

**Dynamik Universal Ltd. Vs. Dy Cit Central Circle 18**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Aug-26-2005

**Reported in :** (2005)4SOT825(Delhi)

**Appellant :** Dynamik Universal Ltd.

**Respondent :** Dy Cit Central Circle 18

**Judgement :**

This appeal by the assessee is against the order passed by the CIT(A) for Block Period 1-4-1995 to 22-8-2001.

The facts of the case are that the assessee was holding a free hold plot No. 20/4, situated on Gurgaon Mehrauli Road, Sukhrali Chowk, Gurgaon admeasuring 11 Kanals, 8 Marlas equivalent to 6897 sq. yds. M/s Elite Promoters P. Ltd. being a builder, vide Collaboration Agreement dated 19-5-1997 agreed to construct a multi-storied office-cum-commercial complex, consisting of two basements, Ground and Seven floors (presently known as "Palm Court") as its own cost and expenses, after obtaining all necessary Government's approvals on equal sharing ratio i.e. 50% of saleable area. Accordingly, Plan bearing No.1155ME dated 3-9-1997 for construction of "Palm Court" Project was submitted to Municipal Committee, Gurgaon, Haryana and subsequently vide their certificate bearing No. 2363 dated 11-5-2000 the requisite Completion Certificate was issued to them. Simultaneously other certificates from Fire department, Air Port Authority of India etc.

were also obtained. Total covered area together with all buildings and structures constructed thereon was at 1,63,838 sq. ft. and open area was at 1,95,000 sq. ft.

On 22-8-2001 a search operation under section 132(1) was conducted on DN Taneja Group of cases wherein certain books of account and other documents were found and seized. During the course of search certain papers i.e. page Nos. 23 and 24 of Annexure A-1 were also seized from premises at 7, KG Marg, New Delhi reflecting the name of the assessee-company and certain cash and cheque payments received by the assessee from Dinesh Jain Group. The assessing officer accordingly issued notice under section 158BD read with section 158BC on 27-6-2002.

The assessee filed the return on 9-9-2002 declaring NIL income.

Thereafter, notice under section 142(1) along with questionnaire dated 3-12-2002 were issued which read as under '1Q.1 This is a mixed account of Shri Dinesh Jain containing details of receipts by cheque and cash for the period from 23-5-2000 to 15-1-2001.

Although, the heading on the page implies that this is the account of "Dynamic" up to 20-5-2001, the entries are only up to 26-11-2000.

This account at page 24 contains receipts by Dynamic Universal (P) Ltd. in respect of the sale of properties out of Palm Project at Gurgaon to Shri Dinesh Jain and his other family members as well as HUFs and companies. These properties have been purchased almost equally from the share of Taneja Group and Dewan Group, but this page contains the details of sale considerations received in respect of the property sold out of the share of Dewan Group.

This account contains details of receipts both in cheques as well as case The cheque amounts are received and reflected in the bank statements and are towards consideration for sale of properties.

As per this account on page 24, the total amount of cash received by Dynamic Universal (P) Ltd. is Rs. 4,30,00,000.

You are required to explain with evidence (a) where this amount Rs. 4,30,00,000 received in cash is recorded? (b) List of parties to whom properties of "Palm Court Project" sold along with their addresses, consideration received from them, area/portion sold to them. (c) Why the whole amount of Rs. 4,30,00,000 should not be treated as undisclosed income of M/s Dynamic Universal (P) Ltd. 0-1.2 Besides the above, following adjustments have been made in this account: An equivalent amount of adjustment has been made in the similar manner in the account of Elite Promoters (P) Ltd. at page 23. It clearly implies that both the groups i.e. Taneja and Dewan must have brokered the purchase of a farmhouse for Dinesh Jain who may have incurred a loss of Rs. 62.50 lakhs on sale of the same farmhouse. There was a third partner Vipin Sharma as well. So each of the three would have had to share one-third loss amounting to Rs. 20,83,500. This adjustment has been made in the accounts of Elite and Dynamic at pages 23 and 24 respectively. Further Tanejas and Dewan have further equally shares the loss of Shri Vipin Sharma equally and this has amounted to Rs. 10,41,500. This adjustment has also been made in the accounts of Elite and Dynamic.

It is obvious from the credit of Rs. 31,25,000 given both in the accounts of Elite Promoters (P) Ltd. at page 23 and Dynamic Universal Ltd. at page 24 that this loss must have been incurred by Shri Dinesh Jain and his group and since Taneja and Dewans may have been involved as guarantees in the farmhouse deal along with Vipin Sharma, both of them must have agreed to share the loss equally between them including the share of loss to Shri Vipin Sharma. Accordingly, both of them have given an equivalent credit to Dinesh Jain group against the consideration they were likely to receive towards the sale of property at Palm Courts. That is why this adjustment has been made in both the accounts of Elite and Dynamic at pages 23 and 24 respectively.

You are required to explain (a) the above mentioned transactions. (b) What was the deal to which loss of Rs. 62.50 lakhs pertain (c) Why have you adjusted the losses of Rs. 62.50 lakhs in the sale consideration received from Dinesh Jain & family? (a) Why the loss of Rs. 31.25 lakhs should not be excluded from sale consideration of Palm Court Property which will result in a further addition of Rs. 3,11,25,000 in the hands of Dynamic Universal (P) Ltd. as undisclosed income out

of sale of property at Palm Courts." The assessing officer also required the assessee to explain with regard to calculation of rent of the said property and where this rental income is recorded as well as whether there was any rent deed. He further asked the assessee to explain the amount of Rs. 8,00,000 which has been shown to be paid by Dynamic Universal (P) Ltd. towards the House Tax. According to the assessing officer, this amount of Rs. 8,00,000 was receivable over and above Rs. 7,74,29,500 towards sale consideration and Rs. 16,06,830 towards rent at the rate of 12.5 per cent on outstanding sale consideration. The assessing officer asked the assessee to explain with evidence whether this amount was received by the assessee or not and also furnish the details of receipt and where they are recorded in the books of account.

The assessee vide reply dated 3-2-2003 stated with regard to page 24 of Anx-A1 that the documents stated in the questionnaire were not seized from the premises of the assessee. As stated in the questionnaire itself these documents were seized from 7, KG Marg, New Delhi which is neither the business premises of the assessee nor the residence.

Accordingly, provisions of section 132(4A) do not apply to these documents. The assessee's assessment is being framed under section 158BD as there was no search on the assessee and the onus of the assessee is only to clarify those papers and documents which have been found at some other premises and pertains to the assessee. It was further submitted that page 24 of Annexure A-1, stated to be a mixed account containing details of receipts by cheque and cash on the basis of the word stated on the top of the paper, i.e. "Dynamic" that these pertain to the assessee-company, i.e. Dynamic Universal Limited and on this assumption that this document pertains to the assessee-company. It was categorically stated that this document did not pertain to us. On this very issue Directors of the assessee-company were called by the Deputy Director (Inv.) a number of times and their statement recorded clarifying that this document does not pertain to the company. It is further clarified that since the document does not pertain to the assessee-company the subsequent question stated in your questionnaire cannot be answered. The answer to this question, if any, can be given by only those persons who have written this paper, The assessee-company

categorically denied to have entered into any transaction with any person in case Wherever the assessee-company has made any transaction in respect of its property the same has been properly recorded in the books of account and can be verified as the same are being produced before your goodself as stated above. It was further submitted that, as this document did not pertain to the assessee-company, the figure stated therein for which the question has been asked cannot be answered by the assessee-company. On page 3, para 2 of the questionnaire, your honour has raised a presumption by stating that "It is obvious ... that the lost must have been incurred by Shri Dinesh Jain... As it is obvious from the facts and circumstances of the case, this amount of Rs.. and said to have been received by Tanejas and Dewan equally".

Which is nothing but a presumption is being made without there being any such thing. The company categorically denied that there was any such loss as stated in this question. As regards the question rental income, it was stated that since the documents did not pertain to the assessee-company, the assessee-company could not explain the figure stated in the document. Further it is categorically denied that the assessee-company has received any rent other than stated in the profit & loss account of the company.

The assessing officer took a follow up action and recorded the statement of Shri Dinesh Jain on 24-3-2003, called for a report under section 133(6) from Standard Chartered Bank and also recorded the statement of the assessee and Shri Dewan on 27-5-2003.

After considering the reply of the assessee and the relevant material and statements, the assessing officer concluded as under : "(a) Assessee has sold the Palm Court Property to Shri Dinesh Jain at a total consideration of Rs. 7,74,29,500 out of which Rs. 2,40,00,300 were accounted for in its books of account and remaining Rs. 5,34,29,200 were received in cash and not entered in the books of account.

(b) Assessee has also received Rs. 16,06,830 in cash from Shri Dinesh Jain as interest on delay in payment and not entered in its books of account.

(c) Hence, Rs. 5,50,36,030 is treated as undisclosed income of the assessee under the head "Income from Profit or gains from business or profession" and added back in the income of the assessee in the following Assessment Year: In appeal before the CIT(A), besides challenge on merits the assessee raised an issue regarding validity of initiation of proceedings under section 158BD. The CIT(A) dealt with this issue in paras 4.6 to 4.18 of his order. Paras 4.6 to 4.9 are reproduced herein below for ready reference: "4.6 I have gone through the verbal and written arguments advanced by the appellant and also perused the relevant case laws relied upon. The objection raised by the appellant regarding initiation of proceedings under section 158BD and non-recording of "satisfaction" by the assessing officer were also considered. Though, in my opinion, the assessing officer has complied with the provisions of section 158BD, however, before arriving at any conclusion, it would be appropriate to spell out the law on the subject i.e. the order passed by the assessing officer with reference to the language as used in the statute.

