THE LATEST ON BLOCK -ASSESSMENT

[CHAPTER XIV-B OF THE INCOME-TAX ACT, 1961]

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Chapter XIII of the Income-Tax Act, 1961 (the Act), deals with "Income-Tax Authorities". Part –'C' of this Chapter deals with "Powers" of the income-tax authorities. Section ('S.' for short) 131 deals with "Power regarding discovery, production of evidence, etc.". Section 132 deals with "Search and seizure". Section 132A deals with "Powers to requisition books of account, etc." and S.132B deals with "Application of seized or requisitioned assets". Out of the aforesaid sections, S.132 is most important, as it confers on the income-tax authorities, powers of search and seizure.

Section 132, on the face of it, is intended to achieve two objectives –

(i) to get hold of evidence bearing on the tax-liability of a person which the said person is seeking to withhold from the assessing authority; and

(ii) to get hold of assets representing income believed to be undisclosed income and applying so much of them, as may be necessary to discharge the existing and anticipated tax-liability of the person concerned.

In other words, S.132 is intended to unearth the hidden or undisclosed income or property and bring the same to assessment. The objective of this section is not merely to get information of the undisclosed income, but also to seize the money, bullion etc., representing the undisclosed income and to retain them for the purposes of proper realization of taxes, penalties, etc.

The Revenue Authorities had been experiencing lot of delays and difficulties in the finalisation of assessments after conducting searches. These delays arose on account of the statutory procedures, as provided in the Act and subsequent delays in the finalization of appeals and also in recovery proceedings. Certain amendments had been made, in the past, for reducing these delays and encouraging the tax-payer to admit certain undisclosed assets and sources of income, during the course of statements under section 132(4) before completion of search proceedings. The I.T. Department, while completing the assessment, had to face a number of difficulties in pin-pointing the year of concealment and the assessment year (AY) in which a particular asset was acquired or a particular income was earned and these disputes resulted in protracted litigation. Similarly, penalty proceedings dragged on for years and the Revenue was unable to show the results of successful searches within a reasonable period. This led the Government, in 1995, to adopt a revised assessment procedure for search cases.

The aforesaid new procedure has been provided in the newly inserted Chapter XIV-B (containing sections 158B to 158BH). The provisions of the aforesaid Chapter XIV-B have been elaborated in Circular No.717 dated 14.8.1995, issued by the Central Board of Direct Taxes (CBDT).

Under the new procedure, undisclosed income detected as a result of search initiated or requisition made after 30th of June, 1995, is to be assessed separately at a flat rate of 60% and a block period of 10 years was to be adopted to cut short the delay in determining the year of assessment for a particular source of income or wealth. Thereafter the Finance Act (No.2), 1996 amended the definition of 'block period' meaning the period comprising the previous years relevant to ten AYs preceding the previous year in which the search was conducted under section 132 or any requisition was made under section 132A. This was done because the definition of 'Previous Year' was amended to mean the 'Financial Year', with effect from 1.4.1989 and before this the tax-payers could have different previous years. Thereafter, vide Finance Act, 2001, the period of **ten AYs** was substituted by **six AYs** with effect from 1.6.2001. The 'block period' also includes the period upto the date of the commencement of search or the date of such requisition in the concerned previous year.

The various provisions contained in Chapter XIV-B are discussed section-wise, as follows:

1. Definitions – S.158B

Section 158B, provides the definitions of the terms 'block period' and 'undisclosed income'. The same are discussed, as follows:

(i) **Block period**

From the definition of 'block period', it is clear that block period, under section 158B(a), comprises previous years relevant to ten AYs or six AYs preceding the previous year in which search was conducted under section 132 or a requisition was made under section 132A, depending upon whether these actions were initiated before 1.6.2001 or after 1.6.2001. Besides, 'block period' also includes the previous year in which search was conducted or requisition made, for the period from 1st April to the date of search.

For example, if search was conducted on 4.3.1996, then the period of previous year will be the period from 1.4.1995 to 4.3.1996. The earlier ten previous years would be the previous year relevant to the AYs 1986-87 to 1995-96.

Under the definition of 'block period', it will include within it the ten previous years relevant to the ten AYs preceding the date of search, plus the period upto the date of the search in the previous year in which the search was conducted – *Lakshmi Jewellery Vs. DCIT* [2001] 252 ITR 712 (Mad.)

(ii) **Undisclosed income**

"*Undisclosed income*" as defined in S.158B(b), includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such an item or income has not been or would not have been disclosed for the purposes of this Act.

Vide Finance Act, 2002, "any expense, deduction or allowance claimed under this Act which is found

to be false" has also been included in the definition of "undisclosed income" with effect from 1.7.1995, retrospectively.

It, therefore, follows that what the assessee has already disclosed or would have disclosed, is not to be treated as 'undisclosed income' – *N.R. Paper & Board Ltd. Vs. Dy.CIT* [1998] 234 ITR 733, 741 (Guj.)

The phrase **"for the purposes of this Act" u**sed in the aforesaid definition of undisclosed income is quite significant. It would mean that if any books of account or other document or transaction not required " for the purpose of this Act", has not been disclosed or would not have been disclosed then the provisions of this chapter will not apply. For instance, the books of account or documents relating to agricultural income would not be relevant for the purposes of the Act, as the income from agriculture cannot be included in the "undisclosed income"

Some of the other relevant terms / expressions, are discussed, as follows:

(a) **Entries in books of accounts**

The entries in the books of accounts will include those entries which occur in books discovered during search or requisition or even in regular books of accounts which represent income, but not disclosed to the Department prior to search. Entries made in duplicate books discovered during search, thus, would form part of undisclosed income under section 158B, in addition to money, bullion, jewellery or other valuable article or thing discovered during search. Such entries may point to certain aspects of assessee's undisclosed income.

(b) **Documents**

The word 'document' has been defined under section 2(22AA) of the Act, under which 'document' includes an electronic record as defined in S. 2(1)(t) of the Information & Technology Act, 2000. However, this definition is of no use for our purpose in the context of Chapter XIV-B.

The word "document" is defined under section 3(18) of the General Clauses Act, 1897, as under:

"Document" shall include any matter written, expressed or described upon any substance by means of letters, figures and marks, or by more than one of those means, which is intended to be used, or which may be used, for the purpose of recording that matter.

