(2009) 11 AHC CK 0278

Allahabad High Court

Case No: None

Pannalal Mahesh Chandra Jwellers		APPELLANT
	Vs	
Dy. Commissioner of Income Tax and Another		RESPONDENT

Date of Decision: Nov. 13, 2009

Acts Referred:

- Income Tax Act, 1961 - Section 148, 80HHC

Citation: (2010) 188 TAXMAN 95

Hon'ble Judges: Subhash Chandra Nigam, J; Prakash Krishna, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Prakash Krishna, J.

These five writ petitions relating to the five assessment years 1997-98 to 2001-02 of the Income Tax Act, challenging the legality and validity of the notice issued u/s 148 of the Income Tax Act (hereinafter referred to as the Act) were heard together and are being disposed of by a common judgment as the common questions of law and facts are involved therein. The arguments were advanced in the writ petition No. 922 of 2004 relating to the assessment year 2000-01. The facts, as jointly suggested by the learned Counsel for the parties, are being noticed from the said writ petition, hereinbelow.

2. The petitioner, a partnership firm is engaged in the business of trading in jewellery, import of golds, bullion, kirana goods like clove, Dalchini, Gambier, shoe-lining, marble and its sale in the local market, and also in export of gold jewellery. Income tax returns were filed in respect of the aforestated five assessment years and they were processed u/s 143(1) of the Act for the assessment years 1997-98, 1998-99 and 1999-2000 and intimations were given to the assessee.

However, the assessment for the next two subsequent years i.e. for the assessment years 2000-01 and 2001-02 were completed after scrutiny of the account books u/s 143(3) of the Act, vide two assessment orders, both dated 6-3-2003. The petitioner, along with income tax return, also enclosed audit certificate in form No. 10CCAC, certifying all particulars of export profits and the claim u/s 80HHC of the Act. The petitioner for the assessment year 2000-01, on the profits shown at Rs. 19,67,675/-, claimed deduction of Rs. 13,20,894/- u/s 80HHC of the Act . Thus, the net taxable income was shown at Rs. 6,69,580/-.

3. The other fact which may have some bearing for the assessment years 1997-98, 1998-99 and 1999-2000 is that the premises of the petitioner was searched by the authorities of the Income Tax Department on 3-2-2000. In consequence of search and seizure operation on 3-2-2000, ''block assessment'' for the period 1-4-1989 to 3-2-2000 u/s 158BC of the Act was framed.

4. While processing the assessment for the assessment year 2002-03, the assessing officer namely, Deputy Commissioner of Income Tax, Circle-II, Kanpur issued impugned notices in respect of the above five assessment years, all dated 26-3-2004, u/s 148 of the Act, on the ground that on perusal of record of the earlier assessment years, the authority concerned formed ''belief'' on the basis of the reasons recorded in its order dated 14-5-2004 that the income of the petitioner has escaped assessment for all these assessment years, on the ground that the deduction u/s 80HHC of the Act has been allowed on the formula specified u/s 80HHC(3)(b) of the Act where the export out of India is of trading goods, whereas it should claim the above deduction on the formula specified u/s 80HHC3(a) where the export out of India is of goods or merchandise manufactured or processed by the assessee. In other words, the deduction under the said section was allowed treating the assessee as a ''trader'' while it should have been allowed at a lesser amount treating the assessee as a ''manufacturer''.

5. Challenging the very jurisdiction of authority to issue such notices, the present writ petitions have been filed. Although number of points have been raised therein, but Sri Ravi Kant, learned Senior Counsel along with Sri Rakesh Ranjan Agrawal, Advocate has urged only the following two points for consideration of this Court.

(1) The assessee had disclosed all the material facts before the assessing officer during the course of assessment proceedings. The assessment orders were framed on the basis of those materials and no new evidence has come in possession of the department and as such, the reassessment notice, impugned in the present petition, is based on mere ''change of opinion'' and as such, the proceedings are wholly without jurisdiction.

(2) Re-assessment proceeding u/s 147 of the Act is not permissible in respect of ''block assessment''. Elaborating the arguments, it was submitted that the period relating to the assessment years 1997-98, 1998-99 and 1999-2000 was covered

under ''block assessment order'', being for block period 1-4-1989 to 3-2-2000. In other words, the submission is that where a ''block assessment order'' has been passed, the law does not envisage initiation of reassessment proceedings by taking recourse to Sections 147 and 148 of the Act.