Accordingly, the perusal of section 158BD was made, which deals with the undisclosed income of any other person" and reads as under: 'Where the assessing officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the assessing officer having jurisdiction over such other person and that assessing officer shall proceed under section 158BC against such other person and the provisions of this Chapter shall apply accordingly.' 4.7 On going through the above lines, it is evident that it is not mandatory on the part of the assessing officer to record a written satisfaction note. According to me, the satisfaction that is required as per section 158BD is only a prima facie satisfaction that there is seized material to show that this income is the undisclosed income of the person, other than one who was searched. From the nature of the proceedings undertaken in Chapter XIV-B containing special procedure for assessment of search cases, at the time of initiating action under section 158BD, the assessing officer is not required to come out with a firm or conclusive satisfaction, before issuing notice under section 158BC. 4.8 Since the

issue raised by the appellant for recording satisfaction of the assessing officer can only be verified from the block assessment record, therefore, the Remand Report of the assessing officer was called for. The assessing officer vide his Remand Report dated 9-2-2004 has reiterated the grounds raised by the appellant. The relevant portion of his report reads as follows: 'Here in the instant case, search operation was conducted on Mr. D.N.Taneja, 7, K.G. Marg, New Delhi, page 24 of Annexure A- 1, which is the relevant seized material, was found from the possession of Shri D.N.Taneja. Thus, it is clear that all the conditions lay down by the section 158BD of the Income Tax Act, 1961 are fully met and therefore, there is no substance in challenging the legality of the notice issued under section 158BC of the Income Tax Act, 1961.

It is very important to note that assessee never objected the legality of the proceedings, initiated under section 158BD of the Income Tax Act, 1961 during the whole block assessment proceedings and return filed in response to notice under section 158BD was not under protest.

All these things make one thing very clear that assessee has no logical ground to present his case in appeal so, he has come down to this kind of tactics, which do not carry any substance, and it is just a matter of afterthought.

Further, the assessee has objected that the proceedings have been initiated without recording satisfaction of the assessing officer. This contention of the assessee is also not correct, as the satisfaction note has been recorded vide order sheet entry dated 26-7-2002 before issue the notice on 26-7-2002 under section 158BD of the Income Tax Act.

Point No. 4: The assessee has objected that no notice under section 143(2) has been issued to the assessee-company by the assessing officer after filing of the return. This contention of the assessee is not correct. The notice under sections 143(2) and 142(1) were initially issued to the assessee-company along with questionnaire dated 3-12-2002, which remained un-complied with. As such as how-cause notice dated 27-1-2003 was issued on 27-1-2003 for non-compliance of the said notices and asking the assessee as to why penalty under section 271(1)(b) should not be imposed and further a fresh notice under section 143(2)

was issued on 27-1-2003. The assessee has himself replied to the said show-cause notice vide his letter dated 3-2-2003.

From the above facts, it is crystal clear that the contention of the assessee is totally wrong and, assessee's objection deserves to be rejected.

Point No. 5 : The assessee has further submitted that assessment was framed without giving proper and adequate opportunity to the assessee-company. This contention of the assessee also has to no merit.

A detailed questionnaire was issued to the assessee on 3-12-2002 providing full details of seized material on the basis of which addition was made. Further all the photocopies of the seized material as asked for were provided to the assessee. From the above facts, it is crystal clear that the contention of the assessee is totally wrong and, assessee's objection deserves to be rejected.' 4.9 From the above report, I find that the assessing officer was also of the view that no written satisfaction note of the assessing officer who was holding charge at the time of search operation, is needed and strongly opposed the stand taken by the appellant. Further, in order to provide an opportunity of rebuttal, a copy of the assessing officer's report was handed over to the appellant's Authorised Representative and the Authorised Representative filed its rejoinder on 23-3-2004.

However, except repeating its earlier submissions, nothing fresh was submitted. Therefore, to my mind, the notice issued by the assessing officer under section 158BC read with section 158BD cannot be said to be bad in law.

4.10 Since the assessing officer having jurisdiction over the appellant's case at the time of search operation was satisfied that the seized document i.e. page 24 of Annexure A-1 'recovered from the residence of Shri D.N. Taneja at 7, K.G. Marg, New Delhi pertain to the appellant-company reflecting therein receipt of some unaccounted cash, therefore, he transferred the appellant's record to the DCIT, Central Circle-18, New Delhi i.e. to the assessing officer who passed the block assessment order. Therefore, there was no further requirement to pass a specific written satisfaction order by the assessing officer holding charge over the

appellant at the time of search. This view gets support from the decision conveyed by Hon'ble Allahabad High Court in the case of Digvijay Chemicals Ltd. v. Asstt. CIT (2001) 248 ITR 381 (All) wherein it was held that there is nothing in section 158BD to require an assessing officer to have his satisfaction recorded in writing. The court further held that wherever the Act required "recording of reasons", it has specifically provided to this effect. Besides this, in the case of Rushil Industries Ltd. v. Harsh Prakash (2001) 251 ITR 608 (Guj.), Priya Blue Inds. (P) Ltd. v. JCIT (2001) 251 ITR 615 (Guj.) and Premjibhai & Sons v. JCIT (2001) 251 ITR 625 (Guj) it was held that in absence of an averment on behalf of the assessing officer, about the satisfaction arrived at by the assessing officer, the same will not vitiate the notice issued by the assessing officer under section 158BD.4.11 Besides above, I find that the assessing officer vide order sheet entry dated 27-6-2002 i.e. while issuing notice under section 158BD read with section 158BC has duly recorded his reasons for initiating assessment proceedings under section 158BD as under:- 'During search & seizure operation under section 132 of the Income Tax Act, 1961 conducted at Mr. D.N. Taneja Group of Companies, it was found that M/s. Dynamic Universal Ltd. is also a company promoted by Taneja family. The assessee-company had developed a property in Gurgaon along with M/s. Elite Promoters (P) Ltd. After developing the property, the same was sold to a Kanpur Party. Seized material "suggests" that there was part receipt in cash, which is not accounted for any where.

Hence, case is picked up under section 158BD of the Income Tax Act, 1961. Issue necessary notice.' 4.12 Thus, in my considered opinion, the assessing officer has fully complied with the provisions of section 158BD and cannot be said to have violated the provisions of Income Tax Act, 1961. One should remember that this is an Income-tax proceeding and not the criminal proceeding in the court of law, where decisions can only be taken when evidences are beyond reasonable doubt. Moreover, in income tax proceedings, the concept of Preponderance of Probability is applied and the case is built up step by step. Therefore, the ground raised by the appellant is not tenable and accordingly, the same is dismissed.

4.13 Further, the assessee has objected that the proceedings have been initiated on the basis or mere speculation, surmises, suspicion and conjectures. This

contention of the assessee is also not acceptable.

Keeping in view the facts of the case that the notice under section 158BD read with section 158BC under Chapter XIV-B of the Income Tax Act was issued on 27-6-2002 after recording the reasons thereof i.e. in the case of Shri D.N. Taneja, in whose case the search & seizure operation was conducted and on scrutiny of the seized material, it was found that the part of sale proceeds of the said property was received in cash, which was not accounted for in the books of account. As such the case was picked up under section 158BD of the Income Tax Act. Hence, finding of a paper having cash transaction in property deal and to which Shri D.N. Taneja shown his inability to explain and transactions are related to M/s. Dynamic Universal Ltd. is the sufficient ground to initiate the action under section 158BD. Further, initiation of an action under section 158BD does not mean that the Income-tax department has decided to make the addition but the appellant has been given an opportunity to represent his case. When after availing all the opportunities, the appellant could not explain the issues satisfactorily then only the additions were made. Had it been the case of evidence beyond reasonable doubt then there was no need of issuing the notice under section 158BD. Accordingly, the issue raised by the appellant is not convincing, Accordingly, the same is dismissed." It may be stated that in paragraph 4.11 in the order of CIT(A) extracted the reasons recorded of Elite Promoters (P) Ltd. by mistake and reasons recorded in assessee's case are as under: "During the search & seizure under section 132 of Income Tax Act, 1961 conducted at D.N. Taneja group, it was found that M/s. Dynamic Universal (P.) Ltd. has developed a property in Gurgaon in collaboration with M/s. Elite Promoters (P.) Ltd. After developing the property, the same was sold to a Kanpur party. Seized material suggests that the sale proceeds were received partly through cheques and partly in cash. This is the general practice that in property deal the cash transaction is not recorded in the books of account.

In order to examine this issue, the case is picked up under section 158BD of the Income Tax Act, 1961: As regards the issue of notice under section 143(2) the CIT(A) observed in para 4.15 that since the block assessment is not made under section 143(3), therefore, the issue of notice under section 143(2) by the assessing officer is not mandatory. While the assessing officer proceeds to

determine the undisclosed income as per the provisions of section 158BC(b), the assessing officer may issue notices under sections 142(1) and 143(2) as per his discretion. Therefore, non-issue of notice under section 143(2) is inconsequential. This issue now stands covered against the assessee by the decision of the Special Bench of ITAT and the issue in this case is not seriously pressed before us.

On merits of the case the CIT(A) observed that in a search operation, page Nos. 24 and 25 of Annexure A-1 were seized from the premises of Shri D.N. Taneja, wherein besides cheque payments, cash payments of Rs. 4,30,00,000 was stated to be made to the assessee-company and also vide page No. 23 cash payment of Rs. 3,71,55,000 made to M/s. Elite Promoters (P) Ltd. by Dinesh Jain Group. The CIT(A) further observed that in this regard the statement of Shri D.N. Taneja was recorded on the date of search on 22-8-2001 wherein he denied of having any connection with these papers and since Shri D.N. Taneja and Shri S.K.Dewan, Shri Ravinder Taneja and Shri Dinesh Jain have categorically denied of having any connection with seized document and receipts or payment of any cash, the CIT(A) therefore, observed that before establishing that payments were received by the assessee outside the books of account to the extent of Rs. 4,30,00,000, it is necessary to draw the conclusion that the commercial flats at ground and 3rd floor, sold to Dinesh Jain group were sold at the price lower than the price of other commercial flats on the same floor or other floors.