Somewhat similar definition of the word 'document' is provided in S.3 of the Indian Evidence Act. Thus a document would include any writing or word printed, lithographed or photographed. Similarly, a 'document' includes a map or a plan or inscription on a metal plate or stone or even a caricature.

(c) **Transactions**

The word 'transaction' is derived from the word 'transact', which means, "to manage", "to

perform" and transaction means, "act of transacting", "management of any affairs". Any business deal can be a transaction as held in *Bhagwandas & Sons Vs. CIT* [1950] 18 ITR 524 (All.).

Such transactions may relate to purchases, sales, exchange of goods and properties, lease or mortgage of immovable properties, loans, advances, deposits, investments or any dealing which indicates income arising or even that which is spent or invested. The transactions may also include personal expenses on travelling, jewelleries, marriages or even negotiations for arriving at a particular deal, which may reflect concealment of income. Thus, the word "transaction" is of very wide import.

2. Assessment of undisclosed income as a result of search – S.158BA

The provisions of S.158BA, may be analysed, as follows:

I. **Sub-section (1) of S.158 BA** opens with a *non-obstante* clause, namely, "Notwithstanding anything contained in any other provisions of this Act" and thus enacts provisions of overriding nature so as to prevail over any other provisions of the 1961 Act. According to sub-section (1), where after 30.6.1995 -

(i) a search is initiated under section 132, or

(ii) books of accounts, other documents or any assets are requisitioned under section 132A,

in the case of any person, then –

the Assessing Officer (AO) shall proceed to assess the undisclosed income in accordance with the provisions of Chapter XIV-B (containing sections 158B to 158BH).

From the aforesaid provisions, it is clear that S.158BA has no application to the case of any search under section 132 or requisition under section 132A, made on or before 30th June, 1995. In this context, it was held in the case of *N.T. John Vs.CIT* [1997] 228 ITR 314 (Ker.), that Chapter XIV-B which came into effect from 1.7.1995, has no retrospective operation and it will not apply to a case where search was initiated under section 132, before 30.6.1995.

However, once the search under section 132 is made after 30.6.1995, there is no restriction on the inclusion of earlier years in the block period of ten or six AYs, as the case may be. Where search under section 132 was conducted on 23.2.1996, special procedure in Chapter XIV-B would be applicable, for assessment, relating to AY 1993-94 also, in view of the definition of "block period" in S.158BA, according to which it operates for a period of ten years from the year in which search was conducted - *N.T. John Vs .CIT* [1997] 228 ITR 314 (Ker.).

II. Section 158BA(2) provides that the total undisclosed income relating to the block period shall be charged to tax at the rate specified in S.113 (which is, 60%), as income of the block period -

(i) irrespective of the previous year or the year to which such income relates, and

(ii) irrespective of the fact whether regular assessment for anyone or more of the relevant AY is pending or not.

Explanation to S. 158BA(2)

For removal of doubts, certain clarifications have been provided as per Explanation to S.158BA(2), inserted by the Finance (No.2) Act, 1998, with effect from 1.7.1995, retrospectively. The same are, as follows:

(i) **As per clause (a) of the Explanation**, assessment made under Chapter XIV-B shall be in addition to the regular assessment in respect of each previous year included in the block period.

Before this Explanation, divergent views were expressed by various High Courts on this issue. In this context, the following judgements are relevant:

- *N.R. Paper & Board Ltd. Vs. Dy. CIT* [1998] 234 ITR 733 (Guj.)
  This judgement may be summarised, as follows:
  The block assessment of undisclosed income was independent of the pending regular assessments and it operated in a different field. This process did not disturb the assessments already made of the previous years, and was intended only to sniff out what had remained hidden and would not have been disclosed by the assessee. There would, therefore, be no overlapping in the nature of assessment made under this Chapter of undisclosed income and the regular assessment made under section 143(3). The provisions of the Chapter do not either expressly or by necessary implication even remotely indicate that the regular assessment proceedings of a previous year covered in the block period, were required to be stayed or dropped or substituted by the proceedings of this Chapter.

- *Malayil Bankers Vs. ACIT* [1999] 236 ITR 869 (Ker.)
  This judgement may be summarised, as follows:
  Provision of S. 158BA is intended to assess undisclosed income in contradistinction with a regular assessment and, thus, in light of Explanation thereto, when a block assessment is pending, the ITO is not debarred from framing an assessment under section 143 for any period included in said block assessment.

- *Dy.CIT Vs. Shah Wallace & Co. Ltd.* [2001] 248 ITR p.81 (Cal.)
  It was held in this case that regular assessment is in addition to the assessment under Chapter XIV-B. In this respect, there is no question of double assessment. Both the block assessment and regular assessment could be simultaneously proceeded with in view of Explanation to S. 158BA.

(ii) **As per clause (b) of the Explanation**, the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment, as income of such block period. In other words, the income assessed in any regular assessment in respect of any previous year

falling within the "block period" shall not be included for arriving at the total undisclosed income relating to the block period, for the purposes of making the block assessment.

(iii) **As per clause (c) of the Explanation**, the income assessed in Chapter XIV-B (containing sections 158B to 158BH) shall not be included in the regular assessment of any previous year included in the block period. In other words, clause (c) of the Explanation takes care of a situation which is converse to clause (b) and puts a ban on treating any income assessed under the "block assessment" so as to form part of the regular assessment of any previous year included in the "block period".

III. As per S.158BA(3), where the date of filing of return under section 139(1), for any previous year has not expired, and the income of that previous year or the transactions relating to such income, are duly recorded, then such income is not required to be included in the block period. This would mean that the regular assessment of that previous year which has remained pending will proceed notwithstanding that it is falling in the block period. In this context recording means that the transaction or entry is evidenced by a document, though the same may not have been entered in the books of accounts on the date of search.

For example, sales as per cash memos or sale bills may not have been recorded for a short period preceding the date of search, but such sale bills or cash memos have to be treated as 'document' and it has to be held that such sales or cash memos would have been recorded in the books in the normal course of accounting. Thus recording would mean either as entered in the books of accounts or evidenced by documents like sale memos, purchase bills or other evidence available at the time of search.

Thus, as per S. 158BA(3), if the assessee proves to the satisfaction of the AO that –

(i) any part of income referred to S. 158BA(1) relate to an assessment year for which the previous year has not ended, or

(ii) the date of filing of return of income under section 139(1) for any previous year has not expired,

- then such income or transactions relating thereto, shall not be included in the block period, provided the same are recorded on or before the date of search or requisition, in the books of accounts or other documents maintained in the normal course relating to such previous years.