6. Along with supplementary affidavit filed with application dated 25-5-2009, a copy of the block assessment order dated 25-2-2003 has been annexed.

7. A counter affidavit has been filed on behalf of the respondents wherein it has been stated that it is not correct to say that the reasons for reopening the assessment proceedings were recorded subsequent to issuance of notice u/s 148 of the Income Tax Act. The assessee was only provided a copy of the reasons subsequently, after issuance of notice dated 26-3-2004. It has been further stated that reopening of the assessment proceedings is within the statutory period of limitation and the present writ petition is liable to be dismissed on the ground of availability of alternative remedy to the petitioner. The action has been sought to be justified on the ground that there is reason to believe that the income of the petitioner has escaped assessment in the relevant assessment years in as much as excessive deduction u/s 80 HHC(3)(a) has been granted treating the assessee as a ''trader'' while the deduction u/s 80HHC(3)(b) is allowable as the assessee is a ''manufacturer''.

8. Taking the first point first, the petitioner submits that the entire facts were disclosed to the assessing authority during the original assessment proceedings and initiation of the proceedings u/s 147 of the Act and issuance of notice u/s 148 of the Act is based on mere ''change of opinion'' and is totally without jurisdiction. The action of the assessing authority, the petitioner submits, amounts the reviewing of the earlier order passed u/s 143(3) of the Act. It was submitted that along with the return the petitioner had filed auditor''s certificate in form No. 10CCAC, certifying all the particulars of export profits and claim u/s 80HHC of the Act as ''trader exporter''. The said claim after examination by the assessing officer was allowed and assessment was completed on an income of Rs. 8,26,688/- u/s 143(3) of the Act on 6-3-2003. It was further submitted that the petitioner is a ''trader'' and not a ''manufacturer'', which was accepted by the assessing officer during the course of assessment. Sri Ravi Kant, learned Senior Counsel for the petitioner submits that there being no fresh material in possession of the department, the initiation of the proceedings u/s 148 of the Act for reassessment is totally without jurisdiction. There had been no concealment on the part of the petitioner and the claim was thoroughly examined while framing the assessment order. The very initiation of the proceedings under Sections 147 and 148 of the Act is totally without jurisdiction.

9. Reliance was placed on certain decisions which will be noticed in the latter part of the judgment.

10. The phrase ''reason to believe'' as used u/s 147 of the Act are key words for reopening an assessment. The said phrase has been subject matter of interpretation, time and again.

11. u/s 147 of the Act, the proceedings for the assessment can be initiated only if the Assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The question whether the Assessing Officer had reasons to believe is not a question of limitation only but is a question of jurisdiction, a vital thing, which can always be investigated by the Court in an application under Article 226 of the Constitution as held in Daulatram Rawatmal Vs. Income Tax Officer and Another, (Cal); JAMNA LAL KABRA Vs. Income Tax OFFICER, B WARD, BAREILLY, AND OTHERS., Calcutta Discount Company Limited Vs. Income Tax Officer, Companies District, I and Another, C.M. Rajgharia and Another Vs. Income Tax Officer and Others, and Madhya Pradesh Industries Ltd. Vs. Income Tax Officer, Special Investigation Circle ''B'', Nagpur,

12. The words "has reason to believe" are stronger than the words "is satisfied". The belief entertained by the Assessing Officer must not be arbitrary or irrational. It must be reasonable or, in other words, it must be based on reasons which are relevant and material as held by the Apex Court in Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others,

