

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(SS)A No.4/Bang/2005
Assessment Year: 1990-2001

V. Ramprasad Raju No.10-155A, 1 st Floor Upper Palace Orchards Bangalore PAN NO : AAPCM1706D	Vs.	Commissioner of Income Tax (A)-VI Bangalore
APPELLANT		RESPONDENT

IT(SS)A No.8/Bang/2011
Assessment Year: 1990-2001

V. Ramprasad Raju No.10-155A, 1 st Floor Upper Palace Orchards Bangalore	Vs.	ACIT Central Circle-2(2) Bangalore
APPELLANT		RESPONDENT

IT(SS)A No.9/Bang/2011
Assessment Year: 1990-2001

Deputy Commissioner of Income-tax Central Circle-2(2) Bangalore	Vs.	V. Ramprasad Raju No.10-155A, 1 st Floor Upper Palace Orchards Bangalore
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, A.R.
Revenue by	:	Shri Dilip, Standing Counsel for Dept.

Date of Hearing	:	18.02.2021
Date of Pronouncement	:	24.02.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

All these appeals are related to the assessment order passed u/s 158BC of the Act consequent to the search and seizure operations conducted in the hands of the assessee u/s 132 of the Income-tax Act,1961 [the Act' for short] on 23.03.2001. This is second round of proceedings.

2. It is necessary to mention about the details of earlier proceedings. Consequent to the search operations, the assessing officer completed the impugned assessment as per the then existing provisions of sec.158BC of the Act covering the block period from 01.04.1990 to 23.03.2001. When the matter reached the ITAT, the assessee raised a legal ground challenging the validity of search conducted u/s 132 of the Act contending that the conditions specified in that section have not been fulfilled and hence the search operation itself is illegal. On merits, the assessee contended the additions made by the AO in the block assessment order, which related to the disallowance of agricultural income shown by the assessee in his returns of income filed prior to search operations.

2.1 The Tribunal disposed of the appeal of the assessee in IT(SS)A No.4/Bang/2005 and the appeal of revenue in IT(SSA) No.15/Bang/2005, vide its order dated 29-06-2006. With regard to the legal issue relating to the validity of the search proceedings, the Tribunal rejected the same by following the decision rendered in the case of C Ramaiah Reddy in IT(SS)A 38/B/97 dated 19-03-2006, wherein it was held that the Tribunal had no jurisdiction to examine the authorisation of search. On the issues urged on merits, the Tribunal restored the issue to the file of the AO for adjudicating the same afresh. The assessee filed a miscellaneous application before

the ITAT, which was numbered as MP No.52/Bang/2008. The addition made by the AO by disallowing agricultural income pertained to an investment made in a company as Share application money. The AO had taken the investment value as Rs.2.99 crores. In the Miscellaneous application, the assessee submitted that the actual amount of investment was only Rs.1.30 crores and it was pointed out in the miscellaneous application that the Tribunal had omitted to issue suitable direction in this regard in its order with regard to the quantum of investment, even though the Tribunal had noted the figure of Rs.1.30 crores in its original order. Accordingly, the miscellaneous petition was allowed by the Tribunal, vide its order dated 31.10.2008, directing the AO to determine the quantum of investments also.

2.2 The assessee challenged the order of Tribunal in rejecting the legal issue relating the validity of search by filing appeal before Hon'ble High Court of Karnataka. In the meantime, the Hon'ble High Court had decided an identical issue in the case of C. Ramaiah Reddy vs. ACIT holding that the Tribunal is not estopped from examining the validity of search operations. Accordingly, following the above said order, the Hon'ble High Court restored the legal issue back to the file of Tribunal for deciding the same. Hence the appeal of the assessee numbered as IT(SS)A No.4/Bang/2005 was revived for the limited purpose of disposing of the legal issue cited above.

2.3 Since the issues urged on merits were set aside to the file of the AO by the Tribunal, the assessing officer passed the impugned assessment order dated 03-11-2009 u/s 158BC r.w.s. 254 of the Act. The appeal filed before Ld CIT(A) challenging the above said assessment order came to be disposed of by the first appellate authority, vide his order dated 07th Feb, 2011. Aggrieved by the order

so passed by Ld CIT(A), both the parties are in appeal before us and their appeals have been numbered as IT(SS)A 8/Bang/2011 (assessee) and IT(SS)A 9/Bang/2011 (revenue).

