

Pooja Bhatt Vs. Assistant Commissioner of Income Tax

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SooperKanoon Citation : sooperkanoon.com/368459

Court : Mumbai

Decided On : May-31-1999

Reported in : (2000)66TTJ(Mumbai)817

Appeal No. : IT (SS)A No. 17/Mum/1998 31 May 1999 Block Period 1986 to 1996

Appellant : Pooja Bhatt

Respondent : Assistant Commissioner of Income Tax

Advocate for Pet/Ap. : K. Shivaram & R.G. Tralshawala, for the Assessee
Krishna Murari, for the Revenue

Judgement :

ORDER

M. A. Bakshi J.M.

The appeal of the assessee is directed against the order dt. 30-12-1997, of Assistant Commissioner, Central Circle 23, Mumbai, under section 158BC of Income Tax Act, 1961. The block period is from 1-4-1986, to 18-12-1996.

2. The relevant facts, in this case, are that the assessee is a film actress of Hindi films. She had started her career as a film artist in the previous year relevant to assessment year 1991-92. Prior to joining films the assessee had certain modeling assignments for consumer products. She had also produced a film viz., 'Tamanna'

under the banner of M/s Pooja Bhatt Productions, her proprietary concern. On 18-12-1996, there was a search and seizure operation under section 132 of the Income Tax Act, 1961, at the residential premises of the assessee. Cash of Rs. 98,500 and some documents were seized. A notice under section 158BC of the Income Tax Act, 1961, was issued to the assessee on 11-4-1997, in response to which the assessee had filed the return of income declaring Nil undisclosed income. The assessing officer has made additions on various accounts under the following heads :

'A. Payment of 'on-money' on purchase of immovable properties.

B. Unexplained cash found at the time of search.

C. Unexplained investment in fixed deposit and jewellery found at the time of search.

D. Unexplained expenses on account of stay at hotels.

E. Unexplained expenses incurred for meeting shooting expenses.

F. Unaccounted expenses for purchase of foreign exchange.

G. Unexplained expenses for purchase of artifacts at M/s Ravissant.

H. Unexplained expenses of various nature met out of undisclosed income on account of low withdrawal for household expenses.'

3. The total undisclosed income for the respective assessment years has been assessed as under :

Previous year

Asst. yr.

Total income including undisclosed income Rs.

Returned/assessed income as on date of search

Undisclosed income

Rs.

Rs,

Rs.

1st

1987-88

Nil

Nil

Nil

2nd

1988-89

Nil

Nil

Nil

3rd

1989-90

20,000

20,000

Nil

4th

1990-91

23,000

23,000

Nil

5th

1991-92

1,97,399

49,300

1,48,099

6th

1992-93

4,58,299

1,96,980

2,61,319

7th

1993-94

7,86,500

6,11,180

21,75,320

8th

1984-95

10,93,087

6,96,125

3,96,962

9th

1995-96

19,62,733

16,76,240

2,86,493

10th

1996-97

18,67,493

8,61,880

10,05,613

11th (for the period 1-4-1996 to 18-12-1996)

1997-98

8,71,501

28,310

8,43,191

Total

31,16,997

4. The assessee has raised an additional ground of appeal which reads as under :

'On the facts and circumstances of the case and in law, the assessing officer was not justified in treating profit of Rs. 2,46,046 as per books for the period 1-4-1996 to 18-12-1996, as undisclosed income for the assessment year 1997-98 because the entries in respect thereof were recorded in the books maintained in the normal course.'

5. It has been contended before us that on the basis of the development of law after the completion of the assessment, this ground of appeal, which is purely legal in nature has been raised. It has further been contended that there is material on record for the purpose of deciding the issue and no fresh evidence is required to be produced in this regard.

6. We, on consideration of facts and circumstances of this case, admit the additional ground of appeal for consideration.

7. The learned counsel for the assessee contended before us that no incriminating documents were found with the assessee on the date of search. The assessing officer has made the additions merely on the basis of presumptions without there being material in support of the findings. It was further contended that the assessing officer had made various allegations in the assessment order but has not made any additions on the basis of most of the allegations. In this connection reference has been made to page No. 9 of the assessment order. Reference has also been made to page No. 41 of the assessment order to point out that upto assessment year 1990-91 no addition has been made. The learned counsel further contended that the assessing officer has resorted to some disallowances exercising his discretion without basing such disallowances on any material or any sound basis. The learned counsel pointed out that the motor car expenses have been disallowed at 1/3rd and similarly additions have been made on account of low withdrawals without there being any material to establish that the assessee has incurred more expenditure than disclosed in the books of account. It was contended that no additions can be made in such a manner in 'block assessments'

under section 158BC. In this connection reliance has been placed on the following decisions :

(1) Sunder Agencies v. Dy. CIT (1997) 63 ITD 245 (Mum); and

(2) Parakh Foods Ltd. v. Dy. CIT .