13. The expression "reason to believe" in Section 147 does not mean purely subjective satisfaction on the part of the Assessing Officer. The belief must be held in good faith; it cannot be merely a pretence. It is open to the Court to examine whether the reasons for the belief have a rational connection or a relevant bearing to the formation of the belief and are not extraneous or irrelevant to the purpose of the section. To this limited extent, the action of the Assessing Officer in starting proceedings u/s 147 is open to challenge in a Court of law as held in S. Narayanappa and Others Vs. Commissioner of Income Tax, Bangalore, Kantamani Venkata Narayana and Sons Vs. First Additional Income Tax Officer, Rajahmundry, Madhya Pradesh Industries Ltd. Vs. The Income Tax Officer, Nagpur, Sowdagar Ahmed Khan (Deceased) (By his Legal representatives) Vs. Income Tax Officer, Nellore, , Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, Income Tax Officer, Income Tax-cum-Wealth Tax Circle II, Hyderabad Vs. Nawab Mir Barkat Ali Khan Bahadur, Hyderabad, The Commissioner of Sales Tax, U.P. Vs. Bhagwan Industries (P) Ltd., Lucknow, and State of Punjab v. Balbir Singh (1994) 3 SCC 2999.

14. The formation of the required opinion and belief by the Assessing Officer is a condition precedent. Without such formation, he will not have jurisdiction to initiate proceedings u/s 147. The fulfillment of this condition is not a mere formality but it is mandatory. The failure to fulfil that condition would vitiate the entire proceedings as held by the Apex Court in the case of Johri Lal (H.U.F.), Agra Vs. The Commissioner of Income Tax, and Sheo Nath Singh Vs. Appellate Assistant Commissioner of Income Tax, Calcutta, The reasons for the formation of the belief must have rational

connection with or relevant bearing on the formation of belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation of his belief that there has been escapement of income of the assessee from assessment in the particular year. It is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of income of the assessee from assessment. as held by the Hon''ble Supreme Court in the Case of Income tax Officer, Calcutta and Others Vs. Lakhmani Mewal Das, If there is no rational and intelligible nexus between the reasons and the belief, so that, on such reasons, no one properly instructed on facts and law could reasonable entertain the belief, the conclusion would be inescapable that the Assessing officer could not have reason to belief. In such a case, the notice issued by him would be liable to be struck down as invalid as held in the case of Ganga Saran and Sons P. Ltd. Vs. Income Tax Officer and Others,

15. Thus, it is well settled that the ''reason to believe'' u/s 147 must be held in good faith and should have a rational connection and relevant bearing on the formation of the belief and should not be extraneous or irrelevant. Further this Court in proceedings under Article 226 of the Constitution of India can scrutinize the reasons recorded by the Assessing Officer for initiating the proceedings u/s 147/148 of the Act. The sufficiency of the material cannot be gone into but relevancy certainly be gone into.

16. In the present case, it is apt to notice the reasons recorded by the authority for initiation of reassessment proceedings, which is as follows, (excluding the charts showing various figures in the concerned assessment years as well as the computation of 80HHC using both the formulas):

The above assessee files its return in this Circle. While proceeding with the assessment for A.Y. 2002-03, the assessee was queried regarding the details of export as it was noted that the assessee purchases gold from local markets and then makes value addition to it before exporting the same.

In reply to the queries, the assessee provided copies of various invoices and other documents related to exports. It was noted from these papers that the assessee has included ''making charges'' in the invoices thereby showing that the assessee is a manufacturer of gold jewellelry. The assessee in his reply has shown export of jewellery weighing 7601.090 gms worth US $ 75150 and in the invoice for the same that is enclosed with the reply, the assessee has shown making charges of US $ 9776 (A copy of the reply received and invoice is enclosed). Thus, it appears that the assessee is a manufacturer of the jewellery which he has exported.

On perusal of the records for previous assessment years, the records for the assessment year 2000-01 were studied. The case of the assessee for this assessment year 2000-01 was also completed u/s 143(3). In response to queries vide its reply

dated 17-1-2003, the assessee has explained his export activities. The same is quoted as under:

During the year we have exported gold ornaments of 47102 gms., amounting to Rs. 17997287. We have consumed 43 grams of gold for making of these ornaments. The cost of purchase of gold for export purpose has been arrived on the basis of immediate purchase before the use of gold for making export ornaments. The total cost of gold consumed so arrived at has been debited to the gold consumed for export account.

Thereafter the assessee has provided the detailed working of the same in the reply. Copy of the above reply is enclosed for ready reference. From perusal of reply of the assessee dated 17-1-2003, it is very clear that-

A. 43000 gms. of gold has been consumed.

B. 47102 gms of gold jewellery has been exported.

This gold of 43000 gms is the raw material for manufacturing of 47102 gms. of gold jewellery and the difference in weight of 4102 gms. is on account of addition in weight during the manufacturing process.