The CIT(A) held that the sale consideration of commercial flats sold to Dinesh Jain group was in fact much lower than the other purchasers. The CIT(A) further held in para 6.7 as under: "Here it is important to note that being best suited for operating a show room or a shop, the commercial value of property situated at ground floor, in any commercial complex/Malls, is the maximum, which can even be twice or thrice the rate of property situated at first floor of the same commercial complex. Similarly, the rate of property reduces as we move towards upper floors i.e., 1st floor to 7th floor.

Whereas in the appellant's case, Surprisingly, the position is reversed i.e., the rates of ground floor commercial flats sold to Dinesh Jain group was @ Rs. 1,000

per sq. ft. which is even less than the rates of 7th floor flats sold to the other parties @0 Rs. 1150 per sq.ft.

Therefore, undoubtedly, the rates reflected for sale of commercial flats to Dinesh Jain group were highly understated. Thus, confirming the fact that besides cheque payments of Rs. 2,40,00,300, Dinesh Jain Group has also given cash payments over and above these cheque payments and that the seized document i.e. page No. 24 of Annexure A- 1, containing the details of these cash payments is not a dumb document.

Rather, it very much belongs to the appellant-company but the appellant in its books of account has not recorded the cash payments reflected therein." The CIT(A) also observed that wrong statements were given by Shri D.N.Taneja during the course of search operation on 22-8-2001, by Shri S.K.Dewan, Director of appellant-company and by Shri Ravinder Taneja, Director of Elite Promoters (P) Ltd. on 14-7-2003 before the assessing officer. The CIT(A) further observed that Shri D.N. Taneja was the main controlling person of Taneja group including the Palm Court Project, because in all the statements recorded by DDIT (Inv.) on 17-9-2001, 24-9-2001 and by DCIT on 27-5-2003, Shri S.K. Dewan, Director of the assessee-company has admitted that all the deals regarding sale of flats of Palm Court Project were undertaken/settled only by Shri D.N.Taneja. Though initially Shri D.N. Taneja has denied of having any connection with pages 23 to 25 of the Annexure A-1 and with Palm Court Project, however, later on vide his reply dated 6-2-2002 he admitted that this deal was made through him, which is evident from the following portion of his reply : "As far as the transaction with Mr. Dinesh Jain is concerned, the same has been negotiated in my office in the presence of Mr. and Mrs. Dewan along with Mr. Ravinder Taneja.

6.10 Besides above, on making perusal of page 24 of Annexure A- 1, it is evident that the entries of cheque payments appearing on his seized paper, which have been received by the appellant, are in total agreement with the entries appearing in the appellant's books of account. Hence, it cannot be said that the entries of cheques are correct but that of cash payments are incorrect. Therefore, this seized document is not a dumb document but very much relates to the appellant-

company.

6.11 According to me, the most important evidence, which clearly establish that the execution of Agreement to sell in respect of sale of ground and 3rd floor properties to Dinesh Jain group in Palm Court Project was entered into not on the date specified there in the Agreements to sell i.e., 10th and 11th April, 2000 but on a much later date, may be on 15-8-2000,i.e., the date mentioned on pages 23 and 24 of Annexure A-1, is the para 6 of these Agreements to sell, which reads as follows: "In terms of the collaboration agreement The Builder caused a plan bearing No. 1155/ME dated 3-9-1997 to be sanctioned by the Municipal Committee, Gurgaon for construction of the said Office-cum-Commercial Complex on the said plot of land and a Completion Certificate bearing No. 2363 dated 11-5-2000 was issued by the Municipal Committee, Gurgaon thereof'." The CIT(A) accordingly confirmed the addition of Rs. 4,30,00,000 and held that in absence of any corroborative evidence to the contrary, the assessing officer was justified in concluding that the cash payments of Rs. 4,30,00,000 has been made by Dinesh Jain group to the assessee-company outside the books of account for the purchase of ground and 3rd floor flats at Palm Court Project.

The learned counsel for the assessee Shri Ved Jain submitted that the assessee-company has been maintaining regular books of account and filing its returns regularly and recording all the transactions entered into by the assessee-company and being audited from assessment year 1996-97 onwards; that the assessee-company submitted its reply vide letter dated 28-8-2001 giving basic information sought by the ADI, Delhi. Statements of the Directors of the company, namely, Mr. S.K.Dewan and Mrs. Achala Dewan were recorded on 17-9-2001 and 24-9-2001, in which various questions asked regarding Mr. D.N. Taneja and the working of the company were replied and there was nothing adverse coming out of the statements; that after the receipt of notice under section 158BD the assessee-company has been asking for the details of the documents and the statements relating to the block period on the basis of which notice under section 158BD has been issued but the assessing officer provided a photocopy of the document, which is unsigned computer print found at the time of search on 22-8-2001, on the basis of which the notice was issued. The learned counsel contended that this is a

plain paper on which certain computer print are there but it is without any signature or handwriting of the person who has prepared this paper; that the assessee-company filed a detailed reply dated 3-2-2003 categorically stating that the document did not pertain to the assessee; that the assessing officer issued summons to Shri Dinesh Jain who has bought the property from the assessee-company and in his statement recorded on 24-3-2003 he categorically stated that no cash payments were made and the property purchased by him was against cheque payments only; that sale deed/agreement to sell executed along with complete details of the sale of property, the list of persons to whom property was sold and their addresses and other information categorically were filed; that in his statement Shri S.K. Dewan has also stated that this paper did not pertain to the assessee-company.

The learned counsel contended that the additions were made by assessing officer and upheld by CIT(A) ignoring all the statements of the concerned persons, the books of account and other evidences only on a presumption that this document pertained to the assessee-company and the amount stated therein represented the cash money received over and above the cheque amount for the sale of the property plus interest.

The learned counsel further contended that under section 158BD the assessing officer has to be satisfied that any undisclosed income belongs to any other person. The satisfaction is something different than mere suspicion. He submitted that in this case satisfaction is based on a piece of paper, which is unsigned and wherein nowhere the name of the assessee is mentioned. No person during the course of search of Shri D.N. Taneja has stated anything linking this document to the assessee-company. No prudent person can reach a satisfaction therefore that the document represents undisclosed income of the assessee-company. In support of this contention, the learned counsel relied upon the decision of the Allahabad High Court in the case of Dr.

Nand Lal Tahliani v. CIT (1988) 170 ITR 592 (All). The learned counsel also submitted that satisfaction has to be recorded by the assessing officer in writing before issue of notice under section 158BD. No such satisfaction has been

recorded in this case.

The learned counsel further contended the assessment has been framed without giving proper opportunity to the assessee and the addition has been made on the basis of a document found from Shri D.N. Taneja's Group. No material and information has been provided to the assessee in respect of the circumstances in which this document was found. He submitted that the assessee had time and again requested for a copy of the statement of Shri D.N. Taneja. However, the same has not been provided to the assessee. It is contended that before making an allegation against a person he should be provided relevant information so that he be aware of the precise charge and reply to the same. He further contended that in this case the onus was on Mr. D.N. Taneja to explain the document and this could have been shifted to the assessee only on Mr. Taneja making a statement that this document pertained to the assessee-company or coming out with any other explanation imputing the assessee-company. In the absence of any such statement or allegation by Mr. Taneja the presumption has to be drawn against Mr.

Taneja and not against the assessee. He referred to two decisions of the Delhi High Court - *Amity Hotel (P) Ltd. v. CIT* (2005) 142 Taxman 160 (Del) and *Janki Exports International v. UOI* (2005) 145 Taxman 82.

On merit, the learned counsel for the assessee submitted that the assessing officer has made the addition of Rs. 5,50,36,030, which consists of two parts, Rs. 5,34,29,200 on the basis of allegation that cash was received over and above the cheques and Rs. 16,06,830 on account of interest paid by Shri Dinesh Jain for delayed payment. The addition has been made on the basis of a piece of paper found at the premises of Mr. Taneja. The assessee retreated that this is a plain document, unsigned and computer print out; not found at the premises of the assessee, nor pertained to the assessee-company but deemed so as nowhere the name of the assessee-company appears on this document.

Nowhere on the document there is any reference to any property. The assessing officer has not brought any material on record to identify the party who has made the payment to the assessee. No material whatsoever has been brought on record to prove or even to corroborate that the amount was received by the assessee. He

further submitted that the assessing officer on the contrary has admitted that this paper was not found at the assessee's premises and Mr. Taneja is not a Director of the company. The observations of the assessing officer stating "that page numbers 5, 7 and 11 of Annexure A-2 are related to sale of some property to Mr. Pravin Arora and in these pages also sale of property of Palm Court is mentioned. In this case the assessee has filed copy of account and other details but did not take the plea that this paper does not pertain to it as it was seized from 7, K.G. Marg, New Delhi," is on the basis of some other papers which have no relevance to the document on the basis of which a presumption could be drawn and he is trying to make out a case ignoring the fact that nowhere the name of the assessee-company and any signature, any name of the director of the company or the person who handed over the cash and the person who received the cash has been stated. The observation of the assessing officer is factually wrong in view of the categorically statement of the assessee that this document does not pertain to it. The statement of Mr. Dinesh Jain that he has purchased the property from D.N. Taneja Group does not serve any purpose nor does it support the allegation that this paper pertains to the assessee. The revenue has nowhere brought any material to negate the contention of the assessee made in very categorical term that this document does not pertain to it.

