

AFR

Court No.34

Judgment reserved on 12.09.2012
Judgment delivered on 08.11.2012

Income Tax Appeal No.47 of 2003
The Commissioner of Income Tax-II, Agra & Anr.
v. Shri Nirankar Nath Mittal

Income Tax Appeal No.50 of 2012
The Commissioner of Income Tax-I, Agra & Anr.
v. Shri Davi Sarin

Hon. Sunil Ambwani, J.
Hon. Aditya Nath Mittal, J.

1. The income tax appeal no.47 of 2003 under Section 260A of the Income Tax Act, 1961 (the Act) arises out of the judgment and order dated 18.9.2002 passed by the Income Tax Appellate Tribunal in ITA No.6001/Del/96, relating to block period from 25.8.1984 to 26.10.1995.
2. The connected Income Tax Appeal No.50 of 2012, under Section 260A of the Act arises out of the judgment and order dated 10.6.2002 passed by the Income Tax Appellate Tribunal, ITA No.6107/Del/96 relating to block period 1.4.1985 to 14.11.1995.
3. The ITA No.47 of 2003 was admitted on 20.7.2007 on the following questions of law:-

"1. Whether on the facts and in the circumstances of the case, the Hon'ble ITAT is legally correct in holding that two separate assessments should have been made in this case, one for the block period the date of search u/s 132 concluded on 20.10.1995 and another for the block period ending on the date of requisition under section 132A of the amount of 30 lacs from the custody of Police Authorities i.e. on 16.07.1996?"

2. Whether the Hon'ble Tribunal is legally correct in holding that the addition made u/s 69 of IT Act, 1961 for Rs.30 lacs out of Rs.1.03 crore looted from the assessee and Sh. Dabi Sarin as per information of the S.H.O. Thana Rakabganj, Agra was illegal and bad in law as the same

was beyond the scope of the block assessment made in the case?

3. Whether the Hon'ble Tribunal is legally correct in law and on facts in deleting the addition made u/s 69A of the IT Act, 1961 being undisclosed income admitted by the Assessee during the course of the statement recorded u/s 132 (4) of the IT Act, 1961?

4. Whether the Hon'ble Tribunal is legally correct in observing that the notice u/s 158BC of the IT Act was bad in law?"

4. The ITA No.50 of 2012 was admitted on 16.7.2007 on the following questions of law:-

"(1) Whether on the fact and in the circumstances of the case, the Tribunal is legally correct in observing that Notice U/s 158 BC of I.T. Act, 1961 was bad in law and that warrant of authorisation U/s 132-A of I.T. Act, 1961 remained unexecuted?

(2) Whether in the circumstances of the case, the Tribunal is legally correct in holding that two separate assessments should have been made in the instant case for the block period upto date of search U/s 132 (1) concluded on 14.1.1995 and the order for the block period ending on requisition of the amount of Rs.72.60 lakhs from the custody of police authorities i.e. on 16.10.1996?

(3) Whether the Tribunal is legally correct in holding that the addition of Rs.73 lakhs u/s 69-A of I.T. Act, 1961 out of Rs.1.03 crores looted from the assessee and Shri N.N. Mittal as per information of the S.O. Thana Rakahganj, Agra was illegal and bad in law as the same fall beyond the scope of block assessment?

(4) Whether on the facts and in the circumstances of the case, the Tribunal is legally justified in deleting the addition of Rs.42.60 lakhs and Rs.30.40 lakhs as undisclosed income U/s 69-A of I.T. Act, 1961?

(5) Whether in the circumstances of the case, the Tribunal is legally correct in deleting the addition of Rs.5,00,000/- made U/s 69-A being unexplained investment of speculation business by estimate to earn profit of Rs.One Crore as against Rs.5,000/- admitted by the assessee?

(6) Whether the Tribunal is legally correct in directing the A.O. to allow deductions claimed under Chapter IV and VIA of I.T. Act, 1961 which were allowed in regular assessments for the respective assessment years, while computing the undisclosed income U/s 158 BB (i) for the block period 1.4.1985 to 14.1.1995?

(7) Whether the Tribunal is legally correct in directing the A.O. to delete the addition of Rs.1,00,500/- made U/s 145 read with Section 55 (2) of the I.T. Act 1961 on account of goodwill received by the assessee on retirement from the firm M/s Sarin Chemical Laboratory Agra from the period Assessment Year 1993-94 which was added as undisclosed income for the assessment year 1993-94?"