Thus, it is very clear that the assessee is a manufacturer of gold jewellery as in his own replies to queries raised during various assessment years, he has admitted both purchase of gold and manufacture of jewellery as well as payment of making charges.

However in the computation of 80HHC the assessee has computed the deduction on the formula specified u/s 80HHC(3)(b) where the export out of India is of trading goods where as it should claim the above deduction on the formula specified u/s 80HHC(3)(a) for export out of India for goods and merchandise manufactured or processed by the assessee.

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Accordingly, it is noted that the assessee has claimed a deduction of Rs. 13,20,894/- u/s 80HHC instead of claiming only Rs. 35,554.23, thereby reducing his income.

Further the assessee has also not included the effect of "Export Incentives" in its computation whereas he has been getting the benefit of export licence benefit in the form of replenishment of gold. The exact effect of the same shall also be material for computing his income.

Accordingly, I have reason to believe that income has been computed incorrectly and as such has escaped assessment and notice u/s 148 of the I.T. Act, 1961 is being issued.

17. Identical reasons have been recorded for all the assessment orders with only variation of figures of deduction allowed u/s 80HHC and the amount which

according to the department should have been allowed.

18. A bare perusal of the reasons recorded by the Deputy Commissioner of Income Tax, Central Circle II, Kanpur shows that from the record it appears that the assessee is a "manufacturer" of gold ornaments, as according to the department, is established from the assessee''s own explanation submitted on 17-1-2003 while explaining his export activities. The contention of the learned Senior Counsel for the petitioner is that on the basis of the said reason it is not possible to have reason to believe that the income of the assessee has escaped assessment. He submits that since the assessment was completed u/s 143(3) of the Act and, therefore, it shall be presumed that whether the assessee is a ''manufacturer'' or ''trader'' was examined by the assessing authority (though not said so expressly in the assessment order). In this connection reliance was placed by him on a Full Bench decision of Delhi High Court in the case of Commissioner of Income Tax v. Kelvinator of India Ltd. (2002) 256 ITR 1, wherein following has been observed:

We also cannot accept the submission of Mr. Jolly to the effect that only because in the assessment order, detailed reasons have not been recorded an analysis of the materials on the record by itself may justify the Assessing Officer to initiate a proceeding u/s 147 of the Act. The said submission is fallacious. An order of assessment can be passed either in terms of Sub-section (1) of Section 143 or Sub-section (3) of Section 143. When a regular order of assessment is passed in terms of the said Sub-section (3) of Section 143 a presumption can be raised that such an order has been passed on application of mind. It is well known that a presumption can also be raised to the effect that in terms of Clause (e) of Section 114 of the Indian Evidence Act judicial and official acts have been regularly performed. If it be held that an order which has been passed purportedly without application of mind would itself confer jurisdiction upon the Assessing Officer to reopen the proceeding without anything further, the same would amount to giving a premium to an authority exercising quasi-judicial function to take benefit of its own wrong.

For the reasons aforementioned, we are of the opinion that the answer to the question raised before this Bench must be rendered in the affirmative, i.e. in favour of the assessee and against the Revenue. No order as to costs.

19. Section 147 of the Act provides for income escaping assessment. The said Section was substituted w.e.f. 1-4-1988. The amended Section 147 contains two Explanations. Explanation 2, which is relevant for our purposes, is reproduced below:

Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable

under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the assessing officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) where an assessment has been made, but-

(i) income chargeable to tax has been under-assessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

20. The said Explanation on its plain language provides certain cases where income is chargeable to tax is deemed to be cases of escaped assessment and one of them is - where a return of income has been furnished by the assessee and assessment has been made, but the said income has been made subject of excessive relief under the Act, vide Explanation II(c)(iii). Similarly, Clause (iv) of Explanation 2(c) provides that where excessive loss or depreciation allowance or any other allowance under the Act has been computed, it shall be deemed that the income has escaped assessment. Explanation 2, thus leaves no room for doubt that in a case where assessment has been made but the income has been assessed by allowing excessive relief or excessive loss or depreciation allowance or any other allowance computed under the Act, is a case of escapement of income within the meaning of Section 147 of the Act.