Regarding the fact that the cheque payments exactly matching with the amount actually received and presuming on this basis that this paper is written by a person having, exact information regarding receipt of payment does not establish that as to who is this person. Every person examined by the assessing officer as well as ADI have. denied about this paper. On the face of it, this is a dumb document and at best one can make out that some calculation of interest has been done but with no reference to any property purchase or sale. It is further submitted that the reference of one Mr. Bipin Sharma and of the date 15-8-2000, the use of word "seems", then of "it can be seen", then of "they must be in deal of purchase of this farmhouse", then stating that the deal did not materialize' "may be due to Shri Dinesh Jain not liking this farmhouse or may be he has got a better deal", then stating that "dispute started will regard to who should show how much loss", and that "the deal must have got stuck on 15-8-2000" are all imaginations as if the assessing officer without knowing as to whether he was evaluating the evidence or

writing a story without any source of information or any person, any other material showing these actions or facts. Further the words used "this theory gets weight from the following facts" establishes that the assessing officer did not have any material whatsoever to substantiate his allegation. Against the statement that the balance of Rs. 73,04,200 has been shown to be receivable is contrary to the fact that the registry was made only after receiving full amount and therefore is wrong. He forgot that no cash could be receivable after the date of registry.

The learned counsel cited number of judgments on the evidentiary value of loose paper found during the course of search. He relied upon the decision of the Tribunal, Lucknow Bench in the case of Satnam Singh Chhabra v. Dy. CIT (2002) 74 TTJ 976 (Luck), the decision of the ITAT Mumbai Bench in the case of S.P. Goyal v. Dy. CIT (2003) 82 ITD 85 (Mum) and submits that additions made are on mere suspicion cannot be sustained and are liable to be deleted. The learned counsel further submitted that the loose paper is not books of account. He also relied upon the decision of the Supreme Court in the case of CBI v. V.C.Shukla (1998) 3 SCC 410 (SC) evidentiary value of books of account v. Loose paper (diary) and submitted that, this paper was not found at the premises of the assessee. This paper is not in the handwriting of the assessee. Accordingly it is a dumb document having no evidentiary value and nowhere can be used in fixing responsibility on the assessee.

The learned counsel also relied upon the judgment of the Kerala High Court in the case of CIT v. Smt. K.C. Agnes (2003) 128 Taxman 848 (Ker) he submits that the assessing officer was wrong in concluding that on the basis of thing simple plain paper noting found at the third party's place having no reference of the property, the price stated in the sale deed is not correct and on that basis making an addition of Rs. 5,34,29,200 and Rs. 16,06,830. Accordingly the addition made by the assessing officer on the basis of this piece of paper of a total of Rs. 5,50,36,030 is perverse and need to be deleted. Reliance was also placed on CIT v. Shri Chaman Lal Dhingra (1994) 121 Taxman 272 (All.); Kularanjan Pathak v. ITO (1984) 19 TTJ 546 (Gau); JRC Bhandari v. Asstt. CIT (2002) 79 TTJ 11 (Jd.); Raunaq Finance Ltd. v. Joint CIT (2004) 141 Taxman 72; Straptex (India) (P) Ltd. v. Dy. CIT (2002) 84 ITD 320 (Mum.); T.S. Venkatesan v. Asstt. CIT (2000) 74 ITD

298 (Cal.); Prarthana Construction (P) Ltd. v. Dy. CIT (2001) 70 TTJ (Ahd.) 122; Chiranji Lal Steel Rolling Mills v. CIT (1972) 84 ITR 222 (Punj. & Har.); Pankaj Dahyabhai Patel (HUF) v. Asstt. CIT (1999) 63 TTJ (Ahd.-Trib.) 790; Punjab Traders v. ITO (2004) 88 TTJ (Chd.) 394; Jaya S. Shetly v. Asstt. CIT (1999) 69 ITD 336-472 (Mum.); Addl CIT v. Miss Lata Mangeshkar (1974) 97 ITR 696 (Bom.); Atul Kumar Jain v. Dy. CIT (1999) 64 TTJ (Del) 786; Asstt. CIT v. Shri Radheyshyam Poddar (1992) 41 ITD 449 (Cal.); Addl. ITO v. T Mudduveerappa Sons (1993) 45 ITD (Bang.) 12; CIT v. Nirmal H. Phopalia (2003) 262 ITR 522 (Bom.); Monga Metals (P.) Ltd. v. Asstt. CIT (2000) 67 TTJ (All.) 247; Rama Traders v. First ITO (1988) 25 ITD 599 (Pat.) (TM); Amarjit Singh Bakshi (HUF) v. Asstt. CIT (2003) 80 ITD 13 (Del); S.P. Goyal case (supra); Assistant Commissioner v. G.S. Bhatia (1997) 59 TTJ (Mum.) 91; Smt. K.C Agnes's case (supra); Srinivasa Ultrasound Scanning Centre v. Asstt. CIT (1998) 61 TTJ (Bang.) 619; Amar Natvarlal v. Asstt. CIT (1997) 60 ITD 560; Pushkar Narain v. CIT (1990) 183 ITR 388 (All.) and Satnam Singh Chhabra's case (supra).

It was further submitted that sales instances given by the CIT(A) were never confronted to the assessee and therefore cannot be the basis for confirming the additions.

The learned Departmental Representative, on the other hand, referred to the order of CIT(A) and relied upon his findings. With regard to satisfaction of assessing officer under section 158BD, the learned Departmental Representative submitted that the assessing officer has recorded the satisfaction on 26-7-2002, that in particular Annexure A- I page 24 clearly indicates undisclosed income belonging to M/s.

Dynamic Universal (P) Ltd. and on examination of this paper, the satisfaction was recorded by stating "I am satisfied that M/s. Dynamic Universal (P) Ltd. needs to be proceeded with under section 158BD of the Income Tax Act, 1961". In this regard he submitted that for applying the provisions of section 158BD there must be a satisfaction and at that stage it has to be only a prima facie view taken at the time of issuing notice. The two decisions relied upon by the counsel of the assessee, according to him, did not lay down a proposition that before proceeding

under section 158BD reasons must be recorded. What according to him these decisions say is, that there must be a satisfaction and there must be material for arriving at such satisfaction.

On merits, supporting the orders of the authorities below, the learned DR submitted that during the course of search and seizure conducted on 22-8-2001 in D.N. Taneja Group of cases documents were found and seized based on which notice under section 158BD was issued. The document was in the nature of statement of account of Shri Dinesh Jain in which details of payments received by the assessee-company from him and his family members /associate concerns as on 20-5-2001 were given. He submitted that the name of the assessee-company and Shri Dinesh Jain are also mentioned on this paper. The learned DR also submitted that the total amount received by cheque as per this paper exactly matches with the amounts received by cheque as per sale deeds and as per the books of account of the assessee. Therefore, there is no doubt that this paper was found at the premises of Shri D.N. Taneja, the main person behind Taneja Group of Companies and involved in almost all the major decisions taken by the group. The argument of the assessee that the said paper does not pertain to it, does not carry any weight, because page Nos. 5, 7 and 11 of Annexure A-2 are related to sale of some properties to Shri Praveen Arora and in these pages also sale of property of Palm Court is mentioned. In that case the assessee has filed the copy of account and other details but did not take plea that this paper does not pertain to it. The assessee-company has a collaboration agreement with M/s. Elite Promoters (P) Ltd. a group company of Taneja Group, there is nothing abnormal in finding of paper relating to the assessee at the premises of Shri D.N. Taneja. Further it is also clear from the fact that total cheque payment as per books is matching with what is mentioned in loose paper that whatever is written on this paper is written by a person having exact information regarding receipt of payments with respect of sale of property at Palm Court, Gurgaon. The learned DR also referred to the date "15-8-2000" on this paper and submitted that on perusal of this paper it seems that the assessee, M/s. Elite Promoters (P) Ltd. and Shri Vipin Sharma were dealing with Shri Dinesh Jain for sale of some Farm House and incurred a total loss of Rs. 62.5 lakhs. He also submitted that wrong statements were given by Shri D.N. Taneja during the course of search operation

on 22-8-2001, by Shri S.K. Dewan, Director of assessee-company and Shri Ravinder Taneja, Director of Elite Promoters (P) Ltd. on 14-7-2003 before the assessing officer which is evident from the facts as stated in the assessment order. He further contended that the seized paper is not a dumb document but very much relates to the assessee-company.

Further the execution of agreements to sell in respect of ground floor and 3rd floor properties to Dinesh Jain group in Palm Court Project was entered into not on the date specified there in the agreements to, sell i.e. On 10th and 11-4-2000 but on a much later date, may be on 15-8-2000, i.e., the date mentioned on pages 23 and 24 of Annexure A-1.

He further submitted that sale price agreed for upper floor sold to other parties was higher at Rs. 1150 for 7th floor, Rs. 1250 for 6th floor and Rs. 1400 for 5th floor than the prices shown by cheque payments in the case of Shri Dinesh Jain to whom ground and first floor were sold at the rate of Rs. 900 and Rs. 400 and Rs. 1,000 respectively. He then referred to sections 143(3), 158BC and specifically the material gathered as mentioned in section 143(2) of the Act. Relying upon the decision of the Supreme Court in the cases of Sumati Dayal v. CIT (1995) 214 ITR 801 and CIT v. Durga Prasad More (1971) 82 ITR 540 (SC), he submitted that preponderance of probabilities should not be forgotten in arriving at the conclusion.

The cheque transactions recorded in the sheet are admittedly of the assessee and, therefore, the assessee is not justified in stating that the transactions recorded in cash in the same documents are not his.

