

(2010) 02 KAR CK 0026

In the Karnataka High Court

Case No : Income Tax Appeal No. 277 of 2003 and Income Tax Appeal No. 258 of 2001

Smt Jyothi Kumari No. 568, 10th Cross. Buddha Marga,
Siddartha Layout, II Stage, Mysore

APPELLANT

Vs

Asst. Commissioner of Income Tax (INV) - Circle-2 No. 55/1.
Shilpashree Vidhyaranya Complex, Vishveshwaranagar,
Mysore-570 008
 The Commissioner of Income Tax
Shilpashree Building Vishveshwara Nagar Mysore and The
Assistant Commissioner of Income Tax (Investigation) Circle-
1, Shilpashree Building, Vishveshwara Nagar Mysore Vs Smt
Jyothikumari

RESPONDENT

Date of Decision : 02-02-2010

Acts Referred:

Citation : (2012) 344 ITR 60 : (2013) 76 KarLJ 113 : (2012) 207 TAXMAN 40

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : A. Shankar in Income Tax Appeal No. 277 of 2003 and Sri. M.V. Seshachala, in Income Tax Appeal Nos. 257 and 258 of 2001, for the Appellant; M.V. Seshachala in Income Tax Appeal No. 277 of 2003 and Sri. A. Shankar in Income Tax Appeal Nos. 257 and 258 of 2001, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—These three sets of Income Tax Appeals u/s 260-A of the Income Tax Act, 1961, have their origin to a search that was conducted by the Income Tax Authorities on 18.3.1996 at the residence/business premises No. 568, 10th Cross, Buddha Marga, Siddartha Layout, II Stage, Mysore, of the respondent in I.T.A.No. 257/2001 and the appellant in I.T.A.No. 277/2003.

2. Two of the appeals, ITA Nos. 257/2001 and 258/2001 are by the revenue and respondents in these two appeals are couple. While in ITA No. 257/2001 Purushothamalal is the respondent - assessee and the subject matter relates to his undisclosed income assessed to tax by the Assessing Officer under the

provisions of section 158BC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), but on his demise being now represented by his legal heir - wife Smt. Jyothikumari, wife herself is the respondent - assessee in ITA No. 258/2001 and the subject matter of this appeal is the block assessment order passed in respect of this assessee for the block period 1.4.1985 to 18.3.1996 and in respect of her undisclosed income for this period, but the revenue passing an assessment order in the hands of this assessee more for the purpose of an alternative option as this assessee had claimed the income assessed to tax as her own income which had gone into contribution of acquiring an asset in respect of which contributions had been made by the couple, but the revenue having rejected this version of this assessee and having attributed the entire unexplained, undisclosed investment in the asset as the undisclosed income of the assessee's husband - Purushothamlal for the very block period.

3. The respondent - Smt. Jyothi Kumari in the other appeal viz., I.T.A.258/2001 is the wife of Sri. Purushothamlal.

4. The search and the follow-up action having lead to the passing of the assessment order dated 26.5.1997 under the provisions of Section 158BC of the Act, resulting in considerable tax liability on Sri. Purushothamlal, the Principal assessee to an extent of Rs. 32,51,142/- which is on the premise that the total undisclosed income, unearthed as a result of the search on 18.3.1996 was in a sum of Rs. 54,18,571/- subjecting this undisclosed income to tax at 60% in terms of provisions of Section 113 of the Income Tax Act, 1961.

5. As a precautionary measure, the Revenue has also passed a protective assessment order in the hands of spouse of Sri. Purushothamlal i.e., his wife as per a separate order dated 26.5.1997 [copy of which is available as Annexure-B to I.T.A.No. 258/2001]. In the hands of Smt. Jyothi Kumari wife of Sri. Purushothamlal the protective assessment order in its turn has resulted in an independent tax liability of a sum of Rs. 5,80,254/- on the premise that there was an undisclosed income of Rs. 9,67,088/- rounded off to Rs. 9,67,090/- for the block period from 1.4.1985 to 18.3.1996, also in terms of Section 158BC r/w Section 158BD of the Act.

6. Both the persons who have suffered these assessment orders under Chapter XIV B of the Income Tax Act are also regular assesseees under the Act and while both of them are assessed to tax as individuals and the income offered to tax being an income earned and taxable under the head "Profits and Gains of Business and Profession", to a certain extent under other sources also. Mr. Purushothamlal had offered his income from the business activity of Auto consultancy and Smt. Jyothi Kumari had offered her income to tax in the returns that she had filed to be from the activity of tailoring and therefore, assessable to tax under the head "Profits and Gains of Business and Profession."

7. The search was followed-up by certain other developments and for the purpose of further discussion a few more dates that can be of some significance

in this context are that while on the date of search the searching officer had while impounded as many as 68 documents in terms of the panchanama drawn on that date, which were all inventorised on the very date. A prohibitory order was also passed by the Income Tax Officer, Survey, Mysore-8 in respect of a copy of R.C. Book of the Motor vehicle bearing registration No. KA 09 M 7575.

8. It is the version of the Revenue that the search continued or did not end till 16.5.1996 when the prohibitory order in respect of copy of the R.C. Book was lifted and thereafter it was followed up by issue of a notice u/s 158BC of the Act as on 22.6.1996.

9. It is also the version of the Revenue that further panchanama was drawn as on 16.5.1996.

10. The notice u/s 158BC of the Act was followed-up by a further notice dated 19.7.1996 issued u/s 142 of the Act apprising the assessee that the case is posted to 30.07.1996.

11. The further development thereafter as recorded in the order of the Assessing Officer is extracted as below:-

In response to this notice, the assessee's representative has stated that he has filed Returns of income for the assessment year 1995-1996 and 1996-97 in Form No. 2 in response to notice u/s 158BC. On receipt of this letter, another opportunity was given to the assessee to file the Return in form No. 2 for the block period 01.04.1985 to 18.03.1996 by 30.7.1996 with copy to assessee's representative Shri U.V. Mollya, Chartered Accountant, Bangalore. In response to this notice, the assessee's representative sent a telegram seeking extension of time for filing the Return till 15.08.1996. The telegram was followed by a letter from the assessee's representative wherein he has confirmed the sending of the telegram and requesting for time till 15.08.1996 to file the Return of income. The above said letter was filed in this office on 31.07.1996. In view of the assessee's failure to file a Return income by 15.08.1996 as stated in his telegram and the written communication of the assessee's representative, a notice u/s 142(1) calling for the Return of income for the block period under consideration was served on the assessee on 19.08.96 posting the case to 26.08.96. The assessee along with his representative was present on 26.08.96 and again sought for time to file the Return of income till 30.09.96 on which date the case was posted for hearing. Yet again there was no compliance on the part of the assessee and therefore, a summons u/s 131 was served on 07.10.96 posting the case to 14.10.96 and requiring the assessee to file the Return and evidences in support of the Return. In response to the summons, assessee filed a letter on 09.10.96. The assessee's representative pleaded again extension of time to file the Return of Income on 24.10.96. Accordingly, a notice u/s 142() was issued - on the assessee posting the case on 24.10.96 and also with a direction to file the Return of income without fail on the said date.

In view of the non compliance of the assessee even on 24.10.96 a further notice

u/s 131 was served on the assessee on 11.11.96 posting the case to 15.11.96. Again, there was failure on the part of the assessee to file the Return. However, the assessee's representative has filed a written submission requesting for time till 25.11.96 to file the Return. In view of the assessee's failure to adhere his own admission to file the Return by 24.11.96, yet another summon was issued u/s 131 on 26.11.96 posting the case to 02.12.96 at 11 a.m. and the same was served on the assessee on 26.11.96. At last, the assessee filed block returns inform 2 B admitting "nil" income on 06.12.96. A detailed questionnaire was issued on 12.12.96 along with notice u/s 143(2) and summon u/s 131, seeking clarifications on various issues that emanated at the time of search, posting the case on 31.12.96. In response to the above notices, the assessee filed a letter on 26.12.96 requesting time till 10.01.97. Again the case was posted for hearing by issue summons u/s 131 on 30.12.96 posting the case to 10.01.97 on 10.01.97. The assessee's representatives Shri Venkatesan and Shri Mallya, Chartered Accountants of S. Venkatesan & Co., were present and they wanted time till 27.01.97 on which date the case was posted for hearing. On 27.01.97 the assessee filed detailed written submissions contesting the various issues raised at the time of hearing which are dealt with separately in this order. The case was again posted for hearing by issue of notice u/s 143(2) and summons u/s 131 on 11.02.97. The assessee along with his representative appeared on that date and a statement was recorded on that date from the assessee. While recording the statement the assessee sought some more time to file further details that were required for finalisation of the assessment proceedings. The assessee stated that he will file the details called for by 17.02.97. In view of the assessee's failure to file the details called for, the case was again kposted for hearing by issue of notice u/s 143(2) and summons u/s 131 on 27.03.97. There was no response from the assessee. The case was again posted on 25.04.97 by issued of summons on 10.04.97. There was no response from the assessee. Therefore, another letter was issued by this office on 05.05.97 requiring certain details to finalise the assessment proceedings by 12.05.97. The assessee appeared on that date and sought for adjournment till 16.05.97. The assessee and his representative has been informed that if they do not appear on 16.05.97 the matter will be decided on the basis of information available on records and the assessment will be completed accordingly. The assessee has failed to appear on 16.05.97 as promised. However, the assessee has filed a letter dated 15.05.1997 which was received by me on 19.5.97 seeking adjournment till 22.5.97. The day on which adjournment is sought for by the assessee is a public holiday and no further adjournment is possible since, the assessment is getting barred by limitation on 31.5.97. Therefore, the assessment is concluded as under on the basis of information available on record.

12. The Assessing Officer had categorised the undisclosed income of Sri. Purushothamlal broadly under the heads "Income Attributable to Money Lending Activities". Income deemed to be undisclosed income of the assessee in view of the unexplained part of investment on the purchase of site No. 569/1, a site

adjacent to the existing constructed property of this assessee at No. 568, 10th Cross, Buddha Marga, Siddartha Layout, Mysore and the unexplained part of expenditure incurred for constructing the property at No. 568, 10th Cross, Buddha Marga, Siddartha Layout, Mysore. "Income Attributable to Money Lending Activities" reads as under:-

1. Advance Money Lending
2. Inv't. In Siddaratha Layout Property
3. Construction of House Property
4. Unexplained part of investment made on the acquisition of Electronic and Electric Gadgets
5. Loan advance given to one N. Suresh Rs. 15,000/-for the purchase of vehicle
6. The unexplained part of expenses on the Foreign Tour undertaken by the assessee
7. Certain advances to one Mr. Moh. Rebeck
8. Certain advance to Smt. Lakshmi W/o. Gururaj Acharya
9. Invest made on movables and immovables to the tune of Rs. 3,81,284/-
10. Cash credits in the Bank accounts of the assessee during the relevant assessment years 1991-1992 to 1996-1997.
13. The undisclosed income attributable to all the above sources added up to a total of Rs. 54,18,571/- in terms of the assessment order, was the subject matter of appeal by Sri. Purushothamlal before the Tribunal under the provisions of Section 253(1)(b) of the Act.
14. Likewise, the assessment order passed in respect of the undisclosed income of Smt. Jyothi Kumari though was a protective measure by the Revenue, on the premise of this assessee having undisclosed income attributable to the unexplained part of the investment on the property at No. 568, 10th Cross, Buddha Marga, Siddartha Layout, II Stage, Mysore. It is the very property in respect of which, her husband had also claimed to have made Investment and the claim of the couple being that they had invested jointly for the construction of the house on this site and from out of their respective earnings. The block assessment order u/s 158BC of the Act of this assessee also was for the block period 1.4.1985 to 18.3.1996 on the premise that the actual investments on the house property was not fully disclosed as also the actual income of the assessee from her own activities. The order in the hands of Smt. Jyothi Kumari was also appealed against and the Income Tax Appellate Tribunal acting as the First Appellate Authority has allowed the appeals in full, in terms of the common order dated 4.4.2001 passed in respect of both these appeals IT (SS) A.No. 118/B/97 and IT (SS) A.115/B/97. While agreeing with the claim of the assessee who had incidentally filed their returns in terms of the notices issued under the provisions

of Chapter XIV B of the Act and purporting to be u/s 158BC of the Act disclosing NIL income for the block period and the Assessing Officer was directed to accept this NIL income returns of the assessee thereby amounting that the assessee did not have any undisclosed income and therefore, set aside the orders of the Assessing Authority passed in respect of both assessee.

15. It is aggrieved by these common orders of the Tribunal allowing the appeals of the assessee the Revenue is in appeal seeking for setting aside the order of the Tribunal and for restoring the assessment order passed for the block period under the provisions of Section 158BC of the Act. It is in this background that the appeals have been heard and arguments have been addressed in all three appeals.

16. While these facts constitute the background, for the Revenue filing appeals I.T.A.No. 257/2001 & I.T.A.No. 258/01, the background for filing the appeal I.T.A.No. 277/03 involves a few additional facts viz., that the principal assessee Sri. Purushothamlal had filed a Miscellaneous Petition u/s 254(2) of the Act before the Tribunal seeking for rectification of the order of the Tribunal dated 4.4.2001 on the premise that a sum of Rs. 3,10,000/- attributable to the proceeds of the sale of car, which was being used by the assessee resulting in a surplus of a sum of Rs. 3,10,000/- and sold for a price of Rs. 3,10,000/- was available and explained the source for investments made in the construction of the house property and the Tribunal should have taken note of this aspect of the matter for reducing the undisclosed income attributable to the unexplained investments made in respect of the house property made by the assessee.

17. Proviso (1) and (2) of Section 254 of the Act reads as follows: -

254. (1) The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit.

(2) The Appellate Tribunal may, at any time within four years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it under sub-section (1), and shall make such amendment if the mistake is brought to its notice by the assessee or the [Assessing] Officer.

18. Though the Tribunal it appears, did permit the assessee to raise this ground and did look into its order for a possible correction on the premise of the mistake in passing the order, nevertheless on examining the question on its merits found there was no occasion to exclude the amount from the undisclosed income of the assessee as assessed by the Assessing Officer and accordingly disposed of the Miscellaneous Petition.

19. The Tribunal examined this petition u/s 254(2) and in terms of its order dated 25.1.2002 treated the petition as allowed for the limited purpose of re-examining the appeal of the assessee only in respect of ground No. 6 as urged in the memorandum of appeal and on such examination found that, there was no occasion to vary or modify the earlier order of the Tribunal touching on this

aspect of the matter and there was no occasion to set aside or modify the order of the Assessing Officer on this aspect of the matter and accordingly opined that the original order dated 4.4.2001 did not call for any modification and the said order was sustained in its original form.

20. It is against this order dated 24.3.2003 passed by the Appellate Tribunal in Appeal No. 118/1997, the assessee has come up with an appeal u/s 260-A of the Act i.e., ITA.No. 277/2003.

