



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No.1280 of 2009 with ITA No.1365 of 2009,  
ITA No.1366 of 2009, ITA No.1367 of 2009**

% DECISION DELIVERED ON: MARCH 30, 2011.

**1) ITA No.1280 of 2009**

**COMMISSIONER OF INCOME TAX . . . APPELLANT**

through : Ms. Suruchi Aggarwal, Sr.  
Standing Counsel with Ms.  
Shawana Bari, Advocate.

*VERSUS*

**CHANDRA KANT CHANU BHAI PATEL  
. . .RESPONDENT**

through: Ms. Shashi Kapila with Mr.  
R.R. Maurya, Advocates.

**2) ITA No.1365 of 2009**

**COMMISSIONER OF INCOME TAX . . . APPELLANT**

through : Ms. Suruchi Aggarwal, Sr.  
Standing Counsel with Ms.  
Shawana Bari, Advocate.

*VERSUS*

**CHANDRA KANT CHANU BHAI PATEL  
. . .RESPONDENT**

through: Ms. Shashi Kapila with Mr.  
R.R. Maurya, Advocates.

**3) ITA No.1366 of 2009**

**COMMISSIONER OF INCOME TAX . . . APPELLANT**



through : Ms. Suruchi Aggarwal, Sr.  
Standing Counsel with Ms.  
Shawana Bari, Advocate.

*VERSUS*

**MITESH PATEL**

**. . .RESPONDENT**

through: Ms. Shashi Kapila with Mr.  
R.R. Maurya, Advocates.

**4) ITA No.1367 of 2009**

**COMMISSIONER OF INCOME TAX . . . APPELLANT**

through : Ms. Suruchi Aggarwal, Sr.  
Standing Counsel with Ms.  
Shawana Bari, Advocate.

*VERSUS*

**MITESH PATEL**

**. . .RESPONDENT**

through: Ms. Shashi Kapila with Mr.  
R.R. Maurya, Advocates.

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE M.L. MEHTA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?



**A.K. SIKRI, J. (ORAL)**

1. ITA Nos.1280 of 2009 and 1365 of 2009

These two appeals arise out of common orders passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). To state in brief, a search had been conducted in the business and residential premises of the respondent-assessee on 18.11.1999. During the course of search, shares and debentures were found and seized. Some jewellery and cash were also found during the search operation, but in respect thereof, no seizure was made. Thereafter, notice under Section 142(1) of the Income Tax Act ('the Act' for brevity) was served upon the assessee and block assessment was made and various additions were made. Few of these additions were deleted by the CIT (A) and some more additions were deleted by the Tribunal. Some of the additions are sustained till the level of the Tribunal, against which no appeals are preferred by the assessee. In these appeals which pertain to block assessment period 01.04.1989 to 18.11.1999, the Revenue has proposed to raise the following questions of law:



- “1. Whether in the facts and circumstances of the present case, Ld. ITAT has erred in confirming the order of the CIT (A) in admitting fresh evidence under Rule 46(A), when the assessee was not fulfilling any conditions laid down for admission of additional evidence under the Rule 46(A)?
  2. Whether in the facts and circumstances of the present case, Ld. ITAT has erred in deleting the addition of ₹8,10,270/- on account of unexplained investment in shares and debentures?
  3. Whether in the facts and circumstances of the present case, Ld. ITAT has erred in deleting the addition of ₹5,31,170/- made by the ACIT on account of peak credit as undisclosed income?
  4. Whether the order of ITAT is perverse, as it has ignored the relevant facts on record?”
2. Insofar as question No. (1) is concerned, it has bearing on two additions in the nature of jewellery and unexplained cash. According to the Assessing Officer (AO), in spite of repeated opportunities given to the assessee, the assessee could not produce any documentary or other evidence to explain the jewellery and cash found during the search and therefore, additions of ₹4,11,265/- and ₹93,530/- were made respectively.
3. Before the CIT (A), the assessee furnished evidence for the first time to explain the jewellery as well as cash. His submission was that jewellery was belonging to the wife of the assessee which was duly disclosed in the income tax



return filed by the wife of the assessee for the Assessment Year 1989-90. In support thereof, the assessment order of the income tax return filed by the wife of the assessee was produced.

4. Insofar as cash is concerned, the assessee again produced the bank statement of M/s Jagdamba Tobacco Co. (which firm belongs to the assessee). The CITA (A) called for the remand report from the AO. Thereafter, he considered the question as to whether the fresh evidence is to be admitted under Rule 46A of the Income Tax Act. Observing that the assessee was not given sufficient opportunity to produce this evidence, the fresh evidence was admitted by the CIT (A) and on the basis of the aforesaid evidence, he recorded the finding of fact that the assessee had successfully accounted for the jewellery and cash, and deleted the same.
5. The Tribunal has affirmed the aforesaid order of the CIT (A). The Revenue in these appeals has not challenged the orders of the two authorities below on merits. The only challenge is to the admission of the fresh evidence under Rule 46A of the Act on the ground that the CIT (A) and



the Tribunal was wrong in observing that sufficient opportunity was not given.

6. Learned counsel for the Revenue submits that the questionnaire was sent much in advance giving sufficient opportunity to the assessee, but the assessee failed to avail the same and produce the evidence. Therefore, there was no justification for admitting the fresh evidence. Apart from the fact that the two authorities below had recorded that sufficient opportunity was not accorded to the respondent-assessee, even if there is some dispute/doubt about the same, we may mention that the fresh evidence which was produced in the form of assessment order in the of the wife of the assessee and the bank statement. Such documentary evidence would be without any blemish. Therefore, eve in order to advance the cause of justice, this evidence was admitted, it cannot be said that no prejudice is caused to the Revenue.
7. For the above reason alone, we hold that no substantial question of law arises.