The documents, according to him, should be read as a whole. Referring to the rate difference, he stated that the reference of 1924 is for the area And not for the rate. He further submitted that when the transactions are outside the books of account, one could not expect that there would be a signed document or receipt for the same.

We have heard the parties and considered their rival submissions. As to the requirement of recording satisfaction under section 158BD we may state that by

this section, what is required is the assessing officer has to satisfy himself that any undisclosed income belongs to any person other than the person with respect to whom search and seizure action has been taken, and thereafter he has to handed over such documents to the assessing officer who was having jurisdiction over the other person to proceed under section 158BC against such other person.

In the case of Amity Hotels (P) Ltd. (supra), the Delhi High Court held that there was no question of there being any reasons to believe if the officer has initiated action either under section 132 or under section 132A of the Act in respect of the person. It is section 158BD that calls upon the assessing officer to be satisfied himself before initiating it. From the records of that case, the Delhi High Court observed that it appears from the appreciation report that in almost all the cases, what issues needs to be investigated are indicated. Over and above, it was also indicated "some of it is verifiable from our record, but for the rest an indepth scrutiny is required to detect concealment". It was further said "Keeping in view the above observations and preliminary examination of the seized record, proceedings under section 158BD of the Income Tax Act are hereby initiated against the assessee-company, to carry out detailed investigation". In that context, the Delhi High Court held that satisfaction is required to be preceded by the investigation and not that the investigation is required to be preceded by the satisfaction.

Reference to Gujarat High Court decision in the case of Rushil Industries Ltd. v. Harsh Prakash (2001) 251 ITR 608 (Guj) and in the case of Priya Blue Industries (P) Ltd v. P. CIT (2001) 251 ITR 615 (Guj) which has followed the earlier decision in the case of Rushil Industries Ltd. (supra) was invited, the extract of which was quoted by the Delhi High Court as under:- "A bare reading of the provisions of section 158BD (quoted above) would show that for taking action under the said section, the assessing officer is merely required to be satisfied that the books of account or other documents or assets found in the search show undisclosed income of a person other than one against whom the search was conducted.

Merely because no books of account or other documents or assets were found in the search against the two above named persons it cannot be said that no action for alleged undisclosed income was called for against the petitioner under section

158BD .... This disclosure in the search operations against the two above named persons was a relevant material for forming of an opinion and satisfaction that the petitioner has not truly disclosed his income and the action under section 158BD was, therefore, called for." We should note that in paragraph 12 of this judgment, the court remarked, "however, it goes without saying that if there is any material, the department can take action in accordance with law. The writ petitions are disposed of accordingly". Thus this case, in our opinion, is not an authority that to proceed with a case under section 158BD, the reasons must be recorded in writing. On the contrary, it gives an impression that if the material is there the department can take action in accordance with law.

In the case of Janki Exports International (supra). Through S.P. Gupta (supra), the court reiterated that so far as section 158BD is concerned, the assessing officer has to be satisfied that there is undisclosed income. Upon such satisfaction, the assessing officer is required to forward the relevant documents, papers, etc. to the assessing officer who is required to assess the person in respect of whom the undisclosed income has been discovered. Once this is done, the person who is to be proceeded with under section 158BD and then section 158BC must be informed about the satisfaction of the assessing officer recorded and he must be given a reasonable opportunity to object the same. In that connection, it is also observed, "Satisfaction can be arrived on some material. That material would provide the reasonable satisfaction". Referring to the Supreme Court decision in the case of Dr. GKN Drive shafts (India) Ltd. v. ITO (2003) 259 ITR 191 (SC), the court directed the assessing officer to supply the reasons recorded for arriving at a satisfaction to the petitioner within a reasonable time upon the petitioner filing a return as required by the impugned notice.

Here also, the judgment is not an authority for recording of reasons but is an authority for supplying the reasons for arriving at a satisfaction.

We may refer to in this connection the provisions of section 271 (1) wherein also a similar language is used for levying penalty upon satisfaction of the assessing officer. It reads, "if the assessing officer or the CIT(A) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person.... (b) has

failed to comply with a notice under sub-section (1) of section 142....

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty", Under that section a case came up before five judges Bench of the Supreme Court in the case of CIT v. S.V Angidi Chettiar (1962) 44 ITR 739 (SC) wherein the counsel contended that penalty could not be imposed upon the assessee-firm because there was no evidence that the Income Tax Officer was satisfied in the course of any assessment proceedings under the Income Tax Act that the firm had concealed the particulars of its income or had deliberately furnished inaccurate particulars thereof. The court held, "The power to impose penalty under section 28 depends upon the satisfaction of the Income Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clause (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction. There is no evidence on the record that the Income Tax Officer was not satisfied in the course of the assessment proceeding that the firm had concealed its income. The assessment order is dated the 10-11-1951, and there is an endorsement at the foot of the assessment order by the Income Tax Officer that action under section 28 had been taken for concealment of income indicating clearly that the Income Tax Officer was satisfied in the course of the assessment proceeding that the firm had concealed its income." On a reading of the aforesaid judgment, it is clear that satisfaction before conclusion of the proceedings under the Act and not the issue of notice was conclusive of any step for imposing penalty is a condition for exercise of the jurisdiction and the court upheld the proceedings by observing "there is no evidence on the record that the Income Tax Officer was not satisfied in the course of assessment proceedings that the firm had concealed its income". The court also found that there was an endorsement at the foot of the assessment order by the assessing officer that action under section 28 has been taken for concealment of income and that indicated clearly that the assessing officer was

satisfied in the course of assessment proceedings that the firm had concealed its income.

In the case of *D.M. Manasvi v. CIT* (1972) 86 ITR 557 (SC), the Supreme Court again observed that clause (c) of sub-section (1) of section 271 says that action for taking proceedings for imposition of penalty arises if the Income Tax Officer or the Appellate Asstt. Commissioner is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. It is also to be shown that the Income Tax Officer or the Appellate Asstt.

Commissioner was so satisfied in the course of proceedings under the Act. In that case, the notice for levy of penalty was issued subsequent to the making of assessment order and in that context the Supreme Court opined that this fact would not show that there was no satisfaction of the Income Tax Officer during the assessment proceedings that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. It was observed that what is contemplated by sub-section (1) of section 271 is that the Income Tax Officer or the Appellate Asstt. Commissioner should have been satisfied in the course of proceedings under the Act regarding the matters mentioned in the clauses of that section. It is not, however, essential that the notice to the person proceeded against should have also been issued during the course of the assessment proceedings. Satisfaction, in the very nature of things, precedes the issue of notice. In that case, the Supreme Court found that the Income Tax Officer while making the assessment order for the assessment year in question held that Kohinoor Mills has wrongly to be a partnership firm and that the other alleged partners were simply name-lenders for the assessee. It was further held that Kohinoor Mills was the proprietary concern of the assessee and the income from that concern should be considered to be the income of the assessee. Notice was ordered to be issued for proposed penalty under section 271(1)(c) to the assessee "in regard to the concealment of and furnishing inaccurate particulars of income" from Kohinoor Mills. It was observed by the Supreme Court that what is contemplated by sections 271 and 274 of the Act is that there should be, prima facie, satisfaction of the Income Tax Officer or the Appellate Asstt. Commissioner in respect of the matters mentioned in sub-section (1) before he hears the

assessee or gives him an opportunity of being heard. The final conclusion on the point is as to whether the requirements of clauses (a), (b) and (c) of section 271(1) have been satisfied would be reached only after the assessee has been heard or has been given a reasonable opportunity of being heard. In that decision, Their Lordships quoted the observation from the decision of the five judges Bench of the Supreme Court in the case of S.V Angidi Chettiar (supra) as under : "The power to impose penalty under section 28 depends upon the satisfaction of the Income Tax Officer in the course of proceedings under the Act; it cannot be exercised if he is not satisfied about the existence of conditions specified in clause (a), (b) or (c) before the proceedings are concluded. The proceeding to levy penalty has, however, not to be commenced by the Income Tax Officer before the completion of the assessment proceedings by the Income Tax Officer. Satisfaction before conclusion of the proceeding under the Act, and not the issue of a notice or initiation of any step for imposing penalty is a condition for the exercise of the jurisdiction." On the contrary, we find a direct decision of Allahabad High Court in the case of Digvijay Chemicals Ltd. (supra) wherein the appeal was admitted on the following inter alia two questions :- "2. Whether the Deputy Commissioner of Income Tax, Amritsar, had lawful satisfaction as mentioned in section 158BD before handing over the books of account and documents to the assessing officer of the appellant? 2A. Whether such satisfaction is legally required to be recorded in writing?" "As regards the second question, we are of the opinion that there was sufficient satisfaction by the Deputy Commissioner of Income Tax, Amritsar, for handing over the books of account and documents to the assessing officer of the appellant. This matter has been dealt with in paragraph 22 of the Tribunal's order where it has been held that the Deputy Commissioner of Income Tax, Amritsar, was satisfied that the undisclosed income mentioned in the seized documents pertains to the appellant. We see no error in this finding. There is nothing in section 158BD that this satisfaction must be recorded in writing. It may be noted that wherever the Income Tax Act required recording of reasons before reaching a satisfaction it has specifically provided to this effect, e.g., in section 148(2)." Another case is of Gujarat High Court in the case of Rushil Industries Ltd. (supra) wherein the petitioner challenged the proceedings under section 158BC read with section 158BD by way of a writ petition under article 226 of the Constitution of

India. The Gujarat High Court observed at page 613 of the report as under :- ". . . A bare reading of the provisions of section 158BD (quoted above) would show that for taking action under the said section, the assessing officer is merely required to be satisfied that the books of account or other documents or assets found in the search show undisclosed income of a person other than one against whom the search was conducted.