21. It is in respect of these three appeals that Sri. Seshachala, learned Sr. Standing Counsel appearing on behalf of the Revenue and Sri. Shankar, learned counsel appearing on behalf of the assessee have made very elaborate submissions and have taken us through the legal position in all possible permutations and combinations that may emerge from out of the issues, have also taken us elaborately through the merits of the matter passed by the Tribunal and while the effort on the part of the learned Sr. Counsel is to demonstrate that the order passed by the Tribunal is illegal, unsustainable and unsupportable on any legal principle and has to be set aside, the effort on the part of the learned counsel for the assessee is to sustain the order of the Tribunal at any cost in its entirety and has put in valiant efforts by seeking aid of many legal principles and making elaborate submissions on all aspects of the matter including raising a preliminary objection for sustaining the order.

22. All the three appeals have been admitted by this Court for examining and the substantial questions of law as indicated in the memorandum of respective appeals and such questions read as under:-

ITA.No. 257/2001:

1. Whether the tribunal is correct in holding that it is the Assessing Officer who has to discharge the burden of demonstrating the claim of the assessee that he is an HUF even though the assessee does not produce any evidence or any material to substantiate his claim regarding his status.

2. Whether the amount of Rs. 4,90,000/-received by the assessee from 60 persons for organizing Singapore trips could be treated as an expenditure without the assessee establishing the identity of these 60 persons by producing their names addresses and presence.

3. Whether a sum of Rs. 1,77,730/- paid towards purchase of site was correctly disallowed by the assessing officer as the sale deed does not disclose the name of HUF or the assessee and the assessee had adopted the status of HUF merely to account for unaccounted investments.

4. Whether the Tribunal is correct that the valuation of the property should be Rs. 12,44,100/- and not Rs. 17,16,000/-as per Departmental Valuation Officer report by adopting erroneously local rates and granting supervision charges of 10%?

5. Whether the Tribunal was correct in holding that the assessee was entitled to claim Rs. 15,000/- towards payment of loan on vehicle when there was absolutely no proof about such payment except estimation from auto consultancy?

6. Whether the Tribunal is correct in holding that a sum of Rs. 1,00,000/- paid to Lakshmi and admitted by the Assessee in his statement cannot be added to the income of the assessee as the assessing officer has not stated whether the document of has been availed a pro-note, or an agreement which has been referred to as document No. 17 in the assessment order?

7. Whether the peak credits of Rs. 14,55,550/- which was not explained by the assessee could be allowed by the tribunal that the bank accounts are figuring in the balance sheet including the cash credits when the income of the assessee was being shown on estimate basis and no final accounts were submitted along with the return ?

ITA.NO. 258/2001:

1. Whether the Tribunal is correct in holding that the cost of construction should be assessed in the hand of the assessee's husband Sri Purushothamlal even though the assessee herself had claimed that 50% of the cost had to be out of the investment made by her and especially when the assessing officer had recorded a finding that the cost of construction had been made out of the unaccounted money shown by the assessee?

2. Whether the Tribunal was correct in holding that a sum of Rs. 3,81,284/- investment shown in moveable and immoveable property by the assessee in the return of income filed on regular basis by the assessee should be treated as her own income without examining any material or recording a finding as to why the assessing officer conclusion that this income had not been generated by the assessee was not correct ?

ITA.No. 277/2003:

1. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that the difference between the cost of construction as ascertained by the Departmental Valuation Officer and as declared by the Appellant constitute undisclosed income and liable for assessment under Chapter XIV-B of the Act?

2. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that a sum of Rs. 3,10,000/-declared by the appellant in his return of income before the date of search constitute undisclosed income and liable for assessment under Chapter XIV-B of the Act?

3. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that the matters which are already a part of return of income, filed before the date of search, can be subject matter of block assessment under

Chapter XIV-B of the Act?

4. Whether on the facts and circumstances of the case the addition sustained by the Tribunal could be treated as undisclosed income u/s 158B(b) of the Act and liable for assessment under Chapter XIV-B of the Act?

23. Sri. Seshachala, learned Sr. Standing Counsel for the appellant has addressed arguments on behalf of the Revenue in the two appeals viz., I.T.A.Nos. 257/2001 & 258/2001. Even at the threshold of his submissions a preliminary objection was raised by Sri. Shankar, learned Counsel for the assessee contending that the preliminary objection now raised by the assessee should be accepted, that will as a consequence avoid going into the correctness of the order of the Tribunal on the merits of the order passed by the Assessing Officer and as reversed by the Tribunal. If the order of the Tribunal can be sustained though not on merits, even without conceding but assuming for arguments sake not on merits but only on the ground of limitation in a sense that the block assessment order passed on 26.5.1997 was one barred by the period of limitation as indicated in Section 158BE of the Act, then the order of the Tribunal can be sustained on this premise alone notwithstanding the fact that the assessee has not either preferred an independent appeal on the aspect of the Tribunal not having agreed with the stand of the assessee that the assessment order was barred by the period of limitation and also notwithstanding the fact that the assessee had neither filed a cross appeal nor cross objection in the appeals filed by the Revenue but nevertheless for the purpose of sustaining the order of the Tribunal to the extent the assessee gets relief before the Tribunal that can be sustained even by supporting the order of the Tribunal and such findings and issues though would have gone against the assessee as per the answers given by the Tribunal and therefore, would vehemently urge that the appeals of the Revenue should necessarily be dismissed, if this Court agrees with the stand of the assessee that the block assessment order was barred by the period of limitation for passing the order as on 26.05.1996 in terms of provisions of Section 158BE of the Act.

24. Sri. Shankar, learned counsel for the Assessee, which assessee is incidentally in appeal against the order of the Tribunal declining to rectify its order on the miscellaneous petition for the purpose of modification of the order dated 4.4.2001 has also sought permission of the Court to raise an additional substantial question of law in ITA.No. 277/2003 to urge that the assessment order was barred by limitation in terms of the provisions of Section 158BE of the Act, for such purpose has sought permission of the Court to permit the appellant to raise the following two additional substantial questions of law as per memo dated 21.1.2010 placed before the Court during the hearing of these appeals. The said two questions are as under:-

1. Whether the Tribunal was justified in law in not giving a finding in respect of the issue of limitation for passing the order of Block Assessment after having noticed the contentions in its order on the facts and circumstances of the case?

2. Whether the Tribunal was justified in law in not holding that the assessment order dated 26.05.1997 is barred by limitation in accordance with the provisions of Section 158BE of the Income Tax Act on the facts and circumstances of the case?

25. Sri. Shankar, learned counsel for the Assessee being conscious of the fact that a ground of this nature had not been raised along with the memorandum of appeal and also that the Tribunal though by implication should be understood to have answered this question against the assessee, would nevertheless make a fervent appeal for remanding the matter to the Tribunal for recording a specific finding on this question of law, if this Court is not inclined to examine the question raised for recording the answer for the limited purpose of sustaining the order of the Tribunal though not on merits but on the question of limitation. The preliminary objection though is called as preliminary, has in fact occupied a major part of the hearing of these appeals as the question was highlighted in all its hues and shades and based on several legal principles.

26. Sri. Seshachala, learned Sr. Standing Counsel for the Revenue has joined issue on this aspect, contending that in the first instance the very premise which is assumed on the part of the assessee is that the provisions of Order 41 Rule 22 are attracted to an appeal u/s 260-A of the Act, is neither tenable nor stipulated in terms of the statutory provisions of Section 260A of the Act, that it is not open to the assessee to contend that the order of the Tribunal can be supported even by pressing the arguments to contend that the assessment order was barred by limitation though the Tribunal neither examined this question nor has in any way indicated that it was a question that merits examination for an answer to set aside the block assessment order and would urge that the assessee having not preferred an appeal by itself in terms of Section 260A of the Act raising the precise substantial questions of law on the question of limitation if it was so permissible and a shortcoming of this nature either not seeking to modify the order or not following a procedure that can fetch the assessee a relief for invalidating the order of the Tribunal not on merits but on the ground of limitation alone cannot be got over by a person who was only a respondent before the Income Tax Appellate Tribunal as well as this court and would therefore, urge that a question as raised by the assessee for examining the validity of the order of the Tribunal on the touchstone of the block assessment order being barred by the period of limitation cannot be entertained or encouraged and the preliminary objection should be over-ruled.

27. Sri. Shankar, learned counsel for the assessee being aware of such plausible submissions on behalf of the Revenue, has therefore by way of abundant caution sought to raise additional grounds and additional substantial questions of law in the appeal of the assessee i.e., I.T.A.No. 277/2003 to urge that the question of limitation as an additional ground for invalidating the assessment order which though has been set aside by the Tribunal not on the ground of limitation but on merits and would therefore, urge that if the block assessment order passed by

the Assessing Officer is not tenable in law even on the ground of limitation, by calling in aid, by the assessee, for the purpose of sustaining the order passed by the Tribunal and at any rate in the appeal filed by the assessee, the subject matter of which appeal is the order passed by the Tribunal. The order of the Tribunal showing recording a finding on limitation or for not having recorded a positive finding against the assessment order as having been barred by the period of limitation, the question can never be raised by the assessee and therefore, would urge that when once the assessee can raise this ground even in its own appeal u/s 260A of the Act, whether or not such ground can be urged to support the order of the Tribunal in the two appeals filed by the Revenue i.e., in I.T.A.Nos. 257 & 258/2001 such arguments will definitely be available to the assessee in ITA.No. 277/2003 as it is not an appeal filed under the very provisions of Section 260A of the Act and it is well settled that an additional ground involving the substantial question of law can be urged at any point of time and at any rate would draw our attention to the provisions of Section 260A(4) of the Act to urge that it is always open to the Court to examine an appeal, not only on the substantial questions of law raised and for examination of which the appeal has been admitted but also on such further questions as the Court may deem fit to frame even during the course of hearing and such questions which had not been initially formulated for an answer and questions on examination of which the appeal had been admitted but which arise in the opinion of the Court and can be examined at any point of time before the disposal of the appeal.

28. While this part of the argument is an argument based on the right given u/s 260A of the Act itself, the other part of the argument such as supporting the order of the Tribunal even in the appeals preferred by the Revenue and to the limited extent of calling in aid the question of limitation, Sri. Shankar, learned counsel for the assessee has urged that this course of defence is definitely available for the assessee in the two appeals of the Revenue on the proper understanding of the provisions of sub-Section (7) of Section 260A of the Act which in turn has adopted the provisions of CPC as are applicable to the appeal before the High Court and so far as may be such provisions applied in the case of appeals under this Section i.e. Section 260-A of the Act and the submission here is that insofar as the procedure for examining the appeals before the High Court which in our understanding had not joined been issue by either counsel can be an appeal u/s 100 of CPC. The procedure is governed by the provisions of Order 42 which in turn takes one back to the provisions of Order 41 Rule 22 as provided for in Rule 22 Order 41 and if once it is to be accepted that the provisions of Order 41 Rule 22 are attracted even to an appeal u/s 260A of the Act in the light of the provisions of sub-Section (7) of Section 260-A and Order 42 of CPC r/w the provisions of Order 41 are available to such a person in its entirety and in such an event Order 41 Rule 22 is also available and it is the provisions of Rule 22 of Order 41 which enables the non-appealing respondent to defend the order in appeal to the extent the order is in favour of the respondent

even without preferring an appeal but for the purpose of sustaining it and if so, even on such of those issues which should have been answered by the order under appeal and even by seeking reversal of the finding on such findings and it is such principle and on such premise Sri. Shankar, learned counsel for the Assessee has urged that this Court has to necessarily examine the question of limitation i.e., the block assessment order being hit by bar of limitation and if such question is examined, it can be answered for such purpose and the assessee is definitely entitled to call in aid this benefit to the extent of sustaining the order of the Tribunal on the ground of limitation also, in addition to defending the order on its merits.

29. It is such submissions which are urged for the purpose of inviting us to examine the validity of the block assessment order on the point of limitation, though the Tribunal has not expressly opined on this question against the assessee or the Tribunal has positively recorded a finding one way or the other.

30. Insofar as the question of limitation is concerned submission of Sri. Shankar, learned counsel for the assessee is two fold.

31. It is firstly contended that the assessee even figuring as the respondent in the appeals preferred by the Revenue i.e., ITA.No. 257/2001 and ITA.No. 258/2001 while defending the order of the Tribunal to the extent such order is in favour of the assessee and for supporting the finding and the order, can urge before this Court, the Appellate Court, such of those issues either expressly by implication decided by the Tribunal against the assessee or even such issues which the assessee had raised for determination by the Tribunal and in this case the question of limitation before the Tribunal and which has not been expressly addressed to can also be raised and a correct answer can be sought for even when the assessee has not filed any appeals that so far as the question of limitation is concerned to the extent of sustaining relief granted by the Tribunal in the assessee's appeal before the Tribunal and though the Tribunal had not expressly opined on the question of limitation can nevertheless demonstrate before this Court that the assessing authority had no jurisdiction to pass an assessment order in terms of the provisions of Section 158BC of the Act for the reason that a period of one year had already elapsed from the date of initial search and therefore in the wake of the provisions of Section 158BE of the Act, the Assessing Authority having been prohibited or not enabled to pass block assessment order after the expiry of this period could not have passed an assessment order which was sought in an appeal against the assessee before the Tribunal and when the assessee had expressly urged this before the Tribunal as to whether or not the Tribunal has opined on the question it is open to the assessee to urge before this Court even in the appeal preferred by the Revenue to the extent of sustaining the relief obtained before the Tribunal. For such purpose Mr. Shankar, learned counsel for the assessee would draw sustenance from the provisions of Rule 22 of Order 41 of CPC and submits that this in turn is linked to Order 42 which is the provision relating to the procedure to be followed

while disposing of the appeals before the High Court governing Second Appeal u/s 100 of CPC.

32. Mr. Shankar, learned counsel for the assessee would invite our attention to the provisions of sub-section (7) of Section 260A of the Act to submit that the procedure as contemplated in CPC, particularly the provisions of Order 42 to a Second Appeal and in turn that being linked to the provisions of Order 41 relating to First Appeal are all attracted in view of sub-section (7) of Section 260A of the Act and therefore, would urge that cross objection is enabled and tenable in view of sub-section (7) of Section 260A of the Act even in an appeal u/s 260A of the Act.

33. We can usefully extract Section 260A of the Income Tax Act, the provisions of Order 42, Order 41 Rule 22 as also Section 100 of CPC as under for easy reference :-

Section 260A: Appeal to High Court

(1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal before the date of establishment of the National Tax Tribunal,

if the High Court is satisfied that the case involves a substantial question of law.

(2) The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be

(a) filed within one hundred and twenty days from the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner;

(b) Omitted by the Finance Act, 1999, w.e.f 1-6-1999.

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate the question.

(4) The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it if it is satisfied that the case involves such question.

(5) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded

and may award such cost as it deems fit.

(6) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal by reason of a decision on such question of law as is referred to in sub-section (1).

(7) Save as otherwise provided in this Act the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this Section.

ORDER XLI RULE 22 APPEALS FROM ORIGINAL DECREES XXX

22. Upon hearing, respondent may object to decree as if he had preferred separate appeal

(1) Any respondent though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal:

Provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow:

Explanation:- A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part in favour of that respondent

(2) Form of objection and provisions applicable thereto - Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

(3) xxxxx

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall so far as they can be made applicable, apply to an objection under this rule.