Reliance has also been placed on the decision of the Delhi High Court in the case of L. R. Gupta v. Union of India : [1992]194ITR32(Delhi) in support of the contention that no routine disallowances can be made in the scheme of block assessment. Reference has also been made to the Central Board of Direct Taxes circular as reported in 215 ITR 70, para Nos. 39.1 to 39.3 in support of the contention that the addition in block assessment is to be made only in respect of undisclosed income found as a result of search and not otherwise.

8. Referring to the addition made on account of Fixed Deposit Report in assessment year 1991-92 of Rs. 59,758, the learned counsel for the assessee contended that the assessee had disclosed the Fixed Deposit Reports in her balance sheet for assessment year 1991-92. Therefore, there was no justification for making the addition on that account in the block assessment.

9. The learned counsel for the assessee contended that the assessee had also disclosed the interest income in assessment year 1992-93. Reliance was placed on the decision of the Indore Bench of the Tribunal in the case of Smt. Sitladevi Daga v. Assistant Commissioner (1998) 67 ITD 151 (Ind) wherein it has been held that the income returned by the assessee cannot be treated as income from undisclosed sources under section 158BC. The learned counsel contended that no incriminating documents were found during search action in regard to the Fixed Deposit Reports. The details have been obtained from the balance sheet on record of the Income Tax Department on the basis of which addition has been made.

10. It was further contended that the assessing officer has unjustifiably made additions on account of low withdrawals and has totally ignored the explanation of the assessee. Our attention was also invited to the assessment for assessment

year 1993-94 completed by the assessing officer in which addition of Rs. 15,000 had been made on account of low withdrawals vide order dated 29-12-1995, passed under section 143(3). The assessee had appealed to the Commissioner (Appeals), and the latter has deleted the addition of Rs. 15,000 vide his order dated 6-5-1997. Similarly, for assessment year 1994-95 the household expenses at Rs. 36,000 have been accepted in regular assessment in an order passed under section 143(3) on 31-3-1997. It was accordingly contended that there was no justification for making any additions on account of low withdrawals.

11. Similarly arguments were addressed in respect of the motor car expenses and household expenses made for the subsequent assessment years. In assessment year 1992-93, the assessing officer has also disallowed 1/3rd of telephone expenses. Relying upon the contentions raised for the disallowance of 1/3rd motor car expenses, the learned counsel contended that there was no justification for making any disallowance in the block assessment when there was no material on record to justify any disallowance.

12. An addition of Rs. 1,50,000 has been made for assessment year 1992-93 on account of foreign visit. It was pointed out by the learned counsel that the assessee had explained her foreign visits in regular assessments. The stand of the assessee that her foreign visits were for charity purposes and the entire expenditure has been borne out by the organisers had been accepted. It was contended that the assessing officer had not based the addition of Rs. 1,50,000 on account of foreign tour expenses on any material in support of the addition.

13. In assessment year 1992-93, the assessing officer has made addition of Rs. 24,202 on account of restriction of deduction under section 80RR. The learned counsel for the assessee relied upon the following decisions in support of the contention that addition on account of debatable issues not based on any material found during the course of search, is not warranted :

(1) Kamkap (India) v. Dy. CIT ;

(2) Parakh Foods Ltd. v. Dy. CIT (supra); and

(3) Shankar Mahadev & Co. v. Dy. CIT in IT(SS)A No. 86/Mum/96, order dated 8-7-1997, block period 1-4-1985, to 16-11-1995.

It was further contended that deduction under section 80RR has been allowed by the department in full for assessment year 1993-94 vide order dt. 29-12-1995, and for assessment year 1994-95 vide order dt. 31-3-1997.

14. For assessment year 1993-94 similar additions and disallowances have been made and similar contentions have been advanced before us as for assessment year 1992-93.

15. In assessment year 1995-96 a further disallowance of Rs. 3,000 under section 80L is contested, It was contended that in regular assessment deduction was allowed to the assessee. Relying upon the decision of the Bombay Bench of the Tribunal in the case of BDA Ltd. v. Assistant Commissioner it was contended that the disallowance was uncalled for.

16. For assessment year 1996-97, the addition to the disallowances on account of motor car expenses, telephone expenses and low withdrawals, the assessing officer has made other additions as follows :

(1) Purchase of personal effects from M/s Ravissant, whose bills had been found at the time of search action.

(2) Addition on account of stay in hotel,

(3) Addition of Rs. 1,00,499 on account of undisclosed shooting expenses.

(4) Addition of Rs. 4,24,116 on account of on-money.

17. It was contended by the learned counsel that the assessee had furnished detailed explanation before the assessing officer in regard to queries raised by the assessing officer. The additions have been made on presumptions without getting any confirmations from M/s Anand Associates, who had made the payment for the stay of the assessee in the hotel. Referring to the addition on account of shooting expenses, the learned counsel contended that the statement found at the time of search contained the notings for expenses made/ought to be made by the

production assistant. However, the expenses which have actually been incurred were reflected in the books of account and the expenses which were not supported by vouchers had been ignored, Referring to the addition account of on-money, it was pointed out that the assessee had filed declarations in Form No. 37-1 for obtaining the approval of the appropriate authority and the assessee had received no objection from the Appropriate Authority. Referring to the purchase of another flat at Pune, the learned counsel contended that the assessee had reflected the purchase price of flat at Rs. 8,31,500 in the balance sheet filed along with the return of income on 2-12-1996, when the date of search is 18-12-1996. A sum of Rs. 31,500 had been shown on account of stamp duty charges. It was contended that no incriminating documents were found to establish that the assessee had paid money other than what was reflected in the agreement for the purchase of immovable property.