3. Computation of undisclosed income of the block period – S.158BB

Section 158BB deals with the computation of undisclosed income of the block period. This section consists of four sub-sections. Section 158BB(1) provides a number of steps for the computation of undisclosed income, whereas sections 158BB(2), (3) and (4) take care of other aspects in that respect. All the four sub-sections of section 158BB, are dealt with, as follows:

I. **Computation of undisclosed income – S. 158BB(1)**

The various steps for the computation of undisclosed income have been laid down under S. 158BB(1). For the purpose of simplicity and easy understanding, the computation of undisclosed income is divided into various steps, which are, as follows:

(i) First of all, undisclosed income relating to various AYs falling within the block period is required to be determined. This is done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as is available with the Assessing Officer (AO).

(ii) As a second step, an account of "regular income" or the " disclosed income" other than the undisclosed income, for the respective AYs falling within the block period, is required to be taken.

(iii) Thirdly, the undisclosed income and the disclosed income so determined, are required to be clubbed together for each of the AYs, in order to determine the aggregate total income of such A.Y.

(iv) Fourthly, the total income of the aforesaid AYs, is required to be aggregated to determine the aggregate total income or the "gross total income" of the block period.

(v) As a fifth step, this "gross total income" of the block period, is required to be reduced by the "disclosed income" or is to be increased by losses. Such "disclosed income or loss" is to be determined in following manner:

(a) where assessments under section 143 or S.144 or S.147 have been concluded, prior to the date of commencement of search or the date of requisition, then income determined on the basis of such completed assessments.

(b) where returns of income have been filed under section 139 or in response to a notice under section 142(1) or 148, but assessments have not been made till the date of search or requisition, then the income determined on the basis of the returned income.

(c) where the due date for filing a return of income has expired, but no return of income has been filed, then the aggregate total income of the block period shall be adjusted -

- on the basis of entries as recorded in the books of accounts or other documents maintained in the normal course on or before the date of search or requisition, where such entries result in computation of loss for any previous year following the block period, *or*

- on the basis of entries as recorded in the books of accounts and other documents maintained in the normal course on or before the date of search or requisition where such income does not exceed the maximum amount not chargeable to tax for any previous year falling in the block period.

(ca)where the due date for filing return has expired, but no return of income has been filed, as 'Nil', in cases not falling under clause (c).

(d) where the previous year has not ended or the date of filing the return of income under section 139(1) has not expired, then the income determined on the basis of entries relating to such income or transactions as recorded in the books of account, and other documents which are maintained in the normal course, provided the recording is made on or before the date of the search or the requisition.

(e) where an order of settlement is made by the Settlement Commission, then the income determined on the basis of such order.

(f) where an assessment of an undisclosed income is made under this Chapter in respect of a search which had taken place prior to the search under consideration, then the income determined on the basis of such assessment.

The aforesaid total income is required to be computed in accordance with the provisions of Chapter IV of the IT Act. This chapter consists of six parts and sections 14 to 59. All the deductions and allowances as are available in respect of each head of income, are to be made. The undisclosed income is also to be computed in the aforesaid manner.

Explanation to S. 158BB(1)

For the purposes of determination of undisclosed income, the Explanation provides that –

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

There is another rider in the form of a proviso to clause (a) of the Explanation, which provides that in computing deduction under Chapter VI-A, for the purposes of said aggregation, effect shall be given to the set-off of such brought forward losses or unabsorbed depreciation.

(b) for determination of undisclosed income in the case of a firm, returned income and total income assessed for each of the previous year falling within the block period shall be the income determined before allowing deduction of salaries, interest, commission, bonus and remuneration by whatever name called, to any partner, not being a working partner.

The proviso to clause (b) of Explanation lays down that undisclosed income of the firm so determined shall not be chargeable to tax in the hands of the partners, whether on allocation or on account of enhancement.

(c) the assessment under section 143 includes determination of income under section 143(1) or 143(1B).

II. Deeming provisions of sections68 to 69C made applicable – S. 158BB(2).

As per S. 158BB(2), in computing the undisclosed income of the block period –

(i) the provisions of sections 68, 69, 69A, 69B, and 69C shall, so far as may be, apply; and

(ii) references to financial year in those sections shall be construed as references to the relevant previous year falling in the block period including the previous year ending with the date of search or requisition.

III. Assessee to prove that undisclosed income was already disclosed – S. 158BB(3).

As per the provisions of S.158BB(3), the burden of proving to the satisfaction of the AO that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be; shall be on the assessee.

IV. Brought forward losses or unabsorbed depreciation are not to be set off against the undisclosed income of the block period – S.158 BB(4).

As per provisions of S. 158BB(4), brought forward losses or unabsorbed depreciation will be allowed to be carried forward for set off in regular assessment and will not be set off against the undisclosed income determined in the block assessment.

Some of the important points for the computation of undisclosed income, are as follows:

(i) **Current year's losses and unabsorbed depreciation**

In this respect we have to look at Explanation (a) to S.158 BB(1) and foot notes 5 and 7 to the Return of Income for block assessment in Form 2B. It would be clear therefrom, that there is no bar to losses under one head of income to be set-off against income under another head of income in the same A.Y. Similar is the position in respect of unabsorbed depreciation.

(ii) **Set-off of losses and unabsorbed depreciation**

There is a specific prohibition as regards the set-off of brought forward losses and unabsorbed depreciation against the undisclosed income. This is made clear by S.158 BB(4) and Explanation (a) to S.158 BB (1). The losses or the depreciation will continue to be carried forward for being set-off against the income of the subsequent years in the regular assessments.

As explained earlier the proceedings under chapter XIV-B will relate to undisclosed income only and the regular assessment proceedings for disclosed income will not be disturbed. In some cases two proceedings may be in progress against the same person, at the same time, one being regular assessment proceedings and the other being proceedings for computation of the undisclosed income under chapter XIV-B. Thus, it should be possible to set off brought forward losses and unabsorbed depreciation against the regular assessments for the AYs falling within the block period.

It is also possible to contend that the block period is akin to one single A.Y and all adjustments within the block period should be construed as an act of set-off within the same A.Y only.