Merely because no books of account or other documents or assets were found in the search against the two abovenamed persons it cannot be said that no action for alleged undisclosed income was called for against the petitioner under section 158BD. The expression "undisclosed income" had been defined to include income based on an entry in the books of account or other documents "which has not been or would not have been disclosed for the purposes of this Act". In our considered opinion, the definition of "undisclosed income" would include any entries in the books of account or other documents showing concealment of the real source of income as on the present case herein. Learned counsel appearing for the department is very right in his submission that the requirement of section 158BD is only a prima facie satisfaction by the assessing officer that in the search operation there is material to show undisclosed income of a person other than the one who is searched. From the nature of the proceedings undertaken in Chapter XIV-B containing special procedure for assessment of search cases, at the time of initiating action under section 158BD the assessing officer at that stage is not required to come to a firm or conclusive satisfaction, before issuing such notice as is sought to be urged on behalf of the assessee. The facts revealed in the search operations have been stated in the reply affidavit that one Royal Enterprises through the two abovenamed persons M.H. Shah and M.C. Shah were engaged in clandestine business of converting black money into white in the garb of bogus sales of ship breaking material of Alang.

The petitioner has been paid the purchase price by the two abovenamed persons having connection with Royal Enterprises. Certain disclosures were made by them with regard to the nature of the transactions they were engaged in. This disclosure in the search operations against the two abovenamed persons was a relevant material for forming of an opinion and satisfaction that the petitioner has

not truly disclosed his income and the action under section 158BD was, therefore, called for." Another Bench of Gujarat High Court has taken the similar view in the case of Priya Blue Industries P. Ltd. (supra) wherein it is observed as under "Initiation of proceedings under section 158BD of the Income Tax Act, 1961, against another person is not a separate and independent proceeding for which a separate jurisdictional fact has to be established. The proceedings under section 158BD against a person other than the person raided are part of the proceedings which commence with search under section 132 and culminate in proceedings under Chapter XIV-B of the Act. If at any stage, the assessing officer is satisfied that any undisclosed income belonged to some other person, similar notice is to be issued to such person also. The absence of an averment by the assessing officer about satisfaction arrived at by the assessing officer of the person raided would not vitiate the notice issued under section 158BD of the "other person". The issuance of notice under section 158BD to a person other than the person raided need not wait till the completion of the proceedings under section 158BC against such person." The court quoted with approval the aforesaid observation in the case of Rushil Industries Ltd. (supra). It was also observed, "(ii) That it was found that the petitioner had converted unaccounted income into legally accounted funds through the bank accounts maintained by M, the person raided and the petitioner was also found to have arranged a loan by providing cash and obtaining cheques through the bank accounts maintained by H. In view of the aforesaid material, the issuance of notice under section 158BD did not suffer from a non-application of mind or for want of any material on record. The issuance of notice was accordingly valid". Similar were the observations of the Gujarat High Court in the case of Premjibhai and Sons v. CIT (2001) 251 ITR 625 (Guj).

On a plain reading of section 158BD and the decisions referred to above, we are of the opinion that though satisfaction is necessary for proceeding with an assessee under section 158BD but there is no requirement that it should be recorded in writing. The record must show that prima facie about the satisfaction of the assessing officer and the final conclusion is to be reached only after the assessee has been heard and giving a reasonable opportunity of being heard. The page Nos.

24 of Annexure A-1 seized from 7, K.G. Marg, New Delhi clearly records the transaction of the assessee both in cash as well as by cheque. The said Annexure is reproduced hereunder for the sake of convenience. It may be noted here that the transactions of cheques and drafts are recorded in the books of the assessee and it is only the cash transactions shown in this Annexure which are not finding place in the books of the assessee. That page 24, in our opinion, is sufficient for arriving at the conclusion that the assessing officer was satisfied that there was undisclosed income belonging to the assessee within the meaning of section 158BD of the Act. In this case, the satisfaction note was recorded on this page by stating "I am satisfied that M/s.

Dynamic Universal P Ltd. needs to be proceeded with under section 158BD of the Income Tax Act, 1961.

Let us examine it from another angle. What section 158BD provides for is to hand over the books of account, other documents or assets seized or requisitioned by the assessing officer having jurisdiction over the person raided to the assessing officer having jurisdiction over the other person to whom they belong. The satisfaction is required for that purpose only. It is only an administrative action of the first mentioned assessing officer and not a judicial order or action and for that the indication of belonging to other person in the document seized is sufficient. The name of the assessee is finding place in these pages 23, 24 and 25 of Annexure A-1 regarding certain transactions of cheque as well as cash and, therefore, that would be the sufficient material for satisfaction of the first mentioned assessing officer to hand over the record to the other assessing officer. It is always open to an assessee to challenge the same and plead that the books of account, documents, etc. did not belong to him or they do not contain any undisclosed income of that person.

On merits, the main contention of the assessee is that except the availability of page 24 of Annexure A-1 exhibiting the name of the assessee, some calculation of interest and mention of some loss to be shared by the assessee and others, there is nothing on record to suggest or to support the version of the assessing officer that cash was received by the assessee over and above the cheque amounts

incorporated in the books of the assessee and also in the said documents. This is claimed to be dumb document without having any evidentiary value. The document/sheet of paper does contain the details of cheques received and these were found, recorded in the books of the two assessees and that may give an impression that document pertain to the assessee concerns or that if part of the transaction recorded in the documents are found to be true, the other part must also be true and in any case the documents connect the assessees with it.

Various statements were recorded. These are of Shri Devki Nandan Taneja; Shri Ravinder Taneja; S.K. Dewan; Dinesh Jain etc. Shri Devki Nandan Taneja during the course of search on 22-8-2001 stated that Palm Court Project was developed by M/s. Elite Promoters. The land was owned by M/s. Universal Dynamic Ltd. of M/s. Dewans; that the sharing was in equal proportion. Shri Kamal Bhawna and Shri Rattan Chand Taneja are beneficiaries of this project; that the estimate cost of this project was about 9 crores and they were expecting to sell at for 10 to 11 crore that page Nos. 23, 24 and 25 of seized Annexure A-1 although found from his premise, were lying in the office of Shri Rattan Chand Taneja, which is also situated in 7, K.G. Marg, N. Delhi; that these pages of Annexure A-1 were found from his bed room; that the Palm Court Project was undertaken by their company M/s. Elite Promoters (P) Ltd. ,in collaboration with M/s. Dynamic Universal Ltd. which was owner of the land; that their company invested in the construction as its share and the project was to be shared equally between the two companies; that Ravinder was looking after this project; that he had not dealt or been aware of financial aspects or transactions of either M/s. Elite Promoters (P) Ltd. or Palm Court Projects; and that when confronted with the fact as to why then the papers and calculations of cash consideration and cheque consideration in respect of Palm Court property undertaken by M/s. Elite Promoters (P) Ltd. and Dynamic Universal Ltd. lying at your residence at, 7, K.G. Marg and that Shri S.K. Dewan, the Director of assessee has also confirmed that he had dealt and negotiated for Plam Courts property, he still maintained that he had nothing to do with these financial transactions and stated that they could ask these questions from Ravinder Taneja, who is director in this company or from S.K. Dewan, who is director in assessee-company.

It was only later he submitted in writing as under: "I have gone through Page Nos. 23, 24 and 25, alleged to be in respect of Elite/Dynamic. In this connection, it is stated that I am not a Director in M/s. Elite Promoters (P) Ltd. My nephew Mr. Ravinder Taneja is a Director in the said company. As far as the transaction with Mr.

Dinesh Jain is concerned, the same has been negotiated in my office in the presence of Mrs. Dewan along with Mr. Ravinder Taneja. At the time of search itself, it was stated by me that my brother Shri Rattan Chand had undergone open heart surgery about 5-6 days back and his office was lying open when I picked up these papers from his office and had kept them as such in my telephone diary without going through them, thinking that these papers are printouts which may be necessary for him in respect of the transactions which he might be proposing. In view of the aforesaid, though these documents were found from me but actually do not belong to me. Before making this statement, I have discussed with Shri Rattan Chand and Mr. Ravinder Taneja and they have stated that the said papers does not pertain to them. Mr. Rattan Chand has also denied any knowledge in respect of the said print outs since none of the print outs were available when he had gone for open heart surgery. It is thus evident that none of the print outs were within the knowledge of the management of the company and none have been found either from their custody or control. It is thus stated that these print outs are planted as the same have not been obtained from our computers /printer, which have been seized from our office/residence and are still in your custody. It is submitted that the fact of the matter is that we have executed a Collaboration Agreement with Dynamic Universal Ltd. for the development of their land at Gurgaon. The Collaboration Agreement was approved by Appropriate Authority. As per the Collaboration Agreement, M/s. Dynamic Universal Ltd. are the registered owner of the land at Gurgaon and M/s. Elite Promoters (P) Ltd. were to bear the total cost of construction on the entire project and in lieu of this both M/s.

Dynamic Universal Ltd. and M/s. Elite Promoters (P) Ltd. were entitled to the sale proceeds in the ratio of 50: 50. All the sale transactions were to be jointly negotiated by M/s. Dynamic Universal Ltd. and M/s.

Elite Promoters (P) Ltd. There was sale of property jointly by both the parties to Mr. Dinesh Jain and his associates and respective sale deeds were executed. We have fully and completely recorded the entire cost of construction and the sale price on execution of sale deeds as and when the payments were received. On close scrutiny of the said sheets it will be seen that there is insertion of certain cash about which I have absolutely no knowledge and it is for this reason that the document appears to have been fabricated and planted. In view thereof, the document though purportedly is in respect of M/s. Elite Promoters (P) Ltd. and M/s. Dynamic Universal Ltd., however, the same is not pertaining to transactions of M/s. Elite Promoters (P) Ltd. or M/s.