3. We shall first take appeal in IT(SS)A No.4/Bang/2005, i.e., the appeal restored to the file of the Tribunal by Hon'ble High Court of Karnataka for deciding the legal issue of validity of search operations.

3.1 At the time of hearing before us, the Ld A.R submitted that the assessee is not pressing the grounds relating to legal issue now. Since this appeal was restored to the file of the Tribunal by Hon'ble High Court to decide only the grounds urged on legal issue and since the assessee is not pressing the same now, there is no requirement of adjudicating those grounds. Accordingly, the grounds urged on the legal issue relating to validity of search proceedings are dismissed as not pressed.

4. We shall now take up the appeal of the assessee numbered as IT(SS)A No.8/Bang/2011. The grounds urged by the assessee relate to the following issues:-

(a) Whether the was justified in determining the "undisclosed income" at Rs.2.96 crores.

(b) Whether the AO was justified in levying surcharge u/s 113 of the Act.

4.1 The facts relating to the above said issues are stated in brief. During the course of search operations, the search officials found one Balance Sheet belonging to a company named M/s MRP Home Inn Private Limited for the financial year ending 31.3.1998 along with corresponding figure for the year ending 31.3.1997. The relevant documents are placed at pages 55 – 56 of the paper book. The assessee is the managing director of the above said company and his

wife is the other director. The said financial statements were to have been signed by the directors and also by the auditor named Shri Mohan Balakrishnan on 31st August, 1998. The said financial statements disclosed that the above said company has received Share Application money. The balance shown under the head "Share Application Money" as on 31.3.1998 and 31.3.1997 are Rs.259 lakhs and Rs.227 lakhs respectively.

4.2 During the course of search proceedings, the aggregate amount of investment was arrived at Rs.299 lakhs as detailed below:-

F Y 96-97	-	227.36 lakhs
F Y 97-98	-	31.64 lakhs
F Y 98-99	-	40.00 lakhs

During the course of post search enquiries, the assessee explained the sources for above said investments as under:-

Name of the assessee	F.Y.	Amount (Rs.in lakhs)	Source
Srinivasa & Bros	1994-95	32.50	Plant and machinery in the erstwhile firm sold over a period of 12 months
		18.00	Closing stock of the firm
		18.00	Debtors
		1.50	Bills receivable
Sri V. Ramprasad	1994-95	41.00	Agricultural income
	1995-96	44.00	Agricultural income
	1996-97	46.50	Agricultural income
	1997-98	50.50	Agricultural income
		47.00	Other sources
	Total	299	

During the course of original assessment proceedings, the AO noticed that the assessee has filed returns of income for AY 1995-96 to 1997-98 declaring substantially higher agricultural income when compared to earlier years. Further, all the above said returns of income have been filed on the same date, i.e., 17.11.1997. Accordingly, the AO did not accept the quantum of agricultural income declared by the assessee. The AO also did not accept the

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claim of sale of machinery for a value of Rs.32.50 lakhs and other sources of income declared by the assessee to the extent declared. Accordingly, the AO determined the quantum of sources available with the assessee at Rs.33.00 lakhs and accordingly determined the “undisclosed income” at Rs.266 lakhs.

4.1 We have earlier noticed that the Tribunal had restored the issue of determination of agricultural income to the file of the AO. Vide the order passed by the Tribunal against the Miscellaneous application, the quantum of investment made in the above said company was also directed to be examined. Hence the AO passed two assessment orders to give effect to the order of the Tribunal. The first order came to be passed on 31.12.2007 in order to give effect to the order of the Tribunal and the second order came to be passed on 03.11.2009 to give effect to the order passed by the Tribunal against the miscellaneous application. The Ld A.R submitted that the assessee had preferred appeal before Ld CIT(A) against the assessment order dated 31.12.2007, but the same has been set aside to the file of the AO by Ld CIT(A), since the AO was required to pass the assessment order again consequent to the order passed by the Tribunal against the miscellaneous application filed by the assessee. In the assessment orders passed to give effect to the direction of the Tribunal, the AO determined “undisclosed income” at Rs.2.96 crores, i.e., the AO has determined the sources available with the assessee at Rs.3.00 lakhs only as against Rs.33.00 lakhs determined in the original assessment order. The AO rejected the claim of the assessee that the quantum of investment was Rs.130 lakhs only and not Rs.299 lakhs.