5. We have heard Shri Shambhu Chopra, learned counsel for the income tax department. Shri Rahul Agarwal appears for the respondent assessee in ITA No.47 of 2003. Shri Shakeel Ahmad appears for the respondent assessee in ITA No.50 of 2012.

6. Brief facts common to both the appeals as narrated in the order of the Income Tax Appellate Tribunal in para 2.1, 2.2, 2.3, 2.4, 2.5 and 2.6 in the case of Shri Nirankar Nath Mittal-the assessee, are quoted as below:-

"2.1 The assessee along with Shri Dabi Sarin was travelling in a Car No. UP-14-C-0040 on 08.10.1995 and while driving on Agra Tundla road the car driver Shri Mata Prasad stopped it near Central Public School and then two unknown persons forced the assessee and Shri Sarin to hand over whatever money they were carrying in the said car. As per F.I.R. 415/95 under Section 394 of IPC dated on 08.10.1995 recorded at Thana Itmad-ud-daula in Book No. 30534, It was claimed by the assessee that a sum of Rs.2.00 Lakh was looted from them. On 31.10.1995 both assessee and Shri Dabi Sarin addressed communications to S.O. Itmad-daula, wherein, it was pointed out that on 08.10.1995 actually the amount looted was about Rs.1.00 Crore, out of which Rs.30.00 Lakh was claimed to be owned by the assessee and Rs.70.00 Lakhs was claimed by Dabi Sarin to be his property. On the basis of the F.I.R. lodged by Shri Mittal and information supplied to S.H.O. Itmad-daula, police authorities took action and recovered the amount aggregating to Rs.72.60 Lakh from the alleged looters including Ashok Tyagi, Devendra Tyagi and Mukesh Tyagi. However, in the meantime the Income-tax Department took search and seizure operation at the premises of the assessee on 26.10.1995 and thereafter on the following day i.e. 27.10.1995 warrant of authorisation under Section 132A was also issued in favour of the police authorities to hand over the recovered amount of looting to the I.T. Department Meanwhile the Department also moved a petition in the Court of IIIrd Additional District and Session Judge, Agra requesting to direct the police authorities to hand over the recovered amount to I.T. Department Vide order dated 08.07.1996 the Additional District and Session Judge, Agra in Criminal Misc Application No.54/95 under Section 394/411 IPC directed to hand over the amount of Rs.72.00 Lakhs to the I.T. Department subject to an undertaking that the responsibility of safety and security of the amount and that the said amount shall not be disposed of without permission of the Court or that of any other Court superior than the said Court as the case may be and if directed by the said Court or any other competent

Court the amount shall be produced as and when so required. Subsequently, a further clarification was also issued by the Hon'ble Court on 07.01.1997 that the order dated 08.07.1996 is clear, yet for the convenience of the I.T. Deptt. it was clarified that it has already been incorporated in the order dated 08.07.1996 that the amount of Rs.72.00 Lakhs handed over to the I.T. Department is an undisclosed income. In such situation, the I.T. Department is competent under the provision of Income Tax Act to realise, collect and adjust as the case may be, the requisite income tax from the said amount and also at liberty to take up entire proceedings contemplated under the I.T. Act subject to the condition already imposed in the order dated 08.07.1996 under which the I.T. Department shall be duty bound to produce in the Court the amount or any part or balance thereof as and when so ordered by the said Court or any superior Court keeping the condition contemplated in the order dated 08.07.1996.

2.2 From the perusal of the judgment of IIIrd Additional District and Session Judge, Agra in Criminal Misc. Application No.64/95 dated 08.07.1996, it is further observed that the alleged looters of the cash on 08.10.1995 had also claimed that the amount seized by the police on various dates belong to them.

2.3 Further, in view of the direction issued by the Court of IIIrd Additional District and Session Judge, Agra dated 08.07.1996 the cash was actually handed over by the police authorities to the Income Tax Department on 16.07.1996. Meanwhile on 18.04.1996 notice under section 158 BC was issued by the A.O. to the assessee.