Dynamic Universal Ltd. It may further be added that the print out allegedly found and alleged seized from the premises is unsupported by any floppy or any other data found from computer and as such, on the basis of mere unsigned printout, it cannot be held that they represent the transactions pertaining to M/s. Elite Promoters (P) Ltd. or M/s.

Dynamic Universal Ltd. In case, you have any adverse material to conclude that they belong to M/s. Elite Promoters (P) Ltd. or M/s.

Dynamic Universal Ltd., you may kindly confront the same." Statement of Shri Ravinder Taneja was recorded on 14-10-2003 after the notice has been issued to the assessee under section 158BD and it seems that no question with regard to any entries in the said Annexure was put to him. He stated that Shri Dinesh Jain has purchased property developed by M/s. Elite Promoters (P) Ltd.; that a part of property comprising ground and 3rd floor were sold to Shri Dinesh Jain and its associate concerns for a consideration of 2,40,00,300 (Two crore forty lakhs and three hundred). He also stated that he did not know any person by the name Vipin Sharma. He was also asked question about the claim of loss relating to the sale of some farm house and that what prevented him to deposit these cheques not on and around date those cheques were issued and received by him in month of April and May, 2000 but to deposit in his bank A/c only after 15-8-2000 and his answer was that the said paper on which this significant date is mentioned is not related to any of his concern. He also denied any dispute mentioned in the paper regarding

any farm house and stated that they have not sold any farm house to him or any of his concern. Regarding depositing of cheques he stated that these cheques were received by me on the condition that the same will be deposited only after reconfirmation and were deposited when he got reconfirmation.

Statement of Shri Dinesh Jain was recorded under section 131 at New Delhi in the case of Elite Promoters P. Ltd., M/s. Sona International Ltd., Shakti Overseas (P.) Ltd. and M/s. Dynamic Universal (P.) Ltd., on 24-3-2003 and he stated he had purchased some portion of property at Gurgaon from M/s. Elite Promoters (P.) Ltd. and M/s. Dynamic Universal (P.) Ltd. That he had also purchased some portion of property at B-38, Conn. Place, New Delhi from M/s. Sona International and Shakti Overseas (P.) Ltd. He was shown page Nos. 4-7 of Annexure A-1, which included transaction mainly include cash as well as cheque payments but he stated that the papers he was seeing for the 1st time and this statement of account shows that payments by cheque have been made through Vyasya Bank Ltd. In this connection it was stated that and factual information. He said that he do not know who these Bipin Sharma and Lalit Modi are and that he never heard or met these persons. Now in the light of the above, the question of making any cash payment loose its significance as nothing written on this paper is factual. He stated that he had not made any cash payment on purchase of these properties and these papers seems to be fabricated and do not belong to the properties purchased by him; in connection with pages 23, 24 and 25 he stated that he was seeing these papers for the 1st time; that he had not made any cash payments to M/s. Elite Promoters or Dynamik Universal for purchase of some portion of property at Gurgaon; that he had made payment for purchase of property by account-payee cheque. He further stated that he had never sold any farm house to Vipin Sharm or Taneja Group. No payments through account-payee cheques and no cash payment was even made for purchase of these properties and that how was it possible that after execution of sale deed any amount would remain outstanding with the builder/owner and this paper seemed to be fabricated one and did not belong to him.

Statement of Shri S.K. Dewan, Director of Dynamic Universal (P.) Ltd. was recorded on oath under section 131 on 27-5-2003 at N. Delhi in the case of M/s.

Dynamic Universal Ltd. He stated that they had made collaboration with Elite Promoters, (P.) Ltd. for construction of our premises at Gurgaon (20/4, Saukhrali Chowk). The Elite Promoters(P.) Ltd. is a Group Company of D.N. Taneja that is how they were connected with it. He was shown the page No. 24 of Annexure A- 1 and he stated that the paper did not belong to them and he did not know who had prepared the paper for what purpose; that no such cheques have been received by my company and whatever the payment we received from any buyer is properly recorded in our books of account and he categorically denied that they had not entered into any cash transactions except-shown in our books of account. As regards entries like adjustment against the 1/3rd loss of farm house, "H T paid by Dynamic" "Security lying with Dynamic" and "amount to be received from you" he stated that the paper did not pertain to them and no such transaction regarding farm house had been made and regarding security lying with Dynamic they have paid through account-payee cheque and the same has been properly recorded in their books of account and they had not paid Rs. 8 lakhs as H T for Dinesh Jain. He stated that before imputing this document the authenticity of the document has to be tested and that if somebody writes some figures and it is found from his premises which does not belong to him. There has to be some person who has to come forward and say that this document pertains to me. It was not that on the basis of piece of paper to explain the figures written by person whose identity is not known (unsigned and computer generated sheet) if the identity of the person is known than he would like to examine such person to find out the circumstances under which the same was written.

As per the special provisions for making block assessment under Chapter XIV-B in the case of search and seizure, section 158BC(b) requiring an assessing officer to proceed to determine the income of the assessee enrolls the provisions of sections 142, 143(2), 143(3), 144 and. 145 so far as they may apply. Section 142 contains the provisions of enquiry before assessment. Section 143(2) deals with furnishing of material to support the claim of loss, exemption, deduction, allowance or relief and if the assessing officer wants to ensure that there was no understatement of income or claim of excessive loss, he may require the assessee to produce any evidence, to support his action. The crucial section is section 143(3) which requires the assessing officer to pass order after taking into

consideration all the relevant material which he has gathered. His order, therefore, has to be on the material gathered and not sans material. An unsigned computer sheet without any supporting direct or circumstantial evidence may be a dumb document and may not be material for making the assessment.

In the case of *Dhakeswari Cotton Mills Ltd. v. CIT* (1954) 26 ITR 775 (SC), the Supreme Court though agreed with the Solicitor General when he said that the Income Tax Officer is not fettered by technical rules of evidence and pleadings, and he is entitled to act on material which may not be accepted in a court of law, but the Supreme Court held that there the matter ends, because it is equally pleaded that in making the assessment under sub-section (3) of section 23 of the Act, the Income Tax Officer is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. It is also held that there must be something more than pure suspicion to support the assessment under section 23(3). Various cases relied upon by the learned Counsel also suggest so.

The case of the revenue, however, that pages 23 and 25 of Annexure A-1 is not a dumb document. It contains the actual receipt of Taneja group on behalf of the assessee in respect of the sale of properties at Palm Court Project at Gurgaon and other family members as well as HUFs and companies and that the page is a statement of account of Shri Dinesh Jain giving the details of payments received by the assessee from him and the name of the assessee and Shri Dinesh Jain are mentioned on the aforesaid paper is though not fully supported by direct evidence but if seen with reference to other circumstance and the material/fact it clearly establishes the case of the revenue that cash was also received by the assessee over and above the cheque receipts appearing in pages 23 and 25 of Annexure 'A' and accounted for by the assessee in its books of account.

In the case of *Sumati Dayal* (supra), a case came up before the Supreme Court regarding receipts from winning tickets from various racing clubs on the basis of winning tickets presented by the assessee. The dispute was, were they really winning of the appellant from the races? In that context it was observed that "this raises the question whether the apparent can be considered "as the real". A.

reference was made to the earlier Supreme Court decision in the case of Durga Prasad More (supra) at pages 545 and 547 and it is observed that "As laid down by this Court, the apparent must be considered the real until it is shown that there are reasons to believe that the apparent is not the real and that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities". The Chairman of the Settlement Commission in that case in his dissenting opinion has laid emphasis on the fact that the assessee has produced evidence in support of the credit in the form of certificate from the racing clubs giving the particulars of the crossed cheques for payment of the amounts for winning of jackpots, etc. The Chairman has rejected the contention regarding lack of expertise in respect of the appellant and has observed that the expertise is the last thing that is necessary for a game of chance and anybody has to go and call for five numbers in a counter and obtain a jackpot ticket and that books containing information are available which are quite cheap. This approach of the Chairman was held to be not correct one and the court observed as under : "This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities. The Chairman of the Settlement Commission has emphasised that the appellant did possess the winning ticket which was surrendered to the Race Club and in return a crossed cheque was obtained. It is, in our view, a neutral circumstance, because if the appellant had purchased the winning ticket after the event she would be having the winning ticket with her which she could surrender to the Race Club. The observation by the Chairman of the Settlement Commission that "fraudulent sale of winning tickets is not an usual practice but is very much of an unusual practice" ignores the prevalent malpractice that was noticed by the Direct Taxes Enquiry Committee and the recommendations made by the said Committee which led to the amendment of the Act by the Finance Act of 1972, whereby the exemption from tax that was available in respect of winnings from lotteries, crossword puzzles, races, etc., was withdrawn.

Similarly, the observation by the Chairman that if it is alleged that these tickets were obtained through fraudulent means, it is upon the alleged to prove that it is so, ignores the reality. The transaction about purchase of winning ticket takes

place in secret and direct evidence about such purchase would be rarely available. An inference about such a purchase has to be drawn on the basis of the circumstances available on the record. Having regard to the conduct of the appellant as disclosed in her sworn statement as well as other material on the record an inference could reasonably be drawn that the winning tickets were purchased by the appellant after the event. We are, therefore, unable to agree with the view of the Chairman in his dissenting opinion. In our opinion, the majority opinion after considering the surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim about the amount being her winnings from races is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably and that the finding that the said amounts are income of the appellant from other sources is not based on evidence." On consideration of rival submissions we notice that the commercial flats at the ground floor and 3rd floor, sold to Dinesh Jain group were found to be at the price lower than the price of other commercial flats on the same floor or other floors. The rates mentioned in Memorandum of Understanding filed in respect of booking advances received from M/s.