(iii) **Deduction under chapter VI-A**

Chapter XIV- B does not prohibit grant of deductions from gross total income under Chapter VI-A. Further S.158 BH provides that all other provisions of the Act shall apply to block assessment. This view is further supported by part III of Form 2B where provision has been made for deduction under chapter VI-A of the IT Act. It is, thus, clear that deduction under chapter VI-A will be permissible even with regard to the block assessments.

(iv) **Income below taxable limit not to form part of undisclosed income.**

S. 158BB(1)(c)(B) provides that where income does not exceed maximum amount not chargeable to tax for any previous year falling in the block period, the same will not form part of undisclosed income. The quantum of such income should, however, be verifiable on the basis of entries as recorded in the books of accounts and other documents, before the date of search or requisition.

The Indore Bench of the Tribunal has upheld the aforesaid view, in the case of *Smt. Sitadevi Daga Vs. ACIT* [1998] 67 ITD 151. It was held in this case that the income below taxable limit in the relevant AY, does not form part of the undisclosed income and the addition on this account towards undisclosed income is unwarranted and uncalled for.

4. Procedure for block assessment – S.158BC

This is the most important provision in Chapter XIV-B. This section lays down the procedure for block assessment. The AO has to issue and serve a notice on the assessee under section 158 BC calling for a return setting forth "his total income" including the undisclosed income for the block period. The proviso to S.158 BC stipulates that no notice under section 148 is required to be issued for the purpose of proceedings under chapter XIV-B. The assessee should be given a time of not less then 15 days but not more than 45 days from the date of service of notice for furnishing the return under section 158 BC.

Thereafter the AO shall proceed to determine the undisclosed income for the block period and provisions of S.142, 143(2), 143(3), 144 and 145, shall apply accordingly. Though the block period can be extended upto ten AYs in a case where the assessee has not disclosed " undisclosed income" in any one or more of AYs comprised in the block period, it will not be necessary to do the exercise of computing the undisclosed income for the relevant years and the exercise may be limited to the years in respect of which the undisclosed income has been found. After the assessment and issue of notice of demand, the assets seized shall be retained to the extent necessary. This aspect shall be dealt with in the manner laid down under section 132 B.

***While computing the undisclosed income, some of the important points, which are required to be kept in view, are as follows*:**

I. Undisclosed income is to be computed only on the basis of material obtained during search.

The AO has to determine the undisclosed income only on the basis of the material seized during the search proceedings. He is not conferred with power to make estimate of income without material in his possession. The aforesaid proposition is supported by the following case-law:

(i) *CIT Vs. Rajendra Prasad Gupta* [2001] 248 ITR 350 (Raj.)

As per this judgement, the block assessment has to be made in the light of the material that has come into possession of the IT authorities during the course of search, which was the foundation of these proceedings. The AO is not entitled to make best judgement assessment and estimate the income, if the same has no nexus with the material seized.

(ii) *CIT Vs. Smt. Usha Tripathi* [2001] 249 ITR 4 (All.)

It was held in this case that the Tribunal was justified in deleting addition to undisclosed income, made on the basis of estimation, for a part of block period for which, no details from any of the seized documents, was available.

(iii) *CIT Vs. Ravikant Jain* [2001] 250 ITR 141 (Delhi)

It was held in this case that block assessment is not a substitute for regular assessment and assessment of block period can only be done on the basis of evidence found as a result of search. It was further held that block assessment in respect of undisclosed income not determined on the basis of any search material, was invalid.

(iv) *D.N. Kamani (HUF) Vs. Dy.CIT* [2000] 241 ITR (ATS) 85 (TM-Pat.)

It was held in this case that S.145 is not applicable in the case of block assessment. Presumption regarding undisclosed income is not permissible in case of block assessment. In this case, the assessee constructed and sold 16 flats. During the search proceedings, in the premises of one of the purchasers, it was admitted that part of the sale price had not been disclosed by the vendor. The AO presumed that similar payments must have been received from other purchasers. It was held by the Tribunal that in the absence of any proof, in the possession of the AO that unaccounted money had been received from other 15 purchasers, addition made by way of unaccounted money, was invalid.

(v) *Samrat Beer Bar Vs. ACIT* [2001] 251 ITR (ATS) 1 (TM-Pune)

In this case, evidence was found in search operations, of suppression of income during a particular period. It was held in this case that there was a difference between the block assessment and regular assessment. It was further held that evidence found in search operation in respect of suppression of income is to be presumed to be exhaustive. The AO cannot estimate income at a higher level on the ground that there would have been suppression during other periods also.

In this case certain observations of the Bench are quite important. The same may be summarised, as follows:

The very purpose of a search is to take the assessee by surprise and to assess his income on the basis of evidence and materials found during the search. Once the rationale

behind the search is kept in view, it would be clear that the law presumes that the assets or materials found in the course of the search are exhaustive of the undisclosed income of the assessee. The Assessing Officer cannot presume that there must be some other material or evidence, which is not found during the search and the assessee must have derived undisclosed income therefrom. To hold that even in the absence of any such evidence or material, the Assessing Officer would be empowered to estimate the income, is fraught with dangerous consequences.

II. No roving enquiries in respect of completed assessments, are permitted.

As per the decision of ITAT Mumbai in the case *Sunder Agencies Vs DyCIT*, [1997]63 ITD 245 (Mumb-Trib)**;** the provisions of S.158 BA do not provide a licence to the Revenue for making roving enquiries connected with completed assessments and it is beyond the power of AO to review completed assessments, unless some direct evidence comes to the knowledge of the Department as a result of search which clearly indicates the factum of undisclosed income.

III. No addition is justified on the basis of papers alone in the absence of corroborative evidence.

For the above proposition the decision the ITAT in the case of *ITO Vs M.A. Chidambaram [1997]* 63 ITD p.203 (Mad - Trib -TM) and the decision of ITAT in the case of *ACIT Vs Shailesh S. Shah[1997]* 63 ITD p.153 (Mumb-Trib); are relevant.

IV. The AO and the Tribunal entitled to adjudicate upon the validity of the search operation.

The Allahabad Bench of the Tribunal, in case of *Dr. A.K. Bansal Vs. ACIT* [2000] 73 ITD 49 (All.-TM), has laid down a very interesting proposition that in the event of the assessee challenging the validity of search under section 132 on the ground of non-existence of any of the circumstances / conditions enumerated in clause (a) or (b) or (c) of S.132(1) or challenging the very factum of search on the ground that there was no search warrant in that case, the AO as well as the Tribunal, is duty bound to adjudicate upon the matter and satisfy itself with regard to authorization for search, having been issued in accordance with law.

