

Chitra Devi Vs. Asstt. Cit

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Court : Rajasthan

Decided On : Sep-17-2002

Reported in : (2002)77TTJ(NULL)640

Appeal No. : IT(SS)A No. 7/Jp/1997 17 September 2002 Block Period 1 April 1985 to 5 January 1996

Appellant : Chitra Devi

Respondent : Asstt. Cit

Advocate for Pet/Ap. : U.C. Jain, *for the Assessee* K.P. Meena, *for the Revenue*

Judgement :

ORDER

S.R. Chauhan, J.M.

As the above appeals are inter-related and involve common points, so we are disposing them of by this common order for the sake of convenience.

2. ITSSA No. 7, 4 and 3/Jp/97 are appeals by three assessees, namely, Smt. Chitra Devi (hereinafter referred to as the CD), Shri Prem Prakash Soni (hereinafter referred to as PPS) and Shri Raj Kumar (hereinafter referred to as RK) for the block period 1-4-1985, to 5-1-1996, and are directed against three separate assessment orders each dated 30-1-1997, passed by assessing officer in their respective cases, under section 158BC.

3. We have heard the arguments of both the sides and also perused the records including the written statement of assessee furnished on record before us.

4. First we take up ITSSA Nos. 7/Jp/97 being in the case of CD ground No. 1 disputes the legal validity of the assessment order and the same being violative of principles of natural justice. The learned authorised representative of assessee has contended that the assessment order is bad in law for the reason that the reasons to believe that the assessee possesses undisclosed income/asset so as to justify action under section 132, not disclosed to the assessee. He has contended that at the request of assessee's authorised representative the Tribunal had issued directions to the Departmental Representative for producing the same before the Tribunal for perusal but the same were not shown to the Tribunal, nor to the assessee. He has cited *Kusumlata v. CIT* , in his support. He has also cited *Dr. A.K. Bansal v. Asstt. CIT* , *Janak Ram Sharma v. Director of Inspection (Inv)* , and *ITO v. Lakmani Mewaldas : [1976]103ITR437(SC)* . He has contended that if there are no reasons having rational nexus with the belief then the entire proceedings deserve to be quashed.

5. In the written statement of assessee it has been contended that there is no material with the Director to form a belief that any of the conditions laid down in section 132(1) exists in the case of the assessee- appellant. It has been contended that at no stage, prior to search, any notice under section 139(2) or 142(1) or under section 131 was issued to the assessee. It has been contended that there is no basis to form a belief that the assessee will not produce books or documents on issuance of notice under sections 139(2), 142(1) or 131. It has also been contended that the third condition laid down in section 132(1)(c) also cannot be said to have existed in the case of assessee inasmuch as the assets found at the time of search nullify such belief of existence of any undisclosed income/asset. Reliance has also been placed on *Southern Herbals Ltd. v. Director of Income Tax (Inv.) & Ors. : [1994]207ITR55(KAR)* . It has been contended that when there is no material to form belief that the conditions laid down under section 132(1) exist, the entire proceedings as also the consequential assessment order passed under section 158BC(c) are, liable to be quashed.

6. As against the above, the learned Departmental Representative of revenue had contended that the reasons to believe were available with the director and the conditions laid down in section 132(1) existed. However, as regards the furnishing of the reasons before the Tribunal for the Tribunal's perusal, the learned authorised representative expressed his helplessness, submitting that he had not received the same from the higher authorities, though he had specifically written to his higher authorities with the request for making the same available for the purpose. He has contended that a similar issue also arose before the Jaipur Tribunal in the case of Kailash Chand Sharma v. Dy. CIT in IT(SS)A No. 53/Jp/2000 for assessment year 1998-99, in 25 TW 349 (Jp) wherein also the reasons of belief were not produced, before the Tribunal, but, in that case, the Tribunal did not draw any adverse inference against the department. He has also contended that the validity of search has not been challenged by assessee. He has contended that the validity of search cannot be decided by the Tribunal. He has cited Pooranmal v. Director of Inspection (Inv.) & Ors. : [1974]93ITR505(SC) .

7. In rejoinder, the learned authorised representative of assessee has contended that in ground No. 1 the assessee has challenged the assessment order which is bad because of there being no reasons. to believe. He has contended that there is no material on record to believe that any of the conditions laid down in clauses (a), (b), (c) of section 132(1) existed. He has contended that search cannot be ordered merely on the basis of suspicion. He has contended that the assessee was never assessed to tax before search. He has contended that the Tribunal is competent to examine whether the reasons exist or not. He has contended that when the department is refusing to produce the reasons before the Tribunal for the Tribunal's perusal then adverse inference has to be drawn that there do not exist any reasons for the required belief.

8. We have considered the rival contentions, the relevant material on record, as also the cited decisions. In (2002) 73 ITD 49 (All) (supra), it has been held that when the assessee challenges the validity of search and the satisfaction of conditions or existence of circumstances specified in clauses (a), (b) or (c) of sub-section (1) of section 132, the Tribunal has power/jurisdiction and is also bound to decide the issue by calling for record of authorities authorizing search, and can

satisfy itself with regard to the authorization having been issued in accordance with law.

9. In (supra), the Hon'ble Rajasthan High Court has held that though the court cannot go into the sufficiency of the information or the material, but the court can see as to whether some material in fact existed or not for coming to the opinion and to have the reason to believe that any person is in possession of any undisclosed income/property. In the said case, the Hon'ble High Court held that there was no reasonable information on the basis of which authorization under section 132(1) could be issued, and accordingly held the authorization for search to be not valid.

10. In (supra), the Hon'ble Punjab and Haryana High Court has held that under section 132 the competent authority is empowered to permit the 'authorised officer' to search a premises but there are certain conditions precedent and one of the conditions is that the competent authority must have reason to believe that the conditions, as stipulated in clauses (a), (b) and (c) of section 132(1), exist. It is only then that it can authorize the search of premises and seizure of documents.

11. In : [1994]207ITR55(KAR) (supra), the Hon'ble Karnataka High Court has held that the scope of writ jurisdiction, while examining validity of authorization for search and seizure, is limited to whether belief formed by authority issuing authorization was reasonable belief. It was held that disclosure of material or information to persons against whom action is taken is not mandatory; and it would be sufficient if revenue places relevant material before court for it to examine its relevancy.

12. In : [1974]93ITR505(SC) (supra), the Hon'ble Supreme Court held that the search and seizures were not vitiated by any illegality. However, it was on a factual appreciation in that case and it was not a general proposition of law.

13. In the case of Kailash Chand Sharma (supra), the fact-situation was that the ground No. 1 disputed the validity of search operation on the ground that there was no material to lead to the formation of belief that the appellant's case fell in any of the three categories mentioned in section 132(1) of the Act The Tribunal,

however, rejected the ground for the reason that it did not arise from the order of the Commissioner (Appeals). Obvious as it is, the Tribunal did not decide the issue on merits, simply rejected the ground and did not entertain it for considering the same on merits for the reason that it was not arising from the order of the Tribunal. As such, the department gets no benefit from the cited decision.

14. From the above discussion of various judgments the legal position that emerges is that the court/Tribunal has the jurisdiction, as also the duty, to examine the validity of the authorization for search when the same is challenged before the court/Tribunal, and then the court/Tribunal can, on perusal/examination of the same, adjudicate as to whether there did exist or not, the required condition precedent for issuance for authorization of search.