ORDER XLII APPEALS FROM APPELLATE DECREES

1. Procedure

The rules of Order XLI shall apply, so far as may be, to appeals from appellate decrees.

2. Power of court to direct that the appeal be heard on the question formulated by it

At the time of making an order under rule 11 of Order XLI for the hearing of a second appeal, the court shall formulate the substantial question of law as required by section 100, and in doing so, the court may direct that the second appeal be heard on the question so formulated and it shall not be open to the appellant to urge any other ground in the appeal without the leave of the court given in accordance with the provisions of section 100.

3. Application of rule 14 of Order XLI

Reference in sub-rule (4) of rule 14 of Order XLI to the court of first instance shall, in the case of an appeal from an appellate decree or order, be construed as a reference to the court to which the appeal was preferred from the original decree or order.

Section 100 CPC :

(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed *ex parte*.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

(4) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) The appeal shall be heard on the question so formulated and the respondent shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

PROVIDED that nothing in this subsection shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law, not formulated by it if it is satisfied that the case involves such question.

34. It is the contention of Sri. Shankar, learned counsel for the assessee that in the wake of the language of Rule 22 of Order 41 a non-appealing respondent in an appeal by the other side has two course of actions, one is even without filing

any cross objection can defend the order appealed against as though an appeal is filed and secondly if the non-appealing respondent is desirous of getting a relief other than what had been obtained before the Court of the first instance, then even when such respondent had not filed an independent appeal by himself/herself, can nevertheless take advantage of the appeal preferred by the other side and even figuring as the respondent in the appeal of the other side can file a cross objection which when admitted would acquire the status of an independent appeal and could possibly get such relief to such a cross objector if entitled to, on merits than what was given before the Court of first instance.

35. It is the first part of these two benefits which Sri. Shankar, learned counsel for the assessee would press for the exercise by the respondent-assessee and would therefore, submit that if it is to be accepted that the assessment order was one without jurisdiction for the reason that the assessing officer passed the order beyond the period contemplated under the provisions of Section 158BE of the Act that arguments can be pressed into service before this Court also, but only to the extent of sustaining the order passed by the Tribunal but not for arguing and seeking more relief etc. On facts, there is no dispute but except for the limited issue of the Revenue claiming that a mahazar lifting of a prohibitory order as on 16.5.1996 is an action in continuation of initial search on 18.3.1996, whereas learned counsel for the assessee would join issue on this aspect and would submit that a mere lifting of prohibitory order as on 16.5.1996 without anything more particularly, when any seizure or impounding of any document etc., by itself will not be in the nature of a search proceedings conducted on that day and therefore, would urge that only the date of search 18.3.1996 and nothing more and if 18.3.1996 is to be taken as the date of search, then the assessment order passed as on 26.5.1997 is definitely barred in terms of Section 158BE as the period contemplated in terms of Section 158BE ended on 31.3.1997 and therefore an order dated 16.5.1996 is definitely bad in law etc. It is this factual premise which is made use of for urging the legal submissions relating to the provisions of Order 41 Rule 22, Order 42 in turn r/w Section 260A(7) of the Act.

36. Though on facts the question as to whether search ended on 18.3.1996 or it continued up to 16.5.1996 there is no clear recording of finding by the Tribunal and in the wake of the records of the assessing authority placed before us, it indicates that certain proceedings had taken place on 16.5.1996 and if we are to accept the search etc., recording certain developments such as lifting of prohibitory order as on that date should be accepted from the records and also to take it as part of the search proceedings, all these questions are definitely not arising for examination.

37. However, on a perusal of the record as we have to find some minor technical discrepancies such as the date of lifting of the prohibitory order in terms of a mahazar drawn having been indicated at the top of the panchanama as 16.3.1996 and at the end of the panchanama the date mentioned is 16.5.1996. We would rather prefer to examine the legal issues urged by Sri. Shankar,

learned counsel for the assessee ignoring the so called panchanama of the subsequent date which is claimed to be drawn on 16.5.1996 particularly, as the very panchanama not only recites wrongly that the search was conducted on 16.5.1996 at 3.00 p.m. whereas the search was actually conducted on 18.3.1996 and even at the left hand bottom of the panchanama where the signature of panchas date is required to be affixed. One Mr. P. Nagaraj has affixed his signature and It is only on right hand part of the very column another signature of the assessee is obtained and the date mentioned is 16.5.1996. In this state of affairs, we examine the legal issues ignoring the two panchanamas relied upon by the Revenue.

38. Provisions of Section 158BE of the Act reads as under: -

158BE. Time limit for completion of block assessment.

(1) The order u/s 158BC shall be passed -

(a) within one year from the end of the month in which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned after the 30th day of June, 1995 but before the 1st day of January, 1997;

(b) within two years from the end of the month in which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed in cases where a search is initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

(2) The period of limitation for completion of block assessment in the case of the other person referred to in section 158BD shall be-

(a) one year from the end of the month in which the notice under this Chapter was served on such other person 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; and

(b) Two years from the end of the month in which notice under this Chapter was served on such other person in respect of search initiated or books of account or other documents or any assets are requisitioned on or after the 1st day of January, 1997.

Explanation 1: In computing the period of limitation for the purposes of this section:-

(i) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(ii) the period commencing from the day on which the Assessing Officer directs the assessee to get his accounts audited under sub-section (2A) of section 142

and ending on the day on which the assessee is required to furnish a report of such audit under that sub-section, or

(iii) the time taken in reopening the whole or any part of the proceedings or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(iv) in a case where an application made before the Settlement Commission u/s 245C is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under sub-section (1) of section 245D is received by the Commissioner under subsection (2) of that section, shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (1) or sub-section (2) available to the Assessing Officer for making an order under clause (c) of section 158BC is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

39. The stipulation of limitation is not an absolute stipulation for the period of one year from the date of the initial search, but as indicated in Explanation 1 to Section 158BE there are certain exceptions and the period of one year is enlarged in the circumstances mentioned in clauses 1, 2, 3 and 4.

40. However, as Sri. Shankar, learned counsel for the assessee has urged before us that the fact situation pointed out in the present case does not come under any one of the four clauses enumerated above. We have examined the fact situation also on this aspect of the matter. We find that the assessee while had not taken the stand that the assessment was barred for mulcting the assessee with any liability in terms of a block assessment order for the period as 1995-1996 to 1996-1997 as the period of one year had elapsed from the date of initial search i.e., from 18.3.1996 was not expressly urged or taken before the Assessing Officer even though the assessee had himself participated or appeared before the Assessing Officer and had been seeking for extending the time for filing of a return of the income for the block period and particularly in the background of the assessee having sought for extension of time for filing its return and particularly as indicated in the order of the Assessing Officer which has already been extracted above in the judgment. We are not inclined to accept the version of Sri. Shankar, learned counsel for the Assessee that the assessment order was barred by limitation in terms of Section 158BE of the Act for the purpose of holding that the assessment was barred by time limitation prescribed u/s 158BE of the Act.

41. In fact, we notice from the assessment order that the assessee had appeared before the Assessing Officer even after 31.3.1997 i.e., when the case had been posted on 25.4.1997 and the issue of summons on 10.4.1997 and when the assessee did not appear in response to subsequent letter dated 5.5.1997 from the Revenue, appearance of the assessee on 12.5.1997 and seeking for an

adjournment till 16.5.1997 would virtually estop the assessee from contending that on the present facts in terms of Section 158BE of the Act, the Assessing Officer could not have passed the block assessment order for the said period. We also draw support from the first part of Clause 3 of Explanation (1) of Section 158BE of the Act which reads as under :-

Time taken in reopening the whole or any part of the proceedings or giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

which would indicate that time consumed by the assessee at his request for postponing the proceedings and for passing an assessment order should be excluded in computing the period of one year from the date of search.

42. In this regard, we are unable to accept the submission of Sri. Shankar, learned counsel for the assessee that limitation is a pure question of law and it is incumbent upon the Assessing Officer to examine and at any rate he could not have passed an order and therefore, the entire order is bad in law, is not tenable.

43. On the other hand, submission made on behalf of the Revenue that limitation no doubt is a question involving the statutory provisions is again to be answered by applying the law to the facts of each case and therefore, a mixed question of facts and law; that it is not a pure question of law and at any rate, we are of the clear view, that the question of limitation should not be confused with the question of jurisdiction as is sought to be contended by Sri. Shankar, learned counsel for the Assessee.

44. Jurisdiction is not an aspect necessarily dependent on the question of limitation as if one would agree it lacks jurisdiction, nothing else follows. But the law of limitation operates even when the Court has jurisdiction to the extent that the particular court grants relief to which a person is entitled to in law, if the person seeking relief before the Court approach the Court within the stipulated period of limitation as prescribed under the statutory provision. In view of this legal position and in the wake of the enabling provisions for extending the enlarged period of limitation of one year and particularly, when the period of enlargement being not either precise or definite but depending upon the facts and circumstances of each case. We are of the clear opinion that having regard to the facts, it cannot be definitely answered that the assessment order dated 26.5.1997 is one barred by the period of limitation, but nevertheless the learned counsel for the assessee having raised certain legal question of considerable importance, we proceed to examine this legal question on an assumption and answer this question on such premise notwithstanding our definite view on this aspect in this particular case.

45. Insofar as the applicability or the attraction of the provisions of Order 41 Rule 22 in respect of the appeal under sub-section (7) of Section 260A of the Act is concerned it may be examined as one leading to such possibility if it crosses three stages.

46. Firstly, the provisions of Order 41 Rule 22 is applicable to a cross-objection enabled in an appeal against original decrees even as indicated in the very provision. It is a right given to a non-appealing respondent to defend a decree which the non-appealing respondent would have obtained before the Court of first instance and to the extent of merely defending in terms of the first part and for getting more relief in terms of second appeal of this provision. If first appeal in terms of Section 96 of CPC is not the same as the second appeal in terms of Section 100 of CPC.

47. While the substantive provision for filing an appeal is the judgment and decree of the original Court, question is as to whether u/s 96 and the procedure governing the filing of such an appeal, is in terms of Order 41 of CPC. The substantive provision for filing a second appeal to the High Court can be compared to Section 260A of the Act for the purpose of present examination. The procedure for disposal of the second appeal before the Court is provided for in Order 42 and sub-rule (1) of order 42 expressly says that the provisions of Order 41 of CPC shall be applicable insofar as may be, to appeals from appellate decrees. The Karnataka amendment to Order 42 of CPC has brought about the following changes in place of existing order that as in the Central Act page 373 of CPC. The words so far as may be the appeals from appellate decrees is of significance as the provision does not enable the applicability of Order 41 in its entirety to the procedure under Order 42 in respect of the second appeal. In fact the procedure in terms of Order 42 can also be linked to the substantive provision of Section 108 of CPC which is as under : -

108. "Procedure in appeals from appellate decrees and orders

The provisions of this Part relating to appeals from original decrees shall, so far as may be, apply to appeals -

(a) from appellate decrees, and

(b) from orders made under this Code or under any special or local law in which a difference procedure is not provided.

48. It is under this provision, the enabling provisions of Order 42 in turn Order 41 to the extent they may be applicable are all invoked. It is by now well settled that an appeal is a creature of statute and is not either a vested right or a natural right nor can it be a right by implication.

49. Though Sri. Shankar, learned counsel for the assessee has placed reliance on the following decisions of the Supreme Court as also other High Courts to support the submission with regard to the maintainability of a cross objection, even in a second appeal or in an appeal of the nature of Section 260A of the Act viz., Shri Ravinder Kumar Sharma Vs. The State of Assam and Others, relying particularly on paras 19 to 24.

19. In connection with Order 41 Rule 22 CPC after the 1976 Amendment, we may first refer to the judgment of the Calcutta High Court in Nishambhu Jana v.

Sova Guha. In that case, Mookerjee, J. referred to the 54th Report of the Law Commission (at p. 295, para 41.70) to the effect that Order 41 Rule 22 gave two distinct rights to the respondent in the appeal. The first was the right to uphold the decree of the court of first instance on any of the grounds which that court decided against him. In that case the finding can be questioned by the respondent without filing cross-objections. The Law Commission had accepted the correctness of the Full Bench of the Madras High Court in Venkata Rao case. The Commission had also accepted the view of the Calcutta High Court in Nrisingha Prasad Rakshit v. Commrs. of Bhadreswar Municipality that a cross-objection was wholly unnecessary in case the adverse finding was to be attacked. The Commission observed that the words "support the decree" appeared to be strange and "what is meant is that he may support it by asserting that the ground decided against him should have been decided in his favour. It is desirable to make this clear". That is why the main part of Order 41 Rule 22 was amended to reflect the principle in Venkata Rao case as accepted in Chandre Prabhuji case.

20. So far as the explanation was concerned, the Law Commission stated (p. 298) that it was necessary to "empower" the respondent to file cross-objection against the adverse finding. That would mean that a right to file cross-objections was given but it was not obligatory to file cross-objections. That was why the word "may" was used. That meant that the provision for filing cross-objections against a finding was only an enabling provision.

21. These recommendations of the Law Commission are reflected in the Statement of Objections and Reasons for the amendment. They read as follows:

Rule 22 [i.e. as it stood before 1976] gives two distinct rights to the respondent in appeal. The first is the right of upholding the decree of the court of first instance on any of the grounds on which that court decided against him; and the second right is that of taking any cross-objection to the decree which the respondent might have taken by way of appeal. In the first case the respondent supports the decree and in the second case he attacks the decree. The language of the rule, however, requires some modification because a person cannot support a decree on a ground decided against him. What is meant is that he may support the decree by asserting that the matters decided against him should have been decided in his favour. The rule is being amended to make it clear.

An explanation is also being added to Rule 22 empowering the respondent to file cross-objection in respect to a finding adverse to him notwithstanding that the ultimate decision is wholly or partly in his favour.

Mookerjee, J. observed in Nishambhu Jana case (see p. 689) that "the amended Rule 22 of Order 41 of the Code has not brought any substantial change in the settled principles of law" (i.e. as accepted in Venkata Rao case) and clarified (p. 691) that

it would be incorrect to hold that the explanation now inserted by Act 104 of

1976 has made it obligatory to file cross-objections even when the respondent supports the decree by stating that the findings against him in the court below in respect of any issue ought to have been in his favour.

22. A similar view was expressed by U.N. Bachawat, J. in *Tej Kumar Jain v. Purshottam* that after the 1976 Amendment, it was not obligatory to file cross-objection against an adverse finding. The explanation merely empowered the respondent to file cross-objections.

23. In our view, the opinion expressed by Mookerjee, J. of the Calcutta High Court on behalf of the Division Bench in *Nishambhu Jena* case and the view expressed by U.N. Bachawat, J. in *Tej Kumar* case in the Madhya Pradesh High Court reflect the correct legal position after the 1976 Amendment. We hold that the respondent-defendant in an appeal can, without filing cross-objections attack an adverse finding upon which a decree in part has been passed against the respondent, for the purpose of sustaining the decree to the extent the lower court had dismissed the suit against the defendant-respondent. The filing of cross-objection, after the 1976 Amendment is purely optional and not mandatory. In other words, the law as stated in *Venkata Rao* case by the Madras Full Bench and *Chandre Prabhuji* case by this Court is merely clarified by the 1976 Amendment and there is no change in the law after the amendment.

