as commission to arrange the gifts was added to

treat Rs.61,80,000/- as undisclosed income.

14. Block assessment order refers to incriminating documents found and seized during the course of search and observed that the respondent

/assessee had unaccounted business turnover of Rs.26,35,25,144/- from the six benami concerns, consisting of undisclosed sales recorded in bank

accounts of Rs.18,80,71,883/- and cash sales of Rs.7,54,53,311/- recorded in seized Annexures A-40, 42 and 46. The assessing officer applying net

profit rate of 5%, had estimated undisclosed income from the said turnover at Rs.1,31,76,257/-. This computation it was observed would match the

sum total of undisclosed income declared by the respondent/assessee of Rs.82,82,110/-, arranged gift of Rs.50,00,000/- in the name of the respondent

/assessee, arranged gift of Rs.10,00,000/- in favour of M/s. Gupta & Sons (HUF) and the commission of Rs.1,81,000/- for arranging the gifts.

15. The Commissioner of Income Tax (Appeals) affirmed the additions made, observing that the respondent /assessee had voluntarily offered the gifts

for taxation during the course of search. There was no coercion. The second statement was recorded 40 days after the search in the presence of his

counsel. There was corroborative evidence that the said gifts, though paid by cheques, were sham and arranged for as search party had found

documents that the respondent/assessee was doing business through benami concerns, which had undisclosed sales turnover of Rs. 26,35,25,144/-,

including sales through bank accounts of Rs. 18,80,71,883/-. Respondent/assessee with this unaccounted turnover could have bought the gifts as was

accepted by him on two occasions. Interestingly, the respondent/assessee to justify the gifts had stated that the gifts ""may"" have been made because

of assistance given by his forefather to the forefather of the donor. Submission was rejected as hypothetical as the respondent/assessee had used the

word ""may"". Further, it was unlikely that Mr. Rama Pati Singhania would have given a gift to the respondent/assessee, whom he had never met. The

respondent/assessee in the first statement did not even know the correct name the donor. If the respondent/assessee had indeed received the gift of

the high amount he would have known the name of the donor.

16. The Tribunal in the impugned order dated 19th January, 2003 has deleted the entire addition of Rs. 61,80,000/- including additions made on account

of gift of Rs.50,00,000/-. In paragraph 28 of the impugned order the Tribunal

records that three questions had arisen for consideration. The first was whether the addition of Rs. 61,80,000/- on account of the gifts and the commission could have been made in the block assessment order, being undisclosed income as defined under Section 158BB of the Act. The second question was whether the admission made by the assessee that the gifts were arranged and an equivalent amount had been paid in cash would constitute conclusive and final evidence against the assessee; and thirdly, if the second question was answered in favour of the respondent/assessee, then whether the respondent/assessee had succeeded in disproving the admission and establishing the genuineness of the gifts.

17. On the first question, the tribunal had held as under:-

29. The first issue as indicated above concerns the scope and ambit of undisclosed income as contemplated under Chapter XIV-B of the Income-tax Act. Chapter XIV-B consisting of sections 158B to section 158BH was introduced by the Finance Act, 1995 with effect from 1.7.1995 to make procedure of assessment of search cases more effective. The chapter is titled ? Special procedure for assessment of search cases.? The scheme of block assessment enacted under this chapter laying down procedure for block assessment proceedings is intended by the legislature to operate simultaneously with the normal and regular scheme of assessment indicated under Chapter XIV of the Income-tax Act. Both the tax schemes are independent of each other and they are not mutually exclusive. Block assessment under Chapter XIV-B is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to regular assessment already made or to be made. Clause (b) of section 158B contains inclusive definition of undisclosed income and reads as under: ?(b) ?undisclosed income? includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act { or any expense, deduction or allowance claimed under this Act which is found to be false.}.

If we analyse the aforesaid definition, it provides that undisclosed income

includes-

- (i) Any money, bullion, jewellery or other valuable article or thing or,
- (ii) any income based on any entry in the books of account or other documents or transactions;
- (iii) such money, bullion, jewellery, valuable article, thing, entry in the books of account or other documents or transactions represents wholly or partly income or property;
- (iv) which has not been or would not have been disclosed for the purposes of this act.

From the aforesaid analysis of the definition, it clearly emerges that if any asset or any income as recorded in the books or documents has been

disclosed or intended to be disclosed to the Income-tax authorities, this would be outside the pale of undisclosed income as defined under clause (b) as

above.

30. We may next refer to section 158BB which provides for computation of undisclosed income or block period. The section expressly and

unequivocally provides that the undisclosed income has to be computed on the basis of evidence found as a result of search... and such other materials

or information as are available with the AO and relating to such evidence. The expression relating to such evidence has been inserted by the

Finance Act, 2002 retrospectively w.e.f. 1.7.1995. A bare reading of this provision would indicate that undisclosed income has to be computed on the

basis of evidence and material found during search. Any material or evidence available to the Assessing Officer which is not related to the search

would not form the basis for computation of undisclosed income.

18. On the second question, the tribunal had held as under:-

31. The issue regarding the jurisdiction of the Assessing Officer to consider the genuineness of the gift transaction and treat such gifts as undisclosed

income would be required to be considered in the backdrop of the aforesaid legal position. The facts are undisputed that no evidence has been found

during the course of search which may impeach the genuineness of the gifts received by the assessee and his HUF from Shri Rampathi Singhania.

No documents or papers have been found during search proving that the gifts are non-genuine. The main stay of the Department's case is the

statement of the assessee recorded on 25.11.99 and 6.1.2000 admitting the gifts to be nongenuine. First statement dated 25.11.99 is placed in the paper book filed by the Id. Sr. DR at pages 4 to 21.

A part of the statement from pages 1 to 10 upto Question No. 19 and Answer thereto has apparently been recorded prior to the commencement of search and is a preliminary statement. Subsequent portion of the statement has apparently been recorded after the commencement of the search

proceeding inasmuch as prior to recording Question No. 20, the authorized officer has recorded the title statement taken during the course of search.

In fact, the Assessing Officer has referred to the statement as preliminary statement at page 5 of the block assessment order. From these facts, it is

amply evident that statement of the assessee admitting the gifts to be non-genuine has been recorded before the commencement of the search and

cannot conceivably be construed as a statement u/s 132(4) of the Income-tax Act. The decision of Allahabad High Court in R.R. Gavit Vs. Smt. Sher

Banu Hasan Daya 161 ITR 793 support the view taken by us. The statement of admission dated 25.11.99, which is the sole basis adopted by the

Assessing Officer for bringing the gifts within the purview of undisclosed income u/s 158BB for the purposes of block assessment cannot thus be

treated as evidence found as a result of search. We are, therefore, of the view that the genuineness of the gifts cannot possibly be treated as covered

within the limited scope and purview of undisclosed income under the block assessment. On this legal ground alone, the impugned addition of

undisclosed income treating the gifts as non-genuine is held to be outside the purview of block assessment and liable to be deleted.

19. Turing to the third question, the tribunal observed as under:-

32. We may next consider the facts concerning the gifts received by the assessee and his HUF in the context of definition clause, namely, section

158B(b) which defines the undisclosed income as reproduced above. The important limb of the definition which constitute the basic essence is

?income or property which has not been or would not have been disclosed for the purpose of the act.? In the case of L.R. Gupta Vs. Union of India

194 ITR 32, the Delhi High Court while construing the expression undisclosed income as used u/s 132 (1) has held that the income which is hidden

from the Department is undisclosed income. In the instant case before us, gifts

have been received by the assessee and his HUF by account payees cheques which have been duly deposited into the bank account as reflected at pages 109 and 111 of the first paper book filed by the assessee. From these bank accounts, the assessee and his HUF have issued cheques for making advances to the sister concerns, namely, Haryana Acrylic company Pvt. Ltd. and Mono Acrylic Manufacturing Co. Pvt.Ltd. Both these companies are existing assesses and amounts advanced by the assessee and his HUF have been duly credited in the books of account of the said companies. Copies of bank accounts of these two companies as well as copies of accounts of the assessee in the books of the said companies have been duly furnished during the course of assessment proceedings before the Assessing Officer and are placed in the assessee's first paper book at pages 112 to 125. Assessee and his family members are promoters, directors and shareholders in these companies and the amounts advanced by the assessee out of the gifts have been duly entered in their books of account and accepted in their tax assessments. Similarly with regard to source of the gift amount, we find that Shri Rampati Singhania is a leading industrialist belonging to Juggi Lal Kamalpath Singhania family of Kanpur. The donor has sold his property in Bombay for a sum of Rs. 2.75 crores and has received clearance from Income-tax Department in Form No. 34A and 37I for the sale of the property. Further Income-tax as well as Wealth-tax assessment of the donor for the assessment year 2000-2001, during which the gifts in question have been made have been completed after scrutiny in Central Circle, Kanpur by the Officer of the rank of the Joint Commissioner of Income-tax. All such documents were provided to the Assessing Officer during the block assessment proceeding and also form part of the paper book filed before us. Ld. Counsel has drawn our attention to gift deed dated 20th June, 1999 as well as 30th May, 1999 which were executed by the donor as well as the donee and produced during the assessment proceedings before the Assessing Officer. Shri Rampati Singhania has sworn affidavit dated 13.5.1999 and 20.6.1999 much before the search and these affidavits have been filed during the block assessment proceedings and are placed in the first paper book filed before us. From these facts, it is amply evident that the gift transactions are duly disclosed and accounted for in the books of account of the donor as well as the donees. These

transactions cannot be considered as secret, hidden or concealed. The surrounding facts and circumstances like routing the transactions through regular banking channels by the donor and the donees and accounting for all the amounts in their respective books of account and further gifts being evidenced by gift deeds as well as the affidavits of the donor provided ample evidence that the transactions are disclosed and accounted for and lie outside the pale of the definition of undisclosed income as contained u/s 158B(b). We feel that the gifts in question have been duly disclosed and reflected in the books of account as well as tax returns of the donor and the donees. Such transactions would clearly fall outside the purview of block assessment. On this ground also, the impugned addition as undisclosed income in the block assessment is liable to be deleted.

33. Thus, the first issue regarding the applicability of section 158B(b) to the gifts in question is decided in favour of the assessee and we hold that the issue of genuineness of the gifts lies beyond the purview of the block assessment.

34. The second and third issue as formulated by us above, arising from the present appeal, are basically concerned with the genuineness of the gifts in question. Without prejudice to our finding that the issue of genuineness of gifts lies outside the purview of block assessment as envisaged under

Chapter XIV-B, we proceed to consider this aspect of the controversy also. The sheet anchor of Department case is the admission made by the

assessee that the gifts are non-genuine and have been arranged through a Chartered Accountant on payment of commission@ 3% Ld. Counsel was

at pains in emphasising that the statement has been procured by the assessee under coercion and pressure and is contrary to CBDT's instruction

issued in march, 2003 pursuant to Kelkar Committee Report wherein the Committee has acknowledged the prevalence of the practice amongst the

search parties to obtain forced confessions of undisclosed income from the assessees. The proposition is well established that admission made by an

assessee during search operations constitute substantive evidence in view of sections 17 and 21 of the Evidence Act. However, such admission

cannot be considered as conclusive evidence against the assessee. It has been held by the Apex Court in Pullangode Rubber Produce Co. Vs. State

of Kerala 91

ITR 18, relied upon by the Id. counsel, an admission is an extremely important

piece of evidence but it cannot be said that it is conclusive. It is open to the assessee who made the admission to show that it is correct.

35. Reference may further be made to the decision of Delhi High Court in *S. Arjun Singh Vs. CWT* 175 ITR 91, cited by the Id. Counsel where a

similar proposition has been laid down. The Punjab & Haryana High Court in *Kishan Lal's* case 88 ITR 293 have taken the same view and

observed, it is an established principle of law that a party is entitled to show and prove that admission made by him is in fact not correct and true.

Such admission raises a presumption against the persons making the admission but such presumption is rebuttable.