14A. In the instant case, it may be noted that the assessee has challenged the validity of the assessment order as being bad in law and in facts and as being violative of the principles of natural justice, as agitated in ground No. 1 raised before us, and in the contention raised before us during arguments that there was no reason for belief that the assessee will not produce the books of accounts or other documents or has undisclosed income in possession. At assessee's request the Tribunal specifically directed the Departmental Representative to furnish the record/reasons before Tribunal for perusal and it is contained in Tribunal's order-sheet dated 12-10-2001. The appeals were adjourned to 21-12-2001, for the purpose but on the adjourned date, that is on 21-12-2001, the required record could not be produced by the Departmental Representative for perusal of the Tribunal and again adjournment was sought by them. The case was then adjourned to 12-2-2002, but on that date again the Departmental Representative sought adjournment for another date submitting that the arguments will be made by senior officer/representative. Accordingly, at the request of the junior Departmental Representative, the case was adjourned to 19-3-2002. The arguments in this matter were heard on 19-3-2002, and 27-3-2002, but the learned Senior Departmental Representative did not produce the record containing the reasons, postulated under sections 132(1)(a), (b) and (c); and the learned Senior Departmental Representative showing his helplessness of furnishing the record before the Tribunal for perusal, expressed that he had not received the same from

his higher officers. As such, when despite the directions of the Tribunal, the department has not been able to produce the record containing the reasons for formation of belief as postulated under section 132(1), the only inferential conclusion, that the Tribunal may, irresistibly but appropriately draw, is that in fact there did not exist reasons with the competent authority to entertain belief reasonably and honestly regarding the satisfaction of conditions as postulated under clauses (a), (b), (c) of section 132(1) of the Act, and so the authorization for search was not valid. In turn, the consequential block assessment is also held to be legally not valid and so is liable to be quashed.

15. Now we take up the other grounds of appeal on merits. Ground Nos. 2(i), (ii) and (iii) dispute the passing of the assessment order by the assessing officer without the assessee having been allowed an opportunity of being heard before granting of approval to various additions by Commissioner. The learned authorised representative of assessee has contended that the learned Commissioner granted approval to assessing officer for making various additions but before granting approval, the learned Commissioner did not give an opportunity of being heard to the assessee. He has contended that the opportunity of being heard before approval to the assessee was necessary for the assessee to express the assessee's case, As against this the learned Departmental Representative of revenue has contended that no such opportunity of being heard is necessary to be given to the assessee by Commissioner before granting approval.

16. We have considered the rival contentions. In our considered opinion, there being no statutory provisions for affording opportunity of being heard to the assessee by Commissioner/Director (or Joint Commissioner/Joint Director) before granting approval to the assessing officer for passing assessment order for the block period, as is evident from the proviso to section 158BG which provides for the said previous approval, and there being ample opportunity to the assessee-appellant for contesting various additions made in the block assessment before the appellate authority/Tribunal, and explaining the assessee's position there and thus there being no material prejudice to the assessee for non-affording of opportunity of being heard to the assessee before granting of the said previous approval by the Commissioner/Director and there also being statutory time-limit for

framing of the assessment for the block period which may also get affected by providing the aforesaid opportunity of being heard before granting previous approval, it cannot be held that there is legal requirement for affording an opportunity of being heard, before granting previous approval by the Commissioner/Director, to the assessee. In such a situation, non-granting of opportunity of being heard to the assessee, in the instant case by learned Commissioner before granting approval to various additions made in the block assessment, does not result in any infirmity, legal or otherwise, in the block assessment, so. as to shake its validity. We, therefore, decide this ground against assessee-appellant.

17. Now we will discuss other grounds on merits in the order in which the same have been summarized/serialized in the chart given on pp. 149 and 150 of the paper book (hereinafter referred to as the PB) as has also been argued by the learned authorised representative of assessee. Serial No. 1 on page 149 of PB pertains to ground No. 14 (i) which disputes the addition of Rs. 44,745 on account of gold ornaments net weight 95 gms. found during search. The learned authorised representative of assessee has contended that these gold ornaments were in the process of manufacturing and were in the possession of assessee's younger son, PPS, who does the job work of manufacturing gold ornaments and resides in the same house and these ornaments were brought by him at the residence for security purposes. He has contended that the fact of these ornaments being in the possession of PPS for job work is also evident from the Panchnama/inventory placed on page 3 of the PB. He has contended that the assessee Smt. CD, does not do any job work of manufacturing ornaments and does only tailoring work and she has not claimed any income from job work of manufacturing ornaments. As against this, the learned Departmental Representative of revenue has supported the order of assessing officer contending that the said gold ornaments weighing 95 gms. were found during search and the assessee could not explain the same. He has contended that the assessing officer rightly made the addition on account of investment in unexplained gold ornaments.

18. We have considered the rival contentions as also the relevant material on record. From the perusal of statements of assessee CD and of her two sons, R.K. and PPS, as placed on pages 7 to 11, 12 to 13, 14 to 16 of PB, it is clear that the present assessee (CD) does only tailoring work and does not do any other work nor job work of manufacturing ornaments whereas PPS does the job of manufacturing gold ornaments and setting of stones and does not have any shop of his own. As regards PPS having not stated anything about the gold ornaments weighing 95 gms. in his statement mentioned above, the learned authorised representative of assessee has contended that they have answered only the questions put to them and no specific question regarding this having been put to PPS he has not stated the same. In our considered opinion, considering all the facts and circumstances of the case, and in particular the fact that PPS does the job work of manufacturing gold ornaments and does not have a shop of his own and that he resides in the same house with the present assessee, CD, who does not do the job work of manufacturing gold ornaments but does only tailoring, and also the fact that these gold ornaments were found in the possession of PPS and it was specifically stated at the time of preparation of inventory also that these were in his possession for job work, that is, for fixing of stones and repairing, as is evident from Panchnama placed on page 3 of PB, the addition made by assessing officer is not justified and uncalled for. We, therefore, delete this addition.

19. Serial No. 2 on p. 149 of PB pertains to ground No. 14(ii) which disputes the addition of Rs. 39,000 on account of unexplained silver ornaments and utensils. The learned authorised representative of assessee has not pressed this ground submitting that no specific addition has been made by assessing officer in respect of this silver in final computation of income. This ground, having not been pressed by the learned authorised representative of assessee is accordingly dismissed.

20. Ground No. 12(i) disputes the addition of Rs. 3,75,500 made in assessment year 1993-94 on account of investment made in the residential house. Ground No. 11(iii) disputes the addition of Rs. 1,10,000 made on account of investment in purchase of plot in assessment year 1992-93. The learned authorised representative of assessee has contended, in his written statement, that no document relating to purchase of plot and construction of house was found as a

result of search and so the issue relating to the investment in purchase of plot and in construction of house is outside the scope of proceedings under section 158BC, and so the entire addition is liable to be deleted. In the alternative, the learned Departmental Representative of revenue has contended that the registered valuer has estimated the cost of construction at Rs. 3,81,000 based on Rajasthan PWD rates which has to be preferred to the DVO's valuation at Rs. 4,67,000 based on CPWD rates, in view of the decision of Hon'ble Rajasthan High Court in the case of CIT v. Hotel Joshi . It has also been contended, in the written statement of assessee, that the source of investment was Rs. 2,02,5007 from sale of gold ornaments, Rs. 31,000 withdrawn from bank, Rs. 60,450 encashment of NSC, Rs. 25,000 loan, Rs. 96,050 contribution by two sons. As against this, the learned Departmental Representative of revenue has contended that the assessing officer has made the addition on the basis of DVO's valuation report. He has contended that the assessing officer has properly considered the assessee's explanation regarding source of investment and has discussed each item but the assessee's explanation having not been found satisfactory, the assessing officer has rightly made the addition. He has supported the assessing officer's order.

21. We have considered the rival contentions, the relevant material on record as also the cited decisions. From the perusal of record we find that no incriminating material/evidence was found as a result of search in respect of investment in house property. It is settled position of law that in a search case in block assessment additions can be made only on the basis of incriminating evidence/material found as a result of search and not without the same. In such a situation, no incriminating material/evidence, in respect of investment in the house property, having been found as a result of search of the assessee's premises, so an addition on account of investment in house property but cannot justifiably be made. The addition, therefore, is liable to be deleted.