24. The respondents before us are, therefore, entitled to contend that the finding of the High Court in regard to the absence of reasonable and probable cause or malice -(upon which the decree for pecuniary damages in B and C Schedules was based) can be attacked by the respondents for the purpose of sustaining the decree of the High Court refusing to pass a decree for non-pecuniary damages as per A Schedule. The filing of cross-objections against the adverse finding was not obligatory. There is no *res judicata*. Point 1 is decided accordingly in favour of the respondent-defendants.

50. We find that the question as to whether a cross-objection is tenable in a second appeal to the High Court was not a question, which was examined in this judgment of the Supreme Court, but it is only explaining the scope of Rule 22 of Order 41 and as to the precise scope of first part of Rule 22 which enables a non-appealing respondent in an appeal against an appealable decree to defend that part of the decree even by urging such other grounds which would have gone against the non-appealing respondent and not followed to hold that a cross-objection is tenable in a second appeal u/s 100 CPC.

51. In fact reliance is placed by Sri. Shankar, learned counsel for the assessee on many other judgments of the Supreme Court as well as High Courts as under including *Subba Reddy's* case. All these authorities do not advance the submission to hold that a cross-objection is tenable in a second appeal such as an appeal u/s 100 of CPC. The other authorities relied upon by Sri. Shankar, learned counsel for the assessee for this proposition are as follows :-

1. *Superintending Engineer vs. Subba Reddy* reported in 1994 (4) SCC 423.

2. American Pipe vs. State of U.P. reported in AIR 1983 CAL 186.
3. Venkata Rao vs. Satyanarayana Murthy reported in AIR 1943 Mad 698 (Full Bench)
4. The Commissioner of Income Tax Vs. Deepak Aggarwal,
5. Municipal Corporation of Delhi and Others Vs. Intl. Security and Intelligence Agency Ltd.,

52. We find none of these judgments /authorities have examined the question of tenability of cross-objection in an appeal u/s 100 of CPC or in a like provision, but are all questions examined in the context of the scope of cross-objection under Order 41 Rule 22 in an appeal against an original decree or a like situation.

53. However, submission of Sri. Seshachala, learned Sr. Standing Counsel for the appellant-Revenue to the effect that in the absence of any express enabling provision a right, such as a right of appeal under Order 41 Rule 22 though while has cross-objection which is nothing but a right of appeal itself cannot be either by inference or by implication, read into the provisions of Order 42 or in turn under the provisions of sub-section (7) of Section 260A of the Act and it is in support this submission Sri. Seshachala has drawn our attention to the observations as pointed out in para 23 of the judgment of the Supreme Court in Superintending Engineer and Others Vs. B. Subba Reddy, cited supra. The observation in this part summing up the principles that emerge above the applicability of Order 41 Rule 22 in the context of Section 41 or Arbitration Act 1940 which is an appeal in the nature of a first appeal, as in second appeal u/s 96 of CPC though may be limited on certain aspects as under the Arbitration Act is quite apt to the present situation and if one can draw sustenance to the observation contained in para-24, we have to inevitably conclude that cross-objection as contemplated in Rule 22 Order 41 of CPC are not tenable in an appeal u/s 100 CPC even in terms of Order 42 of the Code. Paragraph 23 and 24 reads as under :-

23. From the examination of these judgments and the provisions of Section 41 of the Act and Order 41 Rule 22 of the Code, in our view, the following principles emerge:

- (1) Appeal is a substantive right. It is a creation of the statute. Right to appeal does not exist unless it is specifically conferred.
- (2) Cross-objection is like an appeal. It has all the trappings of an appeal. It is filed in the form of memorandum and the provisions of Rule 1 of Order 41 of the Code, so far as these relate to the form and contents of the memorandum of appeal apply to cross-objection as well
- (3) Court fee is payable on cross-objection like that on the memorandum of appeal Provisions relating to appeals by an indigent person also apply to cross-objection.

(4) Even where the appeal is withdrawn or is dismissed for default, cross-objection may nevertheless be heard and determined.

(5) The respondent even though he has not appealed may support the decree on any other ground but if he wants to modify it, he has to file cross-objection to the decree which objections he could have taken earlier by filing an appeal. Time for filing objecting which is in the nature of appeal is extended by one month after service of notice on him of the day fixed for hearing the appeal. This time could also be extended by the court like in appeal.

(6) Cross-objection is nothing but an appeal, a cross-appeal at that. It may be that the respondent wanted to give a quietus to the whole litigation by his accepting the judgment and decree or order even if it was partly against his interest. When, however, the other party challenged the same by filing an appeal the statute gave the respondent a second chance to file an appeal by way of cross-objection if he still felt aggrieved by the judgment and decree or order.

(24) In the present case, as noted above, the respondent did not file any appeal u/s 39 of the Act in the High Court which right he admittedly had when the award of interest @ 18% per annum was reduced to 12% per annum by the trial court. Section 41 of the Act is merely procedural in nature. If there is no right of cross-objection given u/s 39 of the Act, it cannot be read into Section 41 of the Act. Filing of cross-objection is not procedural in nature. Section 41 of the Act merely prescribes that the procedure of the Code would be applicable to the appeal u/s 39 of the Act. We are, therefore, of the opinion that cross-objection by the respondent was not maintainable and the High Court was not correct in holding otherwise and restoring the award of interest to 18% per annum and thus interfering in the decree of the trial court.

54. Though this judgment of the Supreme Court in the case of B. Subba Reddy cited supra had come in for examination again in the later judgment Municipal Corporation of Delhi and Others Vs. Intl. Security and Intelligence Agency Ltd., on which Sri. Seshachala has placed reliance, we find that this judgment has only reiterated with regard to the nature of right for claiming a right of appeal as observed in para-14, which is as under :-

14. Right of appeal is creature of statute. There is no inherent right of appeal. No appeal can be filed, heard or determined on merits unless the statute confers right on the appellant and power on the court to do so. Section 39 of the Act confers right to file appeal, insofar as the orders passed under this Act are concerned, only against such of the orders as fall within one or other of the descriptions given in clauses (i) to (vi) of sub-section (1) of Section 39. Parliament has taken care to specifically exclude any other appeal being filed, against any order passed under the Act but not covered by clauses (i) to (vi) above said, by inserting the expression "and from no others" in the text of sub-section (1). Clause (a) of Section 41 extends applicability of all the provisions contained in the Code of Civil Procedure, 1908 to (i) all proceedings before the

court under the Act, and (ii) to all the appeals, under the Act. However, the applicability of such of the provisions of the CPC shall be excluded as may be inconsistent with the provisions of the Act and/or of rules made thereunder. A bare reading of these provisions shows that in all the appeals filed u/s 39, the provisions of the Code of Civil Procedure, 1908 would be applicable. This would include the applicability of Order 41 including the right to take any cross-objection under Rule 22 thereof to appeals u/s 39 of the Act.

and therefore, having regard to the language of Section 39 of the Arbitration Act, 1940 the Supreme Court ruled that Section 39 being in the nature of first appeal and with the provisions of Order 41 having been made applicable Rule 22 of Order 41 was also attracted and applicable to an appeal u/s 39 of the Act. However, in the present situation, we find such is not the case insofar as sub-section (7) of Section 260A of the Act is concerned for the reason that the provisions of Section 260A of the Act are more comparable to an appeal u/s 100 of CPC rather than an appeal u/s 96 and even hearing insofar as the second appeal is concerned not all provisions of Order 41 are made automatically applicable to an appeal u/s 100 both in terms of order 42 r/w Section 108 of CPC and as the appeal being a creature of a statute, a cross-objection in terms of Rule 22 being barred with an appeal until and unless there is express provision on settling the legal provisions one cannot hold that the implication or a right of cross-objection should be read into either the provisions of Order 42 r/w Section 100 and 108 of CPC or under the provisions of sub-section (7) of Section 260A of the Income Tax Act.

55. Insofar as the Income Tax Act is concerned we say It is fortiori so for the reason that even while adopting the procedure as indicated in CPC for the purpose of disposal of a cross-objection the procedure is again made applicable insofar as, as far as may be, apply in the case of appeals u/s 260-A(1) and not in its entirety.

56. As we have discussed above, if the cross-objection is not even tenable in a second appeal u/s 100 CPC, it is more so in an appeal u/s 260A of the Act. It is for this reason we reject the submission of Sri. Shankar, learned counsel for the assessee that the right of cross appeal or the right to defend an order of the Tribunal to the extent it is in favour of the respondents and which is appealed against before this Court in this appeal is available to the assessee on all grounds which may be otherwise available to either answer against the assessee in appeal by the Tribunal. However, we are aware that the principles of natural justice even otherwise, would require that if a person who has obtained some benefit or relief is to be deprived of that benefit or relief he should have an opportunity to defend that possession. The minimum that is expected in law and procedure is that a person is given an opportunity before being deprived of any benefit or relief which a person had already obtained.

57. It is for this reason that we have examined the merits of the submission that the assessment order was barred by the provisions of Section 158BE of the Act

and Sri. Shankar, learned counsel for the assessee was permitted to make submission on that aspect of the matter on an examination of the factual position and the statutory provisions as pointed out in Section 158BE of the Act, particularly, prescribing the period of one year and indicating the situations wherein the period of one year is enlarged. We have examined and answered such submissions also in the wake of the view expressed in the earlier part of this order. We are of the clear opinion, that even on complying with the principles of natural justice and the prayer of the respondent-assessee to defend the order on the question of limitation also the submission of the respondent does not stand scrutiny in accepting the same as expressed earlier.

58. It is therefore, that the question of limitation cannot be pressed into service or it does not hold the defence set up on behalf of the assessee even to the limited extent of defending the order of the Tribunal to the extent, the relief was granted.

59. That inevitably takes us to the merits of the contentions urged on behalf of the Revenue attacking the order of the Tribunal on the questions formulated in the memorandum of appeal for examination of which questions these appeals of the Revenue have been admitted.

60. We shall take up the questions in seriatim and examine the submissions made on these questions also.

61. As discussed earlier the questions though are several in number they are essentially revolving around three issues. The first issue posed for examination is on the aspect of the assessee having taken the defence of existence of HUF and attributing the sources for investment in several assets owned by the assessee to be from the funds of HUF.

62. This issue figures in I.T.A.No. 257/2001 formulated at para-15 and 16 pertaining to the substantial questions of law. The defence put forth by the assessee is that the income is attributable to certain money lending activity that had been carried out by the HUF of which HUF the father of the assessee was the kartha and which theory was adopted by the Tribunal to the hilt. Whereas the Assessing Authority had not expected the same and had for reasons expected partial relief insofar as the question in terms of question 16 is concerned we had that the finding of the Tribunal on this aspect viz., the assessee's stand and explanation that the income is attributable to the HUF business, money lending and punting activities carried out on behalf of the HUF is something which passes our apprehension and appears to be more contrived by the Tribunal, rather than a claim of the assessee before the Assessing Authority than one substantiated by the assessee either on any cogent material or any material for that matter!

63. Except for such claim the record placed by the assessee does not reveal any systematic business by the so called HUF in fact was not to the knowledge of the Revenue nor had the HUF made its presence felt in terms of any returns filed in respect of the income attributable to any business profits from the business

activities indicated etc. The HUF had never figured as an assessable entity or as a person for the purpose of Income tax Act though the assessee was regularly assessed to tax and even the wife of the assessee was also a regular assessee and both had been filing their returns periodically in their individual capacity. The expenses of a HUF was never disclosed nor offered claim by both the assessees.

64. In this state of affairs, we notice that a finding recorded by the Tribunal assuming it to be on a fact by the Tribunal to the effect that there was an HUF and certain investments said to be explained by the assessee in whose returns it was found as unexplained to be the income of the HUF and in turn gift given to the assessee is nothing short of a perverse finding or inference not tenable in law nor stipulated on material available. The reasoning of the Tribunal towards the end of paragraph 17 reads as under :-

17. We have gone through the entire facts and thoroughly perused the assessment order. The assessee has given a clear account of transactions as to which amounts pertaining to money-lending business; punting business and double entries etc. When such facts and figures are furnished by the assessee it is the bounden duty of the Assessing Officer to counter such statement, if he wants to disbelieve the version of the assessee, in which he failed. The Assessing Officer further failed to discharge the burden cast on him to prove that there was no HUF. In this view of the matter, only the amount admitted by the assessee under the money-lending business alone has to be assessed, but not the other amounts.

65. On the other hand, the Assessing Officer failed to prove that there was no HUF which is in fact to call upon the assessing authority to place negative evidence and the inference drawn against all settled legal principles and even the statutory provisions of the Evidence Act, for the purposes of the income tax the burden of proving the existence of a HUF is only on the person claiming the benefit and definitely not on the Assessing Officer to disprove the existence of the HUF.

66. We hold that the finding is clearly an illegal finding in law and we express our surprise and shock that a quasi judicial authority like the Income Tax Appellate Authority should have exercised in a mechanic/casual manner, to unsettle the settled legal principles to record and a finding of this nature in favour of the assessee when it was never warranted either on facts or in law and for these reasons we answer question Nos. 15 and 16 in favour of the revenue and against the assessee.

67. The other part of the contention urged by Sri. Shankar, learned counsel for the assessee is on the question of limitation apart from reliance placed on the provisions of Order 41 Rule 22 is by way of seeking to raise additional grounds in the appeal preferred by one of the two assessees viz., Purushotham lal in ITA.No. 277/03 and for such purpose a memo is filed before us raising additional grounds in this appeal on the question of limitation i.e., to contend that the Assessing

Officer could not have passed a block assessment order in terms of Section 158BC of the Act when a period of one year had elapsed from the date of initial search from 18.3.1996 and for passing the block assessment order dated 26.5.1997. Submission is that even if the assessee is not enabled to urge this as a ground in a possible cross-objection when the assessee could have filed in the appeals of the Revenue, but if the provisions were attracted by the first part of Rule 22 of Order 41 as the assessee could have raised this ground by way of a defence to sustain the order of the Tribunal and even if that is not possible the assessee should now be permitted, even if it is to be held not possible, the assessee can definitely seek for raising additional grounds in his own appeal, which is again attracted against the order of the Tribunal though initially only on the question of difference of value and on the question of availability of a sum of Rs. 3,10,000/- being the sale proceeds of a car which the assessee pressed earlier and which proceeds count in the investment which had been invested in the construction of building and such other questions. Limitation was not a question, but in the light of the enabling proviso to sub-section (4) r/w sub-section (6) of Section 260A of the Act, Such additional ground/question should always be permitted to be raised and even the Courts can also admit such questions and answer the questions and if such is the statutory provision the assessee should be permitted to raise this question. It is therefore, such additional grounds sought to be urged in the assessee's appeal i.e., ITA. No. 277/2003, the question of limitation is sought to be agitated before this Court to contend that the assessment order is bad in law.