18. For assessment year 1997-98, apart from common additions, the assessing officer has made addition of Rs. 1,08,500 on account of cash found at the time of search. The learned counsel for the assessee contended that proper explanation regarding the cash found was furnished before the assessing officer which has unjustifiably been rejected. It was contended by the learned counsel that there was no justification for making addition of Rs. 1,39,582 on account of purchase of foreign exchange and Rs. 26,635 on account of unexplained shooting expenses. The additions, it was contended, have been made merely on presumptions without there being any material to support the additions. An addition of Rs. 22,895 has been made on account of capital gain on sale of jewellery. The addition has been made on the basis that the jewellery disclosed in the balance sheet was not found in full at the time of search. The assessing officer, therefore, presumed that the balance jewellery has been sold. The addition has been made merely on the basis of presumption without there being any material to support the addition.

19. An addition of Rs. 3,50,240 was made on account of undisclosed diamond jewellery. In this connection, the learned counsel for the assessee referred to the wealth-tax return, wherein the assessee had disclosed the value of jewellery at Rs. 18 lakhs. The diamonds had been found studded in gold jewellery. It was pointed out that for assessment year 1992-93 the assessee had filed the valuation report

along with the wealth-tax return, in which value of diamond ornaments aggregating to Rs. 1,00,830 was declared. The assessee, according to the learned counsel, had purchased the diamonds on 15-1-1993, amounting to Rs. 1,03,000 for which the payment has been made by cheque and had been duly recorded in the books of account of the assessee. It was thus contended that the additions made by the assessing officer were totally uncalled for and liable to be deleted.

20. The learned Departmental Representative, on the other hand, relied upon the assessment order in particular and contended that the assessing officer was justified in making the additions on the basis of the material found at the time of search. It was further contended that the assessing officer was justified in presuming concealment of income on the basis of the evidence found on the date of search. It was further contended that the assessing officer was justified in making additions on account of low withdrawals, motor car expenses and also was justified in restricting the deduction under section 80RR in accordance with law. The learned Departmental Representative pleaded that the decision of the Tribunal in the case of *Sunder Agencies* (supra) was not applicable. In this case certain loose papers and hotel bills were found on the date of search which constituted material for purposes of assessment. It was further contended that the assessing officer has relied upon the relevant material in framing the block assessment. The learned Departmental Representative pointed out that a slip containing the receipt of commission by the secretary of the assessee had been seized during the course of search and substantial telephone expenses incurred by the assessee had been detected during the course of search. Similarly, incurring of hotel expenses by the assessee was also discovered on the date of search. The assessing officer on consideration of the totality of the facts and circumstances of this case, had made the additions and disallowances. Referring to the addition on account of low withdrawals, the learned Departmental Representative contended that considering the status of the assessee, the withdrawals disclosed by her for personal expenses were inadequate and accordingly the assessing officer was justified in making the addition. Similarly, it was found that the assessee had travelled abroad for which no expenditure had been disclosed. In such circumstances the addition was justified. Referring to the deduction under section 80RR, the learned Departmental Representative

contended that deduction was permissible only with reference to the net income as held by their Lordships of the Supreme Court in the case of Distributors Baroda (P) Ltd. v. Union of India : [1985]155ITR120(SC) and in the case of CIT v. United General Trust Ltd. : [1993]200ITR488(SC) . It was also pointed out that the assessee had purchased diamonds in 1993 but the same had not been reflected in the books of account and as such the addition was justified.

21. In counter reply, the learned counsel for the assessee contended that the material in the form of loose papers was not sufficient to make the additions. It was further contended that the statement of the secretary of the assessee had been recorded at the time of search and she had categorically stated that the notings on the loose paper were that of expected receipts and not the actual receipts. It was also clear that there were no such receipts as the assessee has not worked in the films mentioned in that loose paper. It was also pointed out that for assessment year 1995-96 a regular assessment was made and deduction under section 80RR was allowed on the net receipts. In some assessment years there were no expenses and, therefore, the gross income as well as the net income was the same and deduction was allowed accordingly. The learned counsel further pointed out that the assessee maintains books of account on hard disc, which has been seized by the department. No defect has been found in the books of account and all the transactions had been recorded in the hard disc. It was accordingly contended that the entire additions made by the assessing officer may be deleted.