22. However, we may consider the otherwise position as well. Assuming the position to be otherwise, we agree with the contention of the learned authorised representative of assessee that the cost of construction has to be determined on the basis of local PWD rates and not on the basis of CPWD rates, as has been laid down by the Hon'ble Jurisdictional High Court in the case of Hotel Joshi

referred to above. In the instant case, as the DVO's valuation report is based on CPWD rates, so the same cannot be accepted in preference to registered valuer's report wherein the valuation has been made on the basis of Rajasthan State PWD rates; and no other specific lacuna/defect has been pointed out in the report of the registered valuer. We, therefore, direct the assessing officer to take the cost of construction of house property on the basis of registered valuer's report which is based on local PWD rates.

23. However, as regards the source of investment, the bank withdrawal of Rs. 31,000 has not been accepted by assessing officer and in our opinion, rightly so, for the reason that the assessee has not furnished any satisfactory explanation in respect of initial deposit of Rs. 31,000 for purchase of FDR.' Similarly, the assessee has not furnished any convincing evidence in respect of the loan of Rs. 25,000 and even the available creditor Smt. Raj Kunwar, the sister of assessee was also not produced before the assessing officer for examination. In such a situation, the assessing officer's action in not believing the loan of Rs. 25,000 is found to be not laconic. As regards the sale proceeds of Rs. 2,02,500 being on sale of gold ornaments, the assessing officer has discussed the issue elaborately and has observed that the assessee had promised to produce the goldsmith to whom the ornaments were alleged to have been sold, but no such compliance was made. This situation, added with the absence of other. supportive evidence, renders the assessee's plea in respect of this source, that is proceeds of sale of gold ornaments to have not been established and so the assessing officer rightly rejected the same. As regards the entries of gold ornaments in the name of assessee's husband Sh. Omprakash Soni in the stock register in Form GS 13, being the entries by assessee's son, PPS himself, the same is a very weak type of evidence which, in the absence of other convincing supportive evidence, loses its strength, whatever.

24. As regards the contribution of Rs, 96,000 by assessee's two sons, namely., PPS and RK considering the facts and circumstances of the case including the quantum of their earnings as also their ages and the time of their attaining majority, we are of the opinion that an amount of Rs. 76,000 may appropriately be treated as contribution by the two sons of assessee (being Rs. 38,000 by cash of

PPS & RK) towards investment in house property and thus the assessee's pleas in respect of the balance of Rs. 20,000 needs be rejected.

25. However, in the above three preceding paras, we have considered the position in the alternative only; and as regards addition on account of present assessee's (CD's) investment in the construction of house property, we have already decided there above in the negative.

26. Ground No. 14(iii) disputes the addition of Rs. 31,271 on account of investment in synthetic stones and labour charges. The learned authorised representative of assessee has contended that this addition has been made on the basis of Ex. A-2, found at the shop during the course of survey and brought from shop to the residence wherefrom the same was seized. He has contended that the job work of manufacturing ornaments is carried on by the two sons of the present assessee, but not by the present assessee, and so no addition on the basis of the said job work charges can be made in the hands of the present assessee. It has also been contended that no synthetic stones were found at the shop nor at the residence. As against this, the learned Departmental Representative of revenue has contended that this addition has been made on the basis of incriminating document found during search. He has contended that the assessing officer has rightly made the addition. He has thus supported the orders of assessing officer.

27. We have considered the rival contentions as also the relevant material on record, As is evident from record that the job work of manufacturing ornaments is not being done by the present assessee, CD, but only by her two sons, therefore, the addition on the basis of the said document Ex. A-2 seized during search, the addition in the hands of the present assessee is uncalled for and not justified. We, therefore delete this addition.

28. Ground No. 14(iv) disputes the addition of Rs. 90,715 on account of purchase of marble and granite, on the basis of Ex. A-2/pages 5 to 9. The learned authorised representative of assessee has contended that this is a rough calculation of marble and granite slabs which were found not at the residence of the assessee but at the shop of assessee's son during survey of the shop and was brought from there at the residence and seized at the residence. It has been

contended that this paper contains rough calculation and it might have been left there in ignorance. It has also been contended that this paper shows purchase of granite and marble slabs but no such marble and granite slabs were found to have been used in the house of the assessee as is evident from the valuation report of DVO. In the alternative, it has also been contended that even otherwise the assessing officer has valued the house and the marble used in the house stands included in the cost of construction and so separate addition on account of the said slip is not called for.

29. As against the above, the learned Departmental Representative of revenue has supported the orders of assessing officer contending that this addition has been made on the basis of document found during search.

30. We have considered the rival contentions as also the relevant material on record. Considering all the facts and circumstances of the case as also the contentions raised before us together with the fact that the cost of construction, and in turn, assessee's investment therein, already covers the various items used in construction of assessee's residential house property, as also the fact that the marble/granite purchased by assessee for use in the said house property stands considered in the valuation of house property and an addition, if at all required to be made in respect thereof, needs be considered there itself and no separate addition on account of investment in purchase of marble/granite needs justifiably be made in assessee's hands. We order accordingly.

31. Ground No. 12(ii) and (vii) dispute the addition of Rs. 69,095 on account of investment in purchase of gold ornaments, on the basis of stock diary of assessee's son, Raj Kumar in assessment year 1993-94. Ground No. 15 disputes the addition of Rs. 30,707 in assessment year 1994-95. Ground No. 13 and 15(i) dispute the addition of Rs. 2,67,315 in assessment year 1996-97. The learned authorised representative of assessee has contended that these additions have been made on the basis of entries in diaries in Ex. A-2 and Ex. A-4 belonging to assessee's son. He has contended that the present assessee, CD, is not doing any business of manufacturing of gold ornaments, but her sons only are doing the business of manufacturing of gold ornaments. He has contended that these two

diaries Ex. A-2 and Ex. A-4 were found at the shop of assessee's son where survey under section 133A was conducted and the said diaries were brought from that shop at the residence which is in common of assessee and assessee's sons, and were seized at the residence. He has contended that the diaries are in the handwriting of sons. He has contended that no addition, on the basis of entries in the diaries pertaining to job work of manufacturing of gold ornaments, can be made in the hands of assessee, particularly, when no such assets/gold ornaments were found during search. As against this, the learned Departmental Representative of revenue has contended that the assessing officer has made these' additions rightly which are based on diaries Ex A-2 and Ex A-4 which were found during search. He has supported the assessing officer's orders.

32. We have considered the rival contentions as also the relevant material on record. From the perusal of record it is revealed that the assessee is doing only the tailoring work and not any other work. The job work of manufacturing gold ornaments is not being done by the present assessee, CD, but is being done by assessee's sons, R.K. and PPS. The diaries Annexure A-2 (pp. 117 to 128 PB) and Annexure A-4 (pages 129 to 148 PB) are not in the handwriting of present assessee but in the handwriting of assessee's sons and the same are stated to have been found at the shop and brought from the shop at the residence and seized at the residence as survey was conducted at the shop. As such, considering all the facts and circumstances of the case and taking a circumspect view of the entire fact situation, these three additions based on entries in diaries Ex. A-2 and Ex. A-4 are found to be not justified in the hands of the present assessee. We, therefore, delete these three additions.

33. Ground No. 6(iii) disputes the addition of Rs. 1,67,586 in assessment year 1986-87 on account of deposit in bank account in the name of Kala Mandir. Ground No. 7(iv) disputes the addition of Rs. 14,547 in assessment year 1987-88. The learned authorised representative of assessee has contended that this bank account is neither of assessee nor of assessee's son but it belongs to one Shri Daulal Soni, carrying on the business under the name of 'Kala Mandir'. It has been contended that Shri Daulal Soni is not related to assessee nor to assessee's son. It has been contended that the assessee's son is carrying on the business under

the name of Swarn Kala Mandir' at Sonaron Ki Gati, and the postman appears to have wrongly delivered the letter Annexure A-1/40 at the shop of assessee's son, where it was lying as a rough paper. It has been contended that no bank deposit slips nor cheque book were found during survey at the business premises nor during search at the residence. It has been contended that no evidence was found as a result of search which shows that the assessee or her sons made any deposit in the bank account or operated the said bank account. It has been contended that the said paper, as placed on page 116A of the PB, is a letter issued by the bank to 'Kala Mandir' intimating the closure of bank account. It has been contended that the assessing officer presumed this account to be belonging to present assessee, CD, and obtained statement of account from the bank, on the basis of which he made the above two additions. It has been contended that nominal balances were maintained by Shri Dau Lal Soni and deposits used to be withdrawn immediately. It has been contended that the assessing officer failed to bring material on record to show that this account belongs to the assessee.