36. A very heavy onus lay upon the assessee to refute and controvert the admission made at the time of search operation. In the instant case before

us, documents and evidence filed by the assessee during the course of assessment proceedings before the Assessing Officer to which reference has

been made hereinbefore by us amply established that the gifts in question have been made by Shri Rampati Singhania, a leading industrialist of Kanpur

belonging to J.K. Group and such gifts are evidenced by gift deeds duly executed before the date of the search. Source of the gift, creditworthiness

of the donor as well as genuineness of the transactions have been established by filing the copies of the bank account of the donor showing credit of

sale proceeds of the property as duly reflected in the Income-tax and Wealth tax assessment of the donor. With regard to the mass of evidence

filed by the assessee before the Assessing Officer, the revenue authorities have not been able to assail or refute such evidence while treating the

impugned gifts as non-genuine. Even before us, the Id. Sr. DR when called upon to comment upon such evidence fairly conceded that Income-tax

and Wealth tax assessment in the case of Shri Rampati Singhania donor have been made by the Joint Commissioner of Income-tax, Central Circle

after the search operations accepting the return version.

37. With regard to the addition of Rs. 1,80,000/- on account of alleged commission paid by the assessee for arranging the gifts, we have not been told

as to whom the alleged commission has been paid. No documents have been found during search operations to the effect that any intermediary was

involved in these transactions. Neither any enquiry has been made by the revenue authorities regarding the identity of the alleged intermediary who

is reportedly a Chartered Accountant. The addition in the block assessment has apparently been made merely on the basis of preliminary statement

dated 25.11.1999 and 6.1.2000 which have been disproved by the assessee by filing substantial documentary evidence including gift deeds, copies of

bank accounts. Income-tax and Wealth-tax orders of the donor as well as sworn affidavit of the donor. We feel that the assessee has discharged the

onus to disprove the admission regarding genuineness of the gift transactions.

38. At this stage, we may refer to the contention of the Id. Sr.DR that there was no occasion or relationship between the donor and the donee for

making the gifts in the instant case. In our considered view genuineness of the gift transaction has to be considered on the basis of attendant facts

and circumstance of the case like identity of the donor, financial capacity and factum of the transaction. Even though relationship between the donor

and the donees as well as the occasion for the gift may be relevant circumstances for adjudication of the issue of genuineness of the transaction yet

no inference can be drawn merely on the basis of surmises and conjectures. Relationship or occasion for the gift are not in any case essential

elements as engrained in the definition of gift under the Gift Tax Act. The view taken by us is amply reinforced by the decision of Chandigarh Bench

of the Tribunal in the case of R.K. Syal Vs. ACIT 66 TTJ 656 cited by the Id. Counsel . In this decision, the Chandigarh Bench held as under:

The gifts made cannot be rejected merely on the ground that there was no occasion or relationship for making the same. The element close

relationship or occasion for making gift do not flow from the definition of gift as given in Sec.2 (Xii) of the Gift Tax Act. The conditions laid down

there are there should be transfer by one person to another of any existing movable or immovable property, the transfer should be voluntary and

should be made without consideration of any money.?

39. At this stage, we may also refer to the observations of the Delhi High Court in the case of CIT Vs. Sunita Vacchani 184 ITR 121 as refereed by

the Id. Counsel. The Honâ??ble high Court observed, ?The Tribunal has examined the evidence which was available on the record and has arrived

at the aforesaid findings. Even though it may be surprising as to how large sums of money are received by a family in India by way of gifts from

strangers from abroad, unless there is something more tangible than suspicion, it

will be difficult to regard the moneys received in India from abroad as money representing the income of the assessee in India. On the facts as existing on the records, we are unable to come to the conclusion that any question of law arises. The petition is dismissed.?

40. Having regard to the aforesaid discussions, we feel that the assessee has succeeded in disapproving the admission regarding the genuineness of transaction and adequate evidence has been brought on record to establish the genuineness of the gifts.

Genuineness of the gift of Rs.50,00,000/- made to the respondent/assessee.

20. Before we examine the legal issue relating to difference between regular and block assessment, we would like to examine the aspect of

genuineness of the gift, which we would hold is a mixed question of law and fact. Onus to prove that the gifts were genuine would be on the

respondent/assessee, the facts being in the exclusive and personal knowledge of the respondent/assessee. If we uphold findings of the Tribunal that

the gift was genuine, the legal question whether addition should have been made as undisclosed income in block assessment or as a disallowance in

the regular assessment need not be decided. Finding on genuineness of the gift would also form the foundation of facts to answer the issue of regular

and block assessment.

21. We would begin by reproducing for clarity entire statement of the respondent/assessee recorded on oath under Section 132(4) of the Act on 25th

November, 1999, which is as under:-

Statement of Shri Mahender Singh Aggarwal s/o Sh. Mangat Ram Aggarwal aged 54 years R/0 2/34 Roop Nagar Delhi recorded on oath during the

search and seizure operation u/s 132 of the Income-tax Act, 1961 on 25.11.99 at 2/34 Roop Nagar, Delhi.

Sd/-25.11.99 Sd/- 25.11.99

(MS Aggarwal) Pawan K. Kumar IRS

Oath Taken Dy. Director of Income tax

(Inv) Unit-II,

E/2, ARA Centre Jandewalan Extn.,

New Delhi 110055

Oath Administered

Q.1 Please identify yourself

Ans. I am Mahender Singh Aggarwal s/o Sh. Mangat

Ram Aggarwal aged 54 years R/o 2/34 Roop Nagar, Delhi.

Q.2 Please give the details of your bank lockers in your name or in the name of your family members? Ans. My wife Smt. Prabha Aggarwal has a

locker in Indian Overseas Bank, Model Town, Delhi. I will be giving the key of locker. Second locker is in name of Sanjay Aggarwal and Monica

Aggarwal in Punjab National Bank, Subzi Mandi, Delhi locker No. 933.

Q.3 Please give details of your and yours family members' immovable properties.

Ans. We have following immovable properties:

1. House at 2/34, Roop

Nagar, Delhi Ancestral property

2. Godown at Khasra No. 53. In my name

Siraspur,

Delhi

3. Factory 28 Delhi Acrylic

Rajasthan

Udyog Nagar, Delhi

4. Factory at In name of Haryana Acrylic

Vill.- Bad

Malik

Sonepat, Haryana.

5. Factory at Village In name of Delhi Acrylic

Dhaturi Distt.

Sonepat ,

Haryana

6. Land at Near Vill In my name

Bhondsi

Gurgaon

(One Acre)

7. Plot (200 Sq. Yards) in In my name

Narela Housing Scheme

There is not other immovable property my name or in name of my family members or our business concerns.

Q.4. Have you or your family members received and gift during the last ten years?

Ans. I have received a gift of Rs. 50,00,000/- in Indian rupees from Sh. Kamla Pati Singhania R/o.

Kamla Tower, Kanpur UP in this year.

Q.5 How do you know Sh. Kamlapati Singhania?

Ans. I know him through our chartered accountant Sh. V.K. Goyal of V.K. Goyal & Co. (CA) â€" Sixth Floor Amba Deep Building, New Delhi.

Q.6 What is the source of livelihood of Sh. Kamlapati Singhania?

Ans. He is industrialist of J.K. Group of companies based in Kanpur and he is the chairman of J.K.

Synthetic and J.K. Cement.

Q.7 Have you ever met Sh. Kamlapati Singhania?

Ans. No, never

Q.8 Have you given any gift to any person during the last ten years?

Ans. No, never

Q.9 Have you or your family members given any gift to Sh. Kamlapati Singhania or his family members?

Ans. No, never.

Q.10. Can you give any reason which prompted Sh. Kamlapati Singhania to give this gift to you?

Ans. I don't know the reason.

Q.11 Do you want us to accept that Sh. Kamlapati Singhania has given you a gift of Rs. 50,00,000/- without knowing you, without any relationship and

without any basis. Please comment. I would like to explain to you that if you give a false statement you are liable to be prosecuted.

Ans. This gift was arranged by my CA Sh. V.K. Goyal for 3% commission. Besides this I have given Rs. 50,00,000/- in case to Sh. V.K. Goyal.

Q.12 Do you maintain any books of accounts? If yes, please tell where are the same lying. Ans. Books of accounts for my business concern are

maintained. All the books of my companies/business concerns are lying in office located here at ground floor 2/34, Roop Nagar, Delhi. Following are

the business concerns.

1.Delhi Acrylic Manufacturing Director: (i) Sanjay Aggarwal

Co. Pvt. Ltd., 28, Rajasthan, (ii)Prabha Aggarwal

Udyog Nagar

2.Haryana Acrylic Director: (i) Sanjay Aggarwal

Manufacturing Co. Pvt. Ltd. (ii)Prabha Aggarwal

20th Mile Jatheri Road, Vill. (3)Bhupender Nath R/o.C-186, Pushpanjali

Bralmalik Sonapat, Haryana Pushpanjali Enclave

3.Mono Acrylic Manufacturing Director: (1)Manish Aggarwal

Co. Pvt. Ltd 53, Gurudwara (2)Sanjay Aggarwal

Road, Siraspur, Delhi

4.M.S. Marble & Granite Co. Director:

Pvt. Ltd., 28, Rajasthan Udyog (1)S.S. Garg,

Nagar, Delhi Manager

(2)Bhupender Nath

5.Acry Monomour Pvt. Ltd. Director:

Vill. Dhaturi, Sonapat, Haryana (1) Sanjay Aggarwal

(2) ManishAggarwal

Q13 What are your source of income?

Ans. Investment in shares of the companies mentioned in answer to the Question no. 12 is the only source of my income.

Q.14 Give full details of your family members, age, occupation residence and their source of income. Also state their income tax particulars, if any.

M.S. Aggarwal (myself), Prabha Aggarwal, Sanjay Aggarwal and Manish Aggarwal are assessed to tax.

Other income tax particulars I will given later on.

Q.15. Please give details of bank accounts, FDR, share investment, and other investments including investment in moveable properties in your name

and in name of your family members? Ans. Details of Bank account is as under:

FDRs - There is no FDR in my name or in the name of my family members or business concerns.

Investment in shares - Neither my family member nor me have ever invested in shares of any company except our family companies . We have

following vehicles:-

There is no other investment in my name or in the name of my family member.

Q. 16. How much cash jewellery and other valuables are lying in this premises ?

Ans. About Rs.4,00,000/- in cash and jewellery of about 70 tolas is lying in this premises.

Q. 17 Do you know M/s. Loe Ram Munshi Ram

Shroff ?

Ans. Yes, I know . it is business concern of my brother Mr.Munshi Ram and My grandfather Sh. Leo Ram (Late) . The address of the firm is

Baratooti Chowk ,Sadar Bazar , Delhi (ph: 7771630). My brother Sh. Munshi Ram resides at 2/80 Roop Nagar, Delhi

Q. 18 Do you, your family members have any bank account outside India?

Ans. No. There is no foreign bank account in my name or in name of my family members . No bank account outside India is being maintained by me

or my family members

Q. 19 Whether you have received or borrowed any cash / jewellery from anybody for business purpose or otherwise or kept any valuables , money or

contains as amanat , which is not recorded in the regular books of account. Please give the details and evidence thereof? Ans. No cash belonging to

any other person or cash received or borrowed from anybody is lying in this premise. However some jewellery belonging to Mrs. Shashi w/o Anil

Aggarwal is lying here in this premises.

Sd/-

25.11.1999

Statement taken during the course of search

Q.20 During the course of search we have found two diaries marked Neel Gagan Note book which contains detailed account of receipt and payment

during the F.Y. 1997-98 and 1998-99 . Please explain the nature of transaction.

Ans. These transaction relate to M/s. Universal Enterprises which run and controlled by me through Sh. Vipin Bansal R/o South Exten. (the exact no, I will furnish later on)

The nature and detail of transactions are nothing but import of acrylic sheet by this entity which are being sold in open market on cash basis. The purchase are being made through Indian Bank, Pahar Ganj Branch in which deposits are made in cash and consequently the sale are made on cash basis and rotated through this bank.

Q. 21 Please explain where are the books of accounts for M/s. Universal Enterprises for the last three years and current year.

Ans. No books of account are maintained for this concern and the stock lying at Siraspur (most of the stock) belong to M/s Universal Enterprises and some of the stock relates to M/s. Mono Acrylic Pvt. Ltd. (MAMPL) and M/s. Haryana Accrylics Manufacturing Co. Pvt. Ltd. (HAMCPL)

Q.22 What is the present purchase price of imported acrylics Sheet and sale price in domestic market for the same.