4.2 The assessee challenged the assessment order dated 03-11-2009 by filing appeal before Ld CIT(A). The assessee challenged the quantum of undisclosed income determined by the AO; quantum of investment; interest charged u/s 158BFA(1) beyond the date of original assessment order and also the surcharge charged u/s 113 of the Act. The Ld CIT(A) upheld the quantum of undisclosed income and the quantum of investment as Rs.299 lakhs. He also upheld charging of surcharge u/s 113 of the Act by following the decision rendered by Hon'ble Supreme court rendered in the case of Suresh N Gupta (297 ITR 322). With regard to the charging of interest u/s 158BFA(1), the Ld CIT(A) directed the AO to restrict the same upto the date of original assessment order. Aggrieved by the order passed by Ld CIT(A), both the parties are in appeal before us.

4.3 The first issue urged in the appeal of the assessee relates to the undisclosed income determined by the AO. The Ld. A.R. submitted that the addition has been made on the basis of a balance sheet found during the course of search proceedings. He submitted that the share application money shown in the said balance sheet was only Rs.259 lakhs as on 31.3.1998. Hence, it is not discernable as to how the assessing officer has adopted the figure of Rs.299 lakhs. The Ld. A.R. submitted that the assessee has explained that the said balance sheet does not reflect correct figures and it was submitted that the same was prepared for furnishing to a financial institution. The Ld. A.R. submitted that the balance sheet adopted in the annual general meeting and filed with Registrar of companies show share application money outstanding as on 31.3.1998 as Rs.131 lakhs only. Accordingly, he submitted that the above said balance sheet should not have been relied upon by the assessing officer.

4.4 The Ld. A.R. submitted that the block assessment proceedings prescribed u/s 158BC of the Act is a code by itself and what can be assessed in the block period is the “undisclosed income” as defined in section 158B(b) of the Act. Further, as per provisions of section 158BB the undisclosed income should be determined on the basis of evidence found as a result of search and such other material as are available with the assessing officer and relatable to such evidence. Hence no income could be assessed as undisclosed income on the basis of inferences and surmises. The Ld. A.R. submitted that the above said balance sheet found during the course of search does not tally with the books of accounts maintained by the assessee. Further, the said document does not contain breakup details of share application money. Accordingly, he submitted that the said document is a dumb document. Further, it cannot be presumed that the assessee herein has invested entire amount of share application money shown in the balance sheet.

4.5 The Ld. A.R. submitted that, even if the said balance sheet is assumed to be correct for a moment, the assessee has explained the sources for making investments in share application money, major part of which is the agricultural income declared in the returns of income filed by the assessee prior to the date of search. It is pertinent to note that the search officials did not unearth any incriminating material to show that the sources by way of agricultural income and other income/receipts were not available with the assessee. Accordingly he submitted that the AO has rejected the claim of availability of sources merely on surmises. He submitted that the returns of income upto AY 1997-98 have been filed prior to the date of search and hence the details of income were already known to the revenue. In any case, the sources explained by the assessee would fully cover the actual investment of Rs.130 lakhs. Accordingly, he

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submitted that there is no undisclosed income as per the definition given u/s 158B (b) r.w.s. 158BB of the Act, in the absence of any incriminating material to support of the view taken by the assessing officer. Accordingly, he submitted that the entire income assessed by the A.O. as undisclosed income is liable to be deleted.

4.6 The Ld. D.R., on the contrary submitted that the assessee did not raise this legal issue during the first round of proceedings. He further submitted that the assessee has declared huge agricultural income in assessment years 1995-96 to 1997-98 and further the returns of income for these three years have been filed on the same day. Hence, the assessing officer disbelieved the claim of availability of agricultural income and other sources of income.

4.7 In the rejoinder, the Ld A.R submitted that the law on block assessment has evolved over the years and the law is well settled now. It has been held by various Courts that the undisclosed income should be determined only on the basis of incriminating material. In this regard, he placed his reliance on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. Pinaki Misra (392 ITR 347 (Delhi). Accordingly he submitted that the point contested by him is purely a legal issue and it can be raised at any stage of proceedings.