34. As against the above, the learned Departmental Representative of revenue has contended that the assessing officer has made this addition on the basis of bank deposit. He has contended that the assessee's plea has been that this bank account does not belong to her. He has contended that the said deposits are in the name of 'Kala Mandir' which is a proprietary concern of Late Shri O.P. Soni (who expired in the year 1981), husband of present assessee (CD). He has contended that on enquiry the assessing officer found these deposits were made by assessee. He has thus supported the orders of assessing officer.

35. We have considered the rival contentions as also the relevant material on record. From the perusal of record we do not find any material/evidence supportive of the assessee's plea that the said bank account belongs to Shri Daulal Soni or that the said deposits were made by Shri Daulal Soni. The bank's letter being Annexure A-1/40 (placed on page 116A of PB) was found during search and the assessing officer has noted that the bank account in the name of Kala Mandir belonged to assessee's deceased husband; and the assessee has not brought any evidence to shatter the finding of assessing officer, nor to support the assessee's plea regarding this bank account being of Shri Daulal Soni. The

assessing officer has also not brought any convincing material/evidence on record supportive of the contention that this paper was not found during search of residence but during survey of shop; nor even an affidavit has been filed to controvert the finding of assessing officer regarding this. Be that as it may, considering all the facts and circumstances of the case, we find no fault with the assessing officer's impugned order on this count. We, therefore, decline to interfere with the same.

36. Ground No. 4 disputes the assessing of job work income of assessee's two sons as the income of assessee and treating the same as undisclosed income. Ground Nos. 6(i), 7(i) and 9, as per the summary given in chart on page 149 of PB, dispute the addition of Rs. 3,44,500 on account of household expenses and labour charges, for the block period 1986-87 to 1996-97. The learned authorised representative of assessee has contended that the present assessee, lady CD, is still doing stitching work and not goldsmithy's job work. He has contended that she has stated in her statement that she is earning an income of Rs. 100 to 150 p.m. from tailoring (page 7 PB). He has contended that the assessing officer has added the goldsmithy job work income in the hands of assessee's two sons on protective basis and in the hands of their mother (present assessee CD) on substantive basis as having been utilised for meeting household expenses. He has contended that the estimated goldsmithy's job work income of assessee's two sons cannot be added in the hands of their mother, the present assessee. It has been contended, in the written statement of assessee, that there is not an iota of evidence to support that the assessee did any business of manufacturing of gold ornaments on job work basis nor any such document was found during search. In the written statement of assessee, reliance has been placed on the decision of Jaipur Tribunal in the case of Ram Raj Soni (para 14 of p. 10 of the order, on page 170 PB), and Abdul Gaffar A. Nadiadwala v. Dy. CIT (2000) 75 ITD 394 (Bom).

37. As against the above, the learned Departmental Representative of revenue has contended that this addition has been made on account of job work income utilised to meet household expenses. He has contended that the assessing officer estimated the job work income on the basis of estimate of household expenses based on the statement of assessee and her two sons (pages 7 to 11 of PB). He

has thus supported assessing officer's order.

38. We have considered the rival contentions, the relevant material on record as also the cited decisions. From the perusal of record we find it amply established that the present assessee, CD, has been doing only the tailoring/stitching work and not any goldsmithy's job work. In such a situation, we find no justification for making any addition on account of goldsmithy's job work income in her hands. Besides, her two sons, namely, PPS and RK are already major and are being assessed separately as the present assessee (CD) is being assessed, for the very same block period; and so the addition, if any, is required to be made by way of undisclosed income of the block period, the same need appropriately be considered in their hands rather than considering the said job work income in her hands or clubbing the same in her hands. This addition, therefore, made on account of goldsmithy's job work income, though with reference to household expenses, presuming the deemed utilization of the said job work income for household expenses, in the hands of the present assessee, CD, is found to be uncalled for and not justified; and so deserves to be deleted.

39. Besides, the said addition, in the hands of present assessee, CD, is not tenable on the legal score as well. We may note that the provision of section 158BB(1) stands amended vide Finance Act, 2002 w.r.e.f. 1-7-1995, and the relevant amended provision stands as under:

'158BB-(1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling with the block period computed in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the assessing officer and relatable to such evidence

Earlier, the words 'relatable to such evidence' did not exist in the aforesaid statutory provision, and so any information could also form the basis for addition as undisclosed income. But now, as section 158BB(1) stands as amended vide Finance Act, 2002, w.r.e.f. 1-7-1995, an information, available with the assessing officer, to form basis for addition in a block assessment, has essentially to be one

related to or connected with the evidence/material found as a result of search/requisition, and it cannot be any information that may be available with the assessing officer, being unrelated to or unconnected with the evidence found as a result of search. However, in the instant case, this addition has been made on the basis of the statements of present assessee and her two sons recorded during search but these said statements though, may constitute information available with the assessing officer, but the same can, by no stretch of imagination, be treated to be relatable to 'such evidence', that is, to the evidence 'found' as a result of search, inasmuch as, the statement recorded during search cannot be said to be an evidence 'found' as a result of search though the same may be an evidence 'obtained' during search. Accordingly, in view of the provision of section 158BB(1) as it stands amended vide Finance Act, 2002, w.r.e.f. 1-7-1995, an addition, on account of household expenses deemed to have been met out of job work income, estimated on the basis of statement recorded during search, cannot justifiably be made in the block assessment as the said statement does, not fall within the embracement of evidence found as a result of search, nor within that of information relatable thereto. The addition, as such is liable to be deleted.

40. We may observe that the use of the term 'information' in section 158BB(1) does not get rendered redundant and its insertion in this statutory provision is not without significance. We may take an instance for illustration sake. Suppose a document is found during search, which indicates that the assessee has to collect some demand draft or some amount from some person, (may be a bank) where it has been received in assessee's name; but the document does not spell out the figure of amount, nor its nature, nor the source. But from the statement of assessee or some other person recorded by the authorised officer during search or from some subsequent enquiry connected therewith, it is revealed that the said demand draft/amount represents assessee's income (may be commission or some profit share), then the information so received by assessing officer, through the statements recorded or through enquiry made, is relatable to the document, that is, evidence found as a result of search, and so an addition by way of undisclosed income on its basis, can justifiably well be made in the block assessment.

41. In that view of the matter, considering all the facts and circumstances of the case, we delete this addition.

42. Ground No. 7(ii) disputes the addition of Rs. 30,000 on account of investment in NSC in assessment year 1987-88. Ground No. 7(iii) disputes the addition of Rs. 5,585 in assessment year 1987-88, ground No. 8(ii) disputes the addition of Rs. 6,090 in assessment year 1988-89, ground No. 10 disputes the addition of Rs. 6,090 each in assessment years 1989-90, 1990-91 and 1992-93 and Rs. 508 in assessment year 1992-93 on account of interest on NSC. Ground No. 11(i) disputes the addition of Rs. 31,000 in, assessment year 1992-93 on account of unexplained investment in FDR; and ground No. 11(ii) disputes the addition of Rs. 700 in assessment year 1992-93 on account of interest on FDR.