2.4 It is pertinent to note that the assessee first lodge an FIR at Thana Itmad-daula that a sum of Rs.2.00 Lakh was looted from him and his Companies Shri Dabi Sarin on 08.10.1995 while travelling in a car but later on vide letter dated 31.10.1995 addressed to SHO Itmad-daula communicated that on 08.10.1995 actual amount looted was about Rs.1.00 crore out of which Rs.30.00 Lakh claimed to be owned by the assessee and balance amount of Rs.70 Lakh owned by Shri Dabi Sarin. This claim of Rs.30.00 Lakh owned by the assessee was repeatedly made in entire proceedings initiated under the I.T. Act 1961 i.e. either in his statement recorded u/s 132(4) or u/s. 131 or in his various communication made to different authorities or in return of income filed in compliance to notice issued u/s. 158 BC of the Act.

2.5 It is also worthful to mention that looted amount of Rs.72,6,000 in the aggregate was recovered by the police authorities from the possession of different persons. The assessee has filed two paper books during course of hearing before us wherein at page 52 of the paper book there is details of such recovered amount which is as under:-

Name of person	Amount recovered	Amount claimed
Ashok Kumar Tyagi	6,90,000/-	10,00,000/-
Mukesh Tyagi	15,00,000/-	17,00,000/-
Devendra Tyagi	27,00,000/-	37,00,000/-

Bachchu Singh	10,000/-	Not claimed
Uday Singh	10,000/-	Not claimed
Usha Dabi	10,000/-	Not claimed
Ramesh Boja	10,000/-	Not claimed
Om Prakash	70,000/-	Not claimed
Satna Rly. Station	22,60,000/-	Not claimed
Total	72,60,000/-	

2.6 From the above it may also be seen that the alleged looters Shri Ashok Kumar Tyagi, Mukesh Tyagi and Devendra Tyagi have claimed that amount of Rs.10,00,000, Rs.17,00,000 and Rs.37,00,000 respectively earned through their independent source of income and the department has made substantive addition in their hand by passing separate assessment orders."

7. The assessee produced a police report from SHO, Rakabganj recording that during the course of investigation it came to the knowledge of the police that actual amount looted from the assesses and Shri Dabi Sarin was Rs.1.30 crores and not Rs.2 lacs as claimed in the FIR. Out of this amount the police could recover only Rs.72.60 lacs, which was claimed by the assesseees on the basis of identification marks on the notes. The amount represented part recovery of the amount looted on 8.10.1995. Since the matter was subjudice in the Court, no finding regarding ownership of the seized cash was given.

**The assessment in respect of Shri Nirankar Nath Mittal-
assessee in ITA No.47 of 2003**

8. In the assessment of Shri Nirankar Nath Mittal, the A.O. mentioned in the assessment orders that keeping in view the factual position a sum of Rs.1.03 crores, which was looted from the assessee and his companion Shri Davi Sarin is required to be computed as their undisclosed income. As assessee had claimed Rs.30 lacs from out of Rs.72.60 lacs, the same was considered as his income while computing undisclosed income for the block

period. Shri Davi Sarin claimed Rs.70 lacs, which was considered while computing his undisclosed income for the block period.

9. A notice dated 18.4.1996 was issued under Section 158BC of the Act and served on Shri N.N. Mittal on 1.5.1996 requiring him to file returns for the block period within 16 days from the date of service of notice. The assessee objected to the notice under Section 158BC for the reason that, when the requisition has not been made by issuing warrant of authorization under Section 132A to take possession of cash, the proceedings were premature. The A.O. vide his letter dated 14.5.1996 informed the assessee that the proceedings have been initiated on the basis of warrant of authorization issued under Section 132 (1) of the Act. The A.O. advised the assessee to file the return of income. The A.O. in his letter dated 14.5.1996 clarified that notice under Section 158BC was issued on the basis of warrant of authorization under Section 132 (1) dated 26.10.1995. The assessee approached the CIT, Agra reiterating that the notice dated 18.4.1996 under Section 158BC is premature as the amount has not been so far requisitioned by the department. The Commissioner informed the assessee by his letter dated 24.5.1996 that there was no infirmity in the notice under Section 158BC issued by A.O. nor the notice is premature. The assessee relying upon Circular No.717 dated 14.8.1995 issued by the Central Board of Direct Taxes, clarifying the meaning of block period, again requested the CIT, Agra to issue instructions to A.O. as the assessee is not required to file return of income until amount is requisitioned from the police authorities. Since the assessee did not receive any response from CIT, Agra to his letter dated 3.6.1996, he filed return of income on 27.8.1996 as follows:-

<u>"Asstt. Year</u>	<u>Undisclosed Income</u>	<u>Returned/assessed income</u>
1986-87	Nil	39,620.00
1987-88	Nil	34,400.00
1988-89	Nil	34,750.00
1989-90	Nil	42,600.00
1990-91	Nil	20,610.00
1991-92	Nil	42,450.00