Ans. It varies from 300 to 500 dollars / ton depending upon thickness , size and colour of sheet for import. Sale price of sheet varies from Rs. 30 to 50 per Kg. in domestic market depending again on the same parameters.

Q.23 Please explain as to what are expenses incurred on the items imported before being sold in market and consequent profit margin on sale of items.

Ans. There is about 85% of the CIF incurred expenses which include 73% as custom duty and 12% misc. expenses. This leaves 15% margin of profit on sale. The break this as follows:

CIF / Kg. Rs.14

Duty / Kg. Rs.10

Other Expenses (Transportation etc.) Rs.2

Rs.26

Balance Rs.4/- per kg. is profit

Q.24 Whether same processing are done on the material imported or the same is directly sold.

Ans. There is no processing operation done on the material imported. The imported goods are sold after sorting & cutting to saleable size whose cost

has already included in other expenses mentioned above.

Q. 25 What is the total turnover of M/s. Universal Enterprises per year during the last three years.

Ans. This entity done business only during about last two years and the average turnover per year is about Rs. 1.5 crores per year.

Q. 26 Please explain whether any sales tax or income tax has been paid on the sale and income earned through this entity.

Ans. The sale of imported acrylic sheet attract 4% sales tax and since no books of regular accounts are maintained hence no income tax return for

the income earned through this entity has been declared in my I.

Tax return. Also no sales tax has been deposited.

However, a memorandum record in shape of diary is maintained which has been found during the search. Q. 27 I am showing you small diaries

marked as Annexure A-40 to A-46 wherein C1, C-2 , C3 to C-14 have been written alongwith the names to whom payments have been made .

Please explain the nature of these codes.

Ans. These codes relate to the various persons handling cash in various places of the company. For example C-3 relates to Mr. Umesh , the person

handling cash affairs in Siraspur, C-10 is the person namely Mr. Mishra who is handles cash at 2/34 Roop Nagar ,Delhi C-5 â?" relates to Vijay Gupta

at 28, Rajasthani Udyog

Nagar, C-8 relates to Jarnail Singh who handles cash at Q. 28 I am showing you key No. 323 Godrej found during the course of search from the

almirah of your bed room. Please give the name of the bank and locker to which it belongs.

Ans. This key may belong to a locker I had in Indian Overseas Bank , Roop Nagar, Delhi in my previous wife name i.e., Pushpa AGgarwal which is

currently in operative after the death of my wife for the last seven years.

Q.29 Please confirm whether you or your family member have a bank locker in 10B, Roop Nagar, Delhi.

Ans. To the best of my knowledge, no locker except locker in name of Late Smt. Pushpa Aggarwal, is in 10B, Roop Nagar, Delhi Probably we have

surrendered the locker and the key could have not been found at that time.

Q.30 Please confirm the name of the donor who has given you a gift of Rs.

50,00,000/- which has been stated to have been accepted as per statement given on 25.11.1999 morning.

Ans. It may be Rama Pati Singhania of JK Group who is director in Companies belonging to JK Group.

Q.31 Was any gift deed executed? If yes, please produce the same gift deed as no gift deed has been found during the search of your residence.

Ans. The gift deed was delivered to me by Mr. V.K. Goyal after 2 to 3 months of payment of gift. I will produce the gift deed in 2 or 3 days.

Q.32 Please confirm whether any gift deed was signed when the gift was made or it is still to be done.

Ans. I remember have received the gift deed from Mr. V.K.Goyal after payment of Rs.50,00,000/- and 3% commission in cash.

Q.33 Please furnish the latest address of Sh. Vipin Bansal and also clarify whether he is employee in your company / in any other firm owned and controlled by you or your family members.

Ans. He is independently handling the affairs of M/s. Universal Enterprises on my behalf. He is signatory in the bank (India Bank Pahar Ganj and

Sales Tax Authority. His latest address is not known to me, His previous phone No. was 4638999 latest telephone is also not known to me.

Q.34 Please confirm how much initial investment was made in M/s. Universal Enterprises. Also state by whom this investment was made.

Ans. The initial investment of Rs. 10,00,000/- was made by me.

Q. 35 Please state the mode and source of above investment

Ans. It was cash, generated through unaccounted transactions of M/s. Delhi Acrylic Manufacturing Co. Pvt. Ltd. or Mono Acrylic, invested in Universal enterprises.

Q. 36 During the course of search it was informed by the central room that you have purchased a property in village Dhaturi. Please state the total consideration paid and also where are the receipts of cash for the same.

Ans. The land was purchased for Rs.48.77 lacs. The land measured approx. 5 acres. Rs.38.77 lacs was paid in cash and the documents was

registered for a sale consideration of Rs.10,00,000/- only. No receipt for cash was taken as we has taken the possession by the time the cash payment was made.

Q. 37 Please explain the source of cash of Rs.38.77 lacs paid for the land at Dhaturi.

Ans. It was from the unaccounted trading transaction of our group concerns.

Q. 38 During the course of search, papers, pertaining the purchase of one half portion of property No. 2/34 Roop Nagar from your uncle have been

found. On a prima facie examination of the documents it appears that the property is undervalued . Please comment. Ans. Total consideration paid

was Rs. 40 lacs out of which approx. 28 lacs was paid in cash which came from unaccounted trading transactions of our group concerns, namely

Delhi Acrylic Manufacturing Co. Pvt. Ltd. and Mono Acrylic.

Q. 39 During the course of search the papers pertaining to purchase of properties at various places were found. Please given details of properties

owned , mentioning the sale consideration . source and mode of payment ?

Ans. The details of properties owned, sale consideration, source and mode of payment is as under

:

Property Total Sale Source & Mode consideration paid of payment in cash from unaccounted money

Burari Rs.3,00,000 Unaccounted transaction of DAMCO and Mono Acrylic

Bhondari Rs.4,00,000 -- do --

Sukher Rs.2,00,000 -- do --

Udaypur

Siraspur Rs.7,00,000 -- do --

Garhi Khusro Rs.5,00,000 -- do --

Balance payment is mentioned on the documents.

Q. 40 During the course of search proceedings it has been informed by control room that certain papers were found from the premise belonging to

M/s. British Scaffolding India Pvt. Ltd. showing certain agreement with M/s. Acry Monomers Pvt. Ltd. for the purchase of plant and machinery by

your concern initially at a consideration of Rs. 1.20 crores which however, was substantiated later on by another agreement showing sale

consideration at Rs.65 lacs. Please explain how and when the balance consideration was â?" passed to M/s. British Scaffolding Pvt. Ltd.

Ans. The balance consideration of Rs. 55 lacs was paid in cash in the office of Sh. H.R. Shive at 75-76 Manisha, Nehru Place, New Delhi . The cash

was received by the cashier of the company. The name of cashier, I do not remember. The amount was paid probably in more than two installments.

Q.41 What factors compelled you to reduce the sale consideration reflected in books of a/cs from Rs. 1.20 crores to Rs. 65 lacs ?

Ans. It was the demand of other party and they insisted on receiving the cash.

Q.42. Please explain the sources of the amount paid in cash.

Ans. It was out of the income generated out of the books from Mono Acrylic and Delhi Acrylic Manufacturing Co. Pvt. Ltd.

Q. 43 I am showing you paper found and seized during the course of proceedings at Ground Floor 2/34 Roop Nagar Delh marked as Annexure A-

which confirms the payments made by your concern to M/s. BSL in cash amounting to Rs. 55 lacs and also a copy of agreement wherein necessary

changes have been made in pencil whereby the consideration has been reduced to Rs.65 lacs from Rs.120 lacs , please comment.

Ans. Yes, I have already disclosed to you the facts regarding the cash payment even before you could trace out the paper from my office.

Q. 44 During the course of survey operation u/s. 133A of the I.T. Act 1961 at Sirsapur Godown of M/s. Mono.

Acrylic Manufacturing Co. Pvt. Ltd. and M/s. Universal Enterprises, inventory of stock of Acrylic Sheets and poly carbonate sheet was prepared

which is placed on record. Please furnish the detail regarding the purchase vouchers relating to those items and also throw some light on sale price

etc.

Ans. Average purchase price of Acrylic sheet is approx. Rs. 40/- per kg. and poly-carbonate is Rs.80/- per Kg. The average sale price is in cash of.

acrylic, around to Rs.45 to 50/- per Kg. and in case of poly carbonate, it is Rs.85 to 95/- per. Kg.

Q.45 Where are purchase and sale vouchers and books of accounts of your concerns?

Ans. Books of accounts, purchase and sale vouchers are lying here only i.e. 2/34 Roop Nagar, Delhi. Books of account are maintained on computer

also.

Q.46 What is the amount of cash balance as per the cash books of your company?

Ans. I have no idea about the cash balance. The books are probably maintained on computers, only after checking the computer I will be able to give an idea of cash balance.

Q. 47 Where do you keep the cash belonging to your business concerns?

Ans. At the top floor of house where is a small room allotted to Sh. Mishra the cashier wherein the cash belonging to my business concerns is kept.

Q. 48 Do you want to say anything else ?

Ans. No, nothing. Signed

26.11.99

I have read over the above statement and understood the same . I found that it has been correctly recorded. The above statement has been given by me without any pressure, fear or coercion.

Sd/- 26.11.99 Sd/- 26.11.99

(MS Aggarwal) Pawan K. Kumar IRS

Dy. Director of Income tax

(Inv) Unit-II, E/2, ARA Centre Jandewalan Extn.,

New Delhi 110055

W-1 Sd/-

W-1 Sd/-

22. Second statement on oath of the respondent/assessee under Section 131 of the Act was recorded on 29th December, 1999, in the presence of Mr.

Vinay Kumar Goel, Chartered Accountant. Relevant portion of this statement reads:-

Statement of Shri M.S. Aggarwal s/o Sh. M.R Aggarwal R/o 2/34 Roop Nagar New Delhi recorded on oath during the proceedings u/s. 131 of

the I.T. Act 1961 on 29.12.1999 at Room No. 267, ARA Centre Jhandewalan Extn. New Delhi in the presence of his AR, Sh. Vinay Kumar Goyal ,

CA.

I hereby under take to state the truth and only truth In the name of God

Sd/-29.12.99(3.40pm) Sd/- 29.12.99

(MS Aggarwal) Pawan K. Kumar IRS

Oath Taken Dy.Director of Income tax

` (Inv) Unit-II,

E/2, ARA Centre Jandewalan

Extn.,

New Delhi -110055 Oath Administrator

Q.1 Please identify yourself.

Ans. I am Mahender Singh Aggarwal S/o Sh. Mangat Ram Aggarwal aged 54 years r/o 2/34 Roop Nagar, New Delhi

Q.2 Please explain whether the income tax return for the last financial year has been filed or not by you.

Ans. After consulting my tax consultant , I submit that it has not been filed.

Q.3 Please explain whether any wealth tax return has ever been filed by you.

Ans. After consulting my tax consultant, I submit that during last two " three years, no wealth tax return has been filed.

Q.4 Please furnish the list of all bank accounts held in India and abroad by you, your family member and business concerns in which you or your

family members have business interest, or are partners, directors or sole proprietor.

Ans. The complete list I will submit latest by 05.01.2000.

Q.5 Please furnish the list of business concerns started or controlled by you or your family members, the particulars of which have not been disclosed

to department so far.

Ans. I will furnish the exhaustive list of all the entities latest by 05.01.2000 positively.

Q. 6 xxx

Ans. xxx

Q.7 Please explain whether regular books of accounts are maintained for the concerns which have not been disclosed to department.

Ans. Apart from some diaries wherein record for only for some period was maintained here and there and which have been seized during the course

of search by the Department, there are bank accounts maintained by those concerns wherein complete details are available. Also some import files

are with us wherein details of shipments by those concerns are available Q. 8 Where these records available in your residence/office on the day of

search?

Ans. No, these were maintained by Sh. Vipin Bansal who looks after those concerns and were available with him. Q. 9 xxx

Ans. xxx

Q.10 xxx

Ans. xxx

Q. 11 xxx

Ans. xxx

Q. 12 I am showing you Annexure A-38 to A-46 seized from your residence during the course of search. Please explain in whose handwriting these are written and also the details of entries contained therein.