43. The learned authorised representative of assessee has contended that the investment in NSC and in purchase of FDR were made by assessee by selling her ornaments. He has contended that subsequently the amounts of these NSC and FDR were utilized in the construction of house property. He has contended that the evidence of gold ornaments in possession of assessee is there on record and in this regard, he has referred to page 155 of PB as also pages 29 and 31 of PB. He has also relied on his written statement. In the written statement of assessee, it has been contended that no evidence/documents were found during search to suggest any investment in NSC or in purchase of FDR. He has contended that the assessee, while explaining the source of investment in house construction, submitted that she had encashed NSC and also FDR and invested their amounts in the construction of house. He has contended that as no evidence in respect of the same was found as a result of search so the addition on account of NSC and FDR and their interest is beyond the scope of 158BC. He has cited P.K. Ganeshwar v. Dy. CIT (2002) 80 ITD 429 (Che) and Smt. Sita Devi Daga v. Asstt. CIT (1998) 67 ITD 151 (Ind). It has also been contended in the written statement that the income earned from NSC and stitching work was far below taxable limit, and so the same cannot be taxed as undisclosed income.

44. As against the above, the learned Departmental Representative of revenue has contended that the assessing officer has made these additions as the

assessee could not properly explain the source of investment in NSC and in purchase of FDR. He has contended that the NSC and FDR having remained unexplained so the assessing officer rightly made the addition in respect of amounts invested therein as also the interest thereon. He has thus supported the orders of assessing officer.

45. We have considered the rival contentions, the relevant material on record as also the cited decisions. In (2002) 80 ITD 429 (Che) (supra) Tribunal Chennai has held that undisclosed income found, not on the basis of evidence found as a result of search but on investigations and enquiries made following search, could not be included as undisclosed income of block period computed under Chapter IV. In (1998) 67 ITD 151 (Ind) (supra) Tribunal Indore has held that the income below taxable limit in the relevant assessment year does not form part of the undisclosed income and the addition on this account towards undisclosed income is unwarranted and uncalled for.

46. However, now we may pause here for a moment to clarify the legal position on this point as it emanates from the statutory provisions after the amendment effected vide Finance Act, 2002 in section 158B w.r.e.f. 1-7-1995. On analyzing the statutory provisions, the relevant legal position, in respect of sustenance/deletion of addition, as undisclosed income of the assessee, in the block period, where the assessee claims the income of the year to be below taxable limit, and so the return of income having not been filed, that emerges is to make the working out of undisclosed income as under :

Step No. I Aggregation of the total income (i.e. total undisclosed income) of all the previous years falling within the block period.

While making the above aggregation, two conditions have to be satisfied, namely :

(i) An income, in order to be included in the above aggregation, has to be an undisclosed income as defined in section 158B(b), i.e., an income based on any entry in books or documents or transactions which has not been or would not have been disclosed for the purposes of this Act, or any expenses/deduction claimed under this Act, but found to be false.,

(ii) An income in order to be included in the above aggregation has to be on the basis of evidence found as a result of search or requisition of books of accounts or other documents or 'such' other material or information, relating to 'such' evidence, i.e., to the kind of evidence just mentioned above.

Step No. II Some action of making 'plus' or 'minus' has to be done in respect of the above aggregation of total income as detailed under :

(i) The action of making plus is to be of the loss, i.e., the loss has to be added to the above aggregated total income. The loss, in order to be on the basis of entries in the books of account or other documents maintained in the normal course upto the date of search or requisition for any previous year falling in the block period.

(ii) Action of making minus is to be of income, i.e., this income has to be reduced from the above aggregated total income. In order to be eligible for reduction an income has to be on the basis of entries in the books of accounts or other documents maintained in the normal course upto the date of search or requisition where such income is below taxable limit, for any previous year falling in the block period, as provided in clause (c), sub-clause (A).

(iii) In any other case wherein due date for filing of return has expired but no return has been filed, which does not fall in any of the above two categories i.e. in clause (c), sub-clause (A) or clause (c) sub-clause (B), no benefit of 'minus' i.e. of reducing of income out of the above aggregation of total income will be allowable.

47. As discussed above in para 46 of this order, it is evident that when in any particular previous year, the assessee claims his income to be below taxable income, even then the total undisclosed income of that previous year has to be included in the aggregation of total income as provided in section 158BB(1), and thereafter, benefit of 'minus', i.e. of reducing from the above aggregated total income as provided in section 158BB(1), has to be allowed as provided in section 168BB(1)(c)(B). In other words, in such a situation, the income of that previous year wherein the same is stated to be below taxable limit, after inclusion of the undisclosed income of that year within the aggregation of total income, the benefit of reduction is to be allowed in the manner that the income, based on entries in

books or documents maintained in the normal course upto the date of search or requisition, being below taxable limit, and so return of income having not been filed has to be reduced from the above aggregated total income.

48. We may consider the situation wherein the assessing officer does not do the computation of income step by step as per the procedure contained in the statutory provision, as is generally found to have been done in this part of the country and the undisclosed income is straightaway computed by making additions, etc. In such a situation, the addition will be sustainable if that income i.e. the amount of addition is firstly includible within the aggregation of total income of the previous year, of the block period, as provided in section 158BB(1), and where relief of minus i.e. reduction is not allowable as per clause (c), sub-clause (B) or clause (ca). However, where the benefit of above minus or reduction is allowable under the aforesaid provision, i.e. clause (c), sub-clause (B), the addition in respect of the same shall not be sustainable and shall be deleted.

49. Incidentally, we may note here that as regards the previous year of which the total income is not below taxable limit, then the above benefit of minus or reduction is not allowable in the aforesaid statutory provisions.

50. As no document/evidence was found as a result of search regarding investment in NSC or investment in purchase of FDR, nor regarding interest thereon, and the additions in respect of investment in NSC and in purchase of FDR and interest thereon has been made on the basis of explanation furnished by assessee, the information in respect of these cannot be said to be relatable to any evidence found during search and so addition in respect of the same as undisclosed income of the block period cannot be made. We, therefore, delete these additions.

51. No other point or ground or issue has been pressed before us.

52. In view of our conclusion/decision on ground No. 1, the block assessment of assessee (CD) is liable to be quashed which we order accordingly. The other grounds discussed/decided by us above are only in the alternative as the same have been raised before us.

53. In the result, the assessee's appeal is allowed as indicated above.

54. Now we take up ITSSA No. 4/Jp/97 being in the case of Prem Prakash Soni. Ground Nos. 1 to 5 dispute the service of notice under section 158BC to be not valid. The learned authorised representative of assessee has contended that the notice under section 158BC was not validly served on the present assessee Shri Prem Prakash Soni (hereinafter referred to as the PPS). He has contended that the said notice is shown to have been served by assessing officer on present assessee PPS on 12-12-1996, whereas no such notice on the said date was served on present assessee PPS; and the present assessee had appeared before assessing officer on 20-1-1997, in response to notice under section 131 and the assessing officer might have obtained his signature on 20-1-1997, without any knowledge of the same to the assessee. He has contended that the block assessment was getting time barred on 31-1-1997, and so if the notice was to be served on 20-1-1997, the assessee would not have got statutory period of 16 days for filing the return before 31-1-1997. He has contended that, in fact, the assessee did not file any return in response to any such notice under section 158BC and he has referred to assessee's letter on page 1 of the PB disputing the service of notice under section 158BC on 12-12-1996. He has, therefore, contended that the notice under section 158BC having not been validly served on assessee, the consequent assessment order passed under section 158BC is bad in law and liable to be quashed. As against this, the learned Departmental Representative of revenue has contended that the assessing officer duly served the notice under section 158BC validly on present assessee PPS; and the assessee's contentions are not well founded. He has supported the assessing officer's order.

55. We have considered the rival contentions as also the relevant material on record. From the perusal of record we find that the assessee has even not furnished assessee's own affidavit in support of the contentions disputing the correctness of the assessing officer's action as contained in the order sheet. In such a situation, leaving aside any other supportive evidence, even the affidavit of assessee, in support of his contentions, not being there, we find these contentions of assessee to be unsubstantiated and, in turn, not acceptable. The issue regarding service of notice under section 158BC on assessee being not valid, thus

fails.