8. Insofar as second question proposed by the Revenue is concerned, which pertains to the addition made by the AO on account of unexplained investment made in shares and debentures. The case of the assessee was that the said shares and debentures were belonging to Shri Mitesh Patel and Smt. Jyotikaben Patel and in this manner, source of making the aforesaid investments were explained. The CIT (A) sent the matter to DDIT (Investigation) -I, Baroda, who submitted the detailed report after carrying out the investigation. Before him, the assessee had produced Shri Mitesh Patel and Smt. Jyotikaben Patel, who gave the statement on oath stating that the share certificates in question were in their respective names and these investments were made by them out of their funds. On the basis of this investigation, DDIT (Investigation)-I, Baroda concluded that the assessee satisfactorily furnished the sources of the said investments. At the same time, he also observed that the said two persons, viz. Shri Mitesh Patel and Ms. Jyotikaben Patel had not correlated the date-wise withdrawal with the dates of investments made, *inter alia*, by producing the



- documentary evidence, the original/regular books of accounts. The CIT (A) accepted the said report and deleted the addition. However, at the same time, he remitted the case back to the AO to hold an inquiry about the correlation between the date-wise withdrawal with the dates of investments made by the aforesaid two persons.
9. The Tribunal has set aside this part of the order of the CIT (A) remitting the case back to the AO and in our opinion rightly so.
  10. It is clear from the above that insofar as the assessee is concerned, he had explained the source and his explanation was accepted, viz., shares and securities found from the residence in the form of Shri Mitesh Patel and Smt. Jyotikaben Patel. Once this aspect is accepted, there could not be any addition in the income of the assessee. If further investigation was required for the aforesaid correlation, i.e., in case of Shri Mitesh Patel and Smt. Jyotikaben Patel, that aspect could not have been remitted back to the AO for assessment while considering the assessment of the assessee.



11. The third issue is about the peak credit. The AO had made this addition on the basis of the diary seized from the premises of the assessee. While computing the peak credit, the AO had arrived at an addition of ₹5,31,170/- as being the excess outgo as per the diary. Simultaneously, the AO added a sum of ₹7,34,480/- to the peak credit as appearing on 24.11.1995. The Tribunal had sustained the addition of ₹7,34,480/-, but deleted the addition of ₹5,31,170/- on the ground that the addition of both the excess outgo as peak credits cannot be sustained in view of the fact that when computation of peak credit, the outgo would also be considered in the peak credit calculated on the continuous inflow and outflow of the funds, only once addition is called for. On this basis, higher of the two is sustained. This approach of the Tribunal is again without blemish.
12. We, thus, find that no question of law arises, these appeals are accordingly dismissed.

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13. On the basis of the aforesaid search and block assessment, the assessee herein, who happens to be son of Shri Chandra Kant Chanu Bhai Patel (the respondent- assessee in the aforesaid two appeals), two additions were made in his case on protective basis. The first addition was on account of peak credit. Since peak credit to the extent of ₹7,34,480/- had been sustained in the case of Chandra Kant Chanu Bhai Patel, the protective addition in case of this assessee cannot be sustained.
14. Other addition made by the AO was in the sum of ₹815994/- on account of excess stock. This addition has been deleted by the Tribunal on the following grounds:

“15. We have considered the rival submissions. A perusal of the assessments order shows that two additions have been made as a result of survey conducted on the business premises of M/s Jagdamba Tobacco Co. It is further noticed that these additions have been made substantially in the hands of Shri Chanderkant Chandbhai Patel. It is further noticed that this addition has also been deleted by Ld. CIT (A) in the hands of Shri Chanderkant Chandbhai Patel on the ground that these additions are to be considered in the hands of Shri Mitesh Patel as Shri Mitesh Patel was the proprietor of M/s Jagdamba Tobacco Co. It is also noticed that the survey in the case of M/s. Jagdamba Tobacco Co. has been conducted on 18.11.1999 and the search u/s 158BC in the case of Shri Mitesh Patel in a case of survey, which has been converted into a search. Thus, what is noticed is that in the course of survey, the excess stock had been found and consequently in view of the decision of the Coordinate Bench of this Tribunal in the case of GMS Technologies referred to supra, where it has been held



that in the block assessment, material found during the survey u/s 133A can be used only if it has some relation with the material seized during the search, otherwise not, as also the decision of Hon'ble High Court of Madras in the case of GK Senniappan referred to supra wherein it has been held that such other material or information as are available with the AO do not include the material gathered during the survey proceedings u/s 133A, we are of the view that these additions representing the excess stock and additional income computed by virtue action, cannot be treated as undisclosed income of the assessee for the purpose of block assessment as the same has not been linked to anything found in the course of search. In the circumstances, the AO is directed to delete the additions representing the alleged variation in stock found as a result of survey vis-à-vis stock available on account, as also the additional income computed by virtue of survey action. In these circumstances, grounds No.5 and 6 of the assessee's appeal stand allowed. "

15. We agree with the aforesaid finding of fact. No question of law arises, even otherwise tax effect in these cases is less than ₹10 lacs. These appeals are according dismissed.

**(A.K. SIKRI)**  
**JUDGE**

**(M.L. MEHTA)**  
**JUDGE**

**MARCH 30, 2011**

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