Ans. Annexure A-38 is written in my hand and relates to my various business entity like HAMCO, MAMCO, Trust etc. wherein on the left side of

the half page receipts are recorded and on the right side of same, payments recorded. For example on page-6 on LHS Anupam 1.00 means rs.

1,00,000/- has been received from Anupam by C-2 in the Indian Bank of MAMCO. On the RHS the entries are the withdrawals from bank. For

example, documents referred entry 9.18 means the payments Rs. 9,18,000/- have been made for import. Similarly on page-2 one entry Capital Plastic

25,000/- is on LHS which means rs. 25,000/-has been recd from M/s. Capital Plastic.

On page -7 LHS there is on entry of Advista 150 it means Rs. 1,50,000 have been received from Advistas 150 it means Rs.1,50,000 have been

received from Advistas.

Annexure A-39

This probably relates to the details of payments made for purchases which have not been reflected in my regular books of a/cs and some pages from

pages No. 15 onward pertain to M/s. Universal Enterprises which has not filed any return of income so far. The exact details shall be known once my

employee who has written it shall come and explain.

Annexure A-40, A-42 and A-46

These are relating to the cash transactions which are not reflected in our regular books of accounts. However, some entry may be reflected in our

regular books of accounts which I cannot point out at this moment.

The LHS (Half page) reflects the receipts and the other half show payments made. Annexure A-41

This diary contains details of stock purchase/and sold item-wise as well as container wise.

Annexure A-43

This diary seems to contain partywise account of goods sold and payments received.

Annexure A-44

It contains entries relating to some of our companies as well as others. It appears to be a ledger account.

Annexure A-45

It relates to Universal Enterprises' details appears to be of consignment/container's detail.

These diaries are in the hand writing of some of my key employees namely Tarun Kumar, Mr. Mishra and Sh.Bhushan who may be able to

completely explain the contents.

Q.13 Whether this kind of memoranda records containing the detail of unaccounted transactions is being maintained in computers as well?

Ans. As far as I remember these records are not kept on computers.

Q.14 Pl. furnish the name and address of the banks wherein the entities which have not been disclosed to department, maintain their bank A/cs.

Ans, Mainly the accounts are maintained in following two bank

1 Iddian Bank, DBG Road Pahar Ganj, New Delhi.

2. Indian Overseas Bank, Model Town, Delhi

However, complete name of entities and bank A/cs will be furnished on 05.01.2000.

A.15 Pl. explain the nature of business activities carried out by different business concerns owned and controlled by your and your family members.

Ans. All my entities broadly are engaged in import of acrylic sheet, poly carbonate sheets, vinyls and sale thereof, manufacturing of acrylic sheets and there fabrication and exports of fabricated items.

Q.16 I am showing you all the pages of Annexure A76, Pl. explain the nature of transaction with M/s. British Scaffolding International Ltd.

Ans. This annexure contains all the papers relating to transactions with M/s. BSIL regarding purchase of plant. The original agreement was for Rs.

125 lacs out of which Rs. 5 lacs was paid as services charges and Rs. 55 lacs was paid in cash and balance Rs.65 lacs was paid by cheques. The

details of the item purchased are given on page No. 68 and 69 annexed to the agreement showing sale consideration at Rs. 120 lacs and at page No.

56 and 57 annexed to the revised agreement showing consideration at Rs. 65 lacs. Thus the items purchased were the same and only balance

consideration was passed on to the seller in cash out of undeclared sources of income.

Q.17 These plant and machinery are still used by you or has again been re-sold.

Ans. The Plant and machinery purchased from BSIL has been installed and being used by M/s. Acry Monomers (I) Pvt. Ltd.

Q. 18 Please confirm to whom the cash amount was delivered at the premises of BSIL

Ans. It was given to the cashier, whose name I do not remember at the premises of BSIL.

Q. 19 Who asked you to deliver the cash to the cashier ?

Ans. Once I had gone myself to deliver the cash and I was told by Sh. Neerav Hans S/o. Sh. H.R. Shiv to deliver the cash to their cashier sitting at

the same office premise at Nehru Place, New Delhi.

Q. 20 How many time the cash was delivered to BSIL for the purchase of machinery?

Ans. Probably three times.

Q. 21 Who gave the cash from your side on other occasion.

Ans. I do not remember the name, perhaps Tarun Kr. My employee would have given the cash. I will tell the name after consulting my staff.

Q.22 Will you and your staff be able to identify the man to whom cash was delivered at BSIL.

Ans. It might be possible that my employee who delivered the cash may recognize the person to whom the cash was delivered.

Q.23 Who signed the receipt of cash delivered by you and your staff.

Ans. All the case receipt and agreement was signed by Mr. Ashok Mandal on behalf of M/s BSIL

Q.24 xxx

Ans. xxx

Q.25 Please explain why the gift deed has not been furnished so far.

Ans. If available, I will furnish it in next hearing.

Q. 26 Please furnish the details of bank account where the gift-cheques have been deposited.

Ans. I will furnish the details on 05.01.2000.

The statement is temporarily concluded at 7:05 p.m. at the request of Sh. M.S. Aggarwal as he is feeling tired, to be continued on 05.01.2000

Sd/- (MS Aggarwal)

29.12.99

The above statement has been read and I find it has been correctly recorded.

Sd/- (Vinay Goel)

29.12.99

Sd/- 29.12.99

(MS Aggarwal)

Sd/- 29.12.99

Pawan K.Kumar IRS

Dy. Director of Income tax

(Inv) Unit-II,

E/2, ARA Centre Jandewalan Extn., New Delhi

Second statement of the respondent/assessee recorded on 29th December, 1999 was more than a month after the first statement at the time of the

search on 25th November, 1999. By then, respondent/assessee had been discharged and had got over the initial shock and trepidation associated with

the search and seizure operation. In this statement recorded in the presence of his Chartered Accountant on 29th December, 1999, the

respondent/assessee did not retract and contradict his earlier admission on arranged and bogus gifts. The respondent/assessee had not complained or

protested that his earlier admission was factually incorrect and was recorded by force and under coercion. The respondent/assessee took time to

furnish the gift deeds and details of bank accounts.

23. The respondent/assessee's third statement on oath, under Section 131 of the Act, recorded on 6th January, 2000 on the aspect of gifts is as

relevant and significant as the statement on 25th November, 1999. This statement reads:-

“The statement is in continuation of the statement temporarily concluded on 29.12.1999

Q. 27 Please furnish the details of all the bank accounts names of firms/ companies including the particulars of bank a/cs, firms, companies which have not been disclosed to the department & also the addresses of some of the employees and the details of gifts taken by you.

Ans. I am filing the above information in three list.

Q.28 What about the details of gifts taken by you which were informed during the course of search? Ans. It was taken from Sh. Rama Pati Singhania

r/o Kamla Tower, Kanpur (UP). It was taken in the form of cheque for about Rs.50 lacs. I have no evidence of the gift & I hereby voluntarily offer

the same for taxation.

Q.29 When were the cheques deposited & in which account & how many cheques were received. Ans. It was received in the current financial year,

i.e. about six to eight months back. The amount was received in two/three cheques which was duly deposited in my bank account around the same

time. I do not remember the particulars of bank account where the same were deposited. It was received probably in my name. I will furnish the

exact details in three-four days.

Ans. It was received in the current financial year, i.e., about six to eight months back. The amount was received in two/three cheques which was duly

deposited in my bank account around the same time. I do not remember the particulars of the particulars of the bank account where they were

deposited. It was received probably in my name. I will furnish the exact details in four-five days.

Q. 30 Can you explain the reasons for receiving the gifts?

Ans. I do not want to go in details since I am willing to pay taxes on the same.

Q.31 Please explain whether you have received similar gifts from the same person or other persons in earlier years in your name or in the name of

family members & vice-versa, you have also given the gifts to others or the same person .

Ans. As far as I remember there was no gift received by me or given by me to any person or the same person & also by my family members.

Q.32 Please explain the occasion on which the gifts was taken.

Ans. There was no special occasion.

Q.33 Please explain whether any Gift Deed was executed & if yes, why the same was not found during the course of search and also it has not been

furnished till date despite a specific requisition for the same in the notice u/s.131 of the I.T. Act 1961

Ans. To the best of my knowledge it was executed but I do not remember it was registered or not & at present I am not able to trace the same.

Q.34 Please furnish the details of mode & manner in which gift transactions was completed.

Ans. It may be considered out of the income generated from my undisclosed firms.

Q.35 How the undisclosed funds were used in the gift transaction?

Ans. This may have been done in cash/ kind.

Q.36 Please furnish the copy of bank accounts with narration in respect of the entities not disclosed to the department.

Ans. All the entities not disclosed to the department as per the list furnished were started in 1997 & 1998 and even in 1999. Some of them have been

closed in 1998 and in 1999. At present M/s. Kumar Traders & M/s. Universal Enterprises are running, I shall be able to furnish the copies of bank

a/cs within a week's time.

It is noteworthy that even on 6th January, 2000, no attempt was made to retract the admission on bogus gifts or explain the basis and assert that the

gifts were genuine. The third statement affirms and corroborates the first statement that the gift of Rs.50,00,000/- was procured by paying equal

amount in cash. This statement, which is critical and crucial, was never retracted as extracted by extending threats or under compulsion. It is also

apparent that the respondent/assessee did not produce the gift deed etc. on 6th January,2000 and had consciously preferred to accept the truth in the

spirit of atonement.

24.The first attempt and retraction came in the letter dated 13th March, 2002 filed by the assessee during the course of the block assessment

proceedings. Till then no specific communication was written to retract and withdraw the admission and confession that the gifts were bogus and procured by paying cash.

25.The Tribunal, in our opinion, has incorrectly observed and held that initial and first question and answers on gift, with reference to the statement recorded on 25th November, 1999, were at the preliminary stage and before the search, and question No. 20 onwards form part of the statement recorded during the search. The said finding of the Tribunal is fallacious and unacceptable. It ignores the first portion or the preamble before the statement was recorded, which reads as under:

Statement of Shri Mahender Singh Aggarwal s/o Sh. Mangat Ram Aggarwal aged 54 years R/O 2/34 Roop Nagar Delhi recorded on oath during the search and seizure operation u/s 132 of the Income-tax Act, 1961 on 25.11.99 at 2.34 Roop Nagar, Delhi.

26.Clearly questions no. 4 to 11 quoted above and recorded on 25th November, 1999 were made during the course of search and seizure operation.

These were recorded after the search warrant was enforced and executed. After recording answers to the first 19 questions, there was a time gap.

Therefore signatures were affixed. The recording of the statement subsequently continued from question No. 20 onwards. In this situation, before

question no. 20 the words ""statement taken during the course of search"" were again recorded. We fail to understand how the tribunal came to the

conclusion that questions after question no. 20 were recorded during the course of search, while the first 19 questions were preliminary in nature and

were recorded before the search had commenced. This was not pleaded before the Assessing Officer or Commissioner of Income Tax (Appeals).

The search had commenced the moment various officers, including the Deputy Director of Income Tax (Investigation Unit 2) had reached the

residence of the respondent/assessee and had shown and executed the search warrant.

27.The Tribunal in the impugned order correctly records that the admissions were compelling. However, thereafter the Tribunal observed that the

statements should be ignored and would not be accepted, as the assessee had been able to rebut the admissions as the gifts were made by Mr. Rama

Pati Singhanian a leading industrialist from a well known family of Kanpur who had

sold a property worth Rs. 2,75,00,000/- in Bombay. The sale of property and gifts were declared by Mr. Rama Pati Singhania in his Income Tax returns, which were filed on record. Gift deeds dated 20th June, 1999 as well as 30th May, 1999 executed by the donor as well as the donee were produced before their assessing officer. Affidavits dated 13th May, 1999 and 20th June, 1999, sworn by Mr. Rama Pati Singhania much before the search, were also placed on record during the block assessment proceedings. The transactions were therefore not hidden and concealed but were duly disclosed in the books of account of the donor and donee.

28. On the aspect of genuineness of the gift, we would observe that the Tribunal has missed the core issue and question that had arisen for consideration and required an answer. There was no dispute and challenge that the purported gifts were made through bank transactions and donor and his financial status was known. The issue was whether the gifts were arranged and bogus, in the sense that the respondent/assessee had paid cash to procure the gifts from an unrelated person with whom he had no personal relations, love and affection as was admitted by the respondent/assessee in his two statements, before taking a u-turn after two years in 2002. This core issue has been overlooked and ignored by the Tribunal to hold that the gift was genuine.