4.8 We heard the rival contentions and perused the record. The expression "undisclosed income" is defined in section 158B (b) of the Act as under:

"158B(b) "undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property

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which has not been or would not have been disclosed for the purposes of this Act, or any expense, deduction or allowance claimed under this Act which is found to be false.”

In the instant case, the dispute is with regard to the alleged investments made by the assessee in a company by way of share application money. We notice that the amount of share application money mentioned in the seized documents does not tally with the amount of share application money mentioned in the balance sheet approved in the annual general meeting/filed with the Registrar of Companies. Further, as stated by Ld. A.R., the seized document does not contain breakup details of share application money i.e. the details of persons who has invested the said amount. In the absence of break-up details of investors, we are of the view that the assessing officer has drawn conclusions only on surmises and conjectures that it is the assessee who has invested the money as share application. Further, as pointed out by Ld A.R, the amount of share application money shown in the said balance sheet is Rs.259 lakhs and not Rs.299 lakhs as mentioned by the AO. The difference between the two figures have not been reconciled anywhere by the AO. In any case, the assessee has explained that the above said financial statement does not reflect true state of affairs and it has been prepared to furnish it to a financial institution, i.e., the said financial statement is not backed by any original books of accounts. It is an undisputed fact, the search officials also did not unearth any material to show that the transactions shown in the seized financial statements represent true transactions. No material was brought on record by the AO to disprove the claim of the assessee also.

4.9 Be that as it may, the assessee has furnished the details of sources for the above said amount of Rs.299 lakhs, even though the claim of the assessee is that the amount of share application money invested was only Rs.131 lakhs. The sources, inter alia, given by

the assessee includes the agricultural income declared in the returns of income filed prior to the date of search and also other receipts. There is no dispute that the search officials did not unearth any material to show that the agricultural income declared in the returns of income filed prior to the date of search and other receipts declared by the assessee are bogus, i.e., there is no incriminating material to disprove the claim of the assessee.

4.10 The settled law on block assessment has been explained by Hon'ble Delhi High Court in the case of Pinaki Misra (supra). The relevant observations made by the Hon'ble Delhi High Court are extracted below:-

“23. The Gujarat High Court had, in an earlier decision, in N.R. Paper & Board Ltd. v. Dy. CIT [\[1998\] 101 Taxman 525/234 ITR 733](#) ruled that block assessments and regular assessments deal with different purposes. The aim and objective of block assessments is the assessment of undisclosed income of the block period as a result of search. The objective of a regular or normal assessment is to determine the true total income or loss of the previous year on the basis of the return under section 139 and other documents and decide the Assessee's tax liability.

24. The structure and pattern of Chapter XIV-B as originally enacted w.e.f. 1st July, 1995 and as modified/changed through amendments, from time to time (in the relevant provisions), continues to retain its purpose, in that, a block assessment pertaining to a number of years remains distinct from an assessment under Section 143(3) pertaining to a single assessment year. Further, the amendment to section 158B(b) has enlarged the meaning of the term "undisclosed income" by including therein "any expenses, deduction or allowance claimed under this Act, which is found to be false". However, this cannot be construed to mean that whatever has been left out in a regular assessment can be reassessed or re-examined with reference to those provisions which are relatable to an assessment u/s. 143(3). This is evident from A.R. Enterprises (supra), where the court held as follows: ". . . Sections 158BD and 158BC, along with the rest of Chapter XIV-B, find application only in the event of discovery of "undisclosed income" of an Assessee. Undisclosed income is defined by Section 158B as that income "which has not been or would not have been disclosed for the purposes of this Act". The legislature has chosen to define "undisclosed income" in terms of income not disclosed, without providing any definition of "disclosure" of income in the first place. We are of the view that the only way of disclosing income, on the part of an Assessee, is through filing of a return, as stipulated in the Act, and therefore an "undisclosed income" signifies income not stated in the return filed. Keeping that in mind, it

seems that the legislature has clearly carved out two scenarios for income to be deemed as undisclosed: (i) where the income has clearly not been disclosed and (ii) where the income would not have been disclosed. If a situation is covered by any one of the two, income would be undisclosed in the eyes of the Act and hence subject to the machinery provisions of Chapter XIVB. The second category, viz. where income would not have been disclosed, contemplates the likelihood of disclosure; it is a presumption of the intention of the Assessee since in concluding that an Assessee would or would not have disclosed income, one is ipso facto making a statement with respect to whether or not the Assessee possessed the intention to do the same. To gauge this, however, reliance must be placed on the surrounding facts and circumstances of the case."