56. The appeal proceedings of present assessee, PPS in this Tribunal were being taken along with the appeal of his mother, Smt. CD (ITSSA No. 7/Jp/97) as also the appeal of his brother Shri Raj Kumar (ITSSA No. 3/Jp/97). The learned counsel for the assessee had requested the Tribunal for calling for the record of reasons of belief for authorizing search and the Tribunal directed the learned Departmental Representative of revenue accordingly (vide order-sheet dated 12-10-2001), but even after adjournments, the said reasons were not furnished by learned Departmental Representative for perusal of the Tribunal on the dates of hearing arguments on 19-3-2002, and 27-3-2002, expressing that he had not received the same from his higher officials in spite of writing to them. We would have considered this aspect in the case of present assessee as well but from the perusal of record we find that no such ground, challenging the validity of the block assessment either on the said specific count or in general as being bad in law or on facts. We are, therefore, not taking any decision on merits in this regard in the instant case.

57. Now we will be taking up the grounds in the order of serials as given in the chart on page 43 of PB, wherein the grounds have been mentioned in a summarized manner. The legal issue as contained in the grounds 1 to 5 and mentioned at Serial No. 9 at the said chart has already been dealt with by us above.

58. Ground No. 7 disputes the addition of Rs. 3,08,000 in assessment years 1989-90 to 1996-97 being the block period, on account of estimated job work income. The learned authorised representative of assessee has contended that no incriminating document was found as a result of search for making addition on account of job income. He has contended that there is no basis to estimate different income for different years by assessing officer as no such material on support thereof has been found during search. He has cited (1998) 67 ITD 151 (Ind) (supra) in his support. In the written statement of assessee it has been contended that the assessing officer has estimated the assessee's income from job work for assessment year 1989-90 to 1996-97 as under :

Asst yr.

Amount

Rs.

1989-90

35,000

1990-91

36,000

1991-92

37,000

1992-93

38,000

1993-94

39,000

1994-95

40,000

1995-96

41,000

1996-97

42,000

He has contended that as the assessing officer has assigned the reason, for adopting the above income, that the assessee stated that his income from job

work was within the range of Rs. 3,500 per month, but this allegation is not correct and the assessee has not admitted in his statement (pages 30 to 32 of PB) his income to be between Rs. 3,000 to Rs. 3,500 per month for the block period.

59. We have considered the rival contentions as also the relevant material on record. From the perusal of record, we find that the assessing officer has discussed this issue in para No. 6 on pages 9 and 10 of the assessment order, but we find that in the assessment order the assessing officer has determined the job work income of present assessee (PPS) simply on estimate, based on the statement of present assessee (PPS) recorded during search while asking about his source of income and on no other evidence, nor on any evidence found as a result of search. We also know that the estimate of job work income of present assessee has been with reference to his contribution towards household expenses. The assessing officer, as such, estimated present assessee's job work income on the basis of assessee's aforesaid statement. Considering the legal position, as also the facts and circumstances of this case together with the assessment order and the rival contentions, we are of the view that the statement of present assessee, recorded during search with respect to his source of income may constitute an information available with assessing officer, but the same is not found to be relatable to any evidence found as a result of search and so an addition, by way of undisclosed income of assessee, on the basis of the said statement of present assessee, cannot be made in this block assessment, though the same may be considered appropriately in a regular assessment. We, therefore, find this addition to be uncalled for in this block assessment and so we delete the same accordingly.

60. Serial No. 2 in the chart given on page 43 is regarding ground No. 8 of appeal which disputes the addition of Rs. 31,271 in assessment year 1996-97, made by assessing officer on account of other investment in the gold ornaments. The learned authorised representative of assessee has contended that no such asset was found during search. He has contended that the department could take necessary proceedings of regular assessment in respect of documents found during survey but could not include the same in Chapter-XIV-B in the block assessment. In the written statement of assessee, it has been contended that as

admitted by the department the assessee is manufacturing gold ornaments on the basis of orders and the customers used to provide either gold ornaments or the cash for purchase of gold on their behalf. It has been contended that these seized documents being Annexure A-2 (pages 38 to 42 of PB) nowhere suggests that the assessee made investment of his own in purchase of gold to the tune of Rs. 31,271. He has contended that these pages show the total volume of work carried out by assessee and on which the assessee has earned only job work income and, therefore, the addition made by the assessing officer is liable to be deleted as no such gold or debtors were found at the time of search. It has also been contended that the assessing officer has made this addition on protective basis whereas in the case of assessment under Chapter XIV-B there is no scope for any assessment on protective basis. It has also been contended that the very papers were found at the shop where survey under section 133A was carried out and not found as a result of search. As against this, the learned Departmental Representative of revenue has contended that the assessing officer has made this addition rightly and the same is based on seized documents. He has relied on assessing officer's order.

61. We have considered the rival contentions as also the relevant material on record. From the perusal of record, we find that the assessing officer has made this addition on the basis of documents Annexure A-2/4, Annexure A-2/10, Annexure A-2/11 and Annexure A-2/12. The assessing officer has observed in bottom para on page 4 of his assessment order that the assessee has manufactured gold ornaments, and the details of the value of gold, labour charges and semiprecious stones studded in the ornaments are available in the document, and the same aggregates to Rs. 31,271. The assessing officer has also noted that in the course of statement, the assessee, on being confronted with the seized documents, admitted that these transactions recorded in the documents were related to his income though he claimed that he has only received labour charges and no investment in gold and silver ornaments was made by him. The assessing officer has also pointed out that the assessee failed to furnish details of the persons on whose behalf the job work was undertaken and the assessee expressed his helplessness to furnish such details. In our considered opinion, the assessee having failed to substantiate his plea by furnishing supportive evidence,

the action of assessing officer in making the said addition cannot be found fault with, nor can the said addition be said to have been made without any material/evidence having been found during search to form the basis of the same. In that view of the matter, we find the addition to be quite justified and so we decline to interfere with the same.

62. Serial No. 3 on page 43 of PB pertains to ground No. 9 which disputes the addition of Rs. 48,000 made in assessment year 1993-94 on account of present assessee's contribution in the cost of construction of the house. The learned authorised representative of assessee has contended that no protective assessment can be made under Chapter XIV-B. He has contended that the reasons given by the assessing officer for his proceeding against PPS are the diaries. He has contended that on the basis of statement of CD that these diaries belonged to her sons, the assessing officer is proceeding against her sons under section 158BC. In the written statement of assessee, it has been contended that the assessee claimed that out of his job income which is far below taxable limit, he contributed a sum of Rs. 48,000 towards contribution of the house. It has been contended that the investment made by him is supported by his balance sheet (pages 17 to 19 of PB). It has also been contended that as a result of search no paper or document was found which suggests such investment.

63. As against the above, the learned Departmental Representative of revenue has contended that this addition of Rs. 48,000 has been made on the basis of submissions of assessee. He has contended that the issue of construction of house has been considered by the assessing officer in the case of CD and therein it was revealed that the present assessee (PPS) contributed Rs. 48,000 towards the cost of construction and so the assessing officer made the addition and rightly so. He has supported the assessing officer's orders.

64. We have considered the rival contentions as also the relevant material on record. As regards quantum we have treated the present assessee's contribution at Rs. 38,000 only and not Rs. 48,000. From the perusal of record we find that the assessing officer has discussed this issue in para No. 2 on page 6 of his assessment order in the case of present assessee. In the case of present

assessee's mother CD, the assessing officer discussed the issue of investment in the construction of residential house in para 4 on pages 6 to 17 and some of the incriminating documents, that is, Annexure A-1 to Annexure A-5 on pages 17 and 18 of the assessment order in the case of CD. From the perusal of the said assessment order, we find that the assessing officer has noted (on page 7 of assessment order in the case of CD) that the small diaries being Annexure A-3 and Annexure-5 pertained to Tirmi Kumar Karmakar as has been claimed. The assessing officer also noted in the said assessment order that documents seized vide Annexure A-1 and A-4 were claimed as belonging to CD's son R.K. who also admitted the same. The assessing officer also noted that Annexure A-2 was claimed to be belonging to PPS and the same contained documents relating to purchase of setting material like 'moti', 'navratna' and 'setting (p. 18 of assessment order in the case of CD).