1992-93	Nil	54,380.00
1993-94	Nil	2,23,890.00
1994-95	Nil	1,31,260.00
1995-96	Nil	1,48,050.00
1997-98	30,00,000	<u>See first note</u>

10. In the foot note Shri N.N. Mittal noted that separate return for current year income of assessment year 1996-97 shall be filed on or before the due date as the account of the firm are under tax audit. In the computation of the income filed the assessee mentioned that the looted money of Rs.30 lacs is subject to the note given in the separate sheet as per Annexure-A. In this note he mentioned that notice under Section 158BC is bad in law on the grounds that the notice does not indicate the date of requisition, and has been issued without waiting for the execution of requisition under Section 132A, the proceedings are premature, and hence the block period has been shown to be ending on 31.3.1996. The notice was also for upto financial year 1995-96.

11. The assessee revised the return on 11.10.1996 disclosing undisclosed income as nil. Rs.30 lacs earlier shown as income for the assessment year 1996-97 was not shown in the revised return.

12. The A.O. found that the non-declaration of Rs.30 lacs in revised return was improper as the tax is leviable on the income and which is not depending upon its recovery or enjoyment. Shri N.N. Mittal, the assessee had admitted possession of Rs.30 lacs in cash on 8.10.1995 before the amount was looted by the robbers, which proved that the assessee had actually earned Rs.30 lacs, and which was liable to tax in the block period. The A.O. also found that there was no evidence except the statement unsupported by evidence of the assessee that the amount of Rs.30 lacs represents income from speculation in shares, there was no material about the nature and source of the income and therefore keeping in view the provisions of Section 132 (4) of the Act, he added Rs.30 lacs under Section 69A of the Act to the income of the assessee.

13. In appeal the Tribunal relying upon the discussions made in Income Tax Appeal No.6107/D/96, Dabi Sarin v. ACIT (Inv.), Cir-I, held that in this case also two separate assessments should have been made, one for the block period upto the date of search under Section 132 concluded on 26.10.1995, and another for the block period ending on requisition of the amount of Rs.30 lacs from the custody of the police authorities on 16.7.1996.

14. The Tribunal held that the assessment for the block period ending 31.10.1996 covers the block period from 25.8.1984 to 26.10.1995. The amount of Rs.30 lacs was requisitioned under Section 132A of the Act from the police authorities on 16.7.1996 and therefore the addition of Rs.30 lacs was outside the scope of block period.

15. The Tribunal having regard to the fact that though search and seizure action was carried out at the business as well as the residential premises of the assessee in which no document or any other evidence was found in regard to initial investment in speculation business, and in the statement dated 23.9.1996 in which the assessee had deposed that he has not made any initial investment in speculation business held that there was no scope to add any amount purely on the basis of estimate and thus directed the deletion of the amount of Rs.30 lacs, as also Rs.2 lacs.

16. The Tribunal thereafter considered whether deduction under Chapter VIA are to be given, if the entire income for all the years under the block period is taken at Rs.41,34,587/-, relying upon the findings recorded in Income Tax Appeal No.6105/Del/96, Anil Sarin v. ACIT (Inv.), Circle-1(1), Agra and other appeals namely Appeal No.07/Del/1996, Smt. Bewla Sarin v. ACIT (Inv.) Circle-1, Agra; Income Tax Appeal No.6106/Del/96, R.N.S. Sarin v. ACIT (Inv) Circle-1, Agra; Income Tax Appeal No.08/Del/96 Smt. Rani Sarin v. ACIT (Inv) Circle-1, Agra and Income Tax Appeal No.09/Del/96, Smt. Abha Sarin v. ACIT (Inv) Circle-1, Agra, held that any deduction under

Chapter VIA due to the assessee in any previous year including in the block period will not form part of the undisclosed income for the block period. While computing income for the purposes of block assessment the assessee will be entitled for deduction and adjustment under Chapter IV and VIA of the Act. the A.O. was accordingly directed to modify the order giving rise of this appeal.