21. Faced with this Explanation, only this much was submitted that so far as the petitioner is concerned, there is no fault on its part. Be that as it may, in view of the Explanation attached to Section 147, if there is material in possession of the department that excessive allowance has been allowed to an assessee, it would be a case of income escaping assessment.

22. The above view was taken by a Division Bench in which one of us (Prakash Krishna, J.) was a Shyam Bansal Vs. Assistant Commissioner of Income Tax, wherein it was held as follows:

The essential requirement for initiating reassessment proceeding u/s 147, read with Section 148 is that the assessing authority must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year. It is well-settled that sufficiency of material to form reason to believe cannot be the the subject-matter of the writ jurisdiction. The High Court in the exercise of its jurisdiction under Article 226 of the Constitution of India can interfere in a writ

petition against a notice issued u/s 148 of the Act when it is of the opinion that there is no material in possession of the assessing authority on which reasonably an opinion can be formed that the income has escaped assessment. Keeping this principle of law in mind, we have considered the submissions of learned senior Counsel for the petitioner and find that although the assessment of the petitioner was completed u/s 143(3) of the Act. But there is no discussion in the assessment order about the income earned by the assessee from the sale of shares by way of long-term capital gains. The entire assessment order is confined to the question relating to investment in the construction of house.

Explanation 2 to Section 147 enumerates the cases where it shall be deemed that income chargeable to tax has escaped assessment. Clause (b) to Explanation 2 of Section 147 provides that where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return, it is one of the cases of deemed escapement of assessment. Therefore, the argument that the petitioner made all disclosures in the assessment proceeding regarding the income from the sale of shares by long term capital gains is of little consequence as the Assessing Officer has failed to examine the same.

23. The aforesaid decision of this Court as well as the Full Bench decision of Delhi High Court given in the case of Commissioner of Income Tax v. Kelvinator of India Ltd. (supra) came up for consideration before another Division Bench of this Court in Civil Misc. Writ Petition No. 181 (Tax) of 2004 - Ema India Ltd. v. Assistant Commissioner of Income Tax, Central Circle-1 wherein it has relied on certain decisions of Apex Court holding that an assessee does not discharge his duty by merely producing the books of account or other evidence. He has to further bring to the notice of the assessing officer particular items in the books of account or portions of document which are relevant. Even it is it is assumed that, from the books produced, the assessing officer could have found out the truth, he is not on that account precluded from exercising the power to reassess the escaped income. It proceeded to hold as follows:

The aforementioned decision of this case in Shyam Bansal (supra) applies with full force to the facts and issue involved in the present case. We do not see any reasons to deviate from the above referred decision. Respectfully following the same, we uphold the legality and validity of the impugned notice issued u/s 148 of the Act.

24. This being so, we are of the considered opinion that at this stage it is not possible to hold that there is no material to form a belief that the income of the petitioner has not escaped assessment. There is rational connection and relevant bearing on the formation of belief and the material on record. Sufficiency of material, as an acknowledged legal position, cannot be gone into in a writ petition, only its relevancy can be gone into.

25. Only argument, as noticed hereinabove, that since the facts were disclosed before the assessing authority and the assessment was completed u/s 143(3) of the Act, the proceedings u/s 147 of the Act could not have been initiated, has got no merit. Whether the petitioner is a ''manufacturer'' or ''trader'' is a question which was required to be looked into and examined by the assessing officer at the time of original assessments, which it failed.

26. It will not be out of place to mention here that we were taken to the assessment order relating to the assessment year 2000-01 and it was tried to impress upon us that the question whether the petitioner is a ''trader'' or ''manufacturer'' was considered in the assessment order but we find no such discussion therein. Needless to say anything further as it may prejudice the case of the petitioner.

27. Following decisions, which were relied upon by the learned Senior Counsel for the petitioner, may be noticed, to keep the record straight:

(1) In Radhasoami Satsang, Agra v. Commissioner of Income Tax 1992 UPTC 96 it has been held that principle of res judicata is not applicable to Income Tax proceedings. In the absence of any material change, the Revenue is not justified to take a different view of the matter and the question of exemption under Sections 11 and 12 should not be reopened. The said decision has hardly any application to the controversy in hand and is distinguishable. More so, as mentioned in paragraph-18 of the report, the Apex Court has stated therein that the decision is confined to the facts of the case and cannot be treated as an authority on the aspects which have been decided by general application. Therefore, it cannot be treated as precedent.