22. We have given our careful consideration to the rival contentions. In this case, there has been a search operation under section 132, at the residential premises of the assessee on 18-12-1996. The purpose of the search, as envisaged under section 132, is to discover the evaded wealth of an assessee. The important tenet of english jurisprudence for several centuries was 'a man's home is his castle. For no reason whatsoever could a man's privacy at home be violated; though the land and wind might enter a poor man's heart, the King and his army could not'. However, gradually this principle began to wriggle down and search were permitted at first by the police and subsequently for enforcement of revenue loss. It is in this background one has to consider the assessment authorised under section 158BC in such cases where the search operations have been carried out

by the revenue department. The assessment procedure provided under section 158BA, therefore, differs from the regular assessment made under section 143 or under section 144. Section 158BA authorises assessment of undisclosed income as a result of search. Section 158BB provides for computation of undisclosed income of the block period. Section 158BB reads as under :

'158BB. (1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of Chapter IV, 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 assessing officer as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined,-

(a) where assessments under section 143 or section 144 or section 147 have been concluded, on the basis of such assessments;

(b) where returns of income have been filed under section 139 or section 147 but assessments have not been made till the date of search or requisition, on the basis of the income disclosed in such returns;

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

(d) where the previous year has not ended or the date of filing the return of income under sub-section (1) of section 139 has not expired, on the basis of entries relating to such income or transactions as recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous years;

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

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

Explanation : For the purposes of determination of undisclosed income :

(a) the total income or loss of each previous year shall, for the purpose of aggregation be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;

(b) of a firm, returned income and total income assessed for each of the previous years falling within the block period shall be income determined before allowing deduction of salary, interest, commission, bonus or remuneration by whatever name called :

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

(c) assessment under section 143 includes determination of income under sub-section (1) sub-section (1B) of section 143,

(2) In computing the undisclosed income of the block period, the provisions of sections 68, 69, 69A, 69B, and 69C shall, so far as may be, apply and references to 'financial year' in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or of the requisition.

(3) The burden of proving to the satisfaction of the assessing officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

(4) For the purpose of assessment under this Chapter, losses brought forward on the previous year under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32 shall not be set off against the undisclosed income determined in the block assessment under this chapter, but may be carried forward for being set off in the regular assessments.'

23. A perusal of section 158BB reproduced above does not leave us in doubt that in determining the undisclosed income as a result of search the assessment made under sections 143, 144 or 147 have got to be taken into account and reduced from the computation of income under section 158BB. Sub-section (4) of section 158BB also makes it abundantly clear that the process of regular assessment is totally different than the assessment under Chapter XIV-B in search cases. It is in the light of this background we are addressing ourselves to consider the additions made by the assessing officer in the case of the assessee

24. A perusal of the assessment order reveals that the revenue had not found substantial material from the assessee for coming to the conclusion that there was substantial tax evasion by the assessee. On going through the assessment time and again we get an impression as if the assessing officer has made a regular assessment under section 143(3) as compared with an assessment of undisclosed income under section 158BC. The block assessment under section 158BC is to be based on the material found as a result of search. The evidence that has been strongly relied upon by the assessing officer for basing the additions is described in page No. 2 of the assessment order as under :

'A. Unaccounted cash and jewellery found during the course of search from the residence of assessee.

B. Seized documents showing unaccounted expenditure.

C. Seized documents regarding unaccounted cash receipts.'

25. Cash of Rs. 1,08,500 has been found with the assessee. Her explanation regarding the source of cash has not been accepted. Addition on account of jewellery has also been made rejecting the explanation of the assessee that the jewellery found at the time of search was duly accounted for and in fact the jewellery disclosed in the wealth-tax return was much more than the jewellery found on the date of search. Some additions have been made on the basis of hotel bills relating to the period during which the assessee was working with the film unit at shooting site. It will be appropriate if we deal with the additions separately made in respect to assessment years for the block period.

26. In para 3 of this order we have indicated the additions made in respect to assessment years. It is observed that for assessment years 1987-88 to 1990-91 no addition has been made on account of undisclosed income. The income for assessment years 1989-90 and 1990-91 has been assessed at Rs. 20,000 and Rs. 23,000, respectively, which has not been disturbed.

27. For assessment year 1991-92 regular assessment had been made at an income of Rs. 49,300. An addition of Rs. 1,48,099, has been made as undisclosed income of the assessee. The additions are dealt with as under :

28. There is a disallowance of motor car expenses of Rs. 28,338. The disallowance has been made in a routine manner without reference to any material whatsoever. As already pointed out, block assessment under section 158BC is not meant for making a regular assessment but for an assessment of undisclosed income to be based on material found as a result of search. There is no material found as a result of search that would justify disallowance of 1/3rd motor car expenses. Whether a disallowance on account of motor car expenses is to be made or not is a matter of discretion of the assessing officer which has been exercised at the time of making the regular assessment. There is no room for making routine disallowances while making assessment under section 158BC when there is no material detected during the course of search for making such disallowances. The addition is accordingly unwarranted and is hereby deleted.