29. Gift as defined in Section 122 of the Transfer of Property Act means voluntary transfer of existing movable or immovable property made without consideration by the person called donor to another called the donee. Three important and essential characteristics of gifts are that it should be voluntary, it should be 'without consideration' and there should be acceptance by the donee. Expression 'without consideration' was explained and elucidated in *Kumari Sonia Bhatia versus State of U.P. and Others*, (1981) 2 SCC 585, which exposition need not be referred to in detail in view of the limited legal issue that arises in the present case, albeit it is beyond cavil that the gift must be voluntary and 'without consideration'. *Asokan versus Lakshmikutty and Others*, (2007) 13 SCC 210, reiterates that absence of consideration is an essential element of gift and that concept of payment of consideration in whatsoever form is unknown. Therefore, when there are cross-transactions in form of payment of cash for issue of cheque, in the absence of explanation, there would be consideration and the

transaction/transfer would not be a genuine gift but a sham and camouflage. Genuine gifts received during the current year were un-taxable, but sham and bogus gifts would fall foul and attract correction and taxation under Section 68 of the Act. In *State of Karnataka versus J. Jayalalitha and Others*, (2017) 6 SCC 263, Ghose, J. in paragraph 213 of the said citation had referred to Section 68 of the Act and relied on *Sumati Dayal versus Commissioner of Income Tax, Bangalore*, 1995 Supp (2) SCC 453, to observe that payment by way of cheques may not per se be of consequence in all cases and circumstances. When genuineness of the transaction was examined, the assessee must justify the cash credit by explaining the nature and reason of the transaction, otherwise Section 68 of the Act could be invoked even when there was evidence that the money was received by cheque or through bank transaction. This would not ipso facto determine and decide whether the transaction was genuine and truly a gift. It was observed:-

215. In *Yash Pal Goel v. CIT (Appeals)* [*Yash Pal Goel v. CIT (Appeals)*, 2009 SCC OnLine P&H 664 : (2009) 310 ITR 75] , *Kusum Lata*

Thakral v. CIT [*Kusum Lata Thakral v. CIT*, 2009 SCC OnLine P&H 7276 : (2010) 327 ITR 424] , *CIT v. Sandeep Goyal* [*CIT v. Sandeep Goyal*,

2014 SCC OnLine P&H 24763 : (2014) 369 ITR 471 (P&H)] and *ITO v. Mukesh Bhanubhai Shah* [*ITO v. Mukesh Bhanubhai Shah*, 2009 SCC

OnLine ITAT 1489 : (2009) 318 ITR (AT) 394 (Bom)] , the common issue was with regard to applicability of Section 68 of the Income Tax Act, 1961

vis-à-vis receipts which were claimed by the assessees to be by way of gifts and thus exempted from income tax. In all these cases, the assessees

were asked to provide explanation to bring the receipts within the purview of gifts exempted from income tax and the AO on an in-depth scrutiny

thereof had concluded that the transactions were only smoke screen/subterfuge to avoid income tax. The decision in *Sumati Dayal* [*Sumati Dayal v.*

CIT, 1995 Supp (2) SCC 453], with reference to Section 68 of the Income Tax Act was relied upon. Further, the significant aspects of

creditworthiness of donors and genuineness of the transactions were highlighted. The relationship between the donors and the assessee was also

examined so as to furnish an acceptable reason or justification for such gift out of natural love and affection.

216.It was emphasised that to examine the genuineness of a gift, the test of human probability was very appropriate. It was reiterated that a gift cannot be accepted as such to be genuine merely because the amount has come by way of cheque or draft through banking channels unless the identity of the donor, his creditworthiness, relationship with the donee and the occasion was proved. Unless the recipient proved the genuineness of the transaction, the same could be very well treated as an accommodation entry of the assessee's own money, which was not disclosed for the purpose of taxation.

217.In all, however, the process undertaken by the Income Tax Authorities under Section 68 of the Act is only to determine as to whether the receipt is an income from undisclosed sources or not and is unrelated to the lawfulness of the sources or of the receipt. Thus, even if a receipt claimed as a gift is after the scrutiny of the Income Tax Authorities construed to be income from undisclosed sources and is subjected to income tax, it would not for the purposes of a charge under Section 13(1)(e) of the Act be sufficient to hold that it was from a lawful source in the absence of any independent and satisfactory evidence to that effect.?

30.It is in this context that the statements on oath made by the respondent-assessee on two occasions, i.e. 25th November, 1999 and 6th January, 2000 become relevant and significant.

31.Section 114 of the Evidence Act states that Courts may presume existence of certain facts having regard to common course of natural events, human conduct and public and private business in relation to facts of a particular case. Illustration clause (e) states that judicial and official acts could be presumed were regularly performed. Thus, there would be a presumption as to the admission recorded, though the presumption is not absolute.

Similarly, Section 57 of the Evidence Act states that Courts could take judicial notice of facts enumerated therein, albeit the list is not exhaustive.

Judicial pronouncements hold that doctrine of judicial notice is wide and would include matters of common and general knowledge including facts that had acquired universal notoriety and have regular occurrence. It is in this context that observations made in the Kelkar Report regarding use of threats and compulsion to extract admissions, etc. and adverse observations in some judicial pronouncements would be relevant. Judicial notice of

pernicious practice of procuring gifts could also be taken. However, it would be incorrect to apply presumption under Section 114 of the Evidence

Act or the facts that could be judicially noticed, as affirmative or negative universal principles cast in stone. The factual background, i.e. facts and circumstances, matter and would be compelling.

32. Confessions are important for when voluntarily made there is a presumption that no person would make a statement against his interest unless it is

true. Therefore, courts have to be cautious and careful that the confession recorded was voluntarily and not obtained under coercion and by force and

wrongful inducement. Force and coercion are not synonymous and cannot be mixed and equated with mere anxiety and stress due to search and

seizure operations, or inducement propelled by remorse and atonement to make an admission and confess a wrong. Motive of the person making the

admission to gain indulgence, advantage or avoid evil of a temporal nature, cannot be treated as equivalent to inducement, coercion or fraud. Whether

a confession is voluntary or induced by force, threat, coercion and wrongful inducement would primarily be one of fact, albeit any judicial verdict and

decision on the issue must take all relevant facts and circumstances of the case into consideration and should not be guided by mere pre-ordained

impressions. Factors like time of retraction, nature and manner of retraction etc. are relevant. Mere retraction does not make or proves that the

admission was obtained by inducement, threat etc. Further, prudence requires that the court would examine the truthfulness and correctness of the

admission when admissions are accepted and relied. Corroboration by attending circumstances may be justified.[See K.T.M.S. Mohd. and Another

versus Union of India, (1992) 3 SCC 178, Telstar Travels Private Limited and Others Versus Enforcement Directorate, (2013) 9 SCC 549, Adambhai

Sulemanbhai Ajmeri and Others versus State of Gujarat, (2014) 7 SCC 716 and Seeni Nainar Mohammed versus State, (2017) 13 SCC 685)].

33. In the present case, the respondent-assessee had stated that he had paid cash to convert his unaccounted money to procure the gift. This

admission and confession was made in two statements after a time gap of nearly forty days. It would be difficult, if not impossible, to get direct

evidence to ascertain and vouch for the truth or falsity of this inculpatory admission. The answer would largely depend on inference founded on

surrounding circumstances, antecedent and subsequent. In the facts of the present case, the surrounding circumstances compellingly affirm that the

gift was procured and not a genuine one. These circumstances are as under:-

(i) Gift of Rs.50,00,000/- was a substantial amount of money in 1999.

(ii) There is no evidence or material or even an effective attempt to show that the respondent-assessee and Mr. Rama Pati Singhania were extremely

close friends. Blood relationship is not claimed.

(iii) The respondent-assessee before the Commissioner of Income Tax (Appeals) had stated that their forefathers may have helped forefathers of Mr.

Rama Pati Singhania, a vague statement which in fact admits and accepts that the respondent-assessee did not personally know Mr. Rama Pati

Singhanian.

(iv) The respondent-assessee's retraction was nearly two years after he had admitted having procured or arranged the gifts.

(v) Statement dated 6th January, 2000 admitting that the gift was bogus and not genuine was made by the respondent-assessee in the presence of the

Chartered Accountant.

(vi) The respondent-assessee does not claim that the statement recorded on 6th January, 2000 was extracted and given under force, threat or

coercion.

34. A gift is given out of natural love and affection to a person who is close to the donor or for the purposes of charity. Plea of charity has not been

raised in this case. There is no evidence or even an indication as to how the respondent-assessee knew the donor, a well known businessman, who

gave the gift to the respondent-assessee. In view of the aforesaid discussion, we have no hesitation in holding that the gift in question of Rs.50,00,000/-

purportedly received by the respondent-assessee from Mr. Rama Pati Singhania was a procured one and the admissions/confession made as recorded

in the statements dated 25th November, 1999 and 6th January, 2000 are trustworthy, true and correct. Finding of the Tribunal on accepting the gift as

genuine is contrary to law being perverse and contrary to facts and material on record.

Whether addition of Rs.50 lacs would have been made as undisclosed income in the block assessment order or should have been made in the regular

assessment order

35. Chapter XIV-B relating to procedure for assessment in search cases was introduced with effect from 1st July, 1995 by Finance Act, 1995. The

provisions of this Chapter have undergone several amendments, including some with retrospective effect from 1st July, 1995 by Finance Act, 2002.

This has resulted in confusion and divergent interpretation of provisions of the said Chapter. Initially undisclosed income relating to the block period

was taxed at 60% as prescribed under Section 113, with immunity from specified interest and penalty contemplated under Section 158BF on the

undisclosed income. This had no bearing on tax, interest and penalty payable on normal/regular assessment, even if pending and when the assessment

was subsequent to the search. Legal position underwent a change with enactment of Section 158BFA by way of the Income Tax (Amendment) Act,

1997 with effect from 1st January, 1997, in respect of searches under Section 132 or requisition under Section 132A on or after 1st January, 1997.

New provision of Section 158BFA had authorised levy of interest and penalty in certain cases. Conflicting and different stands taken pre and post

enactment of section 158BFA by the Revenue have also contributed to the said confusion, which have resulted in somewhat conflicting judicial

pronouncements.

36. The relevant provisions of Chapter XIV-B, namely, Section 158B clause(b), 158BA, 158BB and 158BC, including amendments made vide Finance

Act, 2002 with retrospective effect from 1st July, 1995, read as under:-

Section 158B. In this Chapter, unless the context otherwise requires,- xxx

(b) undisclosed income includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of

account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other

document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this

Act, or any expense, deduction or allowance claimed under this Act which is found to be false.

(underlined portion was inserted by Finance Act, 2002 w.r.e.f. 1st July, 1995)

xxx

158-BA. Assessment of undisclosed income as a result of search.(1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under Section 132 or books of account, other documents or any assets are requisitioned under Section 132-A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.

(2) The total undisclosed income relating to the block period shall be charged to tax, at the rate specified in Section 113, as income of the block period irrespective of the previous year or years to which such income relates and irrespective of the fact whether regular assessment for any one or more of the relevant assessment years is pending or not.

Explanation.â?"For the removal of doubts, it is hereby declared that

(a)the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b)the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c)the income assessed in this Chapter shall not be included in the regular assessment of every previous year included in the block period.

(3)Where the assessee proves to the satisfaction of the Assessing officer that any part of income referred to in sub-section (1) relates to an assessment year for which the previous year has not ended or the date of filing the return of income under sub-section (1) of Section 139 for any previous year has not expired, and such income or the transactions relating to such income are recorded on or before the date of the search or requisition in the books of account or other documents maintained in the normal course relating to such previous years, the said income shall not be included in the block period.