V. Estimate of income should not be arbitrary

The Bombay High Court in the case of *CIT Vs. Dr. M.K.E. Memon* [2001] 248 ITR 310, has held that while estimating the undisclosed income under Chapter XIV-B, the AO cannot apply a rule of thumb. The AO cannot estimate the undisclosed income on an arbitrary basis. Where estimation of income by the AO was without any evidence / basis, the Tribunal would be justified in deleting the additions made.

VI. Assessment based on illegal search is *ab-initio* void.

It was held in the case of *Ajit Jain Vs. Union of India* [2000] 242 ITR 302 (Del.), that any block assessment made pursuant to a search, which is without jurisdiction and *ab-initio* void, cannot be sustained.

VII. Amendments in the provisions of S.158BC, vide Finance Act, 2002

Clause (b) of S.158BC is amended vide Finance Act, 2002, so as to provide that the provisions of S.145 relating to method of accounting, shall also apply, so far as may be, in determining the undisclosed income of the block period in the manner laid down in S.158BB.

Clause (d) has been substituted vide Finance Act, 2002, so as to provide that the assets seized under section 132 or requisition under section 132A, shall be dealt with in accordance with the provisions of S.132B, which deals with "Application of seized or requisitioned assets".

The aforesaid amendments take effect from 1st of June, 2002.

5. Undisclosed income of any other person – S.158BD

Section 158BD deals with the assessment of undisclosed income of any other person, being a person other than the one in whose case action under section 132 or 132A has been taken.

The provisions of S.158BD may be rephrased, as follows:

Where the AO is satisfied that –
any undisclosed income belongs to any person other than the person with respect to whom search was made under section 132 or whose books of accounts, other documents or any assets, were requisitioned under section 132A, -
in such a situation –

- the books of accounts, other documents or assets seized or requisitioned, shall be handed over the AO, having jurisdiction over such other person, and

- such AO shall proceed against such other person under section 158BC and the provisions of Chapter XIV-B (containing sections 158B to 158BH) shall apply accordingly.

The words 'under section 158BC' after the words 'that AO shall proceed', have been inserted in S.158BD, vide Finance Act, 2002, with effect from 1.6.2002, in order to clarify that the AO concerned shall proceed against such other person under section 158BC.

The provisions of S.158BD explained

There may be and in fact there are, at times, cases where after scrutiny of material seized during search or requisition, the AO finds that there is material or evidence to show that a part of the undisclosed income belongs to some other person and not to the assessee. Section 158BD provides that where the AO is satisfied that any undisclosed income belongs to any person, other than the person in respect to whom search was conducted under section 132 or whose books of accounts or other documents or any assets were requisitioned under section 132A, then the books of accounts, other documents or assets seized or requisitioned, shall be handed over to the AO, having jurisdiction over such other person and that such other AO, shall proceed under section 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly.

In other words, as per the provisions of S.158BD, the applicability of Chapter XIV-B can be extended to a person against whom no direct action under section 132 has taken place or against whom no requisition has been issued under section 132A, but evidence of undisclosed income in respect of such other person is found during the search or requisition.

On account of this section it is likely that different persons carrying on the business at the same place, may be covered under this chapter. Even the group companies when transactions are co-related, can also be roped into under this chapter. The AO having jurisdiction over the person who is searched etc, will have to first satisfy that undisclosed income of other person, is detected as a result of search and only thereafter, he will be able to invoke S.158 BD and will hand over the seized material to the other AO having jurisdiction over the other person.

Requisite condition for invoking S.158BD

As per the provisions of S.158BD, recording of satisfaction that undisclosed income belongs to some other person on the basis of material found in the course of search, is a condition precedent to invoke S.158BD and any material coming into possession after invoking S.158BD cannot be considered for exercising such jurisdiction under section 158BD. Therefore, the absence of recording such satisfaction before invoking S.158BD, would render such assessment order illegal and void *ab initio – Sumant Dhanji Zalte Vs. ACIT* [2000] 72 ITD 132 (Pune-T).

Instances of application of S.158BD

(i) In *T.S. Sujatha Vs. Union of India [1999]* 238 ITR 599 (Ker.), the initiation of proceedings under section 158BD against the petitioner, was held to be sustainable because the petitioner's husband could not explain the source of money standing to the credit of the petitioner in the bank account seized.

(ii) In the case of *T.S.Sujatha Vs. Union of India* [1999] 239 ITR 488 (Ker.), it was discovered that the petitioner was in possession of undisclosed income and it was held that the issuance of notice under section 158BD could not be said to be without jurisdiction or illegal *per se*.

Transfer of a case under section 127 read with sections 158 BD and 158 BG.

Before transferring the case from an IT authority having jurisdiction on an assessee, in view of the provisions of S.158BD / 158 BG, an opportunity of being heard is to be given to the assessee before effecting such transfer. - *Mukutla Lalita Vs. CIT* [1997] 226 ITR 23 (AP).

In the above case, the premises of the father of the assessee were raided and the raid yielded materials connecting the assessee to the suppressed income detected. The case of the assessee was transferred from the ITO, Kakinada to the ACIT, Rajahmundry, without giving an opportunity of being heard to the assessee. It was held that the provisions of S.127, are required to be complied with, even when the records are to be transmitted to an officer other than the officer to whom the papers are handed over in the first instance under section 158BD.

6. Time limit for completion of block assessment – S.158BE

Section 158BE lays down time limit for completion of block assessment. It may be seen from the provisions of S.158BE that there are two sub-sections, namely (1) and (2) in S.158BE. Besides, there are two Explanations, viz. Explanation 1 and Explanation 2, to S.158BE. The aforesaid provisions may be summarised, as follows:

(i) **Time limit for completion of block assessment in the case of an assessee – S.158BE(1)**

Where a search was initiated or requisition was made within the period from 1.7.1995 to 31.12.1996, the assessment under section 158BC had to be completed within **one year** from the end of the month in which the last of the authorization for search under section 132 or for requisition under section 132A, was executed.

Where a search was initiated or requisition was made on or after 1.1.1997, the order of block assessment under section 158BC is to be completed within **two years** from the end of the month in which the last of the authorization for search under section 132 or for requisition under section 132A, was executed.