Antriksh Land Promoters P. Ltd. M/s. Shree Jaganath Securities (P) Ltd. both at the rate of 1,400 per sq.ft. that too for 5th floor, M/s. Lal Construction (P) Ltd. at the rate of 1,150 per sq.ft. for 7th floor and M/s. Chandra Advertising (P) Ltd. at the rate of 1,250 per sq.ft. for 6th floor as against Rs. 1,000 per sq.ft. for ground floor and Rs. 900 per sq.ft. for 3rd floor in the case of sales to Dinesh Jain. It is when the commercial value of property situated at ground floor in any commercial complex/ Malls being best suited for operating a show room or a shop can even be twice or thrice the rate of property situated at first floor of the same commercial complex which reduces as one move towards upper floor i.e. 1st floor to seventh floor. In the case of Dinesh Jain, surprisingly, the position is reversed i.e. the rates of ground floor commercial flats sold to Dinesh Jain group was g Rs. 1,000 per sq.ft. i.e., even less than the rates of 7th floor flats sold to other parties at the rate of Rs. 1, 150 per sq.ft. In absence of any explanation, therefore, the rates reflected for sale of commercial flats to Dinesh Jain group may give an impression of highly understatement and this may be a factor confirming the fact that, Dinesh Jain

group has also given other payments over and above the cheque payments as contained in the seized document i.e., page Nos. 23 and 25 of Annexure A-1, and a further inference that these pages belong to the assessee-company and may not be dummy documents. But the assessee has never been given these details nor was asked to explain the same.

That Shri D.N. Taneja seems to have made a wrong statement and he was in fact the main controlling person of Taneja group including the Palm Court Project at Gurgaon and that fact is evident from: "(1) that in all the statements recorded by DDIT (Inv.) on 17-9-2001, 24-9-2001, 24-9-2001 and by DCIT, CC-18 on 27-5-2003, Shri S.K. Dewan, Director of appellant-company has admitted again and again that all the deals regarding sale of flats of Palm Court Project were undertaken /settled only by Shri D.N. Taneja and on selling prices Shri Dewan also had some dispute with Shri D.N. Taneja. Besides this, it was also admitted that both cheque as well as cash payments were received by him only through Shri D.N. Taneja. Thus establishing the fact that Shri D.N. Taneja was very much involved in the Palm Court Project; (2) that though initially Shri D.N. Taneja has denied of having any connection with pages 23 to 25 of Annexure A-1 and with Palm Court Project, however, later on, vide his reply dated 6-2-2002 to DDIT (Inv.), he admitted that this deal was made through him stating that: "As far as the transaction with Mr.

Dinesh Jain is concerned, the same has been negotiated in my office in the presence of Mr. and Mrs. Dewan along with Mr. Ravinder Taneja.";

(3) that similarly, page No. 2 of Annexure A-54 seized from 9, K.G.Marg, New Delhi which is a duly signed letter from Shri Dinesh Jain to Shri D.N. Taneja requesting him to resolve the long pending issues related to purchase of Palm Court Project; and

(4) that the reference of Shri Vipin Sharma, who was involved in materializing all the deal with Dinesh Jain group, has also been found on page No. 25 of Annexure A- I seized from the residence of Shri D.N. Taneja. Thus, establishing the fact that Shri D.N. Taneja was the main controlling person of this project." That wrong statements were also given by Shri Ravinder Taneja, Director of appellant-

company on 14-7-2003 before the assessing officer is evident from the fact that he has given incorrect answers to certain questions which are apparently contradictory to material on record, namely "(1) Shri Ravinder Taneja vide Q. No. 6 of his statement before the assessing officer has stated that "I do not know any person named Vipin Sharma" whereas almost all the "Agreement to sell" and "sale deeds" executed in favour of Dinesh Jain group were duly witnessed by Shri Vipin Sharma S/o. Shri Trilok Nath. Further, on examining the Agreement to Sell, Shri Vipin Sharma was also found having his office in the name of M/s. SVS Developers (P) Ltd. at 807, Prakash Deep, 7, Tolstoy Marg, New Delhi- 1;

(2) On perusal of page Nos. 4 to 7 of Annexure A- I seized from 7, M.G. Marg, New Delhi reflecting therein the cash receipt of Rs. 3,01,50,000, it is seen that the payments were mainly through Shri Vipin Sharma between May 20 to June 22;

(3) Vide Q.No. 2 of Shri S.K. Dewan's statement recorded on 24-9-2001 before the DDIT (Inv.), Shri Dewan identified Shri Vipin Sharma as a broker working for Shri D.N. Taneja and residing at Greater Kailash-1.

Further, during the course of appellate proceedings, he supplied the address of Shri Vipin Sharma as M/s. SVS Propmart (P) Ltd. 18, Jacaranda Marg, DLF City-II, Gurgaon, Haryana". But he was not asked to explain the existence of the documents at pages 23, 24 and 25.

The fact that the entries of cheque payments appearing on this seized paper, which have been received by the appellant are in total agreement with the entries appearing in the appellant's books of account cannot be taken lightly and it may not be possible to say that the entries of cheques are correct but that of cash payments are incorrect. Therefore, this seized document may not be a dumb document but very much relates to the appellant-company.

Further another most crucial material noted by the CIT(A), which according to him clearly establishes that the execution of Agreements to Sell in respect of sale of ground and 3rd floor properties to Dinesh Jain group in Palm Court Project was entered into not on the date specified there in the Agreement to Sell i.e. 10/11-4-2000 but on a much later date, may be on 15-8-2000 i.e. the date mentioned on

page Nos. 23, 24 and 25 of Annexure A-1, is the para 6 reading : "In terms of the collaboration agreement the builder caused a plan bearing No.1155 /ME dated 3-9-1997 to be sanctioned by the Municipal Committee, Gurgaon for construction of the said Office- cum-Commercial Complex on the said plot of land a Completion Certificate bearing No. 2363 dated 11-5-2000 was issued by the Municipal Committee, Gurgaon thereof." If the Agreements to Sell were actually prepared on 10/11-4-2000, then how a date later than that i.e. 11-5-2000 can appear in these Agreements to Sell with Dinesh Jain group? It may be that these Agreements were executed on a much later date i.e. on or after 15-8-2000 the date mentioned in pages 23, 24 and 25 of Annexure W. This view would get support from the fact that not even a single cheque issued in compliance to Paragraph 2 of page 4 of these Agreements to Sell i.e.

Rs. 2,00,000 was to be given at the time of signing this Agreement, was deposited into the appellant's bank account in the month of April, 2000 to August, 2000. The earliest date of depositing the cheque was 4-9-2000. Further, all Form No. 34A, needing clearance for sale of property were either filed on a date later than 15-8-2000 or issued by the Income Tax department in the month of September, 2000. Therefore, it seems that the preparation of Agreements to sell dated 10/11-4-2000 was an arranged affair and the agreements might have actual been executed on a later date and thus, confirming that the date appearing on page Nos. 23 and 24, i.e. 15-8-2000, was the date on which both the parties agreed to purchase the properties at ground and 3rd floor of Palm Court Project.

We do not find any answer to the above mentioned issues and the conclusion of CIT(A) is without giving proper opportunity of being heard and explaining the material relied upon by him, namely, why the selling price of ground floor commercial flats sold to Dinesh Jain group was lower than the selling price of commercial flats available at 7th floor. Is it so in other commercial complexes; how a date later than the date of execution of Agreements to Sell i.e. 11-5-2000 is appearing in the Agreements to Sell prepared on 10/11-4-2000; why the condition specified in Paragraph 2 of page 4 of these Agreements to Sell i.e. issue of cheque of Rs. 2,00,000 at the time of signing the agreement was not acted upon; why wrong statements was given by Shri Ravinder Taneja, Director of M/s. Elite

Promoters (P) Ltd. that he did not know any person named Shri Vipin Sharma whereas all the Agreements to Sell of Dinesh Jain group was duly witnessed by him; and why Shri D.N. Taneja has given wrong statement by stating that he is not involved with Palm Court Project whereas Shri S.K. Dewan, Director of appellant-company has confirmed that the deals of Palm Court were executed by Shri Taneja.

In the present case, surprisingly however, the assessing officer has concluded that the assessee has sold Palm Court property to Shri Dinesh Jain at a total consideration of Rs. 7,74,29,500 out of which only Rs. 2,40,00,300 was accounted for in the books and balance Rs. 5,34,29,200 was received in cash which was not entered in the books of account and including interest thereon of Rs. 15,06,830 he added a sum of Rs. 5,50,36,030 in the case of the assessee even after examining Shri Dinesh Jain, the cash receipt from whom was denied by D.N. Taneja and also by Ravinder Taneja who denied of having any transaction in any property of Farmhouse or having any loss incurred with respect thereto.

It is also not on record as to what has happened in the case of Dinesh Jain and his group case for assessment of the alleged payment in cash by them. CIT(A) gives certain findings but without giving an opportunity to the assessee to explain the same. He quotes certain examples of sales at higher rates but again without confronting the same to the assessee and to explain. Shri Ravinder Jain was not put to question about the document containing the details of cash and cheques payments and other notings stated to have been taken by D.N. Taneja from his drawer, the document on which case of the revenue is heavily stands. These are all things to be seen and the assessee has to be given proper opportunity to explain the material used against him before taking a final decision. We accordingly set aside his order and also that of the assessing officer and remit the matter back to his file for consideration of the issue afresh after affording a reasonable opportunity to the assessee to explain the matter and the material being used against him.

In the result, the appeal of the assessee is allowed for statistical purposes.