2. Indra Prasth Chemicals Pvt. Ltd. Meerut and Ors. v. Commissioner of Income Tax, Meerut and Anr. 2005 UPTC 53 was a case where on facts it was found by the Court that there was no material for formation of belief that the income has escaped and as such, the notices were held to be invalid and without jurisdiction, which is not so here.

3. Universal Subscription Agency Pvt. Ltd. Vs. The Joint Commissioner of Income Tax, Special Ranger, is also distinguishable on facts as it was found that the initiation of the proceedings in respect of particular year was barred by time. In respect of other years, the notices were held to be valid and initiation of reassessment proceedings was upheld.

4. Jindal Photo Films Ltd. Vs. The Deputy Commissioner of Income Tax, is a case under unamended Section 147 wherein it was held that it was a case of mere change of opinion which does not provide jurisdiction to the assessing authority to initiate proceedings u/s 147 of the Act.

5. In Foramer Vs. Commissioner of Income Tax and Another, it has been held that w.e.f. 1-4-1989, radical departure from the original Section 147 has been made in as much as Clauses (a)(b) of the original Section 147 have been deleted and a new

proviso added to Section 147. In this case also the initiation of the proceedings was found to be barred by time.

28. It is not necessary to discuss the following cases relied upon by the petitioner which have no bearing on the controversy involved herein. Even the learned Senior Counsel did not refer those cases during course of the arguments but filed their photostat copies.

1. Sanghvi Swiss Refills (P) Ltd. Vs. Smt. Arti Handa, Assistant Commissioner of Income Tax and Another,

2. Niba India and Another Vs. Smt. Arti Handa, Assistant Commissioner of Income Tax and Others,

3. Smt. Jamila Ansari Vs. Income Tax Department and Another,

4. SGS India Pvt. Ltd. Vs. Assistant Commissioner of Income Tax-10(3)(1) and Union of India (UOI),

5. Siemens Information Systems Ltd. v. ACIT and Ors. (2007) 295 ITR 333 (Bom).

6. Kaira District Co-operative Milk Producers Union Ltd. Vs. Assistant Commissioner of Income Tax,

7. CIT v. Pithampur Steels Pvt. Ltd. (2008)173 Taxman 190 (MP).

8. Ambica Steels Pvt. Ltd. and Ors. v. State of U.P. 2008 UPTC 455.

9. (2008) 119 TTJ 1

29. In view of the above discussions, we find no merit in the first submission of the learned Senior Counsel for the petitioner and the same is hereby rejected by holding that initiation of reassessment proceedings, on the facts of the present case, cannot be said to be without jurisdiction. By way of clarification, it may be added that the plea that the initiation of reassessment proceedings are barred by time was not argued or raised before us. It may also be added that in the writ petition it has been pleaded that the reasons to initiate reassessment proceedings were recorded subsequently i.e. after issuance of the notice, but no such argument was raised during the course of hearing of the writ petition. We find that in the counter affidavit it has been stated that the reasons were recorded earlier before issuance of the impugned notices. This being so, in the absence of any argument in this behalf, the plea sought to be raised in the writ petition stands concluded against the petitioner.

30. Now, we take up the second issue raised by the learned Senior Counsel for the petitioner. The facts relevant to the said issue may be noticed in brief. The assessments for the assessment years 1997-98, 1998-99 and 1999-2000 were completed u/s 143(1) of the Act, meaning thereby the assessment was finalised without any scrutiny by the assessing officer. The business premises of the petitioner was searched on 3-2-2000 by the Income Tax authorities as disclosed in