(ii) **Time limit for completion of block assessment in the case of the other person referred to in S.158BD – S.158 BE(2)**

Where a search was initiated or requisition was made within the period from 1.7.1995 to 31.12.1996, the assessment under section 158BC in the case of the other person referred to in S.158BD, had to be completed within **one year** from the end of the month in which the notice under Chapter XIV-B, was served on such other person.

Where a search was initiated or requisition was made on or after 1.1.1997, the order of block assessment under section 158BC in the case of the other person referred to in S.158BD is to be completed within **two years** from the end of the month in which the notice under Chapter XIV-B, was served on such other person.

(iii)**Exclusion of certain period in computing the period of limitations – Explanation 1**

Explanation 1 to S.158BE has been substituted with effect from 1.6.2002 vide Finance Act, 2002. The newly substituted Explanation 1 to S.158BE, provides for exclusion, in computing the period of limitation for the purposes of S.158BE, of the following periods :

(a) the period during which the assessment proceeding is stayed by an order or injunction of any Court; or

(b) the period commencing from the day on which the AO directs the assessee to get his accounts audited under section 142(2A) and ending on the day on which the assessee is required to furnish a report of such audit under section 142(2A); or

(c) the time taken in reopening the whole or any part of the proceeding or giving an opportunity to the assessee to be re-heard under the proviso to S.129 (in case of change of incumbent AO); or

(d) in a case where an application made before the Settlement Commission under section 245C, is rejected by it or is not allowed to be proceeded with by it, the period commencing on the date on which such application is made and ending with the date on which the order under section 245D(1) is received by the CIT, under section 245D(2).

(iv) **Provision of minimum period for completion of block assessment in case of aforesaid exclusion – Proviso to Explanation 1**

There is a proviso inserted in Explanation 1 to S.158BE with effect from 1.6.2002 vide Finance Act, 2002. As per this proviso, where immediately after the exclusion of the aforesaid period, the period of limitation referred to in S.158BE(1) or (2) available to the AO, under section 158BC(c), is less than 60 days, such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly.

(v) **Authorisation when deemed to have been executed – Explanation 2**

The newly substituted Explanation 2 to S.158BE provides that for the removal of doubts, it is hereby declared that the authorization referred to in S.158BE(1), shall be deemed to have been executed –

(a) in the case of search under section 132 -
- on the conclusion of search as recorded on the last panchanama drawn in relation to any person in whose case, the warrant for authorization has been issued,

(b) in the case of requisition under section 132A -
- on the actual receipt of the books of accounts or assets by the authorised officer.

7. Certain interests and penalties not be levied or imposed – S.158BF

The essential feature of the scheme under Chapter XIV-B is to determine the undisclosed income and levy tax at a fixed rate of 60% on the income so determined, for the block period, irrespective of the rate of tax which was chargeable for such an assessee in any AY covered under the block period.

It has, therefore, been specifically laid down that –

(i) no interest under sections.234A, 234B or 234C, or

(ii) no penalty under sections. 271(1)(c), 271A or 271B

- shall be levied or imposed upon the assessee in respect of undisclosed income determined in block assessment.

Immunity from levy of interests and penalties, as per S.158BF, is of limited nature

Upon perusal of provisions of S.158BF, it is clear that only interests and penalties under the sections enumerated therein, are not to be levied or imposed upon the assessee in respect of the undisclosed income determined in the block assessment. However, there is no immunity from other penal provisions enumerated in Chapter XXI. There is also no immunity from any prosecution. Penalty and prosecution may be related to the order of the regular assessment, which is totally different from the block assessment.

8. Levy of interest and penalty in certain cases – S.158BFA

There was a wide spread criticism of the scheme under Chapter XIV-B, that tax-evaders subjected to search have been let off very lightly with only 60% of undisclosed income as tax and immunity from penalty for concealment as well as interest leviable under sections. 234A, 234B and 234C. As a result, the IT (Amendment) Act, 1997, has brought about an amendment by incorporating S.158BFA in the Act, with effect from 1.1.1997, in order to provide for levy of interest and penalty.

Section 158BFA is divided into four sub-sections. There are two provisos to S. 158BFA(2) and there is an Explanation to S. 158BFA(3). All the provisions under various sub-sections are explained, as follows:

I. Interest for late furnishing or non-furnishing of returns, to be levied in cases of search or requisition on or after 1.1.1997 – S. 158 BFA(1)

As per the revised provisions of S.158BC(a)(ii), a notice is to be issued for furnishing a return within "such time not being less than 15 days, but not more than 45 days" of the service of notice. It is now laid down under section 158BFA(1) that if the said return is not furnished within the aforesaid period or not furnished at all, then interest will be chargeable "*@ 2% of the tax on undisclosed income, determined under section 158BC(c)*" for every month or part of month. The rate of interest has been reduced from 2% to 1.25% vide Finance Act, 2001, with effect from 1.6.2001. This interest is, thus, similar to the interest chargeable under section 234A.

Interest leviable under section 158BFA(1), whether could be waived by the Chief Commissioner.

No provision has been made for waiver of interest leviable under section 158BFA. Board's circular dated 23.5.1996 had been issued for the purpose of waiver of interest leviable under sections. 234A, 234B and 234C, in exercise of its jurisdiction granted under section 119(2), under which it was specifically empowered to relax the provisions of those sections. On the other hand, S.158BFA had come on the statute book with effect from 1.1.1997, and as such, the Circular, being prior in time, cannot possibly govern the interest leviable under section 158BFA. It is pertinent to note that the Legislature in its wisdom did not make a corresponding amendment in S.119(2), to empower the Board for relaxation of the provisions for levy of interest under section 158BFA – *New Punjab Skin Co. Vs. Union of India* [2000] 242 ITR 401 (Punj. & Har.) –This judgement was affirmed in *New Punjab Skin Co. Vs. Union of India* [2002] 254 ITR 68 (SC), holding that so far as interest leviable on undisclosed income under section 158BFA(1) is concerned, no power is vested under section 119(2)(a), to pass a general or special order for waiver or reduction.