68. We have bestowed our attention to the prayer for raising additional grounds. While we are not inclined to accept the submission of Sri. Shankar, learned counsel for the assessee that the statutory provisions particularly, sub-section (4) r/w sub-section (6) of Section 260A of the Act does enable this Court to not only frame additional questions for examination, if such questions actually arise out the order of the Tribunal and if it is found that the Tribunal is again wrong in answering such questions and if the Tribunal has not expressly addressed any issues, it could be examined by this Court and a finding, or an answer recorded on the issue.

69. The question relating to limitation being a mixed question of facts and law. A question of this nature, can be permitted to be raised only if it is found there is sufficient foundation laid for raising such a question at the earlier possible time and the matter is kept alive.

70. While we notice that the assessee in fact has urged limitation as a ground of appeal in its appeal before the Tribunal, such was not the stand taken before the original authority particularly, having regard to the factual developments leading to the passing of the assessment order after the search began on 18.3.1996.

71. With the Tribunal also not having shown its awareness in having adverted to the question of limitation, it could be presumed that the Tribunal has not accepted the contention urged or it is deemed to have been rejected and even if

so, the question as to rejection of argument on the question of limitation could possibly constitute a question of law even in an appeal u/s 260A of the Act. We have some difficulty in accepting the submission that it constituted an issue before the lower authorities as an issue is framed only before the original authority. Though Sri. Shankar, learned counsel for the assessee has vehemently urged that for the purposes of examining an appeal u/s 260A of the Act, having regard to the present set of facts that is against the order of the assessing authority, an appeal lies directly to the Tribunal which acts as the First Appellate Authority but when it comes to the question of a lis which is adversarial in nature i.e., as though the parties are joining issues on some questions, it should be taken that the Tribunal is the original authority before which issues can arise and on such premise has also urged that the appeal u/s 260A of the Act could be taken as first appeal and not a second appeal, we are not very impressed by these submissions for the reason that the very contention on the question of limitation is that the assessing authority could not have passed block assessment order in terms of Section 158BC in view of the limitation provided u/s 158BE of the Act. The objection to the question of limitation should be raised at the earliest, particularly when it is to be found, that on the peculiar facts and circumstances of the given case there cannot be a generalization of the question of limitation being applicable to all cases. It is no doubt true that the statute has prescribed the limitation in general but even here for the purposes of considering the supporting point of limitation it is inevitably linked to the date on which the cause of action arises which depends upon the facts and circumstances of each case and can be different in respect of each litigant in respect of income tax matters, which is in respect of each assessee. If so, the question of limitation being not a pure question of law and being a mixed question of law and facts and the assessee having got an opportunity to plead this before the original authority as the assessee was quite aware that no block assessment order had been passed even as on 31.3.1997 and on the other hand the assessee having actively participated in the proceedings, if not for joining issue at least for seeking further time for filing its returns and if the assessee had not thought it proper to raise the question of limitation before the very assessing authority, it cannot be said that the assessee has got an opportunity to raise the question of limitation for the first time only before the Tribunal and that too only after the assessing authority passed the order.

72. While it may be true, that when once the matter is heard and concluded and if it was within the period of limitation, there could not have been any possibility of the assessee so contending that the order is not possible because of the period of limitation in terms of Section 158BE of the Act. In the present set of facts, the assessee being quite aware of the fact that as on 31.3.1997, no block assessment order had been passed, and even as contended there was no possibility of passing a block assessment order, the contention that it was not within the knowledge of the assessee as to when the Assessing Officer would pass the block assessment order is not tenable, an argument that can be

accepted as it was to the knowledge of the assessee that the assessment order if at all is to be passed on and after 31.3.1997, it will be barred by Section 158BE of the Act as is now sought to be contended before us. It is for this reason, we are required to examine the factual situation also to record a finding on this aspect assuming that it could have been made an issue before the Tribunal.

73. In such circumstances, we have to hold that on both issues for urging the ground of limitation as a ground for dismissal of the appeals filed by the Revenue, we have to negative the contention and proceed to examine the merits of the order passed by the Tribunal.

74. On the question of maintainability of a cross-objection in a second appeal even in terms of Section 100 of CPC, we have examined the question with the aid of decided cases, even cases decided by Courts other than referred to and relied upon by the learned counsel for the parties.

75. While our examination has indicated that there are good number of judgments of the High Courts and even the Supreme Court indicating the scope of the provisions of Order 41 Rule 22 and even with reference to the provision as it now prevails after the 1976 amendment to CPC. The scope of Order 41 Rule 22 after the amendment is explained to be of two implications. The first part is to enable a non-appealing respondent to defend the order in appeal even by supporting the order by contending that the issues decided against the respondent should have been decided in favour of the respondent by the order under appeal even without filing a positive appeal or a cross appeal. The second part is to enable a non-appealing respondent who could have filed an appeal to the extent of Original Court not having granted the relief sought for by the non-appealing person through an independent appeal to maintain a cross-objection which can achieve the purpose of maintaining an independent appeal and though such a party might have missed the bus and had not filed the appeal which is to be filed or to maintain such an appeal through the cross-objection in the appeal filed by either contestant to the original proceedings.

76. While we find such is the scope of a cross objection filed under the provisions of Order 41 Rule 22 which is expressly applicable to first appeals or in the sense which is a Rule in Order 41 which is a procedural guidelines in respect of appeals from original decrees. Insofar as the provisions of Order 42 is concerned it is one relating to the procedure in appeals from the appellate decrees.

77. The distinction between Order 41 and Order 42 is that while Order 41 regulates the procedure in appeals from original decrees, Order 42 regulates the procedure in appeals from the appellate decrees. Order 41 and Order 42 being in turn referable to substantive provisions of Section 96 and also Order 42 and Section 108 of CPC and the procedure under Order 42 being only as envisaged in Order 41 but only insofar as may be they can be made applicable to second appeals or the appeals from the appellate decree even on an elementary understanding of the two provisions, while one provides for first appeal and the

other one being a second appeal, it is obvious that they are not one and the same i.e., a second appeal can never be equated on all its fours to a first appeal in the CPC u/s 100 appeal is not the same as Section 96 appeal. If such fundamental principle is to be borne in mind then it becomes obvious that a procedural provision like Order 41 Rule 22, cannot provide for a right of appeal and a right of appeal can be creative of a statute and has expressly for filing a cross objection in a second appeal u/s 100 of CPC, which is not so expressly provided in the same of filing a second appeal against appellate decrees, in the Code of Civil Procedure. We say so, for the reason that until and unless the provision like Order 41 Rule 22 was expressly made applicable even in respect of Section 100 appeal there is no way of reading that by way of implication.

78. Though the case law on Order 41 Rule 22 of CPC is quite considerable, we have not been able to come across direct authorities to hold a cross objection as contemplated under Order 41 Rule 22 is tenable in an appeal from an appellate decree also.

79. While there are no direct or specific authorities of the Supreme Court on the question to hold that a cross objection in terms of Order 41 Rule 22 is tenable in a second appeal particularly, such a question having been not raised nor made an issue in the several authorities placed before us by the learned counsel and the other authorities, which we had occasion to refer to are only incidentally touching upon the aspect and in the wake of the provisions of Order 41 Rule 22 as it occurs as part of the procedure regulating the filing of a regular first appeal, it cannot be by implication extended under order 42, to attribute a right of filing a cross-objection in a section 100 appeal also.

80. A Single Bench decision of the Orissa High Court in the case of Shridhar Ghose Vs. Harimohan Sahu, while opines that a cross-objection in terms of Order 41 Rule 22 is not tenable in a second appeal. A contrary view appears to have been taken in a Single Bench Decision of the Kerala High Court in the case of Palasseri Velayudhan and Another Vs. Palasseri Ithayi and Others, however, to the limited extent of the cross-objection also conforming to the requirements of a Section 100 appeal.

81. We have bestowed our attention to these two authorities of the Orissa High Court as well as Kerala High Court. On an independent analysis also we find that with a second appeal being not the same as a first appeal and having regard to the provisions of Section 108 CPC, if we examine the scope of a cross-objection in an appeal against the original decree it is obvious that a provision of this nature was provided for to enable the defendant who might have suffered an adverse finding on any of the issues framed in the suit, but nevertheless the suit having been dismissed by the Trial Court but against which the defendant is not independently enabled to file an appeal as there is no decree suffered by the defendant, but when the failed plaintiff files an appeal and in this appeal should call in and the adverse finding recorded against the defendant by the trial court on a particular issue, then the defendant should be given an opportunity to get

over the adverse finding by filing the cross objection in the appeal preferred by the plaintiff.

82. Such a situation can arise only in an appeal against an original decree and not in an appeal against an appellate decree. A situation of this nature gets exhausted at the first appeal stage and need not be permitted/enabled again in an appeal against an appellate decree. For this reason also, we are inclined to take a view that a cross-objection is neither expressly enabled in an appeal u/s 100 of CPC nor can it be inferred by the language of Rule 2 of order 42 which enables the provisions of Order 41 and the rules therein being made applicable to the procedure required to be followed in respect of an appeal preferred under Order 42 only to the extent it permits and not in its entirety. The preponderance of judicial opinion to the effect that the cross-objection in terms of Order 41 Rule 22 of CPC cannot be inferred in all situations where even a first appeal is provided against an order of the original authority is also a legal principle which weighed heavily with us in coming to the conclusion that a cross-objection is not enabled in terms rule 2 of Order 42 of Code of Civil Procedure.

83. We have also for a good measure examined the possibility of a cross-objection in terms of Order 41 Rule 22 of CPC being entertained in an appeal u/s 260A of the Act and on such examination and we notice our examination only indicates to the contrary, that when a cross-objection is not tenable even in an appeal u/s 100 of CPC, it is a fortiori so in an appeal u/s 260-A of the Act.

84. We find that the provisions of sub-section (7) of Section 260A of the Act on which Sri. Shankar, learned counsel for the assessee has placed considerable reliance to contend that cross-objections are tenable even in an appeal u/s 260A of the Act, also only enables the provisions of CPC relating to the appeal to the High Court being made applicable only as far as may be and subject to the other provisions in this Section or in the Act also. Sub-section (7) of Section 260A of the Act figuring towards the end of the Section "Expressly providing for the procedure to be followed, it should be understood to be only in respect of the procedural aspects of Order 42 that is made applicable and even there to the extent it may be made applicable. While even in Order 42 not all provisions of Order 41 are made applicable, the scope of the provisions of Order 42 are being made applicable to an appeal u/s 260A of the Act should necessarily be read as a provision in providing for creating substantive rights. A right of appeal u/s 260A of the Act is governed by sub-sections (1) to (6).

85. The scope of an appeal is that the order appealed against should involve a substantial question of law and of course such question having been decided erroneously by the Tribunal should warrant interference by the High Court in the appeal.

86. For the purpose of disposing of an appeal u/s 260A of the Act, the High Court being satisfied that the appeal which involve substantial question of law in the course of passing of the order by the Tribunal which is appealed against such

question is to be formulated and at the time of hearing of the appeal, the hearing should be restricted only to such questions which have already been formulated and notified. While it is open to the respondent even to urge that the question does not even arise. It is obvious that the respondent can join issue on the merits to defend the order. The enabling provision of proviso to sub-section (4) does permit the High Court to formulate additional questions and not so formulated in the beginning but even it is found that such additional question arise or involved in the decision of the Tribunal appealed against. It is of some significance to investigate that the decision of the High Court in an appeal u/s 260A should be based only on the answer given to the questions of law formulated and examined and not based on any other considerations. When such are the restrictions imposed on an appeal u/s 260A of the Act, it is rather difficult to accept the submission that a substantive right like a cross-objection which is nothing but a right of appeal in favour of the respondent can be inferred only because of the language of sub-section (7) of Section 260A of the Act.

87. We are of the considered opinion that even if a cross-objection is possible or permitted and assuming on such premise also cross-objection is definitely not permissible u/s 260A of the Act based only on the language of sub-section (7) of Section 260A and in the absence on any express enabling provision creating a right of cross-objection. It is on an over all examination of all these aspects, we hold that a cross-objection is not permitted in an appeal u/s 260A of the Act.

88. Though Sri. Shankar, learned counsel for the assessee has placed considerable reliance on the Division Bench judgment of the Kerala High Court in the case of Deputy Commissioner of Income Tax Vs. S.T.N. Textiles Ltd., particularly, on the observations as contained at Page 166 reading as under:-

One other contention urged by learned counsel is that this expenditure could be treated as revenue expenditure u/s 37 of the income tax Act and the matter may be adjudicated in that manner. Learned counsel Mr. P.K. Ravindranatha Menon, appearing for the Revenue, submits that no separate appeal is filed by the assessee claiming this relief The question of considering the present claim that it would be a revenue expenditure cannot be adjudicated.

We are of the view that there is no prohibition in the statute preventing the examination of the said contention as to whether the present claim be treated as revenue expenditure. Sub-section (7) of section 260A reads as follows:

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

This means that all the provisions relating to an appeal under the CPC would apply when an appeal is preferred u/s 260A. It is well known that a respondent in appeal can sustain the order which is being challenged in appeal relying on any ground that is decided against him. In this case the question as to whether the claim would amount to a revenue expenditure or not was not pressed in aid

by him for the reason that the assessee had succeeded in the appeal and there was no occasion for the assessee to do so. If the decision binding on the main aspect is against the Revenue, he can always sustain the relief granted to him relying on an issue decided against him. If this be the position, the claim of the assessee as to whether it will be a revenue expenditure could be examined by this court at this stage. But, however, as the question was not examined by the Tribunal the matter should be remitted for fresh consideration by the Tribunal to examine whether the claim of deduction of Rs. 11,11,600 can be claimed u/s 31(i) of the income tax Act as a revenue expenditure as contemplated u/s 37 of the Act. For this purpose alone, the matter is remitted back to the Tribunal for fresh disposal. Besides the second question raised by the appellant in this appeal is as follows:

Whether, on the facts and in the circumstances of the case is not the expenditure of Rs. 11,11,600 incurred on replacement of electric control panel a capital expenditure?

The present direction answers the issue as well. As such it will not spring any surprise on the Revenue as well. The Tribunal is directed to consider the second question of law formulated by the Revenue in this appeal afresh and in accordance with law.

89. We are unable to follow the said judgment for the reason that the question is not examined to constitute an answer to the question as a precedent, but is argued on the premise of the provisions relating to an appeal u/s 100 of CPC would apply when an appeal is preferred u/s 260A of the Act. It is a well settled principle that the respondent can sustain the order, which is being challenged, from being decided against him.