29. An addition of Rs. 59,758 has been made on account of fixed deposit receipts purchased in that year. The fixed deposit report is reflected in the balance sheet for assessment year 1991-92 filed along with the return of income. The statement of Hong Kong Bank account is also available with the authorities. The interest income earned on fixed deposit report is reflected in the income and expenditure statement for the year ending March, 1992. There was no incriminating document found as a result of search on the basis of which addition on account of fixed deposit report could be made. In our considered view, there is no justification for making the addition on account of fixed deposit report which is duly reflected in the balance sheet of the assessee for assessment year 1991-92. If the assessee had not reflected the fixed deposit report in her books of account and the search party

had found the fixed deposit report or its details, then the revenue could invoke section 158BC for assessing the amount. However, in this case, the addition has been made on the basis of the details available in the balance sheet of the assessee already available in assessment records. The addition has not been based on any material found during the course of search. This is unwarranted, and accordingly deleted.

30. An addition of Rs. 60,000 has been made on account of low withdrawals. The assessee was found to be living in the property belonging to her mother, Mrs. Kiran Bhatt. There is no dispute about the fact that Mrs. Kiran Bhatt is being supported by her husband, Shri Mahesh Bhatt. All the expenses and society charges are borne by her. In regular assessment the issue relating to the adequacy of withdrawals for household expenses had come up for consideration in some of the assessment years. The assessing officer had made addition of Rs. 15,000 in assessment year 1993-94 which has been deleted by the Commissioner (Appeals). No material has been found as a result of the search on the basis of which one could change the opinion formed by the assessing officer in regular assessment. The addition made by the assessing officer on account of low withdrawals as undisclosed income of the assessee for purposes of assessment under section 158BC is not justified and is accordingly deleted.

31. For the same reasons, similar additions made for assessment years 1992-93 to 1997-98, as indicated below, are uncalled for and are accordingly deleted :

1992-93

1993-94

1994-95

1995-96

1996-97

1997-98

Rs.

Rs.

Rs.

Rs.

Rs.

Rs.

Motor car expenses

27,959

31,029

31,583

72,689

81,038

65,163

Telephone expenses

5,658

6,650

12,234

2,495

3,647

5,685

Household expenses

Low withdrawals

53,500

1,15,000

1,44,000

1,32,499

1,89,725

47,000

32. For assessment year 1995-96 the assessing officer denied deduction under section 80L. Deduction under section 80L was allowed to the assessee in the regular assessment made under section 143(3). There is no reason for disallowance of this claim under the block assessment. This view is supported by the decision of the Mumbai Bench of the Tribunal in the case of B. D.A. Ltd. v. Asstt. CIT (supra). Respectfully following the aforementioned decision, I hold that the disallowance is not warranted. The assessing officer is directed to allow deduction to the assessee.

33. For assessment year 1992-93 the addition of Rs. 1,50,000 has been made on account of estimated expenses on foreign visits. The assessing officer had asked the assessee to explain the expenditure incurred by her on attending the charity shows in which she had participated in foreign countries. It was pleaded by the assessee that the entire expenditure on account of fare and stay abroad was provided by the organisers. The assessing officer, however, was not satisfied with the explanation of the assessee. He accordingly made an addition of Rs. 1,50,000. There is no dispute about the fact that assessee had attended the charity shows organised in foreign countries. Therefore, the fact that assessee had gone abroad is established. The claim made by the assessee that the entire expenditure was met by the organisers cannot be ruled out. It was contended before us that there is no material on record to establish that assessee had incurred the expenditure in regard to the tours undertaken by her for attending the charity shows. It was

further contended that assessee had disclosed the foreign visits in the original return filled by her which fact is admitted by the assessing officer in para 23 of his order. No incriminating documents were found during the course of search. In such circumstances there is no justification on change of opinion for the addition on account of estimated foreign visit expenditure.

34. In our considered view there is no justification for addition of Rs. 1,50,000 in the light of the fact that assessee had disclosed the foreign visits in her original assessment proceedings. The assessing officer accepted the explanation of the assessee that the entire expenditure had been borne by the organisers. There is no material on record to justify the addition of Rs. 1,50,000. The same is accordingly deleted.

35. Next issue that arises for our consideration is deduction under section 80RR. It was contended before us that the addition made by the assessing officer is based on change of opinion. Once the view has been taken in assessment proceedings the same cannot be changed without there being any material discovered as a result search justifying any change. In our considered view the deduction under section 80RR is an issue which was considered in the original assessment proceedings. The purpose of block assessment is to assess the undisclosed income discovered on the basis of the search. No material was found in the course of the search in regard to deduction under section 80RR. Once a view has been taken in regular assessments relating to deduction under section 80RR it is not permissible for the assessing officer to review his decision without there being any material found during the course of search for coming to a different conclusion. In block assessments mere change of opinion from the view taken in assessment proceedings is not permissible. The addition of Rs. 24,202 made for assessment year 1992-93 is thus deleted. Similar additions made for assessment years 1993-94, 1995-96, 1996-97 and 1997-98 are hereby deleted on the basis of the aforementioned reasoning.