65. As such, it is clear that in the case of the present assessee, PPS, there is no material/evidence found during search which suggests any investment/contribution by present assessee PPS in the cost of construction of the house. In that view of the matter, considering all the facts and circumstances of the case, as also the legal position, we find this addition by way of investment/contribution in the construction of house by present assessee made in the block assessment to be uncalled for and not justified. We, therefore, delete this addition.

65A. Serial No. 14 on page 43 of PB pertains to ground No. 10 which disputes the addition of Rs. 8,000 in assessment year 1996-97 on account of investment in purchase of shares. The learned authorised representative of assessee has relied on his written statement. In the written statement of assessee, it has been contended that the assessee has made this investment in purchase of shares out of his job income which is far below taxable limit. As against this, the learned Departmental Representative of revenue has relied on assessing officer's order.

66. We have considered the rival contentions as also the relevant material on record. As regards the question of making of investment of Rs. 8,000 in purchase of shares, the same is not disputed by assessee. The only dispute is that the assessing officer has made addition in respect of the same as being unexplained

whereas the assessee's plea has been that this is out of assessee's job work income which was below taxable limit in the relevant year.

67. Considering the facts of the instant case, we find that the transaction of investment of Rs. 8,000 in the purchase of shares is not recorded in the books or documents maintained by assessee in the normal course. This transaction was found during search in the manner that share certificates were found during search. As such, this income is on the one hand includible in the aggregation of the total income of all the previous years of the block period and on the other hand it is not eligible for the benefit of minus/reduction out of the above total aggregated total income, for the reason that it does not satisfy the conditions as laid down in clause (c)(B) of section 158BB(1). In section 158B(b) in the definition of undisclosed income, the words used are 'which has not been or would not have been disclosed' for the purpose of this Act. The first part of expression that is 'which has not been (disclosed)' refer to assessment years relating to which the due date for filing of return of income, has already, expired, and the second part of expression, that is, 'which would not have been disclosed' refer to that assessment year relating to which the due date for filing of return has not yet expired on the date of search/requisition. In that view of the matter, we find the addition made by assessing officer to be quite proper and justified and so we make no interference therein.

68. Serial No. 5 on page 43 of PB pertains. to ground No. 11 which disputes the addition of Rs. 9,250, in assessment year 1991-92, Rs. 44,000 in assessment year 1995-96 and Rs. 41,950 in assessment year 1996-97, thus aggregating to Rs. 95,200, on account of deposits of DD/cash in bank account. The learned authorised representative of assessee has contended that this issue does not come in block assessment as the: bank account was not found during search. He has referred to the citations mentioned in his written statement and has relied on his written statement. In the written statement of learned authorised representative of assessee, it has been contended that no evidence was found as a result of search which shows the bank account with the Bank of Baroda and that this information was collected on account of enquiry made by assessing officer during assessment proceedings. It has been contended that since no information was

found as a result of search so the assessing officer was not justified in considering these deposits in the block assessment under section 158BC. In the written statement of assessee, P.K. Ganeshwar v. Dy. CIT (supra) has been cited. The learned authorised representative of assessee has also contended, in the alternative, that the assessing officer has considered only deposits/ credits and not the withdrawals. He has contended that only peak account can be assessed. He has contended that the peak account of Rs. 32,500 comes as a result of DD of Rs. 31,712 received from customer whereas the assessee peak can be only considered of cash deposits which is maximum Rs. 9,202. and so the assessee's peak that may be considered here can be taken at Rs. 9,202. As against this, the learned Departmental Representative of revenue has contended that the assessing officer has made these additions on the basis of deposits made by assessee in the bank account He has supported the orders of assessing officer.

69. We have considered the rival contentions as also the relevant material on record. From the perusal of record we find that the assessing officer, has noted in the assessment order, in para 5 on page 7 of the order, that the information regarding bank account maintained by assessee was collected during assessment proceedings. Obvious as it is, the entire working out of addition based on deposits in the bank has resulted from the information collected by the assessing officer during assessment proceedings. From the perusal of record, it is evident that this addition is not based on any evidence/material found as a result of search or on any information relatable to such evidence found during search. In that view of the matter, we find this addition to be not sustainable. We, therefore, delete this addition.

70. Serial No. 6 on page 43 of paper book, pertains to ground No. 12 which disputes the addition of Rs. 90,715 in assessment year 1996-97 on account of purchase of granite and marble. The learned authorised representative of assessee has relied on his written statement. In the written statement of assessee it has been contended that at the time of survey, at the business premises of assessee, some rough papers were found which might have been left by the customers inadvertently. It has been contended that no marble or granite was found at the time of search at the business premises of the assessee and at the

residence. It has been contended that the assessee is not dealing in marble or granite, and so this addition based on some rough papers is not justified. It has been contended that these papers were not found as a result of search, and as such, cannot be made the basis for making the addition in the hands of assessee. It has also been contended that the assessing officer's observation that no explanation was submitted by assessee during assessment proceedings is not correct, particularly, when the assessing officer issued notice under section 158BC on 20-1-1997, and that no notice under section 142(1) was issued by assessing officer; no question/query was issued. It has also been contended that these papers, found at the shop, nowhere suggest that the assessee has in fact, made the said investment of Rs. 90,715 in assessment year 1996-97. As against this, the learned Departmental Representative of revenue has contended that the assessing officer's action in making this addition is justified, inasmuch as, the assessing officer has made this addition on the basis of documents (pages 5 to 9 of Annexure A-2) found during search. He has relied on the assessing officer's orders.

71. We have considered the rival contentions as also the relevant material on record. From the perusal of record the assessee's plea that these documents Annexure A-2/pages 5 to 9 were not found during search and were found during survey at business premises does not seem to have been agitated before assessing officer; nor any convincing evidence to establish the allegation nor even the affidavit of assessee to support the plea has been furnished on record. However, as the said papers (Annexure A-2/pages 5 to 9) are found as a result of search the same do constitute 'evidence' as mentioned in section 158BB, but an addition on that basis has already been considered by us above in the case of CD in the cost of construction treating the marble/granite as having been used in CD's house property, so no further addition whether separately or otherwise needs justifiably be considered in the hands of any other person including present assessee PPS. As a result, this addition is deleted.

72. Serial No. 7 on page 43 of PB pertains to ground No. 13 which disputes the addition of Rs. 33,000 in assessment year 1996-97 on account of purchase of motorcycle. The learned authorised representative of assessee has contended

that during the preliminary statement the assessee admitted that he owns a motorcycle. But it is not an evidence so addition on that basis cannot be made. He has contended that no document nor any such assets was found during search. The learned Departmental Representative of revenue has contended that this addition has been made by assessing officer on the basis of assessee's admission in his statement. He has relied on assessing officer's order.

73. We have considered the rival contentions as also the relevant material on record. From the perusal of record, we find that this addition is not based on any evidence/material found during search or any information relatable to such evidence. Accordingly, addition in respect of this amount being investment in purchase of motor-cycle cannot be made as undisclosed income, in the block assessment. We, therefore, delete this addition.

74. Serial No. 9 on page 43 of PB disputes the addition of Rs. 130 in assessment years 1991-92 to 1995-96, on account of bank interest. This is consequential to ground No. 11 (Sl. No. 5). As we have deleted the addition of Rs. 95,200 made on account of deposits in the bank, while our discussion made above in respect of ground No. 11 this addition of Rs. 130 on account of interest on bank deposit is also not sustainable. We, therefore, delete this addition.

75. In the result ITSSA No. 4/Jp/97 of assessee PPS is allowed in part as indicated above.

76. Now we take up ITSSA No. 3/Jp/97 being of Raj Kumar (hereinafter referred to as RK). The learned authorised representative of assessee has relied on his written statement on all the grounds of appeal. The learned Departmental Representative of revenue has relied on the orders of assessing officer in respect of an the grounds.