Waiver of interest under section 158BFA(1) by the Chief Commissioner, after 1.6.2002

Section 119(2)(a) of the Act, has been amended vide Finance Act, 2002, with effect from 1.6.2002, by adding "158BFA after the figure 155", so as to provide that such general or special order may be issued by the Board, by way of relaxation of the provisions of S.158BFA also. Thus the CBDT has been empowered to issue a Circular for reduction or waiver of penal interest for late filing of return of

income etc., even in respect of penal interest leviable under section 158BFA. The aforesaid Circular of the Board dated 23.5.1996, empowers the Chief Commissioner / Director-General of Income-Tax to reduce or waive penal interest even in respect of assessments in search and seizure cases, as is evident from sub-paras 2(a) and 2(b) of the aforesaid Circular. It is, therefore, a moot point whether the aforesaid Circular could apply to Block Assessment, after 1.6.2002. The Board have not issued any fresh Circular after the aforesaid amendment of S.119(2)(a) for the waiver of interest leviable under section 158 BFA. However, as the aforesaid Circular is a beneficial provision, the same is required to be interpreted liberally and in favour of the tax-payer. In this view of the matter, in my opinion, the Chief Commissioner / Director-General of Income-Tax will have power to reduce or waive penal interest leviable under section 158BFA, after 1.6.2002.

It would, however, be better if the Board issues a fresh Circular, so as to explicitly empower the Chief Commissioner / Director-General of Income-Tax, to reduce or waive interest leviable under section 158BFA, in cases of both search as well as requisition under sections 132 and 132A of the Act.

II. Penalty under section 158BFA(2)

As per provisions of sub-section (2), penalty will be leviable if the AO detects undisclosed income over and above what has been disclosed in the return of income. The penalty under section 158BFA(2) may also be levied by the Commissioner (Appeals). He will take action only if he is of the opinion that action under the section is liable to be taken, but has not been initiated by the AO or where he himself has discovered some further undisclosed income to be assessed under block assessment.

Quantum of penalty

The quantum of penalty laid down under section 158BFA(2), is a sum which shall not be less than the amount of tax leviable, but which shall not exceed 3 times the amount of tax so leviable in respect of undisclosed income determined by the AO, under section 158BC(c).

Penalty under section 158BFA(2) not to be imposed in certain cases – 1st proviso to S. 158BFA(2)

As per the first proviso to S.158BFA(2), no order imposing penalty under section 158BFA(2) shall be made in respect of a person, if –

(i) such person has furnished a return under section 158BC(a);

(ii) the tax payable on the basis of such return has been paid or if the assets seized consist of money, the assessee offers the monies so seized to be adjusted against the tax payable;

(iii) evidence of tax paid is furnished alongwith the return; and

(iv) an appeal is not filed against the assessment of that part of the income, which is shown in the return.

If income in excess of the income as per return is determined under section 158BC(c), then the assessee has a right to file an appeal against the additional income and the penalty proceedings can be initiated only in respect of the additional undisclosed income brought to assessment.

From the aforesaid conditions, it is clear that the circumstances stated in (i) to (iv) are cumulative in nature and all of them have to be satisfied for availing of the benefit of the said first proviso.

Exception to the applicability of first proviso – 2nd proviso to S.158BFA(2)

The second proviso to S.158BFA(2) enacts an exception to the applicability of the provisions of the aforesaid first proviso. As per the 2nd proviso, the penalty shall be imposed only on that portion of undisclosed income determined, which is in excess of the amount of undisclosed income shown in the return. Thus penalty under section 158BFA(2) is leviable if the income assessed under section 158BC (c) is in excess of the income declared in the return.

III. Requisite condition for levy of penalty under section 158BFA(2) – S.158BFA(3)

Section 158BFA(3) lays down six conditions in clauses (a) to (f), for levy of penalty under section 158BFA(2).

These conditions may be discussed, as follows:

(i) **Assessee must be given a reasonable opportunity of being heard**

As per clause (a), it is mandatory that no order imposing a penalty under section 158BFA(2) shall be made unless an assessee has been given a reasonable opportunity of being heard.

(ii) **Approval is mandatory in certain cases**

As per clause (b), a penalty can be levied by the Assistant Commissioner or Assistant Director, where the amount of penalty does not exceed Rs.20,000/-. With effect from 1.10.1998, a Dy. Commissioner or a Dy. Director can levy a penalty not exceeding Rs. 20,000/-.

However, if the penalty leviable exceeds Rs. 20,000/- then the AO, either Assistant Commissioner, Assistant Director, a Dy. Commissioner or a Dy. Director, must take the previous approval of the Joint Commissioner or Joint Director.

In case the Joint Commissioner or Joint Director is himself the AO, he is competent to levy any penalty and there is no restriction on his power to levy penalty.

(iii) **Period of limitation for imposing penalty under section 158BFA(2)**

Clauses (c), (d) and (e) lay down period of limitations for imposing such penalty in 3 categories of cases.

- **Category I, as per clause (c)** covers cases where the assessment to which the proceedings for imposition of penalty relate, is subject matter of appeal to the CIT(A) or to the Tribunal. The period of limitation for levy of penalty in such cases, is –

  - the financial year in which the proceedings, in the case of which action for imposition of penalty has been initiated, are completed; or

- six months from the end of the month in which the order of the CIT(A) or as the case may be, or Appellate Tribunal is received by the Chief Commissioner or the Commissioner,

whichever period expires later.

- **Category II, as per clause (d),** covers the cases where the relevant assessment is the subject matter of revision under section 263.

  The period of limitation for levy of penalty in such cases, is six months from the end of the month in which such order or revision is passed.

- **Category III, as per clause (e)** covers all other cases not falling within category I and category II.

The period of limitation, for levy of penalty in such cases is –

- the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed; or

- six months from the end of the month, in which action for imposition of penalty is initiated,

whichever period expires later.

The aforesaid provisions correspond to the provisions contained in clauses (a), (b) and (c) of S.275(1).

(iv) **Clarification for levy of penalty – S.158BFA (3)(f)**

As per the provisions of S.158BFA(3)(f), no penalty is leviable for any search initiated under section 132 or requisition under section 132A, if they are conducted on any date after 30.6.1995, but before 1.1.1997.

Exclusion of certain period, for levy of penalty – Explanation to S.158BFA(3).

As per Explanation to S.158BFA(3), in computing the period of limitation for the purpose of S.158BFA, the following periods are to be excluded:

(i) the time taken in giving an opportunity to the assessee to be re-heard under the proviso to S.129. This proviso enables an assessee to demand that he be re-heard by the successor AO in case of change of the incumbent AO.

(ii) the period during which the immunity granted under section 245H by the Settlement Commission, remained in force; and

(iii) the period during which the proceedings under S.158BFA(2) are stayed by an order or injunction of any Court.