36. For assessment year 1996-97 the assessing officer has made an addition of Rs. 64,944 on the basis of the bill of M/s Ravissant. The bill from M/s Ravissant was found during the course of search. Though the assessee had given

explanation the same was not considered satisfactory. In our considered view, assessee having not furnished evidence in rebuttal of the evidence found during the course of the search, addition of Rs. 64,944 was justified. The same is accordingly confirmed,

37. Next ground is relating to Rs. 83,849 on account of expenses relating to hotel stay. In the course of the search, the revenue had found certain documents that assessee had stayed in various hotels. When asked to explain as to why expenditure for the stay in the hotels was not reflected in the books of accounts, it was explained that the assessee was acting in south Indian film and accordingly the entire expenditure has been borne by the producer namely, M/s Anand Associates. The assessing officer has pointed out in the assessment order that the hotel bills are in the name of M/s Anand Associates being the producer of the film.

38. The assessing officer had made enquiries from the hotels in order to verify the name of the assessee that the bills had been paid by the producer whereas M/s Anand Associates have confirmed the payments of most of the bills. The Holiday-Inn has indicated that the payment of Rs. 63,849 was paid by the assessee apart from the payment made by the producer. Similarly, enquiries from Hotel Park, Sheratan have been made regarding the hotel bills and the reply to the enquiry indicated that assessee had made payments of Rs. 20,000 and Rs. 14,824 to them. Assessee was confronted with the information gathered by the assessing officer. Assessee had given an explanation regarding the payment of Rs. 20,000 and Rs. 14,824 to Park Sheratan Hotel. It was claimed that the entire payments were made by M/s Anand Associates, Ashok Nagar, Madras, sum of Rs. 14,824 had been made by cheque and the sum of Rs. 20,000 was made by cash. It was explained by the assessee that the entire bill was for the period of stay in connection with shooting of the film and, therefore, there is no reason as to why part of the expenditure would have been paid by the assessee. In our considered view, an addition of Rs. 20,000 is justified. The hoteliers have confirmed that payment of Rs. 20,000 was paid by the assessee. Though the assessee was staying in the hotel in connection with shooting of the film some personal expenditure cannot be ruled out. Moreover, it was for the assessee to rebut the evidence. That not having been done the addition of Rs. 20,000 is warranted and

the same is hereby confirmed.

39. With regard to the payment of Rs. 63,849 made to Holiday-Inn Ooty, assessee had explained that the bill issued by the hotel was signed by one Sunny on behalf of M/s Anand Associates. This according to the assessee would establish that bill was actually of M/s Anand Associates but since the assessee had booked the rooms, bill had been raised in the name of the assessee. The assessing officer had not found M/s Anand Associates to be available at the address given by the assessee. However, a new address was given by the assessee as indicated in the assessment order of M/s Anand Associates. It seems that assessing officer did not issue any notice at the new address given by the assessee of M/s Anand Associates. The assessing officer made the addition on the ground that since bill had been raised in the name of the assessee it is for her to establish that the payment was made by M/s Anand Associates.

40. We agree with the principle relied upon by the assessing officer that since the bill had been raised in the name of the assessee it was for her to establish that the stay in hotel Holiday-Inn was in connection with shooting for which payment has been made by the producer. In the case of Park Sheratan most of the payments was established to have been made by producer. Since the assessee has not discharged the onus we are of the view that the addition of Rs. 63,849 is justified and the same is accordingly confirmed.

41. Next addition is Rs. 1,04,099 on account of shooting expenses relating to assessment year 1996-97. During the course of the search, certain documents giving details of daily shooting expenses for the film 'TAMANNA' produced by the assessee has been seized. Assessee had been asked to explain the nature of the expenses. It was claimed by the assessee that basically the statements are prepared by the accountant or the person authorised to disburse cash at the end of the shooting for the day. In the normal course such expenditure would be recorded in the regular books of accounts. Assessee had been asked to get the expenditure verified from the books of accounts. On verification of the accounts vis-a-vis the seized documents the assessing officer determined the unaccounted expenditure of Rs. 1,04,099. The discrepancy for assessment year 1996-97 was

worked out at Rs. 1,04,099 and an addition of Rs. 23,635 was also made for assessment year 1997-98 on similar basis. In response to the query as to why expenses incurred by the assessee may not be added as an expenditure out of undisclosed sources, the assessee explained that the documents seized is a rough notings. The actual expenditure is recorded in the books of accounts. According to the learned counsel for the assessee there is no justification for the addition as the expenditure is related to the assessee's own production. If the expenditure had been, genuinely incurred the same would have been allowed as a deduction in computing the income of the assessee from the production of the film 'Tamanna'. There was no reason for the assessee not to book the expenditure if it were incurred. It was accordingly contended that the addition may be deleted.