90. Here while we have to disagree with the generalization of the principle that all provisions relating to CPC would apply when an appeal is preferred u/s 260A of the Act for the simple reason that even under sub-section (7) of Section 260A of the Act, not only all the provisions relating to all the appeals is made applicable, but it is only such provisions relating to appeals of High Court and appeals to the High Court and even here only to the extent of they being applicable or made applicable and enabled under sub-Section (7) and subjected to further condition that it is so safe for application on a reading of all other provisions of Income Tax Act. A sweeping generalization to the effect they being made the basis for acceptance, even the Court maintains a distinction between the first appeal and second appeal and all appeals are generalized under the code. Be that as it may, with great respect to Kerala High Court we are unable to subscribe to the view taken in this judgment and on the other hand we indicate our views, on this aspect as above. Reliance placed by Sri. Shankar, learned counsel for the assessee, on the decision of Calcutta High Court Income Tax 124 438 cannot also advance the submissions made on behalf of the assessee to contend that a cross-objection in terms of Order 41 Rule 22 is enabled either in a Section 100 appeal or in an appeal u/s 260A of the Act for the reason that the

judgment is an authority only insofar it relates to the applicability of the provisions of Rule 5 of Order 41 and that cannot be made applicable or extended to understand the scope of Rule 22 Order 41 of CPC. However, Sri. Shankar, learned counsel for the assessee has placed strong reliance on a Full Bench Decision of our High Court in Chandrashekar vs. Narayan. On a perusal of this judgment and the opinion of the Full Court, we find that the opinion was expressed in the context of an appeal u/s 110D of the Motor Vehicles Act, which is akin to a first appeal u/s 98 and at any rate is definitely a first appeal against the order and award of the Motor Vehicle Accident Claims Tribunal and there cannot be a comparison between an appeal of this nature with an appeal filed either u/s 100 CPC or an appeal u/s 260A of the Act. Therefore, this judgment cannot be followed to hold that a cross-objection either u/s 100 of CPC appeal or an appeal u/s 260A of the Act is tenable.

91. Reliance placed by the learned counsel for the assessee on the decision of the MADHYA PRADESH HIGH COURT in the case of Srinath vs. Commissioner of Income Tax reported in 255 ITR page 215 is also an authority only insofar as it relates to adopting the provisions of Order 41 Rule 19 and all provisions of Order 41 Rule 19 relating to setting aside of ex-parte orders such as readmission of appeals dismissed for default and in turn passed under Order 9 relating to original suits is to be understood as an authority only insofar as it relates to the applicability of Rule

19 of Order 41, an exclusive procedural aspect governing the readmission of an appeal dismissed for default and on such reasoning it cannot be accepted or held that the provisions of Order 41 Rule 22 i.e., a substantive provision also can be made applicable and included within the scope of sub-section (7) of Section 260A of the Act.

92. In our opinion, with respect to the learned judges of the two High Courts i.e., Kerala High Court and Orissa High Court, we are of the view, that even these two judgments do not constitute any direct authority to hold that a cross-objection is tenable in a Section 100 appeal to the High Court. The other principles underlying the enabling provisions of Order 41 Rule 22 to file cross-objection is that the party who had succeeded in part, before the Court of first instance and who contends that success should nevertheless be enabled to seek for improvement when the party who has not received full relief before of the Trial Court chooses to file an appeal to improve his prospects or to deprive the contestant even from the limited relief that the other party would have obtained before the Trial Court and it is only to give a second round of opportunity to a non-appealing party, who is content with limited success or failure but is dragged before the appellate court, gets a fresh opportunity to shrug off even the adverse part of the trial court even such a party had himself not filed an appeal, the enabling provisions of Rule 22 of Order 41 are put on the statute, but such an enabling provision to file a cross objection in a second appeal u/s 100 CPC is neither the possibility nor the intention of legislature in Rule 1 of Order 42 of

CPC. Even the provisions of Rule 3 of Order 42 of CPC reading "Reference in sub-rule(4) of Rule 14 of Order XLI to the court of first instance shall in the case of an appeal from an appellate decree or order, be construed as a reference to the court to which the appeal was preferred from the decree or order" also cannot make any difference to understand that the provisions of Rule 22 of Order 41 of CPC are all automatically applicable even in respect of an appeal u/s 100 CPC for the reasons as spelt out above, while discussing the different authorities on this aspect.

93. In the light of the discussion made above though Sri. Shankar, learned counsel for the Assessee has placed reliance on the following decisions to urge that limitation is an issue and should be held against the Revenue. We are of the view, that they cannot have any bearing to the facts and circumstances of the present case. Not only in the facts and circumstances which we have pointed out in the present cases, but also in the light of the view, that we have expressed above and therefore, we do not propose to examine each of these citations on its merits.

1. Commissioner of Income Tax (Central) Vs. Sarb Consulate Marine Products Pvt. Ltd.,
2. Commissioner of Income Tax Vs. Shri S.K. Katyal,
3. Commissioner of Income Tax Vs. Mrs. Sandhya P. Naik, Vinay A. Naik, Mrs. Manjusha V. Naik, Mrs. Mira A. Naik, Ananta N. Naik (Decd.) (through legal representatives) and Pandurang A. Naik,
4. Cit vs. Deepak Aggarwal & Another 308 Itr 115 (Del)
5. Cit vs. Plastika Enterprises 23 Dtr 333 (Bom)
6. Dr. C. Balakrishnan Nair and Another Vs. Commissioner of Income Tax and Another,
7. Cit vs. T.S. Chandrashekar (2009) 17 Dtr (Kar) 194

94. In the light of the view that they had taken that the assessee had not placed any worthwhile material to substantiate its claim of the existence of a Hindu Undivided Family from which some income could have been generated and could have constituted an investment of several assets etc., the explanation of the assessee to the effect that cost of acquisition of any asset is attributable to some income which was generated in the hands of the Hindu Undivided Family is not an explanation that should have found favour with the Tribunal and accordingly the same logic holds good when the assessee seeks to explain certain asset to be belonging to the Hindu Undivided Family and not to an individual and it was for the assessee to have made good the source of acquisition even in the hands of the Hindu Undivided Family also and when the existence of the very Hindu Undivided Family is not made good, the further question recedes to the background and accordingly the question as formulated in paragraph-17 of the

memorandum of appeal has to be necessarily answered in favour of the revenue and against the assessee.

95. With regard to the question posed for our answer in paragraph-18 of the memorandum of appeal i.e., relating to valuation of the property and submission in this regard by Sri Seshachala, learned senior standing counsel appearing for the revenue is that the valuation by the department was based on sound principles and the deletions by the tribunal are not justified in law; that the Tribunal has committed an error in not only allowing a deduction of 15% purporting to be due to the differences in legal valuation method and CPW valuation method which the Tribunal presumes to have been adopted by the Departmental Valuation Officer and further deduction of 10% towards supervisory charges by the assessee himself was also not warranted when the situation did not warrant a reduction of this nature and in fact the claim of self supervision was clearly proved to be imaginary claim on the assessee's own revelations.

96. On this aspect, submission of Sri Shankar, learned counsel for the assessee is that if the revenue was not inclined to accept the valuation which according to the revenue was unearthed from the information furnished by the assessee himself and on his own valuation at Rs. 15,01,000/-, then if the revenue has to go by its own method of valuation as per the value arrived at by the Departmental Valuation Officer, the deductions towards differences in CPW rate and local rates and also towards self supervision has to be inevitably allowed and if the tribunal has done only that, there is nothing to obstruct or interfere with the order passed by the Tribunal.

97. In support of the submission, Sri Shankar, learned counsel for the assessee has also placed reliance on the reported decision of the Bombay High Court in the case of Commissioner of Income Tax Vs. Vinod Danchand Ghodawat, and further submits that in a block assessment, valuation cannot be the criteria for bringing to tax some undisclosed income as difference in valuation is not something which can be attributable to undisclosed income of the assessee but one arising out of perceptions and the method of valuation and ultimately the entire thing being based on assumption there can always be an area of difference and that should not be characterized as suppression of income on the part of the assessee or attributable to some undisclosed income of the assessee.

98. Apart from the legal contentions urged on this aspect, what we notice on factual basis even as indicated by the Tribunal is that the Departmental Valuation Officer valued the property at Rs. 17,16,000/- whereas the assessee's valuer had indicated the value of the property to be at Rs. 15,01,000/-. This was after allowing deduction towards self supervision at 12.5%. If that is also to be included even as per assessee's own valuer, the amount will work out to Rs. 16,86,000/-.

99. Submission of Sri Seshachala, learned senior standing counsel for the

revenue, based on these figures is that the valuation as adopted by the Departmental Valuation Officer was not paid as indicated by the valuer of the very assessee namely at Rs. 16,86,000/- etc., and with the claim of the assessee towards deduction for self supervision being totally not tenable, particularly, as the assessee could have neither had the time to supervise in his multifarious activities nor had any expertise and therefore it is only a claim for saving certain things and not a genuine claim and the tribunal has gone beyond its brief in imagining such things for the assessee and allowing such deductions and reducing the value of Rs. 17,16,000/- to Rs. 12,44,100/- is totally not warranted in law and therefore all questions could be answered in favour of the revenue and against the assessee.

100. We notice that the difference between the two valuations is hardly around Rs. 30,000/- and in such state of affairs, if the assessee's claim towards self supervision is found not tenable, we do not find the matter warranted such detail examination by the Tribunal and that too by giving various reasons.

101. With regard to the submission of Sri Shankar, learned counsel for the assessee that difference in valuation cannot be subject matter for block assessment on the premise that it is some undisclosed income and with respect to this view taken by the learned Judges of Bombay High Court in the decision stated [supra], we are of the view that the concept of block assessment is only one that enables revenue to bring to tax some undisclosed income for the block period and it is not so important as to the manner in which it is found that certain income had not been disclosed whether it is attributable to some differences in valuation or on any other reason, so long as it has a link to the search which results in passing of a block assessment order and so long as there is some unexplained investments or expenditure or an asset found in the hands of the assessee which is a general inference in law and particularly as enabled under the deeming provision and to deem it in the year in which it was found.

102. Ultimately, in our view any unexplained investments, expenditure or an asset found in the hands of the assessee which is attributable to a search can definitely be brought to tax under the provisions of section 158BC of the Act as part of the block assessment and therefore we are of the view that the Tribunal has unnecessarily interfered with the findings of the assessing officer in accepting the valuation as indicated by the Developmental Valuation Officer.

103. The question is not as to the Tribunal could have found justification to arrive at some other figure than what is indicated by the assessing officer, but the question is as to whether the Tribunal had found sufficient reasons to hold that there was some wrong and the need for correcting it on accepted legal principles. The tribunal by adopting a totally different method, though may be at the behest of the assessee does not appeal to us for acceptability and we are of the view that the Tribunal has unnecessarily interfered on this aspect of the matter with the view taken by the assessing officer and accordingly this question is also answered in favour of the revenue and against the assessee.

104. The next question for examination is as to whether the Tribunal was correct in holding that the assessee was entitled to claim deduction of Rs. 15,000/- towards payment of loan on vehicle etc.,.

105. We are of the view that the question does not merit examination by us and we simply answer this question in favour of the assessee and we do not want to examine the further aspects on this question having regard to the insignificant amount that too as found by the Tribunal being amount justifying acceptability in the hands of the assessee as an investment source of which was found to be accepted by the Tribunal. We do not find any substantial question of law arising in respect of Rs. 15,000/- and therefore the question of law is rejected. This question is answered in favour of the assessee and against the revenue.

106. In so far as the addition of Rs. 1,00,000/- as an unexplained investment and amount advanced to one Smt. Lakshmi Gururaj Acharya, while the assessee also did not dispute the transaction, the explanation which had not even found merit with the assessing officer was that a sum of Rs. 50,000/- had been repaid by Sri Gururaj and that had been recycled etc., and therefore balance amount if at all could have been looked into was not acceptable as the claim was not supported by any receipt etc., owing from Gururaj -husband of Lakshmi.

107. The Tribunal on this issue has reversed the finding with a rather perverted reasoning to hold that there is no concrete evidence to support the view taken by the assessing officer.

108. It is not for the assessing officer to produce some negative evidence, but for the assessee who puts forth a claim, to make good the claim by producing evidence. If the assessee had claimed some amount had come back to him and that formed a reinvestment etc., that stand should have been made good by the assessee and not disproved by the assessing officer. In our considered opinion, the reasoning is most illogical, bordering on perversity. We set aside the finding of the Tribunal on this aspect and answer the question in favour of the revenue and against the assessee.

109. With regard to the question occurring at paragraph-21 on the aspect of the revenue taking the peak cash credit at Rs. 14,55,550/- and as an amount found in the bank statement of the account of the assessee as disclosed by the assessee himself as not properly explained, the Tribunal has proceeded on certain assumptions and presumptions to upset the finding on this aspect of the matter.

110. It is on this aspect that Sri Shankar, learned counsel for the assessee has also joined issue contending that an asset or a bank balance which is already disclosed by the assessee in his return of income in the normal course of filing of the return, cannot form subject matter for a block assessment, particularly, for contending that some undisclosed income is imbedded in the asset and while such is the submission on behalf of the assessee, the stand of the revenue and as submitted by Sri Seshachala, learned senior standing counsel, is that the

information relating to the bank statements, bank balances, leading to the assessment of the undisclosed income relating to bank deposits and credits in the bank are as a consequence of the very information furnished by the assessee when the assessee had been served with the notice to file return of income and furnish information pursuant to the search and any material forthcoming in pursuance of a search and follow up action if it could reveal any undisclosed income in respect of the investments, the expenditure and assets held by the assessee, that can be brought to tax etc.

111. Another aspect is the method adopted for taking the figure at Rs. 14,55,550/- as a peak cash credit and on this aspect while Sri Seshachala, learned counsel for the appellant - revenue has submitted that the cash credits are worked out for the years within the block period bank-wise and year-wise, submission of Sri Shankar, learned counsel for the assessee is that in the concept and scheme of block assessment u/s 158BC of the Act, it is not as though the income or the undisclosed income is unearthed for each year of the block period. The entire block period is taken to be as one unit and the entire undisclosed income of the block period is brought to tax as a part of one assessment order.

112. While submissions of both learned counsel for the revenue and learned counsel for the assessee per se merits acceptance on legal principles, the question is as to whether the assessing officer had committed an error warranting interference by the tribunal to conclude that on the premise that the cash credits could be explained from the source of the income of the Hindu Undivided Family, some income earned by the assessee from Singapore trip collections and amount drawn by the assessee from the chit group and also as part of home loan from Canara Bank and cash gifts received from the relatives, we find that the assessee had not put forth such claims before the assessing authority but was rest content in claiming that the method of arriving at the peak cash credit was not tenable; that it worked for each year and this claim projected for the entire number of years in the block period etc.

113. We find that the Tribunal has gone over board in finding ways and means of funding the bank deposits in favour of the assessee by attributing that to a variety of activities on the part of the assessee capable of generating income available for investments in a bank by way of deposits.

114. If the version of the assessee that he was carrying on business by borrowing money is to be pleaded, the assessee would not have been keeping the fund parked in a bank by way of deposits. We find that the actual figures as reflected in the bank statements are not in dispute and if the sum total is a possible amount which was not properly accounted for as found by the assessing officer and attributed to the entire block period, even after providing for withdrawals which is the method as worked out by the assessing officer, the Tribunal could not have found a way to relieve the assessee of the burden to make good the credits found in its account by adopting reasons such as that the amount are attributable to other activities of the assessee etc.

115. We are also not in a position to accept the submissions of Sri Shankar, learned counsel for the assessee that an investment in an asset if had already figured in the returns cannot be subject matter for a block assessment period u/s 158BC of the Act, only for the reason that the subject matter for assessment in terms of section 158BC of the Act is the undisclosed income of the assessee attributable to the block period which had not been brought to tax for any reason.