25. A block assessment is to be carried out on the basis of the material found during the course of search and not as a result of other documents or material, which come to the possession of the AO subsequent to the conclusion of the search operation unless and until such material has a relationship or connection with certain material or evidence found during the course of search. It was highlighted in [CIT v. Ravi Kant Jain \[2001\] 117 Taxman 28/250 ITR 141/117 Taxman 28 \(Delhi\)](#) how the procedure of Chapter -XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. The scope and ambit of a block assessment is limited to materials unearthed during search and the assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the AO. The Bombay High Court in the case of [CIT v. Vinod Danchand Ghodawat \[2001\] 114 Taxman 90/247 ITR 448](#) also held, similarly that where the assessee had made disclosure in their wealth tax return, which was accepted by the Department, additions made by the Department on the ground of undisclosed income was erroneous.

26. A larger, five member bench of the Supreme Court reiterated the distinctness of the procedure between normal assessments and block assessments, with specific reference to the charging section (of the Income tax), the reference to "previous year" as the income for which tax is levied and the special procedure for assessment of undisclosed income relateable to materials seized during a search, in [CIT v. Vatika Township \(P.\) Ltd. \[2014\] 49 taxmann.com 249/227 Taxman 121/367 ITR 466 SC](#) in the following terms:

"Undisclosed income referred to in Chapter XIVB is not relateable to the previous year. On the contrary, it is for the block period which may be 6 years or 10 years, as the case may be. Consequently, as already mentioned, while analyzing the scheme of Chapter XIVB, such Chapter is a complete code in respect of assessments of 'undisclosed income'. Not only it defines what is undisclosed income, it also lays down the block period for which undisclosed

income can be taxed. Further, it also lays down the procedure for taxing that income. It is very pertinent to note at this stage that for this purpose, specific provision in the form of Section 158BA (2) is inserted making it a charging section. Thus, a diagnostic of Chapter XIVB of the Act leads to irresistible conclusion that it contains all the provisions starting from charging section till the completion of assessment, by prescribing special procedure in relation thereto, making it a complete Code by itself. Looking it from this angle, the character and nature of 'undisclosed income' referred to in Chapter XIVB becomes quite distinct from 'total income' referred to in Section 5. It is of some significance to observe that when a separate charging section is introduced specifically, to assess the undisclosed income, notwithstanding a provision in the nature of Section 4 already on the statute book, this move of the legislature has to be assigned some reason, otherwise, there was no necessity to make a provision in the form of 158BA (2). It could only be that for assessing undisclosed income, charging provision is 158BA (2) alone."

27. This court is also of the opinion that the proper approach, commended through the decision in Shailendra Mahto (supra) by the Revenue, is inapt. Where the law is clear that unless material extraneous to the returns and document are seized or discerned as relatable to statements made, etc. additions could not have been made, having regard to the state of law applicable to the facts of the case. Furthermore, Durga Prasad More (supra) undoubtedly propounds an important principle of law relating to evidence. Its application however is wherever there is material that can validly be used to complete an assessment (in this case a block assessment). Again, as in the case of Shailendra Mahto, that authority has no applicability for this case.