42. In our considered view, the addition is not justified. It is not disputed that the rough notings indicate certain amounts of expenditure in connection with shooting of the film 'Tamanna'. Rough notings are the basis for the addition. In our view rough notings have to be considered in the light of the circumstantial evidence. Assessee has not incurred any expenditure of capital nature which could not be allowed as a deduction in computing her business income. There is no reason as to why the expenditure incurred by the assessee would not have been booked for claiming a deduction. Therefore, the preponderance of probabilities are in favour of the assessee. In absence of corroborating material to support the finding of the assessing officer that the notings on loose papers represented the actual expenditure incurred by the assessee in connection with shooting of the film, we find no justification to sustain the addition. We may point out that even otherwise the addition of Rs. 1,04,099 may not be warranted as the addition could be made on the ground that the expenditure have been made out from undisclosed sources but at the same time corresponding deduction shall have to be made towards the cost of production of the film 'Tamanna'. The preponderance of probabilities are thus in favour of the assessee. The expenditure admittedly having been found relating to the production expenses of the said film, we therefore, delete the addition of Rs. 1,04,099 for the same reasons-addition of Rs. 23,435 for the assessment year 1996-97 is also deleted.

43. There is another addition of Rs. 4,24,166 on account of on-money relating to Pune flat. During the block period the assessee had purchased two residential flats one at Kandivali (East), Bombay, in consideration of Rs. 26,10,000 vide agreement dated 26-7-1994, and the other at Koregao Park Pune, for a consideration of Rs. 8,00,000 vide agreement dt. 19-5-1995. Assessee had filed an application in Form No. 37-1 for getting the approval from Appropriate Authority for the Kandivali Flat. The Appropriate Authority had given no objection. In respect of purchase of flat at Pune, the agreement of purchase had been entered with M/s. Praveen Bobby. The assessing officer made an addition of Rs. 4,24,166 on the ground that the value of flat during the relevant period was Rs. 2,000 per sq.ft. and, therefore, assessee was presumed to have paid sum of Rs. 4,24,166 in excess of the amount disclosed.

44. It was explained on behalf of the assessee that the assessee had filed the return on 2-12-1996, i.e., before the date of search giving the details of the purchase of the property including the expenditure of Rs. 31,500 towards stamp duty, etc. The addition according to the learned counsel for the assessee has been made merely on suspicion without there being any material in support of the addition. The learned Departmental Representative, on the other hand, relied on the order of the revenue authorities. In our considered view, the addition made by the assessing officer is unwarranted as having been made merely on the basis of suspicion. The transaction of purchase of the flat is effected by means of an agreement and the amount of consideration is also indicated in the agreement. There may be a strong suspicion of payment of on-money in respect of the property deals but no addition can be made on the basis of mere suspicion. It is established principle of law that suspicion however strong it may be does not take the place of proof. Since there is no material found during the course of search suggesting payment of on-money in regard to the purchase of the flat, the addition of Rs. 4,24,166 made by the assessing officer is unwarranted and is hereby deleted.

45. We now deal with the additions relating to assessment year 1996-97. We have already dealt with the disallowance of motor car expenses, telephone expenses, unexplained shooting expenses, low withdrawals as also with deduction under

section 80RR. The decision rendered in respect of the other assessment years is also applicable for the year under appeal. The assessing officer is directed to give relief to the assessee on the same basis.

46. The other issue involved in this appeal is relating to Rs. 1,08,500 on account of cash found at the time of search. Assessee had given an explanation at the time of search about the cash. It was explained that sum of Rs. 1,00,000 was out of the cash balance of M/s Pooja Bhatt Production and the balance amount of Rs. 8,500 was stated belonging to her mother.

47. The assessing officer has pointed out that before the start of the search assessee had stated that there was no cash lying in her house. She had also stated that the film was financed partly by the assessee and partly by his uncle Shri Mukesh Bhatt and that as far as she knew there was no outside finance. She had also stated that she was not in a position to give exact details as she was more associated with the creative side of the film and that she was hardly aware of the financial aspect of the film.

48. In our considered view, the explanation of the assessee has wrongly been rejected. Mere fact that financial matters are handled by employees of the assessee and her uncle does not establish that the cash belonging to her proprietor concern was not with her at the time of search. M/s Pooja Bhatt Production was her proprietary concern and there was no reason as to why the cash pertaining to proprietary concern could not be with her at the time of search. Not having full knowledge of the financial transactions is one thing and possession of cash of the proprietary concern is the other thing. In these circumstances, the explanation of the assessee regarding the availability of cash of Rs. 1,00,000 has wrongly been rejected. Similarly, explanation for possession of cash of Rs. 8,500 out of the withdrawals for expenses has also been rejected unjustifiably. Addition of Rs. 1,08,500 being uncalled for is also hereby deleted.

49. Next ground is relating to addition of Rs. 1,39,582 on account of purchase of foreign exchange. The only contention advanced on behalf of the assessee is that the assessing officer has made addition on account of low withdrawals and has also estimated the professional receipts. The addition on account of foreign

exchange according to the assessee amounts to double addition.

50. We have deleted the addition on account of low withdrawals. We do not see how the addition on account of purchase of foreign exchange amounts to double addition. Assessee has been found to have purchased the foreign exchange, which is not recorded in the books of accounts nor the source satisfactorily explained. The addition was, therefore, justified and is hereby confirmed.