The Assessment in respect of Shri Dabi Sarin-the assessee in ITA No.50 of 2012

17. In the matter of assessment of Shri Davi Sarin, the A.O. considered total looted amount of Rs.1.03 lacs, which is said to be looted from the assessee, and his accomplice Shri N.N. Mittal. The A.O. mentioned in the assessment order that without prejudice to the claim of Shri Ashok Tyagi, Devendra Tyagi and Mukesh Tyagi, a sum of Rs.49 lacs looted out of Rs.72.60 lacs seized by the police belong to them. The same amount was considered in the hands of the assessee, because the assessee had claimed that on the basis of identification marks on the note, the said amount represented the part recovery of the amount looted from him and Shri Mittal, when they were going in a car on 8.10.1995. According to A.O. since the matter is subjudice before the Hon'ble Court, no findings regarding ownership of seized cash is given in the assessment order. Substantive addition was made in the hands of Shri Devendra Tyagi, Ashok Tyagi and Mukesh Tyagi on the ground that they claimed before the Court that Rs.37 lacs; Rs.10 lacs and Rs.17 lacs respectively was earned by them from their independent sources.

18. The warrant of authorisation to search the premise of the assessee was issued on 26.10.1995. On the following date on 27.10.1995 the warrant of authorisation for requisition of cash of looted money was issued to SHO P.S. Etmad-ud-daula, Agra requiring him to hand over money to income tax department. On 23rd November, 1995 the Asstt. Director of Income Tax (Inv.) II,

Agra made an application to the Addl. District Judge, Anti Dacoity Affected Area, Agra requesting him to issue necessary directions to hand over the recovered cash of looted money to Income Tax Department, to save interest of revenue in view of the provisions under Section 132A of the Act. Meanwhile notice under Section 158BC of the Act was issued on 18.8.1996 by the Assessing Officer requiring the assessee to furnish return of income within 16 days. The assessee by his letter dated 12.5.1996 objected to the notice for the reason that when requisition has not been made by issuing warrant of authorisation under Section 132A to take possession of cash, then unless the authority, who hold control/possession of the cash delivers the same to the income tax authority, the proceedings initiated by the issue of notice under Section 158BC, is premature as the same can be issued only after receipt of the assets.

19. The Commissioner of Income Tax, Agra by letter dated 4.6.1996 informed the assessee that there is no defect in the notice under Section 158BC. Thereafter the return of income was filed under protest on 12.8.1996 for the block period from 1.4.1995 to 26.10.1995, declaring undisclosed income at Rs.52,60,900/-. The return was subsequently revised on 27.9.1996, wherein total undisclosed income was brought down to Rs.10,00,900/-

20. The Assessing Officer merged both the proceedings initiated under Section 132 and 132A in the assessment order dated 31.10.1996 under Section 158BC read with Section 143 (3) of the Act. The notice dated 18.4.1996 was issued without referring as to whether same has been issued under Section 132 or Section 132A.

21. The recovered amount of cash was handed over to the department on 16.7.1996 in pursuance to the order of Third Addl. District Judge, Agra dated 8.7.1996. In the judgment dated 8.7.1996 or in the clarificatory order dated 7.1.1997 the Court did not stay the proceedings under the Income Tax Act and decided

that the Income Tax Department is competent to realise, collect and adjust against income tax demand from the amount handed over to the department.

22. Shri Shambhu Chopra appearing for the revenue submits that the Tribunal has erred in holding that two separate assessments should have been made in the case, one for the block period upto date of search under Section 132 concluded on 26.10.1996, and another for the block period ending on the date of requisition under Section 132A of the amount recovered from the custody of the police authorities on 16.7.1996. The Tribunal was not justified in deleting the addition under Section 69A by the A.O. The assessee had admitted during the course of statement recorded under Section 132 (4) of the Act, the undisclosed income. The Tribunal thus erred in interfering with the order of the A.O.

23. Shri Shambhu Chopra relied upon **Smt. Jyoti Kumari v. Assistant Commissioner of Income Tax, (2012) 344 ITR 60 (Karn)**. In this case relating to the undisclosed income assessed to tax by A.O. under the provision of Section 158 (B) of the Act represented by his wife, after his death, relating to block assessment, in respect of her undisclosed income, the assessee had claimed that the income assessed to tax is her own income, which had gone into contribution of acquiring an asset in respect of which contributions were made by late husband and wife. The Karnataka High Court held that Section 158BE prescribed time limit for completion of block assessment, in order to clear the demand, which may arise regarding commencing of the date from which limitation is to be completed, an explanation was added by Finance Act No.2 of 1998 with retrospective effect from July 1st, 1995 in which expression used is '**last panchnama**' and not '**last of the panchnama**' therefore there cannot be plurality of panchnama in respect of authorization. The word 'last of the authorisation' is used in the main Section. In the explanation the word used is 'panchnama' and not 'panchnamas'. Starting point