116. Section 158BC of the Act reads as under:

Section 158BC - Procedure for block assessment:-

Where any search has been conducted u/s 132 or books of account, other documents or assets are requisitioned u/s 132A, in the case of any person, then,
-

(a) The Assessing Officer shall -

(i) in respect of search initiated or books of accounts 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 accounts 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 u/s 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 158BB 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;

id) the assets seized u/s 132 or requisitioned u/s 132A shall be dealt with in accordance with the provisions of section 132B.

117. On a reading of the provisions of section 158BC of the Act, it becomes clear that the existence of some undisclosed income and deduction of the same which are attributable to a search, in the sense, that it is as a sequel to the search in

terms of section 132 of the Act, then in respect of such undisclosed income or as income which had not been subjected to tax, the assessing officer is bound to pass a block assessment order.

118. Here, we are of the clear view that the criteria is as to whether the assessee had earlier disclosed as part of its income or not. A disclosure of the existence of an asset is not a criteria whether disclosed or not disclosed. Even assuming that an asset like the property purchased in earlier year or in fact a deposit made in an earlier year had been revealed as part of the assets and liabilities of the assessee, but the source of acquisition had not been accounted for in the years and as a result of the search and the assessee was called upon to file its return of income, if it is found that the investment in an asset has not been properly accounted for giving rise to an inference that some part of it has not been accounted for earlier and quite possibly some income also had gone into the acquisition of the asset to that extent, an information whether it is directly as a result of the search and found during the search itself or as a follow up action when the assessee is called upon to file a return and provide information and is so provided can also be utilized for passing a block assessment order to bring to tax some undisclosed income of the block period. The test is as to whether the income which is sought to be brought to tax in the block assessment period had already been offered to tax as income and not in any other way. If the assessee had merely revealed the existence of some assets, but had not disclosed the income which has gone into the acquisition or investment of the asset, it is not a disclosure of the income earlier and to that extent, that income which had not been assessed earlier by the assessee not having so disclosed it as income can be definitely brought to tax and the block period whether or not the assessee is so willing or otherwise and even when the information relating to the existence of some undisclosed unassessed income being part of an asset was available for the earlier years.

119. We would like to indicate that an assessment for block period in terms of section 158BC of the Act is not based on the same principles as an assessment in the course of reopening in terms of sections 147 and 148 of the Act. u/s 147 of the Act, while income escaping assessment for the earlier years can be brought to tax either by a reassessment after an earlier assessment was over or for the first time also, but within the time stipulations as indicated in section 149 of the Act and if it is for a shorter period and only on fresh information and it presupposes information leading to the possible income after it was not assessed to tax unless there is information and cannot be by looking into the very information or return filed by the assessee, such a limitation we are afraid cannot and should not be read into for the assessment in the block period in terms of section 158BC of the Act.

120. Submission of Sri Shankar, learned counsel for the assessee proceeds on the premise that it is analogous to the applicability of the provisions of section 147 of the Act for reassessment.

121. We are also aware that if an income had already been disclosed in the returns filed prior to the search by the assessee, such income can be brought to tax only in the form of regular assessment or by reopening as permitted within the scope of section 147 of the Act and does not get into a block assessment order, but if an income had not been disclosed for earlier years, there is no way of the assessee filing a revised return for the earlier year, but it is only in the block period it has to be brought to tax and the only criteria for bringing to tax such undisclosed unassessed income of the assessee for the earlier period is only by the block assessment order and by no other method so long as the provisions of section 158BC of the Act are on the statute book.

122. If this principle is to be applied, we are of the view that the mere fact that some of the bank statements did indicate the credits as reflected in the bank account of the assessee by itself does not constitute a disclosure of income by the assessee.

123. As to whether the availability of such credits coming from the hands of the assessee into the account of the bank and to that extent the assessee admitting some funds are remitted to his accounts is a basic fact which can give rise to the inference of a possible undisclosed income or may not be. Ultimately, the existence of a possible undisclosed income pursuant to a cash credit found in the bank accounts of the assessee at any given point of time is a matter which has to be verified with reference to the explanation offered and the acceptability of the same and that exercise having been undertaken by the assessing authority, if the Tribunal is to reverse that finding, it has to necessarily be satisfied that the assessee had a worthwhile explanation forthcoming to demonstrate that the acquisition of the asset or any part of it is not representing an undisclosed income and therefore the view of that it is so is not a proper evaluation by the assessing officer. The Tribunal has not examined the question from this angle but has gone off at a tangent in accepting the other explanations given by the assessee and that too most of it for the first time put forth before the Tribunal and therefore the finding of the Tribunal on this aspect of the matter with regard to setting aside the entire peak cash credit of Rs. 14,55,550/-, particularly, on the premise that the assessee had a sum of Rs. 27 lakhs available with him as an indisputable fact on the premise that the bank deposits and withdrawals had been accounted for, in the sense, that had been reflected in the returns filed earlier is not a reason that either appeals to us or can merit acceptability.

124. It is virtually begging the question as it is the amount of Rs. 27,15,600/- which is an amount from out of which the assessee is required to explain the income part of it and that having not been done, mere availability in itself is not the criteria but what part of the available amount had been indicated to be from out of the disclosed income is the criteria and the assessee having not disclosed the income part which had gone into such investments and with the assessing officer having arrived at by a method of peak cash credit to be at Rs. 14 lakhs etc., from out of those deposits there was no way that the tribunal could have

reversed that finding of the assessing authority.

125. Sri Shankar, learned counsel for the assessee very vehemently contended that not only the assessment of income on peak cash credit basis is very erroneous, but even while computing the income for the block period, the method of the assessing officer, taking into account the peak cash credit for each of the years in the block period is also not tenable as that militates against the scheme of the block period for treating the entire block period as one assessment period and it is for this reason has submitted that the aggregation of the peak cash credits in the two accounts, namely, current account and savings bank account maintained by the assessee with Canara Bank from the years 1991-92 to 18.3.1996 reads as under:

Asst. Year

SB A/c No. 18461

CA A/c No. 480

Total

1991-92

160,200

-

160,200

1992-93

116,800

362,000

478,800

1993-94

2,000

286,700

288,700

1994-95

25,700

77,000

102,700

1995-96

13,200

309,800

323,000

1.4.95 to 18.3.96

34,650

67,500

102,150

Total

352,550

1,103,000

1,455,550

is clearly erroneous and at any rate aggregating the peak cash credit to Rs. 14,55,550/- is clearly not the proper way of working out a possible undisclosed income of the assessee for the block period.

126. Sri Seshachala, learned senior standing counsel appearing for the revenue, on the other hand, has joined issue on this aspect by pointing out that the assessing officer has given deductions to all withdrawals for each of the year; that the total deposits as found even as per the bank statement and as disclosed by the very assessee itself totaled to a sum of Rs. 32,22,114/- and even while taking the peak cash credit for each year, in the sense, highest balance in respect of the accounts for the year in question which is only after providing for the withdrawals and with the assessee not coming forward with any plausible explanation as to the possibility of the withdrawn amount having flowed back for the credits in respect of the accounts, there was no other way of the assessing officer reducing the peak cash credits for the years in question and if on such premise the aggregating the peak cash credits for the years in question are added it works out to Rs. 31,88,314/- and there is nothing wrong in the assessing officer adopting this figure as unexplained investments credits of the assessee in the two accounts of the bank and bringing this amount to tax is the inevitable course for the assessing officer and the Tribunal having reversed this finding not on relevant consideration but on extraneous considerations such as attributing some source of income to the credits while the actual withdrawal were not properly accounted and when the withdrawals were not demonstrated to have been recycled, the Tribunal had no reason to reverse the well recorded finding of the assessing officer on this aspect of the matter.

127. We have bestowed our attention to the rival arguments on this aspect. While it is true that the assessee if is attributed to have some income and which is taken as the peak cash credit and treated as undisclosed income of the year in question, could have demonstrated that some part of it has been recycled for the deposits made during the subsequent years within block period, quite naturally

that amount could have gone into the purpose of computing the peak cash credits for the subsequent years, the actual recording on this aspect by the assessing officer that the assessee did not come forward with any evidence worthwhile to accept this claim and the Tribunal instead of addressing this aspect has given some other reasoning to reverse the finding of the assessing authority.

128. If the Tribunal should have found as a matter of fact and as is now sought to be contended by Sri Shankar, learned counsel for the assessee before us that the peak cash credit which constitute income for the years were available for redeposit on being withdrawn and if it should have been made good perhaps that could have merited acceptance and could have been a good ground for either setting aside the assessment order determining the income as assessed by the assessing officer or to the extent it is permitted to reduce the same. But, such is not the course of action resorted to by the Tribunal nor demonstrated by the assessee either before the assessing officer or before the Tribunal.

129. Though Sri Shankar, learned counsel for the assessee would contend that the assessee had placed necessary material and if the Tribunal had not addressed the issue and had not recorded commensurate finding on this, the assessee should not be penalized for the absence of a finding on the part of the Tribunal, what we are examining is as to the sustainability or otherwise of the finding of the Tribunal on settled legal principles and as to whether the conclusion of the Tribunal to delete the entire peak cash credit amount as not an undisclosed income, of the assessee and therefore did not amount to unexplained investments.

130. The explanation as is given by the assessee before us was not forthcoming, whether before the assessing authority or before the Tribunal. We are not inclined to look into the so called statements/submissions which Sri Shankar, learned counsel for the assessee would draw our attention to and said to have been placed before the tribunal for examination, as we are not required to examine such material in an appeal u/s 260-A of the Act, particularly, for answering the questions as posed for our answer.

131. In the very scheme of things, the questions alone are required to be answered and if a question does not merit answer as not being a substantial question of law, that question can be discarded, but not to answer a question on any material not examined and answered by the Tribunal or the authorities, and inviting our attention to such material/ statement placed before the High Court for the first time and for answering the questions, which has no bearing or relevance to such material!

132. The arguments as now addressed before us, had been sought to be addressed before the Tribunal also, but we notice that the Tribunal simply accepts the arguments, purporting to be on examination of facts, without advertng to any material supporting the claim and on an assumption that "one cannot dispute the availability of cash of Rs. 27,15,600/- with the assessee"

which is based on the premise that the assessee had generated this kind of income from a variety of his activities, such as Singapore trips, amounts received from Vishandas being the kartha of the Hindu Undivided Family and the amounts drawn from the chit transaction. When none of them had been made good before the assessing authority, there is no way of the Tribunal attributing such sources of income to the assessee for the purpose of concluding that the assessee had cash of Rs. 27,15,600/- which even on a very liberal view appears to be rather ambitious for the assessee and rather impertinent on the part of the Tribunal to record such a finding. Attributing availability of an amount of Rs. 27,15,600/- in the hands of the assessee which had never been accounted for and even when the assessee had been borrowing from the banks for the purpose of investment for the construction of house etc., does not appeal to us either on logic or on reasoning and to accept that the assessee even while was retaining such amount of cash in his hand, was borrowing funds otherwise also and such cash was the amount which is available for such deposits etc.!

133. The reasoning given by the tribunal does not appeal to us in the least and while we frown on this finding, other argument of Sri Shankar, learned counsel for the assessee that the method of taking the peak cash credit for each of the year and aggregating that is also not tenable is an argument which we cannot accept for the simple reason that for each year, the assessing officer has in fact examined his deposits and withdrawals in the bank accounts and has taken into account the possible peak for the years in question and with the income tax being an annual affair though for the block period it is made as one assessment order, for the purpose of ascertaining the undisclosed income part and even with respect to the block period with the assessee having had the opportunity of filing return for each of the earlier years and if the transactions as reflected in the bank accounts had not in fact been properly explained for the purpose of the income it could have generated and used as an income which is accounted for and invested for the purpose of acquiring any other investment, we cannot accept the argument that the method adopted by the assessing officer to aggregate the peak cash credit available in the two accounts for each of the year which again is arrived at after giving deduction to the withdrawals and only the available balance at a given point of time and highest for the year in question does not in any way militate against the scheme of Chapter - XIV-B of the Act and it is only one method of arriving at a possible undisclosed income of the assessee for the block period. It is not as though if the assessee has accumulated the undisclosed income over a period of time, the undisclosed income for any part of it alone should be taken and not as discovered for any other part of the block period, so long as the same income is not taxed twice but only once.

134. We are quite aware that in tax parlance, particularly, in income tax, an income which has suffered tax once, cannot be taxed again in the hands of the same assessee is a well accepted principle, but the question is as to whether it had suffered tax and for the purpose of arriving at a possible undisclosed income

of the block period if the method as adopted by the assessing officer does not militate against the method and manner of arriving at a possible undisclosed income, there is no way of the Tribunal disturbing the undisclosed income arrived at by the assessing officer and irrespective of what the tribunal has done, the arguments addressed by Sri Shankar, learned counsel for the assessee to accept only the peak cash credit for each year separately does not appeal to us for acceptance.

135. If the assessee who had the opportunity to demonstrate that this very income had been recycled for further credits made in the bank accounts had failed to do that, it was not for the tribunal to invent possibilities not demonstrated before it to hold that there was no undisclosed income or to opine in any other manner and even if the assessee to contended, as is now submitted by Sri Shankar, learned counsel for the assessee that it could have been only the peak which is the one peak for the entire block period.

136. There can be only one peak and not several peaks, but in the very scheme of the Income Tax assessments and the manner of computing undisclosed income, that too by the present method of the unexplained credits in the bank account, we do not find the method adopted by the assessing officer to be obnoxious enough to warrant interference by the Tribunal or to upset the same by us on the basis of arguments addressed by Sri Shankar, learned counsel for the assessee. It is for this reason we inevitably answer this question in favour of the revenue and against the assessee and by setting aside this finding of the Tribunal and sustaining the finding of the assessing officer.

137. Therefore, the substantial question Nos. 1, 2, 3, 4, 5 & 7 as indicated in memorandum of appeal at paragraph Nos. 15, 16, 17, 18, 19 & 21 respectively are all answered in favour of the revenue and against the assessee and substantial question No. 6 as indicated in the memorandum of appeal at paragraph No. 20 is answered in favour of the assessee and against the revenue.

138. ITA No. 257 of 2001 is allowed in part to the extent indicated above.

RE: ITA No 258 OF 2001:

139. In this appeal by the revenue u/s 260-A of the Act, the appeal had been admitted for examination of the following substantial questions of law:

1. Whether the Tribunal is correct in holding that the cost of construction should be assessed in the hand of the assessee's husband Sri. Purushothamlal even though the assessee herself had claimed that 50% of the cost had to be out of the investment made by her and especially when the assessing officer had recorded a finding that the cost of construction had been made out of the unaccounted money shown by the assessee?

2. Whether the Tribunal was correct in holding that a sum of Rs. 3,81,284/- investment shown in moveable and immoveable property by the assessee in the return of income filed on regular basis by the assessee should be treated as her

own income without examining any material or recording a finding as to why the assessing officer conclusion that this income had not been generated by the assessee was not correct ?