(portion was inserted by Finance Act (No.2), 1998 w.r.e.f. 1st July, 1995)

xxx

158-BB. Computation of undisclosed income of the block period.â?"(1) 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 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, determined,

(a) where assessments under Section 143 or Section 144 or Section 147 have been concluded prior to the date of commencement of the search or the

date of requisition, on the basis of such assessments;

(b) where returns of income have been filed under Section 139 or in response to a notice issued under subsection (1) of Section 142 or Section 148 but

assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

(c) where the due date for filing a return of income has expired, but no return of income has been filed,

(A) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the

search or requisition where such entries result in computation of loss for any previous year falling in the block period; or

(B) on the basis of entries as recorded in the books of account and other documents maintained in the normal course on or before the date of the

search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period;

(ca) where the due date for filing a return of income has expired, but no return of income has been filed, as nil, in cases not falling under clause (c);

(d) where the previous year has not ended or the date of filing the return of income under sub-section (1) of Section 139 has not expired, on the basis

of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or

before the date of the search or requisition relating to such previous years;

(e) where any order of settlement has been made under sub-section (4) of Section 245-D, on the basis of such order;

(f) where an assessment of undisclosed income had been made earlier under clause (c) of Section 158-BC, on the basis of such assessment.

Explanation.â?"For the purposes of determination of undisclosed income,â?

(a)the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance

with the provisions of this Act without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-

section (2) of Section 32: Provided that in computing deductions under Chapter VI-A for the purposes of the said aggregation, effect shall be given to

set off of brought forward losses under Chapter VI or unabsorbed depreciation under subsection (2) of Section 32;

(b)of a firm, returned income and total income assessed for each of the previous years falling within the block period shall be income determined

before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called:

Provided that undisclosed income of the firm so determined shall not be chargeable to tax in the hands of the partners, whether on allocation or on

account of enhancement;

(c)assessment under Section 143 includes determination of income under subsection (1) or subsection (1-B) of Section 143.

(2)In computing the undisclosed income of the block period, the provisions of Sections 68, 69, 69-A, 69-B and 69-C shall, so far as may be, apply and

references to ?financial year in those sections shall be construed as references to the relevant previous year falling in the block period including the

previous year ending with the date of search or of the requisition.

(3)The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income

filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

(4)For the purpose of assessment under this Chapter, losses brought forward from the previous year under Chapter VI or unabsorbed depreciation

under subsection (2) of Section 32 shall not be set off against the undisclosed income determined in the block assessment under this Chapter, but may

be carried forward for being set off in the regular assessments.

(portion was inserted by Finance Act, 2002 w.r.e.f. 1st July, 1995. Prior to its substitution, clause (c) read as under, ?(c) where the due date for

filing a return of income has expired but no return of income has been filed, as

nil)

xxx

158-BC. Procedure for block assessment.â?"Where any search has been conducted under Section 132 or books of account, other documents or

assets are requisitioned under Section 132-A, in the case of any person, then,â?

(a) the Assessing Officer shallâ?

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995 but before the 1st

day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days; (ii) in respect of search

initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997 serve a notice to such person

requiring him to furnish within such time not being less than fifteen days but not more than forty five days, as may be specified in the notice a return

in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of Section 142, setting forth his total income

including the undisclosed income for the block period:

Provided that no notice under Section 148 is required to be issued for the purpose of proceeding under this Chapter:

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b)the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in Section 158-BB and the

provisions of Section 142, sub-sections (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply;

(c)the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of

assessment and determine the tax payable by him on the basis of such assessment.

37. In Commissioner of Income Tax, Delhi-II versus Ravi Kant Jain, [2001] 250 ITR 141 (Delhi), after referring to sub-section (1) to Section 158BA,

which starts with a non obstante clause, it was observed that block assessment under Chapter XIV-B was in addition to the regular assessment in

respect of each previous year. Income assessed in block assessment does not form part of regular assessment. Further, procedure under Chapter

XIVB was intended to provide for a mode of taxing undisclosed income detected as a result of search and was not a substitute for a regular

assessment. Assessment for the block period could only be done on the basis of the evidence found as a result of search or requisitioning the books of

account or documents or such other information available with the assessing officer. Legal position on scope and ambit of undisclosed income has

been elucidated and explained by the Supreme Court in Assistant Commissioner of Income Tax, Chennai versus A.R. Enterprises, (2013) 3 SCC 196,

which specifically made reference to the expression which has not been or would not have been disclosed for the purpose of the said Act.

Referring to the latter portion of Section 158B(b), it was observed as under:-

17. The genesis of the issue before us lies within the folds of this section. Sections 158-BD and 158-BC, along with the rest of Chapter XIV-B,

find application only in the event of discovery of undisclosed income of an assessee. Undisclosed income is defined by Section 158-B as that

income which has not been or would not have been disclosed for the purposes of this Act. The legislature has chosen to define undisclosed

income in terms of income not disclosed, without providing any definition of disclosure of income in the first place. We are of the view that the only

way of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act, and therefore an undisclosed income

signifies income not stated in the return filed. Keeping that in mind, it seems that the legislature has clearly carved out two scenarios for income to be

deemed as undisclosed: (i) where the income has clearly not been disclosed, and (ii) where the income would not have been disclosed. If a situation is

covered by any one of the two, income would be undisclosed in the eyes of the Act and hence subject to the machinery provisions of Chapter XIV-B.

The second category viz. where income would not have been disclosed, contemplates the likelihood of disclosure; it is a presumption of the intention of

the assessee since in concluding that an assessee would or would not have disclosed income, one is ipso facto making a statement with respect to

whether or not the assessee possessed the intention to do the same. To gauge this, however, reliance must be placed on the surrounding facts and

circumstances of the case.

XXXX

25. Hence, the computation of 'undisclosed income' for the purposes of Chapter XIV-B has to be construed in terms of the 'total income'

received, accrued, arisen; or which is deemed to have been received, accrued or arisen in the previous year, and is computed according to the

provisions of the Act. According to Section 139(1) of the Act, every person who is assessable under the Act, must file a return declaring his or her

total income during the previous year on or before the due date, for assessment under Section 143 of the Act. Hence, the 'disclosure of income' is

the disclosure of the total income in a valid return under Section 139, subject to assessment and chargeable to tax under the provisions of the Act. It is

important to bear in mind that total income is distinct from the estimated income, upon the basis of which, advance tax is paid by an assessee.

Advance tax is based on estimated income, and hence, it cannot result in the disclosure of the total income assessable and chargeable to tax.

xxxx

38. Thus, for the purposes of computation of undisclosed income under Chapter XIV-B, an assessee can rebut the assessing officer's finding of

undisclosed income by showing that such income was disclosed in the return of income filed by him before the commencement of search or the

requisition. In other words, when Section 158-BB(3) is read with Section 158-B(b), which defines undisclosed income, we reach the conclusion that

for income to be considered as disclosed income, the same should have been disclosed in the return filed by the assessee before the search or

requisition. In our opinion, on failure to file return of income by the due date under Section 139 of the Act, payment of advance tax per se cannot

indicate the intention of an assessee to disclose his income.

Undisclosed income in the second category, i.e. where the income would not have been disclosed, contemplates likelihood of non-disclosure. It refers

to the intention of the assessee. Relevance of the aforesaid observations in the context of the present case is that the respondent/assessee had

certainly received Rs.50,00,000/- by way of cheques from Mr. Rama Pati Singhania, allegedly as a gift, with an intent to claim exemption. It is not

the case of the respondent / assessee that he wanted to ever disclose Rs. 50,00,000/- as taxable income and indeed in the block assessment return he

had not disclosed this amount as taxable income. It is not the case of the

respondent/assessee that this amount was to be disclosed or was disclosed as taxable income in the regular return under Section 139 of the Act.

38. Interpreting the aforesaid provisions of Chapter XIV-B in Commissioner of Income Tax versus Shailendra Mahto, [2015] 372 ITR 257 (Del), it was held as under:-

8. Section 158B(b) is a definition provision for the purpose of the said Chapter, which defines the term 'undisclosed income'. It is an inclusive

definition and is subject to the context otherwise requiring a different interpretation. Undisclosed income for the purpose of the Chapter could include

any money, bullion, jewellery or other article, valuable article or thing or even income based on entry in the books of account and other documents of

transactions, which had not been or would not have been disclosed for the purposes of this Act. By retrospective amendment inserted by the Finance

Act, 2002, with effect from July 1, 1995, any expense, deduction or disallowance claimed under the Act, which was found to be false was also treated

as undisclosed income. An inclusive definition is to be read broadly and in a wide manner and should not be given a restrictive meaning. The

expression 'undisclosed income' with effect from July 1, 1995, therefore, would mean and include any false expenditure, deduction or allowance

claimed under the Act but was found to be false, or any money, bullion, jewellery, valuable article or thing, that had not been or would not have been

disclosed and also included any income based on entry in the books of account or other documents, which had not been disclosed or would not have

been disclosed for the purposes of this Act. The crucial and singularly pre-eminent expression used in the said clause is 'has not been or would not

have been disclosed' for the purposes of this Act. We shall be subsequently referring to, in detail, the judgment of the Supreme Court in Asst. CIT v.

A.R. Enterprises, [2013] 350 ITR 489 (SC); (2013) 3 SCC 196, but suffice at this stage, it is to notice and reproduce the following paragraph from

A.R. Enterprises (supra) (page 500 of 350 ITR):

The genesis of the issue before us lies within the folds of this section. Sections 158BD and 158BC, along with the rest of Chapter XIV-B, find

application only in the event of discovery of undisclosed income of an assessee. 'Undisclosed income' is defined by section 158B as that income

which has not been or would not have been disclosed for the purposes of this

Actâ??. The Legislature has chosen to define 'undisclosed income'â??

in terms of income not disclosed, without providing any definition of 'disclosure'â??. of income in the first place. We are of the view that the only way

of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act, and therefore an 'undisclosed income'â??. signifies

income not stated in the return filed. Keeping that in mind, it seems that the Legislature has clearly carved out two scenarios for income to be deemed

as undisclosed : (i) where the income has clearly not been disclosed, and (ii) where the income would not have been disclosed. If a situation is covered

by any one of the two, income would be undisclosed in the eyes of the Act and, hence, subject to the machinery provisions of Chapter XIV-B. The

second category, viz., where income would not have been disclosed, contemplates the likelihood of disclosure; it is a presumption of the intention of the

assessee since in concluding that an assessee would or would not have disclosed income, one is ipso facto making a statement with respect to whether

or not the assessee possessed the intention to do the same. To gauge this, however, reliance must be placed on the surrounding facts and

circumstances of the case.

9.The aforementioned paragraph, interprets section 158B(b) of the Act and lays core and primary emphasis/stress on the phrase, 'has not been and

would not have been disclosed. This part of the definition effectuates and underlines the object of the block assessment proceedings is to bring to tax

what was not taxed or would not have been taxed including wrong deduction or disallowance claimed and allowed earlier. The retrospective

amendment is an indication that even the entries recorded in the books of account or other documents of transaction could become the subject matter

of undisclosed income if found to be false and, accordingly, deduction or disallowance should not have been allowed or claimed.

10.Section 158BA(1) of the Act begins as a non obstante provision giving primacy to the procedure prescribed under Chapter XIV-B of the Act to the

exclusion of other provisions of the Act where search was conducted after June 30, 1995, up to May 31, 2003 (see section 158BI of the Act), or

books of account or other documents of the assessee had been requisitioned in the aforesaid period. Sub-section (2) stipulates that the rate of tax as

specified in section 113 shall apply to income calculated for the block period irrespective of the previous years to which the income relates and irrespective of the fact whether regular assessment for any one or more assessment years was pending or not. Explanation which was inserted by the Finance (No. 2) Act, 1998, with retrospective effect from July 1, 1995, is a cause of some debate, as do the subsequent amendments by the Finance Act, 2002, again with retrospective effect from July 1, 1995. The amendments incorporated by the Finance Act, 2002, reflect the position that there was a greater clarity and understanding, regarding block assessment proceedings when the Finance Act, 2002, was enacted. It reflects the march of law, as there was greater and better appreciation and the amendments negate the ill effects and problems noticed in practice (This aspect has been also examined below with reference to the decision in N.R. Paper and Board Ltd. v. Deputy CIT, [1998] 234 ITR 733 (Guj). Coming back to the Explanation inserted by the Finance (No. 2) Act, 1998, with retrospective effect from July 1, 1995, it declares for removal of doubt that assessment under Chapter XIV-B shall be in addition to regular assessment for each of the previous year in the block period; total undisclosed income in the block period would not include income included in regular assessment; and income assessed under Chapter XIV-B shall not be included in the regular assessment of the previous years. The aforesaid Explanation supports in view that there would be two assessments in the cases of search or when section 132A is invoked, i.e., normal/regular assessments under section 143(1) or section 143(3) of the Act; and Chapter XIV-B or block assessment. Further, income included in the block assessment would not be included in the normal assessment and similarly income included in the normal assessment would not be included in the block assessment. We shall be referring to several judgments relied upon by the counsel for the respondent- assessee which have decided the controversy whether income should be assessed in the normal assessment or block assessment by primarily relying upon the said Explanation. This indeed is the correct interpretation accepted by the courts. Thus, there can be regular and block assessments for the same period. The next question is what could be included or the scope and ambit of block assessment and regular assessment. The answer lies in conjoint and harmonious reading of the sections 158B(b) and 158BB of the Act.