the supplementary affidavit dated 29-5-2009. As a result thereof, proceedings for block assessment u/s 158 BC of the Act for the assessment years 1990-91 to 1999-2000 and 2000-01 for the previous year ending on 3-2-2000, the date of search, was framed. The submission is that in the block assessment order dated 25-2-2003, the entire evidence and the material which were collected and found and were placed on record, was considered. The assessing authority was thus satisfied that the petitioner is not a manufacturer, rather it is a trader. The submission is that in view of framing of block assessment for the period upto 3-2-2000, no reassessment proceedings under Sections 147 and 148 of the Act could be initiated. It is difficult to agree with the said submission. The point in issue is no longer res integra and has been set at rest by a decision of this Court in Civil Misc. Writ Petition No. 504 of 2006 - Chandra Prakash Agrawal v. Assistant Commissioner of Income Tax, Circle-2(1), Farrukhabad and Ors. and connected other writ petitions by judgment dated 28-8-2006. Similar argument was raised and repelled. The Court has considered Sections 132A, 158B to 158 BI and the judgment of Punjab and Haryana High Court in the case of Raja Ram Kulwant Rai Vs. Assistant Commissioner of Income Tax, and of Madras High Court in the case of B. Noorsingh Vs. Union of India and Others, and also various decisions and after taking note of Explanation to Sub-section (2) of Section 158BA, which reads as follows:
Explanation- For the removal of doubts, it is hereby declared that-

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) 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;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

has held as follows:

...After the insertion of explanation to Sub-section (2) of Section 158BA of the Act, the Parliament has made its intention clear that the special procedure for making assessment of undisclosed income as a result of search and specified matters as provided under Chapter XIVB is confined to the undisclosed material found therein and does not in any way effect the regular assessment provided under Chapter XIV of the Act in respect of the income not discovered or relatable to the search u/s 132 or the requisition of documents u/s 132A of the Act. The Kerala High Court in the case of Malayil Bankers Vs. Assistant Commissioner of Income Tax, the Gujarat High Court in the case of Commissioner of Income Tax Vs. Shambhulal C. Bachkaniwala, and the Calcutta High Court in the case of Deputy Commissioner of Income Tax and Others Vs. Shaw Wallace and Co. Ltd., has taken the view that in view of the plain language of Section 158BA of the Act and the explanation thereto, the Assessing Officer is not debarred from framing an assessment u/s 143 even where an

assessment has been framed for a block period u/s 158BC of the Act. Thus, we are of the opinion that even where an assessment for a block period has been made or is to be made under Chapter XIVB of the Act, regular assessment proceedings including re-assessment under Chapter XIV of the Act are not barred.

This would also be clear from a reading of Sub-section (1) of Section 158BB of the Act. Prior to substitution of the phrase "in accordance with the provisions of Chapter IV, on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer" occurring in Sub-section (1) of Section 158BB of the Act by the Finance Act 2002 with effect from 1.7.1995 by the following phrase "in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence", it could have been said that the income which can be included 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 proceeding. However, after the amendment made by the Finance Act, 2002, the assessment of undisclosed income can only be based on the evidence found in the search and the material or information gathered in post-search enquiry made on the basis of the evidence found in the search.

31. It can be looked from a different angle. It is a case where according to the department, the assessment has been made by giving excessive relief u/s 80HHC of the Act. Section 80HHC provides scheme for deduction in respect of profits retained for export business and Sub-section 3(a), 3(b) and 3(c) give the details claiming deductions by various categories of exporters. The petitioner has been claiming the same in the category of ''trader exporter'' and computed deductions as per Sub-section 3(b). The case of the department is that the petitioner falls in the category of ''manufacturer exporter'' and correct computation should be made according to Sub-section 3(a).

32. The issue whether the petitioner is entitled for deduction as a ''trader exporter'' or a ''manufacturer exporter'' having not been addressed in the block assessment order even, it is a clear case of initiation of reassessment proceedings.

33. In view of the Explanation, referred to above, which declares that the assessment made under Chapter XIVB dealing with special procedure for assessment, such cases shall be in addition to the regular assessment in respect of each previous years included in the block period. We do not find any merit in issue No. 2 also.

34. Viewed as above, we do not find any illegality in the initiation of reassessment proceedings by invoking Sections 147 and 148 of the Income Tax Act.

35. No other point was pressed by the learned Senior Counsel for the petitioner.

36. All the writ petitions, therefore, lack merit and are hereby dismissed with consolidated costs of Rs. 10,000/-.