of the limitation is the end of the month in which last of the authorizations is executed as recorded in the last panchnama. The Authorised Officer has discretion for the reasons to be recorded in writing to pass restraint order, in respect of articles books and other material, which he could not take physical possession of by making an inventory and leaving them in the custody of the assessee. It is also open to him to pass prohibitory orders under sub-section (3) not amounting to seizure, which will be enforced for 60 days for securing possession of the material/ articles. The time limit available cannot be extended by the restraint order. Once an order under Section 132 (3) was passed, the limitation period commenced. The period of limitation starts on the date on which the last of the authorizations have been executed, and not when the Authorised Officer states that the search is finally concluded. The making of prohibitory order under Section 132 (3) does not extend the starting point of the limitation.

24. On the other hand Shri Rahul Agarwal and Shri Shakeel Ahmad submits that in the search and seizure operations under Section 132 nothing incriminating was found at the residential or business premise of the assessee. The block period related to the period when the search was carried out. They submit that the cash was looted on 8.10.1995. The search and seizure operations were carried out on 26.10.1995. The assessment for the block period in respect of the N.N. Mittal, assessee made on 31.10.1996 to cover the block period from 25.8.1984 to 26.10.1995, when the search was carried out and in respect of Shri Dabi Sarin from 1.4.1985 to 14.11.1995. The requisition was made by the warrant of authorization under Section 132A on the following day on 27.10.1995 from SHO, Police Station Itmad-ud-daula, Agra for requisitioning the cash of looted money. On 23.11.1995 the Asstt. Director (Inv.) made an application to the Addl. District Judge, Agra to issue necessary directions to police authorities to hand over recovered cash to income tax department to save the interest

of revenue. Meanwhile notice under Section 158BC was issued by A.O. requiring the assessee to file return to which the assessee filed objections.

25. Shri Shakeel Ahmad submits that sub-section (1) of Section 158BA of the Act uses the words 'are requisitioned'. The word 'requisition' means taking of actual possession. Even where an assessment for block period has been made, regular assessment proceedings including the assessment under Chapter XIV are not barred as is clear from Section 158BB. The special procedure provided for making assessment of undisclosed income as a result of search is confined to the undisclosed material found therein and does not in any way affect the regular assessment under Chapter XIV in respect of income not discovered or relating to the search under Section 132 or requisition of documents under Section 132A. Shri Shakeel Ahmad submits that the loot or recovery of cash cannot be equated as the amount recovered during search. During the search and seizure operations nothing was recovered. The notice under Section 158BC of the Act required the assessee for filing return of income for the block period. The notice under Section 158BC dated 18.4.1996 did not indicate, as found by the Tribunal, that it was issued with reference to the search conducted under Section 132 on 26.10.1995, or with reference to the warrant of authorization under Section 132A on 27.10.1995, for requisition of the amount. In the letter dated 14.5.1996 the A.O. clarified that notice under Section 158BC was issued on the basis of warrant of authorization under Section 132 (1) dated 26.10.1995. The Tribunal rightly found that the assessment for the block period was not as a result of the requisition of the cash from the police. The cash was actually received after taking permission of the Court of the Addl. District Judge, which had correctly treated it as case property and had given it to the A.O. with certain conditions. In the circumstances the alleged undisclosed income of Rs.30 lacs could not be treated to be pertaining to the period of block

assessment and was directed by the Tribunal to be treated to be subject to regular assessment for the subsequent period.

26. Shri Shakeel Ahmad and Shri Rahul Agarwal have relied upon **Chandra Prakash Agrawal v. Assistant Commissioner of Income-Tax & Ors., (2006) 287 ITR 172 (All)**. In this case a search was conducted on 7th June, 2001 by the Director General, Central Excise, New Delhi, which prepared a panchnama on June 8th, 2001. Certain documents were seized by the Central Excise Department, on the basis of which Deputy Director of Income Tax (Inv.), Agra, initiated proceedings under Section 132A vide notice dated March 27th, 2002. The petitioner was required and gave statement with regard to these documents, and submitted that papers seized by the Central Excise Department do not reflect his income, but still in order to purchase peace he offered a sum of Rs.50 lacs in the proceedings under Section 132A of the Act in respect of the group of cases. The Deputy Director of Income Tax (Inv.), Agra sent a requisition on April 18th, 2002 under Section 132A by which he requisitioned the seized material from the Central Excise Department. The assessee wrote a letter to Income Tax Department to initiate proceedings under Section 158BC for completing assessment for the block period pursuant to surrender of Rs.50 lacs. He was informed that since the original documents have not been made available to the Income Tax Department, the notice for block assessment cannot be given. The department instead of issuing proceedings under Section 158BC, initiated proceedings for reassessment under Section 148 of the Act in which assessee requested to treat the regular return already filed by him for the assessment year 2000-01 as the return filed by him in compliance with the notice under Section 148, and also requested for reasons for reopening the assessment.