11. Section 158BB of the Act is a procedural provision which deals with computation of undisclosed income but is also a substantive provision because it seeks to define what is to be included and can be made a subject matter of the block assessment. Sub-section (1) refers to the evidence found as a result of search or requisition of books of account or other documents and such other information as was available with the Assessing Officer and relatable to such evidence. It postulates that evidence found as a result of search or requisition of books of account or documents as well as other information relatable to such evidence could be taken into consideration for the purpose of undisclosed income for the block period. The income so calculated shall be increased or reduced by the aggregate of total income or loss of the previous years which have been determined where assessment under section 143/144/147 of the Act had concluded prior to the date of commencement of search or date of requisition; but where returns of income have been filed under section 139/142(1)/148 of the Act, then such increase or reduction shall be done on the basis of income disclosed in such returns. Section 158BB(2)(b) of the Act is indicative that the returned income, where assessment had not been concluded or made, the returned income would be treated as disclosed income and any other income on the basis of evidence found during the course of search or requisition of books of account or documents with other evidence relatable to such evidence would be treated as undisclosed income and, accordingly, made the subject matter of the block assessment. The controversy that would remain is whether in view of the said clause (b) where assessments were pending, additions in block assessment could still be made where no material or evidence was found in the search relatable to the disclosed income declared in the return, or the addition should be made in regular assessment. Preponderance of the judicial opinion appears to be in favour of the normal or regular assessment and not for additions under the head 'Undisclosed income' in the block assessment. Of course, this would not apply where material has been found during the course of search or on further enquiry relatable to such material or in cases where expense, deduction or allowance claimed under the Act was found to be false. In such cases, additions could be made under sub-section (1) to section 158BB of the Act.

12. At this stage, it will be relevant to also refer to section 158BA(3) of the Act. Sub-section (3) of section 158BA of the Act relates to a part of the

year which had not ended or when the date of the filing of the return under section 139(1) had not expired. In such cases, income of the transactions

recorded on or before the date of search or requisition of the books of account or other documents, etc., would not be included in the block period.

The said sub-section has to be read along with section 158B(b) which defines, 'undisclosed income'. On harmonious construction, it follows that said

entry in the books of account should not be false, otherwise they would be covered under the head 'Expense, deduction or allowance which is found

to be false'.

13. False or falsehood is a strong word and much narrower than the word or term 'incorrect' or 'legally unsustainable'. 'False' or 'falsehood'

refers to element of mens rea or bad mental intention and would not relate to claims which might be wrong because of legal interpretation or has to be

disallowed because of technical defect and similar reasons. However, as noticed below, this question does not arise for consideration in the present

case.

14. Clause (c) of section 158BB(1) of the Act as enacted was substituted by the Finance Act, 2002, with retrospective effect from July 1, 1995. The

substituted clause (c) deals with cases where due date of filing of returns of income had expired but no return of income, had been filed, when either

of the two conditions were satisfied. As per sub-clause (A) of clause (c), income for the block assessment would be computed on the basis of entries

as recorded in the books of account and other documents maintained in the normal course where such entries result in computation of loss for any

previous year falling in the block period. Sub-clause (B) would only apply in a case where the income, as a result of entries in the books of account

and other documents maintained in the normal course on or before the date of search or requisition did not exceed the maximum amount not

chargeable to tax. Clause (ca) deals with cases not covered by clause (c), i.e., when no return of income had been filed but income was taxable.

Thus, where the due date of filing of return had lapsed but no return had been filed and computation was not at a loss or below the taxable limit,

income as per the books of account shall be treated as 'nil', even if as per the books of account and other documents maintained in the normal

course, the income disclosed was above the taxable limit. In such cases,

irrespective of the figures in the books of account or documents, income has to be by default, taken as nil. Clause (ca) would apply only when the date of filing of return has expired and return of income has not been filed.

15. Clause (d) would apply to cases where previous year has not ended or date of filing of return under section 139(1) has not expired. In such

cases income has to be computed on the basis of the entries relevant to such income or transactions recorded in the books of account or other

documents maintained in the normal course on or before the date of search.

16. XXX

17. Section 158BC of the Act relates to the procedure for block assessment and postulates issue of notice for filing of return for block

assessment. The first proviso states that in such cases, no notice under section 148 was required. Thus, it does away with the requirement of notice

under section 148 and recording of reasons for the same. The said proviso is to be read with subsection (1) of section 158BA which gives an

overriding primacy to Chapter XIV-B. The second proviso states that no revised return for block assessment can be filed. Clause (b) of section

158BC states that the Assessing Officer shall proceed to determine the undisclosed income for the block assessment period and the provisions of

sections 142, 143(2), 143(3), 144 and 145 shall apply and as per the mandate of clause (c), block assessment order has to be passed and tax payable

has to be determined. As per clause (d), the assets seized under section 132 or requisitioned under section 132A have to be accordingly dealt with in

accordance with section 132B.

39. Shailendra Mahto (supra) had examined several decisions of different High Courts on the issue and had extensively relied on the decision of

the Supreme Court in A.R. Enterprises, (supra) interpreting the term undisclosed income? and in particular the expression ?had not been or would not

have been disclosed for the purposes of the Act?.

40. At this stage, it would be relevant to refer to the judgments relied upon by the counsel for the respondent/assessee. Decision of the Supreme

Court in Assistant Commissioner of Income Tax and Another versus Hotel Blue Moon, [2010] 321 ITR 362 (SC) had answered the issue and question

whether issue of notice under Section 143(2) was mandatory after return of income for block period was filed by the assessee, who had been

subjected to search, pursuant to notice under Section 158BC of the Act. Agreeing with the High Court, the Supreme Court held that it was mandatory to issue notice under Section 143(2) for the purpose of Chapter XIV-B of the Act for determination of undisclosed income for the block period. While deciding the said issue, the Supreme Court observed that Chapter XIV-B provides for assessment of undisclosed income unearthed as a result of search. These provisions were devised to operate in distinct field of undisclosed income and were in addition to regular assessments covering the previous years, falling in the block period. Block assessment was not intended to be a substitute for regular assessment and was a special procedure intended to provide mode of assessment of undisclosed income done on the basis of evidence found as a result of search, or requisition of books of accounts, or documents and such other material and information as were available with the Assessing Officer. The said decision does not directly relate to the point and question before us. We would simultaneously now deal with the decisions of the Delhi High Court in CIT versus Bluechip Construction Company (P) Ltd., [2007] 213 ITR 530 (Delhi), Commissioner of Income Tax, Delhi-VI versus Ashok Dua, [2009] 177 TAXMAN 494 (Delhi), Commissioner of Income Tax versus Vishal Aggarwal, [2006] 283 ITR 326 (Delhi), Commissioner of Income Tax versus Ansal Buildwell Ltd., (2008) 304 ITR 378 (Delhi) and Commissioner of Income Tax versus DPA Finvest Services Ltd., [2015] 376 ITR 399 (Delhi). In Vishal Aggarwal (supra), father of the assessee was subjected to search and seizure operations. Nevertheless, the Assessing Officer had invoked Section 158BC of the Act in the case of the son in respect of gifts of Rs.10 lacs and another gift of Rs.20,000/-. In this context, it was observed that resort to Section 158BC was improper and contrary to law and holds that any post search inquiry unconnected with material or information recovered during search, would at best enable the Assessing Officer to re-open assessment under Section 147, albeit would not be a ground to invoke Section 158BC of the Act. This decision is, therefore, distinguishable as was considered and observed in Shailendra Mahto (supra). In Ansal Buildwell Ltd. (supra), the Division Bench referred to definition of the expression 'undisclosed income' vide clause (b) to Section 158B and the amendment made by Finance Act 2002 with retrospective effect from 1st July, 1995 to Section 158BB(1) of the Act relating to computation of undisclosed income for the

block period and it was observed as under:-

10. On a reading of both these provisions of law, which are inserted in the Act by the same amending statute, that is, the Finance Act, 2002, it appears

to us that undisclosed income should be that which is discovered as a result, inter alia, of a document or transaction which has not been or would not

have been disclosed for the purpose of the Act. This pre-condition does not arise in so far as the present case is concerned because admittedly the

document recovered during the search represented a disclosed transaction of sale of property that had taken place for which M/s. Televista

Electronics Limited had been paid a commission. In so far as the falsity of the expense or deduction or allowance is concerned, that must be

necessarily be relatable to the document or transaction. This is clear from section 158BB(1) of the Act which specifically requires that the material or

information must be relatable to such evidence. Therefore, both requirements are necessary, namely, material showing that the amount has not been

or would not have been disclosed and that the expense, deduction or allowance should be false on the basis of the unearthed evidence.

11. In so far as the present case is concerned, the very first requirement, namely, of non-disclosure of the material does not arise because in fact the

assessee had disclosed the transaction in its account books and this is not disputed by the Revenue. Moreover, the sale appears to have been

considered by the Assessing Officer during the course of regular assessment, although learned counsel for the parties are not in a position to tell us the

exact facts. In any case, since the first condition itself is not satisfied, the falsity of the claim being relatable to that evidence does not arise.?

Elucidation was that for invoking the provisions of Chapter XIV-B for block assessment procedure, two requirements must be satisfied and the

requirements were cumulative. Firstly, there should be material or documents showing that information had not been or would not have been disclosed

and secondly that the expense, deduction or allowance should be false on the basis of evidence unearthed as a result of search. We would observe

that this decision has to be read in light of the ratio subsequently expounded and explained by the Supreme Court in A.R. Enterprises (surpa) which

would now constitute the binding precedent. A. R. Enterprises (supra) as noticed above, had expounded on the condition precedent for taxing

undisclosed income in block assessment in search cases, and emphasised that it could include entries in the books of accounts or other documents or

transactions which wholly or partly represent income or property which had not been or would not have been disclosed for the purposes of the Act.

Finality and absolute certainty would not be required at the initial stage. More importantly, the Division Bench in *Ansal Buildwell Ltd.* (supra) had

stated and held that the issue of commission, subject matter of the block assessment, had been considered by the Assessing Officer during the course

of regular assessment, though counsel for the parties were unable to state the exact facts. Thereafter, the Division Bench had referred to the findings

recorded by the Assessing Officer in the regular assessment. Section 158BB(1) pertinently uses the expression "relatable to evidence found as a

result of search or requisition of books of account or other documents or such other material or information as available with the Assessing Officer".

Expression "relatable to" is wide in ambit and scope. 41. Similarly, decision in *DPA Finvest Services Ltd.* (supra) is distinguishable for in the said

case, the Assessing Officer had made addition of more than Rs.33.75 lacs as unexplained credit under Section 68 of the Act on the basis that the said

assessee had received Rs.61,933/- by way of accommodation entry from a company subjected to search and seizure operations. After referring to

Section 158BB(1) it was observed that the Revenue had not been able to bring on record any information or material that the additions made were

relatable to the solitary accommodation entry which was unearthed during the search.

42. *Bluechip Construction Company (P) Ltd.* (supra) follows the reasoning given in *Ansal Buildwell Ltd.* (supra) while deciding the question of

addition of Rs.26,10,500/- in respect of credit appearing in the bank account of the assessee to observe that the amount which had been disclosed in

the bank account maintained by the assessee to that extent cannot be described as undisclosed income. It was held that the revenue's contention

that the amount mentioned in the bank account would not have been disclosed in the return, the due date for which was subsequent to the date of the

search cannot be answered in that manner, and that the burden and a heavy one, was on the Revenue that they had not attempted to discharge. It

was held that to negate addition in the block assessment, it was enough if the amount disclosed by the assessee was in the bank account. In *Ashok*

Dua (supra), the assessee had received gifts from non-residents which were credited in the bank accounts. These bank accounts were discovered during the course of search and gift deeds and the affidavits in support of gifts were also found during the course of search. Referring to the case of Vishal Aggarwal (supra), it was observed that these gifts would be outside the purview of Chapter XIV-B of the Act. On the question of undisclosed income we have referred to the judgment of the Supreme Court in A.R. Enterprises (supra), which should be considered as settling the issue and controversy. Earlier ratio contrary to the dictum in A.R. Enterprises (supra) should be treated as over-ruled and not binding.