51. Next ground of appeal is relating to unexplained shooting expenses of Rs. 26,635. This addition is based on the notings on the loose paper seized on the date of search. Assessee's case is that the expenditure recorded in the loose paper is not actual amount of the expenditure but rough notings made by the assistants. The actual expenditure, which is incurred, is recorded in the books of accounts. It was contended before us that there was no point in not booking the expenditure if it were incurred as the assessee would have got a deduction of such an expenditure. It was, therefore, contended that the addition may be deleted. The learned Departmental Representative on the other hand, relied upon the orders of the revenue authorities.

52. In our considered view, the preponderance of probabilities are in favour of the assessee. The assessing officer has made the addition on the ground that the details in the loose 'papers suggest the expenditure incurred by the assessee on film 'Tamanna' under the banner Pooja Bhatt Production. This expenditure has not been found to be booked in the books of accounts, If the assessee had incurred the expenditure, there is no reason why such expenditure would not have been booked as the assessee in that case would have got a deduction in computation of income. We, therefore, accept the explanation of the assessee in regard to the addition of Rs. 26,635 and delete the same.

53. Next ground is relating to capital gains on sale of jewellery. On the date of the search, it was found that most of the jewellery disclosed by the assessee in the wealth-tax return was not available with the assessee. The assessing officer presumed that the assessee has sold the jewellery. The accordingly estimated the capital gain on the sale of jewellery. He accordingly estimated the capital gain on the sale of jewellery at Rs. 22,895 which has been assessed to tax. Explanation of

the assessee is that the jewellery worth Rs. 14,28,230 was disclosed in the balance sheet for assessment year 1996-97 and that the entire jewellery was available with the assessee. The addition on account of capital gains was not justified, contended the learned counsel for the assessee.

54. In our considered view, addition of Rs. 22,895 is justified. Proper opportunity was given to the assessee to explain the whereabouts of the jewellery disclosed in the wealth-tax return. The assessee did not give satisfactory explanation. In fact it was stated by her that she was not having any other jewellery except what was found on the date of search. There was a justification for the assessing officer to presume that the assessee has sold the jewellery on which a gain of Rs. 22,895 has been worked out. The addition is accordingly confirmed.

55. The next ground is relating to addition of Rs. 3,50,240. The relevant facts relating to this issue are that the assessee had shown jewellery worth Rs. 18,00,000 in her wealth-tax return. On the date of search, assessing officer found certain diamonds studded in gold jewellery. In the assessment year 1992-93 assessee disclosed diamond ornaments aggregating to Rs. 1,00,830. On 16-1-1993, diamonds from M/s Lalchand Dhalamall & Sons had been purchased for Rs. 1,03,000. The said amount had been paid by cheque and duly recorded in the books of accounts. The said diamonds had been studded in gold jewellery for which supporting bill No. 717, dt. 21-1-1993, of M/s Lalchand Dhalamall & Sons was on record. It was accordingly contended that the addition made by the assessing officer was not justified.

56. We have given our careful consideration to the rival contentions. At the time of search, gold jewellery of Rs. 1,85,895 and the diamond jewellery worth Rs. 3,96,500 were found. Out of the jewellery, diamond and gold jewellery worth Rs. 46,260 was stated to be belonging to Mrs. Kiran Bhatt, mother of the assessee, who is staying with her. No explanation was given to the assessing officer regarding the diamond jewellery, it was claimed by the revenue. The assessing officer accordingly made the addition towards the value of diamonds as undisclosed income of the assessee.

57. The learned counsel for the assessee contended that the necessary evidence in the shape of the bill from M/s Lalchand Dhalamall & Sons 15-1-1993, and their bill No. 717, dt. 21-1-1993, had been filed with the assessing officer. Therefore, there was no justification for the addition. In our considered view, the matter requires verification afresh in the light of the explanation of the assessee. It may be verified by the assessing officer that the evidence produced before us had been filed during the course of assessment proceedings. If the evidence is found to have been filed during the assessment proceedings, the assessing officer shall reconsider the issue in the light of the said evidence and explanation of the assessee.

58. We now consider the additional ground of appeal raised by the assessee. The assessing officer has not deducted the amount already assessed under section 143(3) in regular assessment in computing the undisclosed income of the assessee. It is clearly in contravention of section 158BB. Section 158BB provides for the computation of undisclosed income of block period. As per this section, the undisclosed income of the block period shall be the aggregate of the total income of the previous year falling within the block period computed, in accordance with the provisions of Chapter IV, 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 assessing officer, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined clause (a) of section 158BB provides : where assessments under section 143 or section 144 or section 147 have been concluded, on the basis of such assessments. It is evident from the above that it is provided under section 158BB that the income which has already been assessed is to be excluded for the purposes of determination of the undisclosed income. We, therefore, direct the assessing officer to exclude the income which has already been assessed under section 143/144 or under section 147 for the assessment years involved in the block period. In the result, the appeal of the assessee is partly allowed.