

**IN THE HIGH COURT OF HIMACHAL PRADESH,**  
**SHIMLA.**

ITA No.14 of 2003

Reserved on: 23.6.2009

Decided on:31.7. 2009

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**Commissioner of Income Tax** **...Appellant.**

**Versus**

**M/s Moon Hotel (P) Limited.** **...Respondent.**

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*Coram*

**The Hon'ble Mr. Justice Jagdish Bhalla, C.J.**

**The Hon'ble Mr. Justice Rajiv Sharma, J.**

*Whether approved for reporting ?<sup>1</sup>.*

**For the Appellant : Mr. Vinay Kuthiala, Advocate.**

**For the Respondent : Mr. M.M. Khanna, Senior Advocate with Mr. Vayur Gautam, Advocate.**

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This appeal has been preferred by the Revenue against the order of the Income Tax Appellate Tribunal Chandigarh Bench 'A' dated 22.7.2002. The appeal was admitted on the following substantial question of law:

**“Whether on the facts and in the circumstances of the case the ITAT was right in law in holding that jurisdiction was wrongly assumed by the AO under Chapter XIV-B of the Income Tax Act, 1961. The ITAT**

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?*

**has failed to appreciate that under section 158 BC the AO has the right to consider all evidence before him and frame a comprehensive assessment of undisclosed income as per Chapter XIV-B of Income Tax Act, 1961.”**

A search and seizure operation was carried in the residential premises of Sh. Ashok Goel, Executive Director of the assessee company on 21.6.1996. It is claimed that books of account of the company and other loose papers were recovered and seized. Survey operation was also carried out at the business premises under section 133-A of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’ for convenience sake). The learned Income Tax Appellate Tribunal has proceeded with the matter by assuming that assessment under section 158 BC was made as consequences of search conducted under section 132 of the Act. A notice was issued to the assessee on 3.7.1996. He submitted the response and declared ‘nil’ undisclosed income on 24.11.1997. The books of account of the assessee were audited under section 142 (2-A) of the Act. The Assessing Officer made addition of Rs. 7,38,440/- vide order dated 16.12.1997. The assessee filed an appeal before the Income Tax Appellate Tribunal Chandigarh Bench. The Income Tax Appellate Tribunal Chandigarh Bench vide order dated 22.7.2002 cancelled the block assessment made under section 158 BC of the Act.

Mr. Vinay Kuthiala, Advocate has strenuously argued that the order passed by the Income Tax Appellate Tribunal Chandigarh Bench is not sustainable in the eyes of law. He has further argued that the order passed by the Assessing Officer was in accordance with law.

Mr. M.M. Khanna, Senior Advocate has supported the order dated 22.7.2002.

We have heard the learned counsel for the parties and have perused the pleadings carefully.

It is not disputed by both the parties that block assessment is entirely different from regular assessment. Block assessment is resorted to in addition to the regular assessment in case of search. Chapter XIV-B lays down special procedure for assessment of search exercise. It will be apt at this stage to take note of definition of word “undisclosed income” as contained in 158B (b), which reads thus:

**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 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].**

Section 158 BA bears heading “Assessment of undisclosed income as a result of search”.

Mr. Vinay Kuthiala, Advocate could not point out from the records that any undisclosed income was recovered during the search operation. The special audit was carried out by the Assessment Officer under section 142 (2-A) of the Act. The books of account were audited by the competent Chartered Accountant. No defect/irregularity was detected in the books of account. The department could proceed against the assessee under section 158 AB only if any undisclosed income was detected during the search operation. The assessment under Chapter XIV-B of the Act was

not permissible on the basis of the report of DVO. The regular assessment was already made by the assessee. Special procedure in Chapter –XIVB is provided as a mode of assessment of undisclosed income, which had been detected as a result of search. It cannot be intended and permitted to be substitute for regular assessment. Its scope is limited and cannot be enlarged. The learned Income Tax Appellate Tribunal has not found any defect in the books of account maintained by the assessee. The learned CIT (A) had already rejected the report of the DVO. No appeal was carried by the Revenue against the order of the CIT (A).

Accordingly, it is held that Assessing Officer had no jurisdiction to resort to block assessment since no undisclosed income was detected during search. The order of the Income Tax Appellate Tribunal Chandigarh Bench is in conformity of law.

Accordingly, in view of the observations made hereinabove, the substantial question is answered accordingly and the appeal is dismissed. No costs.

**(Jagdish Bhalla), C.J.**

31.7. 2009  
\*awasthi\*

**(Rajiv Sharma ), J.**