43. In Director of Income Tax (Exemption) versus All India Personality Enhancement and Cultural Centre for Scholars Apieccs Society, [2015]

379 ITR 464 (Delhi), while interpreting Section 158B(b), which defines undisclosed income for the purpose of Chapter XIV-B, it was observed that it

connotes assets or income which were taxable but the assessee seeks to conceal the same from the authorities. In that case, it was observed that

surplus recorded by the assessee in the books of accounts maintained in the normal course and which according to the assessee were not chargeable

to tax cannot be assumed to be undisclosed income as revenue believes them to be taxable. Therefore, when the assessee subscribes to the view that

a particular amount was not taxable, and he was not required to file his return, it would not be undisclosed income. Reference was also made to the

decision in Shri L.R. Gupta and Others versus Union of India and Others, [1992] 194 ITR 32 (Delhi) which had considered the expression undisclosed

income or property? in the context of Section 132 of the Act. With respect we may note that for the purpose of Chapter XIV-B, the expression

“undisclosed income” has been specifically defined. Section 132 relates to pre-search requirements and Chapter XIV-B incorporated a special

procedure for post search assessment in respect of “undisclosed income”. Definition ascribed to “undisclosed income” would guide and govern the

applicability of Chapter XIV-B or the block assessment proceedings. Difference in clause (c) of Section 132 and expression undisclosed income

defined in Section 158B(b) of the Act was highlighted in Shailendra Mehto (supra) after referring to observations made in N.R. Paper and Board

Limited and Others versus Deputy Commissioner of Income Tax, [1998] 234 ITR 733(Guj.). In this context, we may now refer to the decision of the

Rajasthan High Court in Commissioner of Income Tax versus Elegant Homes Private Limited, [2003] 259 ITR 232 (Raj.) which with respect reflects

and resonates a compelling opposite view. The tribunal in the said case had deleted additions of Rs.41,000/- as cash credits not proved as genuine.

Deposits of Rs. 41,000/- were recorded in the regular cash books maintained by the assessee. Rajasthan High Court reversed the findings of the

tribunal and held that the Tribunal had committed an error by holding that as the entries were found in the regular books of accounts, the entries

cannot be treated as undisclosed income. It was held as under:

10. Admittedly, Rs.41,400 had never been offered for tax and it was never shown as income of the assessee, the entries of these deposits were found

in the regular cash books maintained by the assessee. When the entries were found in the books of the assessee, the assessee could not explain the

genuineness of the deposits, this amount was never disclosed, it is an undisclosed income of the assessee. The Tribunal has committed an error in

holding that as the entries were found in the regular books of account, therefore, it cannot be treated as undisclosed income.

11. The view is contrary to the provisions of Chapter XIV-B of the Income-tax-Act, 1961. In Chapter XIV-B of the Act, special provisions for

assessment in search cases have been given and if any amount of income has not been taxed and during the course of search, if some "undisclosed

income is found on the basis of material seized, that should be treated as undisclosed income as per the scheme of special assessment under the

aforesaid Chapter.

44.It has been submitted on behalf of the respondent/assessee that in the present case no "evidence was found" as a result of the search in respect

of the gift and, hence, no addition could be made in the block assessment proceedings. Reliance was placed upon paragraph 20 of the decision

Commissioner of Income Tax versus Harjeev Aggarwal, (2016) 229 DLT 33 and Commissioner of Income-tax versus Late Shri Raj Pal Bhatia,

(2011) 333 ITR 315 (Del). In the latter case, the High Court has observed as under:-

13.The Tribunal has held that this statement could not be treated "books of accounts or other documents or assets" which only could be the basis for

invoking the provision of Section 158 BD of the Act. Admittedly, statement of

Mrs. Charla is neither 'books of accounts' or 'assets'. The question, therefore, is as to whether this statement can be treated as 'other documents'. Prima facie, it is difficult to accept this proposition.

Statement was not the document which was found during search. In fact this was the document which came to be created during the search as the

statement was recorded at the time of search. Therefore, it cannot be said that the statement was 'seized' during the search and thus, would not

qualify the expression 'document' having been seized during the search. In such a scenario, proper course of action was reassessment u/s 147 read

with section 148 of the Act.

In Harjeev Aggarwal (supra), it was observed as under:-

20. In our view, a plain reading of Section 158BB(1) of the Act does not contemplate computing of undisclosed income solely on the basis of a

statement recorded during the search. The words 'evidence found as a result of search' would not take within its sweep statements recorded during

search and seizure operations. However, the statements recorded would certainly constitute information and if such information is relatable to the

evidence or material found during search, the same could certainly be used in evidence in any proceedings under the Act as expressly mandated by

virtue of the explanation to Section 132(4) of the Act. However, such statements on a standalone basis without reference to any other material

discovered during search and seizure operations would not empower the AO to make a block assessment merely because any admission was made by

the Assessee during search operation.

45. In paragraph 13 of Late Shri Raj Pal Bhatia (supra), the Court had expressed prima facie view that a statement recorded at the time of search

could not be treated as another document. Late Shri Raj Pal Bhatia (supra), was a case relating to Section 158BD of the Act which relates to initiation

of block assessment proceedings against a third person who has not been subjected to search and seizure operations on the basis that undisclosed

income belonging to him or whose books of accounts or other document sheets or assets had been requisitioned. In the context of the said provision,

the Division Bench observed that the oral statement would not be covered by the expression 'seized' during the course of search and would not

qualify the expression 'document'. However, no final or authoritative opinion

was given by the Division Bench on the said aspect as appeal of the Revenue was rejected for the reason of absence of any satisfaction in writing by the Assessing Officer of the searched person, in view of decision of the Supreme Court in *Manish Maheshwari versus Assistant Commissioner of Income Tax and Others*, (2007) 289 ITR 341 (SC). Thus, *Late Shri Raj Pal Bhatia* (supra) had not expounded a clear ratio on the aspect as is clear from paragraph 16 of the said judgment, which reads as under:-

16. However, it is not even necessary to decide this aspect authoritatively in these appeals, inasmuch as, order of the Tribunal warrants to be sustained because of the following reason.?

46. However, in *Harjeev Aggarwal* (supra) it was observed that oral statements recorded would constitute information, but if such information was relatable to the material or evidence found during search. Then alone oral statement could be used as evidence as expressly mandated by virtue of Explanation to Section 132 (4) of the Act. Explanation to Section 132(4) of the Act, reads as under:-

Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.]

47. Evidence can be both - documentary or oral. Section 3 of the Evidence Act, 1872 states that evidence means and includes all statements which

the court permits or requires to be made before it by witnesses, in relation to matters of the fact under enquiry, and such statements are oral

evidence. Documents, including electronic records, produced for the inspection of the courts, are called documentary evidence. *Harjeev Aggarwal*

(supra), thus confounds the confusion and does not help us resolve conundrum and enigma of ""undisclosed income"". In the first portion of the

judgment it was held that the evidence found as a result of search would not take within its sweep statements recorded during the search and seizure

operations except when it was relatable to material or documents found during the search. In other words, oral testimonies recorded under Section

132(4) on a standalone basis without reference to other material discovered

during the course of search and seizure operations cannot be treated as evidence and form the basis of addition as undisclosed income in the block assessment. Mere admission during the search on oath cannot result in addition as undisclosed income. This was notwithstanding Explanation to Section 132(4) inserted by the Direct Tax Laws (Amendment) Act, 1987 with effect from 1st April, 1989, which states that the person could be examined not only in respect of books of accounts or other documents found during the course of search but also in respect of matters relevant for purposes of any investment connected with any proceedings under the Act. In the context of Section 158BB(1) read with Section 158B(b) of the Act, it was observed that despite the Explanation, oral statement would be relevant and used only if incriminating document or material was found during the search and seizure operation and not by itself as incriminating evidence and gathered during search. Noticeably contrary view has been taken by the Kerala High Court in Commissioner of Income Tax versus M/s Hotel Meriya, [2011] 332 ITR 537 (Kerala) after referring to Section 3 of the Finance Act and Section 131 of the Act. Oral evidence, it was observed, would be admissible for the purpose of block assessment also. Explanation to Section 132(4), it was emphasized, permits recording of statement on oath for all purposes connected with any proceedings under the Act.

48. In the case of Harjeev Agarwal (supra), the question of law was answered in favour of the Revenue and against the assessee in spite of the ratio and observations made in the first portion after referring to A.R. Enterprises (supra). It was observed that the requirement of addition of Rs.74 lacs as undisclosed income was rightly made in the block assessment proceedings as these payments in cash were not reflected in the books of accounts, though subsequently the assessee had given an explanation as to the source of the said money. In the said case, the transaction of sale of immovable property was duly disclosed but part purchase consideration of the cash element of Rs.74 lacs was clearly undeclared income. In the aforesaid factual background, it was held that Rs.74 lacs should be treated as undisclosed income taxable by virtue of Section 158B(b) as explained in A.R. Enterprises (supra).

49. The word found is elastic and can be given varied meaning and need not be restricted to a physical object found. The expression 'evidence

found? could in the context of the block assessment include an incriminating statement on oath. Statements on oath could be with reference to entries

in the statement of accounts, including bank accounts or may well refer to acceptance or admission on utilization of unaccounted for money/income

for which physical/material and documents have been destroyed and were not available/found, or were already in knowledge of the Revenue and,

therefore, were not 'found' for the first time. 'Evidence found' could well be oral evidence that would mandate addition as undisclosed income.

The word 'found' is past and past participle of 'find', which means to discover by chance or deliberately. It is normally associated with discovery

of information or a fact and in the context of investigation, detection of someone in a wrong, lie or a crime. The word 'found', therefore, in natural

and normal context would in the context of 'evidence found' include oral evidence or a statement made on oath and is not confined and restricted to

tangible material in form of documents or papers or an article. It is, in this context, the Assessing Officer could refer to the facts or evidence as found

as a result of search and further inquiries thereupon.

50. In the present case, Revenue would submit that papers and documents were found, which indicated that the assessee had not disclosed income

from six benami concerns. Books of account would also include the pass-books or statement of bank accounts. It is in this context we would have to

read and understand the questions and answers given by the respondent / assessee in his statements under Section 132(4) of the Act. Oral statement

was and should not be read in isolation, as respondent/assessee at the first and initial stage had accepted that the gift of Rs.50,00,000/- was not

genuine, and was a subterfuge. Oral evidence and documentary material was collected during the course of search regarding the undisclosed

income. It is relevant that the respondent/assessee in his block return had declared undisclosed income, i.e. unaccounted income, to the tune of Rs.

86.82 lacs.

51. Given the aforesaid position, and in view of the aforesaid conflict and divergence, having recorded our prima facie reservation on the view

expressed on "books of accounts" and more particularly on "oral statement" not being evidence found, we are inclined to refer the question of

interpretation of the term 'undisclosed income' for the purpose of block

assessment to a larger bench to resolve and iron out differences and bestow and bring clarity. While examining the questions, the view expressed in Harjeev Aggarwal (*supra*) on whether a statement recorded under Section 132(4) cannot be treated as evidence found during the course of search could be considered and re-appraised. Larger bench could so examine the issue and question whether it would be appropriate and proper, when addition made in block assessment is deleted and knock down for "technical grounds, for the Tribunal and Court to direct that the addition should have been made in regular/normal assessment in terms of sub-section (6) to Section 153 of the Act.

52. The appeals would be accordingly placed before Hon^{ble} the Acting Chief Justice for being referred to a Larger Bench for deciding the issues and questions hereinbefore noticed. The questions of law can be thereafter answered by the Larger Bench or on the basis of opinion given and expressed by the Larger Bench, on the appeals being listed before the roster Bench.