27. This Court held that Section 132A (1) empowers various authorities to requisition books of accounts, documents or any assets either from the person to whom it belongs in case such

authority has reason to believe that such person will produce or caused to produce such document or assets. Sub-section (2) of Section 132A mandates the authority, which has custody of books of accounts or other documents to deliver them to the requisitioning officer and after these books of accounts or other documents or assets have been delivered provisions of sub-section (4A) to (14) of Section 132 and 132B shall mutis mutandis apply. The requisition is complete only, when the seized books of accounts and other documents have been delivered to the requisitioning authority.

28. This Court further held that Chapter XIV-B inserted w.e.f. July 1st, 1995 introduced a new scheme of assessment of undisclosed income, determined as a result of search, which has assessed separately as the income of designated period consisting of 10 previous years now reduced to 6 by the Finance Act, 2001 w.e.f. June 1st, 2001. This Chapter provides for special procedure for assessment of the block period in respect of the undisclosed income, as a result of search conducted under Section 132 or requisition made under Section 132A of the Act. Section 158BA opening with non-obstante clause mandates A.O. to assess the undisclosed income, where search has been initiated after June 30th, 1995 under Section 132 or books of accounts, or other documents or assets are requisitioned under Section 132A of the Act. The total undisclosed income relating to block period is assessed at fixed rate of 60%, irrespective of the previous year or years to which such income relates. This assessment is an advantage to regular assessment and it shall not include the income assessed in any regular assessment. It will also not be included in the regular assessment of any previous year included in the block period. Section 158BB provides for determination of total income on the basis of evidence found as a result of search or requisition and is relatable to such evidence with certain specifications. Section 158BC provides for procedure for block

assessment. Section 158BD deals with the assessment of undisclosed income and Section 158BE provides for time limit for completion of such assessment. After discussing the effect of non-abstante clause this Court held relying on *Raja Ram Kulwant Rai v. ACIT, 1997 (227) ITR 187* and *B. Noorsingh v. Union of India, (2001) 249 ITR 378* that the special procedure under Chapter XIV-B shall be adopted in such case covered by the provisions, notwithstanding anything contained in any other provisions of the Act. Consequently the income to be excluded in the block assessment is only such income, which is directly evidenced by the material found during the search and does not include the income, which has been discovered on the basis of post search enquiries made during the block assessment proceedings. This position, however, has changed after the amendment made by the Finance Act of 2002, after which the assessment of undisclosed income can only be based on evidence found in search and the material or information gathered in post search enquiries made on the basis of evidence found in the search.

29. This Court, thereafter, observed the effect of the 'requisition' and the use of word 'requisitioned' under Section 158BA (1) and which means the taking of actual possession. The Court held:-

"Having discussed the scheme of various provisions of Chapter XIVB of the Act, we now come to the issue as to whether the provisions of the aforesaid Chapter is attracted in the present case or not. The crucial words for the applicability of Chapter XIVB of the Act are contained in sub-section (1) of Section 158BA of the Act. It is applicable in cases where a search is initiated under Section 132 of the Act or books of account, other documents or any assets are requisitioned under Section 132A of the Act. It is not in dispute that in the present case no search under Section 132 has been conducted by the Income Tax Department. The search, if any, was conducted on 7/8.6.2001 by the Central Excise Department. The Income Tax department had sent a requisition on 27.3.2002 under Section 132A of the Act requisitioning the books of account and other documents seized by the Central Excise Department. The record of the proceeding

dated 18.4.2002 show that the requisition was not fully executed as all the books of account and other documents had not been delivered to the Requisitioning Authority.