77. Ground Nos. 1 to 4 contain single issue disputing the block assessment order made under section 158BC on the allegation that no valid service of notice under section 158BC was effected on assessee. This issue as contained in ground Nos. 1 to 4, is similar to that contained in ground Nos. 1 to 4 in ITSSA No. 4/Jp/97 in the case of PPS. The facts being identical, we follow our decision rendered above on

similar issue contained in ground Nos. 1 to 4 raised in ITSSA No. 4/Jp/97 in the case of PPS and accordingly, we decide this issue against the assessee-appellant.

78. Now we take up grounds as summarized on page 74 of PB as has also been argued by learned authorised representative of assessee before us during arguments. Serial No. 1 pertains to ground No. 7 which disputes the addition of Rs. 3,08,000 in assessment years 1989-90 to 1996-97 on account of estimating of job income. The rival representatives have relied on their contentions made earlier on similar issue in the case of CD and PPS being ITSSA Nos. 7/Jp/97 and 4/Jp/97.

79. We have considered the rival contentions as also the relevant material on record. From the perusal of record, we find that small diaries/loose papers marked as Annexure A-1 (pages 29 to 53 of PB) and Annexure A-4 (pages 54 to 73 of PB) found during search pertain to RK and contain entries of job work. The assessing officer has made an addition of Rs. 42,000 on account of assessee's job work income for the current year being assessment year 1996-97. The assessing officer has no doubt not based the estimate of assessee's aforesaid income for assessment year 1996-97 directly on Annexures A-1 and A-4 and has rather made the estimate with reference to present assessee's contribution to household expenses as he is residing in the same house along with his mother (CD), and brother (PPS), based on statements of CD and PPS. No doubt the assessing officer has mentioned in the assessment order that the present assessee, RK has admitted his job work income between Rs. 3,000 and 3,500 per month, but in fact, RK has neither stated anything regarding his job work income in his statement recorded during search, nor has he been put any question with respect to the same, in the said statement. Be that as it may, the estimate of job work income for the current year i.e. assessment year 1996-97 mad by assessing officer, cannot be found fault with on account of the same being not based on evidence found as a result of search or information relatable thereto, inasmuch as, diaries Annexures A-1 and A-4 were found as a result of search. However, as regards other previous years falling within the block period but being prior to the current year, i.e., assessment year 1996-97, the estimate of assessee's job work income for the

same cannot justifiably be made for the reason that basis for the same, as provided/specified in section 158BB(1) is found to be not available on record, and so the assessing officer's action in determining the assessee's job work income for the previous year prior to assessment year 1996-97, falling within the block-period, on the basis of estimate proportionate to assessee's estimated income for the current year i.e. assessment year 1996-97 is legally not tenable. As such, the assessment year falling within the block period but being prior to the current assessment year 1996-97 assumed the same position as that of the other assessee PPS, and to that extent the issue pertaining to RK becomes identical with that of PPS on that count. In that view of the matter the addition on account of present assessee's job work income is restricted to Rs. 42,000 and the rest of the addition on account of assessee's job work income for assessment years which fall within the block period, but are prior to current year, i.e., assessment year 1996-97 is deleted.

80. Serial No. 2 on page 74 of PB pertains. to ground No. 8 which disputes the addition of Rs. 69,095 in assessment year 1993-94 Rs. 30,707 in assessment year 1994-95 and Rs. 2,67,316 in assessment year 1996-96 (sic) aggregating to Rs. 3,67,118 on account of unexplained investment in gold ornaments. In the written statement of assessee, it has been contended that when in the entire family gold ornaments including, those of customers, mother and married sister of assessee, found come to worth Rs. 1,42,470, being 307.5 gms, there was no action/question for assessing officer to make addition of Rs. 3,67,118, particularly when no such gold ornaments were found during search. It has been contended that as admitted by the department, the assessee is manufacturing gold ornaments on the basis of orders and the customers used to provide gold ornaments or cash to purchase gold on their behalf. It has been contended that the seized documents nowhere suggest that the assessee made investment on his own in the purchase of gold to the tune of the above addition. It has been contended that the seized papers show the total volume of work carried out by assessee in three years and on this the assessee has earned only job work income and so the addition made by assessing officer deserves to be deleted. It has also been contended that the assessing officer has made addition on protective basis whereas in a block assessment under Chapter XIV-B there is no scope for any assessment on

protective basis. As against this the learned Departmental Representative of revenue has relied on the orders of the assessing officer.

81. We have considered the rival contentions as also the relevant material on record. From the perusal of record we find that the assessing officer has, no doubt, noted in the assessment order that the assessee failed to furnish full particulars of the alleged customers on whose behalf the- job work was undertaken by assessee and the gold ornaments were manufactured by him, but the order-sheets dated 12-12-1996, to 30-1-1997, as placed on page 78 of PB reveal that the assessing officer never raised any specific query regarding the same as is evident from the notices issued to assessee under section 131 (pages 2 to 7 of PB), nor does the assessing officer seem to have required the assessee to explain/furnish the aforesaid details, as is evident from the fact that the assessing officer did not give notice under section 142(1) to the assessee (para viii, page 86 PB), nor is the same borne out from the assessment order. Besides, we cannot brush aside and ignore the emphatic fact that there is no return of the present assessee RK furnished on record for the block period, though assessee's allegation has been that the notice under section 158BC was not served on assessee on 12-12-1996, as alleged by the department, but served on 20-1-1997, but due to non-producing of convincing supportive evidence we have not accepted the assessee's allegations regarding the date of service of notice upon him under section 158BC, but the fact remains that there is no block return of present assessee on record and the block assessment order stands passed on 30-1-1997. In such a situation, we feel that the assessee has not been allowed proper opportunity of being heard regarding this addition, prior to the making of this addition by assessing officer. The issue is no less substantial, nor of meagre amount, and the plea of assessee has been of there being no investment of assessee in purchase of gold. As such considering all the facts and circumstances of the case, and taking a circumspect view of the entire fact-situation, we find the impugned order of assessing officer in making this addition as undisclosed income of assessee for the assessment year mentioned above, falling in the block period to be not tenable in law, and rather the matter appropriately needs to be set aside for being decided afresh after proper opportunity to the assessee. We, therefore, set aside the assessing officer's order on this count and restore the matter to assessing officer for deciding the same

afresh after affording the assessee adequate opportunity of being heard and producing the supportive evidence, if the assessee so requires. We order accordingly.

82. Serial No. 3 on page 74 of paper book pertains to ground No. 9 which disputes the addition of Rs. 48,000 in assessment year 1993-94 on account of investment and construction of residential house. In the written statement of assessee, it has been contended that the assessee contributed this amount towards construction of house and the same is supported by his balance sheet (pages 17 to 19 of P.B.) and the assessee's income is far below taxable limit. It has been contended that the assessee had provided adequate explanation and so there is no justification for assessing officer to treat this investment as unexplained and make the addition on protective basis. The learned Departmental Representative of revenue has relied on the orders of assessing officer.

83. We have considered the rival contentions as also the relevant material on record. As regards the quantum, we have restricted the present assessee's contribution to Rs. 38,000 only as discussed above in the case of CD. From the perusal of record we find that the assessing officer has made this addition on the basis of statement of Smt. CD as also the statement of present assessee RK but there does not appear to be any evidence/material found as a result of search or any information relatable to such evidence available with the assessing officer for making this addition. As such, this addition being not based on evidence found as a result of search, the same cannot be sustained in the block assessment, though the same may be considered by assessing officer in regular assessment. We, therefore, delete this addition.

84. Serial No. 4 on page 74 of PB pertains to ground No. 10 disputing the addition of Rs. 2,000 in assessment year 1996-97 on account of purchase of shares. This issue is similar to that contained in ground No. 10 in the case of PPS (mentioned at S1. No. 4 on page 43 of that PB) and the fact-situation of the present assessee, RK, in respect of this ground is identical with that of the case of PPS, and so we follow our decision rendered above in ground No. 10 in the case of PPS and accordingly, we find no fault with the impugned order of assessing officer in

making this addition, and so we decline to interfere with the same.

85. In the result ITSSA No. 3/Jp/97 of assessee RK is allowed in part as indicated above.

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