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33. In Mahesh Bhatt v. Asstt. CIT [2004] 84 TTJ 734 (Mum.) the court highlighted how the Income Tax Act provides additions or disallowances in a block assessment have to be based on evidences found at the time of search and not merely on the basis of presumptions and assumptions by taking inference from the set of material available on record. It was similarly held in Sunder Agencies v. Dy. CIT [1997] 63 ITD 245 (Mum.) that the scheme of Chapter XIV-B does not empower to the Revenue to presume or draw assumptions in regard to the undisclosed income. The AO can only proceed on the basis of material detected at the time of search and the evidence gathered under section 132(4) only, and not otherwise. If seen in this light, the estimates of costs on the foreign travels of the assessee and his wife were not made during the course of the search pertaining to the block assessment, but through surmises based on the details found in the passports of the two assessees after requisitioning them from the passport office. Thus, the inference of escaped income is based upon materials gathered from extraneous sources and not from search. Section 158BB (subsequent to amendment by the Finance Act,

2002 w.e.f. 01.07.1995) states how the undisclosed income of the block period needs to be computed on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the AO and relatable to such evidence on the basis of evidence. In *Asstt. CIT v. Hotel Blue Moon* [2010] 188 *Taxman* 113/321 ITR 362 (SC) held that block assessments are not intended to substitute regular assessment and its scope and ambit is limited in that sense to materials unearthed during search. Similarly, it was highlighted in *CIT v. R.M.L. Mehrotra* [2010] 186 *Taxman* 137/320 ITR 403 (All.), an assessment based on search alone that does not attribute material evidence found therein or other information available with the AO relating to such materials cannot constitute block assessment. In the light of the above analysis, it is held that the additions made on account of the foreign trips made by the assessee fell outside the jurisdiction of the AO under section 158BC. They were correctly deleted by the ITAT.

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34. The counsel for the Revenue, however, in the course of the present proceedings was unable to pinpoint any material, which had been found during the course of the search vis-a-vis the point at issue, thereby, the aforesaid figures arrived at cannot be brought to tax as "undisclosed income" in the block assessment, within the meaning of section 158BB(1). Therefore, in the absence of any material found during the course of search, the post search enquiries made by the AO would become futile since this would only be relevant for a regular assessment u/s. 143(3) and not in respect of a block assessment."

4.11 In the instant case, we notice that there are no corroborative evidences to show that the Balance sheet found during the course of search represents true nature of transactions. On the contrary, the assessee, being a limited company, has filed annual reports containing Balance sheets with Registrar of companies, which is based on books of accounts. Hence the balance sheet found during the course of search has to be considered as a "dumb document" only. In that view of the matter, the quantum of investment made as share application money in the above said company should be taken as Rs.131 lakhs only. The assessee has claimed that he has invested Rs.130 lakhs. Since the claim of the assessee is supported by the books of accounts, the same is required to be accepted.

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4.12 We have noticed earlier that the assessee has explained the sources, major portion of which represents agricultural income and it has been declared to the revenue in the returns of income filed prior to the date of search. The revenue has not found any material to show that the agricultural income and other income declared by the assessee in the returns of income are false. Hence, we are of the view that the AO, in the block assessment proceedings, cannot tinker with the income/agricultural income already declared by the assessee in the returns of income filed prior to the date of search. Hence the sources for Rs.130 lakhs also require to be accepted. Accordingly, in effect, there is no incriminating material available with the AO in support of the undisclosed income determined by him. Accordingly, we set aside the order passed by Ld CIT(A) and direct the AO to delete the entire amount of undisclosed income determined by him.

5. The next issue contested by the assessee relates to the surcharge levied u/s 113 of the Act. The AO had levied the surcharge u/s 113 of the Act and the Ld CIT(A) has confirmed the same following the decision rendered by Hon'ble Supreme Court in the case of Suresh N Gupta (supra). Since we have deleted the entire undisclosed income in the earlier paragraphs, the question of levying of surcharge has become academic. In any case, it is the submission of the assessee that the decision rendered in the case of Suresh N Gupta (supra) has since been modified by Hon'ble Supreme Court in the case of Vatika Township (367 ITR 466)(SC). Accordingly, in case if any need arise for levying of surcharge in the instant case, the law laid down by Hon'ble Supreme Court in the case of Vatika Township (supra) needs to be followed.

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6. We shall now take up the appeal of the revenue in IT(SS)A No.9/Bang/2011. The revenue is aggrieved by the decision of Ld CIT(A) in directing the AO to compute interest u/s 158BFA(1) of the Act upto the date of original assessment order and not upto the date of assessment order passed in the set aside proceedings. Since we have deleted the entire undisclosed income in the earlier paragraphs, this question has become academic. In any case, we deal with this issue on academic interest.