We have already referred to the scheme of Section 132A of the Act and have come to the conclusion that it deals with the power and procedure for requisitioning the books of account etc. and would be complete only when the requisitioned books of account and other documents have been delivered. Sub-section (1) of Section 158BA of the Act uses the words "are requisitioned". The word "requisition" is not one of art and does not connote the same state of things in every particular case and in its various meanings are determinable in specific instance by other facts.

Thus, one of the meanings which can be assigned to the word "requisition" is taking of actual possession of all the items.

We are fortified in our aforesaid view with the provisions made in Section 158BE of the Act, which provides for time limit for completion of block assessment. It specifically provides for counting the limitation from the end of the month in which the last of the authorization for search under Section 132 or for requisition under Section 132A of the Act was executed. Explanation 2 to Section 158BE of the Act clarifies that the authorization shall be deemed to have been executed in the case of a search, on the conclusion of search as recorded in the last panchnama and in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the Authorised Officer. Thus, we are of the considered opinion that the provisions of Chapter XIVB of the Act would come into play only when the books of account or other documents or assets are actually received by the Assessing Officer pursuant to the requisition made under Section 132A of the Act.

Looking at it from another angle also, it is the only conclusion which one can arrive. If the entire books of account and other documents which have been requisitioned under Section 132A by the Authorised Officer is not in the possession of the Department, the proceedings under Chapter XIVB of the Act would be of no consequence as it does not speak of piecemeal block assessment. The block assessment has to be made for a composite period of 10 years or 6 years, as the case may be, in which the entire evidence collected as a result of the requisition under Section 132A of the Act and all other materials or information available with the Assessing Officer relatable to such evidence has to be taken into consideration.

In view of the foregoing discussions, we are of the considered opinion that the proceedings initiated under

Section 148 of the Act cannot be said to be without jurisdiction. However, we make it clear that in the proceedings for re-assessment under Section 148 of the Act, material or evidence which are relatable to the documents for which the requisition has been sent under Section 132A cannot be taken into consideration."

30. We are in respectful agreement with the view taken by the Division Bench of this Court in Chandra Prakash Agrawal (Supra).

31. Applying the ratio of the judgment in Chandra Prakash Agrawal (Supra) to the present case, we find that the Tribunal did not commit any error in recording findings that since nothing was found in the search operations on 26.10.1995 and that though the warrant of authorisation under Section 132A was issued on the following day on 27.10.1995, the amount requisitioned was actually received after the permission of the Addl. District & Sessions Judge, Agra in Criminal Misc. Application no.54/95 under Section 394/411 IPC for handing over amount of Rs.72 lacs to Income Tax Department, with certain conditions. The requisitioned amount was actually received on 16.7.1996 with the conditions imposed by the Addl. District & Sessions Judge that the Income Tax Department will be duty bound to produce in the Court the amount or any part or balance thereof and when so ordered by the Court or any superior court. The amount so received in pursuance to the warrant of authorisation under Section 132A could not be subjected to tax in the block assessment period under Chapter XIVB.

32. The requisitioned amount, thus, could not be added under Section 69A of the Act in the block assessments of the assesseees and to that effect notice under Section 158BC, including the amount, which was requisitioned and brought into the hands of the income tax authorities beyond the period of block assessment, the notices under Section 158BC was bad in law.

33. The question nos.5, 6 and 7 in Income Tax Appeal No.50 of 2012, CIT v. Shri Davi Sarin relate to deletion of Rs.5 lacs made under Section 69A being unexplained investment of

speculation business by estimate to earn profit of Rs.1 crore as against Rs.5000/- admitted by the assessee of directing A.O. to allow deduction claimed under Chapter VI and VIA of the Act, which were allowed in regular assessment for respective assessment years while computing undisclosed income under Section 158BB (i) for the block period 1.4.1985 to 14.1.1995, and deletion of the addition of Rs.1,00,500/- made under Section 145 read with Section 55 (2) of the Act on account of goodwill received by the assessee on retirement from the firm M/s Sarin Chemical Laboratory, Agra from the assessment order 1993-94, which was added as undisclosed income for the assessment year 1993-94.

34. All the four questions namely question Nos.1, 2, 3 and 4, common in both the appeals as framed by this Court are decided in favour of the respondent assessee and against the revenue.

35. The question nos.5, 6 and 7 in ITA No.50 of 2012 are questions based on facts and the assessment made thereon by the Tribunal. These questions are not substantial questions of law to be decided by the High Court. The A.O. will make computations on these issues in the light of the observations made by the Tribunal.

36. The income tax appeals are **dismissed**.

Dt.08.11.2012

SP/