140. The appeal has its origin to a block assessment order passed in the hands of the respondent-assessee, who is wife of one Purushothamlal, pursuant to a search conducted in the premises of said Purushothamlal as on 18-3-1996. With the respondent in this appeal also being an assessee under the provisions of the Act and the officials having, in the course of the search, purported to have unearthed some materials leading to detection of a possible undisclosed income of the respondent-assessee, it had resulted in a block assessment order dated 26-5-1997 [Annexure-B]. The salient feature of this block assessment order is that the assessee had been assessed to undisclosed income of Rs 9,67,090 as undisclosed income referable to the period 1991-92 to 1996-97. The additions made for the different years are as under:

Year

Amount in Rupees

1991-92

1,60,200

1992-93

4,78,800

1993-04

2,88,700

1994-95

1,02,700

1995-96

3,23,000

1996-97

1,02,150

resulting in a tax liability of Rs 5,80,254/- on the assessee.

141. The assessee's stand was that she, as wife of Purushothamlal, had separate and independent income prior to the date of search of the premises of Purushothamlal; that she had filed return of income for the year 1995-96 in the normal course, towards the difference in the cost of construction of the house property jointly with her husband and other amount, was in a sum of Rs 3,81,284/-, as unexplained investment made by the assessee for the four assessment years in question in purchasing an immovable property by the

assessee.

142. The assessee had appealed to the tribunal, contending inter alia, that the search was not in accordance with law; that the assessment was not within the permitted time u/s 158BE of the Act; that the income sought to be included in the hands of the husband of the assessee cannot be again assessed in the hands of the present assessee also. With regard to the investment of Rs 3,81,284/- as unexplained investment, it was the version of the assessee that it was an income generated by her in relation to tailoring activity pursued by the assessee and the income from this activity had also been offered to tax and the investment from out of the income generated from this activity had also been accounted prior to the search and therefore the addition in the hands of this assessee to any extent is bad in law and requires to be set aside.

143. The tribunal, which examined such contentions, simply accepted that the addition towards the cost of construction in the hands of the assessee to the extent of 50% as her contribution could have been considered only if it had not been considered elsewhere, but if the income had been considered in the hands of her husband, there was nothing left independently to examine any part of such investment in the house property in the hands of the assessee and therefore held that the addition was not good in law.

144. The other aspect of investment in other property amounting to Rs 3,81,284/- by the assessee, the version of the assessee that this was from out of the income generated from her tailoring activity and should be accepted, for the reason that the assessee was filing returns of income from the year 1986-87 onwards and in this view of the matter, allowed the appeal.

145. It is aggrieved by this order the present appeal has been filed by the revenue on the substantial questions of law as indicated earlier.

146. It is the case of the revenue that the tribunal should have assessed the income claimed to be the income of the assessee only in the hands of her husband Purushothamlal and as an unexplained income in the hands of Purushothamlal, as the assessee did not have a real or acceptable source of income from her so-called tailoring activity and without examining this aspect, simply could not have allowed the appeal of the assessee to hold that the income addition could not have been made in the hands of the assessee for the block period based on the search.

147. Sri M V Sheshachala, learned standing counsel for the appellant-revenue has contended that while the investment made in the construction of house property in respect of which the assessee had claimed 50% contribution, the assessee's claim had been rejected and it has been brought to tax in the hands of her husband Purushothamlal and to this extent, there is no question of the assessee being asked to pay any further burden of tax as her undisclosed income.

148. However, in so far as the amount of Rs 3,81,284/- is concerned, submission

is that the tribunal taking the view that the amount cannot be treated as an undisclosed income of her husband Purushothamlal, particularly in the wake of the present assessee having filed her return of income for the earlier years prior to the date of search and having earned some income and offered it to tax and that income being sufficient to sustain assessee's explanation on this aspect, the finding based on the premise that the assessee had an independent source of income and from out of that income she had made investment, which theory has not been accepted by the revenue and therefore, the revenue is in appeal to this extent.

149. It is also submitted that the addition of Rs 3,81,284/- is an amount which the assessing authority had found over and above what had been accepted in terms of the returns filed by the assessee in the earlier years and this amount having not been properly explained in any manner other than the amount already indicated in the returns filed by the assessee, deletion by the tribunal is not justified and is on an erroneous premise that it is only an income which had already been offered to tax in terms of the returns filed by the assessee for the earlier years.

150. Sri A Shankar, learned counsel for the respondent-assessee would submit that there are no other investments made by the assessee other than the amount of Rs 3,81,284/- and in fact even in terms of the return filed for the assessment year 1994-95 and in the balance sheet appended to the return of income, the assessee had pointed out to the availability of this kind of fund for investment; that the entire investment in the form of assets was actually to the extent of Rs 4,05,005.50 and this had been duly accounted for by the assessee, based on the returns of income filed for the earlier years and that total investment of the assessee did not reflect any amount over and above what has already been disclosed in the returns and the balance sheet for the year 1994-95 and therefore the tribunal is very justified in concluding that it cannot be brought to tax again, which virtually amounts to showing the same income twice.

151. We have been taken through the return for the year 1994-95 filed by the assessee and the balance sheet appended to the return. It is indicated therein that the capital account of the assessee as on 31-3-1994 was Rs 4,05,005.50 and it is well supported by the income generated in terms of the return of income filed for the earlier years.

152. To this extent, Sri Seshachala, learned standing counsel for the appellant-revenue, does not dispute the factual premise and facts and figures as mentioned in the balance sheet attached to the return of income filed by the assessee for the assessment year 1994-95.

153. A perusal of the balance sheet and the orders passed by the assessing authority and the tribunal, does not indicate that the so-called unexplained income of Rs 3,81,284/- is only made once by the assessee and that has already been accounted properly and in this view of the matter, of the two questions

raised in this appeal by the revenue, while the first question has become academic, as the revenue itself has accepted that the entire income assessed in the hands of Purushotamlal - husband of the present assessee - and therefore there is no question of bringing that income to tax again in the hands of the present assessee, in so far as the second question is concerned, it has to be necessarily answered in the affirmative and in favour of the assessee and against the revenue.

154. Accordingly ITA No 258 of 2001 is dismissed.

RE: ITA No 277 OF 2003:

155. This appeal by the assessee directed against the order passed by the tribunal in two appeals that had been preferred by the assessee and his spouse Ms Jyothi Kumari, is against that part of the order of the tribunal, wherein the assessee was denied relief to the extent of confirmation of addition of Rs 3.10 lakh, an amount which the assessee claimed as income generated from the sale of a car, which was not accepted by the revenue and instead treated it as undisclosed income of the assessee for the block period, and also on the aspect of the difference in the value of a building constructed by the assessee during the block period being taken as undisclosed income of the assessee, assessable to tax in terms of Chapter XIVB of the Act and on the premise that the tribunal had taken the view that the assessing authority was entitled to bring to tax as undisclosed income of the block period even if the particulars relating to the generation of income had already been disclosed in the returns filed for the period prior to search and as to whether the additions made on such premise can form subject matter for assessment u/s 158B(b) of the Act.

156. This appeal had been admitted to examine the following substantial questions of law:

1. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that the difference between the cost of construction as ascertained by the Departmental Valuation Officer and as declared by the Appellant constitute undisclosed income and liable for assessment under Chapter XIV-B of the Act?
2. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that a sum of Rs. 3,10,000/-declared by the appellant in his return of income before the date of search constitute undisclosed income and liable for assessment under Chapter XIV-B of the Act?
3. Whether on the facts and circumstances of the case was the Tribunal right in law in holding that the matters which are already a part of return of income, filed before the date of search, can be subject matter of block assessment under Chapter XIV-B of the Act?
4. Whether on the facts and circumstances of the case the addition sustained by the Tribunal could be treated as undisclosed income u/s 158B(b) of the Act and

liable for assessment under Chapter XIV-B of the Act?

157. In the course of the hearing of the appeal, Sri A Shankar, learned counsel for the appellant-assessee has made a prayer to permit the assessee to raise additional questions such as questions relating to the period of limitation operating against the revenue in terms of Section 158BE of the Act for passing block assessment order as on 26-5-1997 in respect of a search which was conducted on 18-3-1996.

158. Though such a question was, in fact, canvassed and Sri Shankar, learned counsel for the appellant-assessee, who figure as respondent in the two appeals filed by the revenue and disposed of as above i.e. ITA Nos 257 and 258 of 2001, we have examined the questions independently therein. For the sake of record, we have formally allowed the prayer of the appellant-assessee, made in this appeal through a memo dated 21-1-2010 for raising the following additional substantial questions of law:

1. Whether the Tribunal was justified in law in not giving a finding in respect of the issue of limitation for passing the order of Block Assessment after having noticed the contentions in its order on the facts and circumstances of the case?

2. Whether was the Tribunal justified in law in not holding that the assessment order dated 26.05.1997 is barred by limitation in accordance with the provisions of section 158BE of the Income Tax Act on the facts and circumstances of the case.

159. The arguments substantially overlapped one another and all questions, except the question relating to acceptability of the source of investment of Rs 3.10 lakh as one attributable to sale of a motor car owned by the assessee, have virtually being answered above while answering the questions arising in the two appeals of the revenue.

160. For the sake of record, we have further examined the question relating to limitation, particularly as Sri Shankar, learned counsel for the assessee, has submitted that if the question of limitation is to be answered in favour of the assessee if reliance placed on behalf of the assessee in the decided cases of other high courts as also a Division bench of this court, as referred to by us while dealing ITA No 257 of 2001, are to be looked into.

161. Sri M V Sheshachala, learned standing counsel for the revenue, has raised a preliminary objection to permit such further questions being raised in this appeal, as it was not a question which had been either expressly canvassed before the assessing authority or the assessee had pursued the matter as against the main order passed by the tribunal by filing an independent appeal against that order, but has sought to bring it through the backdoor method of first filing a rectification petition before the tribunal under the provisions of Section 254(2) of the Act, seeking for rectification of the main order passed by the tribunal in the two appeals of the assessee and his spouse, but had preferred the present

appeal only after the tribunal had declined to rectify its main order in the two appeals for the limited purpose of addition or otherwise of a sum of Rs 3.10 lakh to the undisclosed income of the assessee for the block period and the question of limitation being not substantially raised, which had received the attention of the tribunal at the instance of the assessee, in the absence of a direct appeal against the impugned order of the tribunal, the present appeal, purporting to be directed against the order declining to review the main order on the limited question of addition or otherwise of Rs 3.10 lakh, the question of limitation now sought to be raised as an additional substantial question of law by raising additional grounds should not be permitted and the application should be rejected.

162. Irrespective of the technical objections raised by the learned counsel for the revenue and though the question of limitation in the present case is not a pure question of law but is a mixed question of fact and law, nevertheless, we permit the question being raised only for the purpose of satisfying ourselves as to whether the question of limitation would have totally come in the way of the assessing authority passing block assessment order and if there was absolutely a bar in law against passing assessment order on a period of limitation, which is not made dependent on any other aspect, but only on the ascertainment of definite dates and being capable of only one possibility, such questions cannot be examined, nevertheless, we permit to raise such question in this appeal and examine the appeal on the basis of such question also.

163. We have already indicated that in so far as the question of limitation is concerned, it was not a pure question of law but a mixed question fact and law, in the present situation and particularly having regard to the language of Section 158BE of the Act and the indication provided therein to compute the period of limitation, in an elastic manner and not in a rigid manner of a watertight compartment and having found that in the facts and circumstance of the assessee's case and particularly having regard to the conduct of the assessee in seeking for further time, even to file a return of income in respect of the undisclosed income for the block period after the expiry of the date up to which alone, the assessee contends, the assessing officer has been enabled to pass an assessment order and beyond that day, he has no jurisdiction and if the assessee had, by his own conduct, sought to take the assessment order beyond that date, that too for enabling him to furnish details in respect of the return, in the sense, that the assessee wanted further opportunity before passing the assessment order and it had been acceded to by the assessing officer, we are of the view that the situation cannot be taken to be as one disentitling the assessing authority to pass assessment orders as on 26-5-1997 and that the assessment orders passed on this day in terms of Section 158BE of the Act are beyond the jurisdiction of the assessing officer or were banned by Law. It is for this reason, we have indicated that there does not arise the need to examine the merits of each case, referred to and relied upon by Sri A Shankar, learned counsel for the assessee in the judgments rendered by other high courts on this question of limitation.

164. We would, with respect to the authorities cited at the Bar, hold in this case the question of limitation as posed should be answered, against the assessee and in favour of the revenue in the peculiar facts and circumstances of the present case and therefore even the judgments relied upon by Sri A Shankar, learned counsel for the assessee in respect of the aspect of validity of the panchanama drawn on a subsequent date when there is no substantial seizure effected by the searching officer, as decided in the case of CIT vs T S Chandrashekar [(2009) 17 DTR (KAR) 194] cannot advance the case of the assessee in the present situation to answer the question in favour of the assessee. Therefore, we hold that there is no need for further examination of this judgment for the purpose of answering the question posed in the present appeal.

165. In so far as the substantial question occurring at para-20 of the memorandum of appeal, in concerned as we have already answered this question in favour of the revenue and against the assessee, while answering the questions raised in the earlier two appeals of the revenue, it is so answered here again.

166. With regard to the question that occurs at para-21 of the memorandum of appeal i.e. the question relating to the tribunal confirming the additional sum of Rs 3.10 lakh as an amount not properly explained by the assessee, notwithstanding the amount being claimed as proceeds attributable to sale of a car owned by the assessee, we find that the assessing authority as well as the tribunal have gone wrong on this aspect, particularly as it is contended by Sri A Shankar, learned counsel for the assessee that this amount had figured in the returns filed by the assessee for the earlier years and had been accepted by the revenue, as attributable to the sale of a car.

167. With this position being not disputed by Sri Sheshachala, learned standing counsel for the revenue, the amount cannot constitute an undisclosed source of investment to treat it as an income on the premise of unexplained source for further investment. Therefore, we have to necessarily answer this question in favour of the appellant-assessee and against the revenue. To this extent, we set aside the findings of the tribunal as well as that of the assessing authority, and hold that the addition of a sum of Rs 3.10 lakh to the undisclosed income of the assessee is not justified and the assessment order warrants correction to this extent. The assessing authority to effect the correction and to implement and given effect to this finding by passing necessary order in this regard.

168. Questions raised at paras-22 and 23 of the memorandum of appeal do not really warrant separate answers, in the light of the answers we have already indicated to the earlier substantial questions, which virtually cover these two questions also and therefore we ignore these two questions holding that they do not warrant separate answers on the facts and circumstances of this case.

169. In the result, this appeal is allowed in part to the extent indicated above.

170. In the peculiar circumstance of the case and in view of the mixed fortune for the revenue, we leave the parties to bear their respective costs, though we

were inclined to mulct the assesseees with proportionate cost for the unduly long time these appeals engaged our attention!

171. Before parting with, we would like to place on record our appreciation of the quality assistance rendered by Sri M V Sheshachala, learned senior standing counsel for the revenue and Sri A Shankar, learned counsel for the assesseees, who have, with great patience, equipment and thorough study taken us through the nuances of all aspects not only of the provisions of Order XLI Rule 21 CPC but also the provisions of Chapter XIVB of the Act, which is reflected in our judgment as above.