6.1 The facts relating to the above said issue are set out in brief. The assessing officer had issued notice u/s 158BC of the Act on 19-12-2001 directing the assessee to file the return of income in Form 2B within 30 days from the date of service of the notice. The assessee did not file return of income in Form 2B and hence the assessing officer passed the block assessment order u/s 158BC r.w.s. 144 of the Act on 28.3.2003. The assessing officer also charged interest u/s 158BFA(1) of the Act for 14 months, i.e., for the period from Feb. 2002 to Mar. 2003. We have noticed earlier, the Tribunal had restored the issues urged on merits to the file of the AO for deciding them afresh. Accordingly, the AO passed a fresh assessment order on 03.11.2009 u/s 158BC r.w.s 254 of the Act. In the said order, the assessing officer charged interest for the period from Feb 2002 to October 2009.

6.2 The assessee, inter alia, challenged before Ld CIT(A) the interest charged u/s 158BFA(1) of the Act upto the date of assessment order passed by the AO in the set aside proceedings. It was the contention of the assessee that the interest could be charged upto the date of original assessment order. The Ld CIT(A) accepted the contentions of the assessee and held that the interest is chargeable upto the date

of original assessment order only, i.e., upto February, 2003 only. The revenue is aggrieved by the same.

6.3 The main contention of the revenue is that the Tribunal had directed the AO to pass assessment order denovo and hence the original assessment order no longer exists. Hence the AO was justified in charging interest upto the date of fresh assessment order.

6.4 The Ld A.R, on the contrary, submitted that the Tribunal in the order passed by it earlier had not quashed the assessment order. It had only restored the issues urged on merits for fresh consideration. Hence it is a case of continuation of original assessment proceedings only. He submitted that the provisions of sec.158BFA(1) permits charging of interest upto the date of original assessment order only. Accordingly he submitted that the Ld CIT(A) was justified in directing the AO to restrict the charging of interest upto the date of original assessment order.

6.5 We heard the parties on this issue and perused the record. The provisions of sec.158BFA(1) existed at the time of passing of original assessment order read as under:-

“158BFA. (1) Where the return of total income including undisclosed income for the block period, in respect of search initiated under [section 132](#) or books of account, other documents or any assets requisitioned under [section 132A](#) on or after the 1st day of January, 1997, as required by a notice under clause (a) of [section 158BC](#), is furnished after the expiry of the period specified in such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of one and one fourth per cent of the tax on undisclosed income, determined under clause (c) of [section 158BC](#), for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time specified in the notice, and—

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(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, on the date of completion of assessment under clause (c) of [section 158BC](#).”

A careful reading of above said provisions would show that the interest is chargeable upto the month ending on the date of completion of assessment, if the return of income was not filed in response to the notice issued u/s 158BC of the Act. In the instant case, the assessee did not file return of income and hence the AO had charged interest upto the date of completion of assessment in the original assessment order.

6.6 It is the case of the revenue that the original assessment order has been set aside by the Tribunal by observing that the “assessment order is set aside to be done de novo” and hence the date of passing of fresh assessment order should be considered as the date of completion of assessment.

6.7 We are unable to agree with the contentions of the revenue. As rightly pointed out by Ld A.R, the order passed by the Tribunal earlier and the order passed by the AO in the set aside proceedings are continuation of original assessment proceedings. It is not a case of quashing of original assessment order and initiation of altogether new proceedings. Hence, we agree with the view expressed the Ld CIT(A) that the interest u/s 158BFA(1) should be charged upto the date of original assessment order, i.e., the expression “date of completion of assessment under clause (c) of sec. 158BC” should mean the original assessment order only. We further notice that there is no provision under the Act to extend charging of interest beyond the date of completion of the original assessment

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proceedings. Accordingly, we confirm the order passed by Ld CIT(A) on this issue.

7. In the result, the appeal filed by the assessee in IT(SS)A No.4/Bang/2005 relating to legal issue is dismissed as not pressed. The appeal filed by the assessee in IT(SS)A No.8/Bang/2011 is allowed. The appeal filed by the revenue in IT(SS)A No.9/Bang/2011 is dismissed.

Order pronounced in the open court on 24th Feb, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 24th Feb, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.