The Explanation, thus, excludes the period, which are not available to the AO.

IV. Copy of penalty order to be sent to the AO in certain cases – S.158BFA(4)

As per the provisions of S.158BFA(4), if an IT authority other than the AO passes an order under section 158BFA(2), imposing a penalty, then he must immediately send a copy of such order to the AO.

V. Cases of non-filing of return

It is evident that in cases where no return is filed in response to notice under section 158BC(a) and assessment is completed without there being such a return, such a case is not covered by the prohibition as per first proviso and in each of such cases penalty proceedings are to be initiated. In such a case the income assessed under section 158BC(c), is in fact the income in respect of which penalty is leviable, as income declared is to be taken as 'Nil'. In such cases of non-filing of return the assessee would thus be liable to interest under section 158BFA(1) and also penalty under section 158FA(2). The double levy would be in addition to tax at the rate of 60 per cent of the undisclosed income. Thus in cases of non-filing of returns, tax and penalty leviable would be more than one hundred per cent of tax on undisclosed income as determined under section 158BC(c). In addition, interest will be chargeable at two per cent under section 158BFA(1). The penalty may be levied upto a maximum of 300 per cent of tax. Thus every tax payer now has to take urgent and immediate steps for filing return in response to notice under section 158BC(a), otherwise he has to pay heavy penalties and interest.

9. Authority competent to make a block assessment – S.158BG

Section 158BG deals with the issue regarding the authority, which is competent to make the block assessment. From the provisions of S.158BG, it may be seen that no officer below the rank of Assistant Commissioner will be entitled to make an assessment for the block period. Thus an ITO cannot pass an order under section 158BC(c). Thus the power under Chapter XIV-B can be invoked only by an officer who is either an Assistant Commissioner or an Assistant Director or a Dy. Commissioner or a Dy. Director.

Previous approval of the supervising officer necessary – Proviso to S.158BG

As per the proviso to S.158BG, an AO will have to seek the approval of the supervising officer before passing such an assessment order –

(i) For the searches under section 132 conducted and initiated between 1.7.1995 and 31.12.1996, the AO shall have to seek the approval of the Commissioner or the Director.

Thus, even if the assessment was made by a Dy. Commissioner or Dy. Director, he had to obtain previous approval of the Commissioner or Director.

(ii) For search under section 132 or requisition under section 132A after 31.12.1996, the approval has to be sought by an Asst. Commissioner / Asst. Director from a Dy. Commissioner / Director till 30.9.1998. However, with effect from 1.10.1998, the approval is to be obtained from Jt. Commissioner / Jt. Director. If the AO is himself a Jt. Commissioner / Jt. Director, he is not required

to seek any approval of any other authority and he is competent to pass the order himself and no approval of the Commissioner is required.

Approval of the order under section 158BC by the CIT

Approval of the Assessment Order under section 158BC by the CIT, was required for searches initiated between 1.7.1995 to 31.12.1996.

With effect from 1.1.1997, as per revised assessment procedure r.w. proviso to S.158BG, no order is to be passed by the competent authority under section 158BG without the previous approval of –

(i) Commissioner or Director for any search after 30.6.1995, but before 1.1.1997

(ii) Jt. Commissioner / Jt. Director for searches conducted on or after 1.1.1997.

A controversy had arisen as to whether approval was to be given by the Commissioner after giving opportunity of hearing to the assessee and whether the Commissioner was required to record the reasons in writing for approving the order. This controversy has now been resolved by the special Bench of the ITAT in *Kailash Moudgil Vs. DCIT* [2000] 72 ITD 97 (Del.-SB).

It was held in this case that –

(i) Under the provisions of S. 158BG, approval contemplated is only an administrative approval and not a judicial approval. Therefore, an opportunity of hearing to the assessee need not necessarily be given by the Commissioner, under proviso to S.158BG.

(ii) The provisions of S.158BG do not require the Commissioner to record the reasons in writing and the approval without recording reasons, would not render the order of the AO invalid.

Appeals against the block assessment

Where an order is made under section 158BC(c) determining the undisclosed income of the block period, an appeal is provided to –

(i) ITAT under section 253(1)(b) for searches initiated or requisition issued on or after 1.7.1995, but before 1.1.1997. Thus no appeal to the CIT(A), was provided for the search or requisition during this period, as the assessment order had to be approved by the Commissioner or the Director. Thus, the assessee was deprived of the first appeal to the CIT(A) in respect of assessment made consequent to searches between 1.7.1995 to 31.12.1996.

(ii) For the searches initiated or requisition made on or after 1.1.1997, the order of assessment has to be passed either by the Dy. Commissioner or the Assistant Commissioner with the approval of a Dy. Commissioner till 30.9.1998 and therefore, the assessee is entitled to appeal to the CIT(A) under section 246(2)(da) or S.246A(1)(k) and a direct appeal to the Tribunal is thus excluded.

(iii)With effect from 1.10.1998, the order under section 158BC(c) is passed with the approval of Jt.Commissioner and therefore, the appeal lies to the Commissioner (Appeals).

(iv) In such a case, as the appellate order would be passed by the CIT(A), under section 250, an assessee aggrieved by such an order may appeal to the ITAT as provided under section 253(1)(a). Similarly a Commissioner may direct an AO, under section 253(2), to appeal to the ITAT if the Commissioner objects to any order passed by the Commissioner (Appeals) under section 250.

10. Application of other provisions of this Act – S.158BH

As per S.158BH, save as otherwise provided in Chapter XIV-B, all other provisions of this Act shall apply to the block assessment made thereunder.

Thus, it is quite clear that Chapter XIV-B does not prohibit the grant of deductions from gross total income, under Chapter VI-A, because S.158BH provides that all other provisions of the Act shall apply to the block assessment. This view is further supported by Part-II of Form 2B (Return of income for block assessment). In **Part-II of Form 2B**, there is a provision for computation of total income / loss. Second column thereof provides for "total income including undisclosed income computed under section 158BB" Entry No.7 of "Computation of total income / loss" provides for "Deduction under Chapter VI-A". It is thus clear that the deduction under Chapter VI-A will be permissible with regard to the block assessment.

In this context, a judgement of the ITAT in the case of *A. Sadasivam Vs. ACIT* [2002] 255 ITR (ATS) 1 (Cal-T) ; is also relevant. It was held in this case that a special deduction under section 80L is allowable in block assessment.

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