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

\+ **ITA No. 322 of 2005**

Judgment Reserved On: 12.07.2011

% ***Judgment Pronounced On:30.9.2011***

GURINDER MOHAN SINGH NINDRAJOG . . . **APPELLANT**

Through : Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Advocate.

VERSUS

COMMISSIONER OF INCOME TAX . . .**RESPONDENT**

Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel.

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.

1. This appeal was admitted on the following substantial questions of law:-

"1. Whether in the circumstances of the case, the Income Tax Appellate Tribunal was legally correct in confirming the:-

i) Addition of Rs.10,00,000/- on the basis of pages 16 and 17 of Annexure A-1 of the seized documents allegedly representing an amount received from Mr. Roop Chand.

ii) Addition of Rs.10,00,000/- on account of an alleged purported payment made to Sh. Jitu Virmani on the basis of notes on page No. 24 of Annexure A-1 of the seized documents.

iii) Addition of Rs.20,00,000/- on account an amount allegedly received from Jeetu Vitrmani, on the basis of the notings on page 27 of Annexure-1 of the seized documents.

iv) The enhancement of assessment of undisclosed income of assessee of Rs. 25,00,000/- on account of payment allegedly received from Jeetu Virmani on the basis of notings in page 21 of Annexure A-1 of the seized documents.

v) The enhancement of assessment of an alleged undisclosed income of assessee of Rs.1,05,00,000/- on account of an alleged payment received back in respect of transactions of Chellegata property on the basis of notings in page 21 of Annexure A-1 of the seized documents.

2. Whether the Income Tax Appellate Tribunal has failed to appreciate that in view of the judgment of this Hon'ble Court in the case of ***Commissioner of Income Tax*** Vs. ***Sardari Lal & Co.,*** reported in 251 ITR 864 (Delhi) [FB], the Commissioner of Income Tax (Appeals) could not have enhanced the income not considered by the Assessing Officer?

3. Whether the order of the Income Tax Appellate Tribunal is not vitiated for non consideration of evidence and in disregard of the law that burden to establish that there was an undisclosed income of the assessee was on the revenue?"

It would be imperative to take stock of the facts and events which have given rise to the aforesaid questions.

2. The appellant is an individual. The appellant draws income from salaries, income from house property and income from other sources. A search and seizure operation under Section 132 of the Income-Tax Act (hereinafter referred to as 'the Act') was conducted on 19th November, 1999 at the residential and office premises of the appellant at Mumbai. On the basis of the aforesaid search, a notice under Section 158BC of the Act was issued on 25th September, 2000. In compliance thereto the appellant filed a return of an undisclosed income for the block assessment period 1990-91 to 2000-02 on 13th November, 2000, declaring therein an undisclosed income of ₹15,00,000/-. However, the Deputy Commissioner of Income Tax, Circle 41 (1), New Delhi vide orders dated 28th February, 2002 under Section 158 BC of the Act computed the total undisclosed income at ₹57,42,698/- by inter alia making the following additions to the declared undisclosed income of ₹15,00,000/- by the appellant:

(i)	An amount allegedly received from Mr. Roop Chand Indermal Singhi	₹ 10,00,000
(ii)	Dividend received on account of Canshares	₹2,42,698
(iii)	An amount allegedly paid to Mr. Jitu Virmani	₹ 10,00,000
(iv)	An amount received from Mr. Jitu Virmani	₹ 20,00,000
	Total	₹ 42,42,698

In terms of the aforesaid order dated 28th February, 2002 under Section 158BC of the Act, the Assessing Officer made the additions of undisclosed income of ₹10,00,000/- under Section 68 of the Act of the amount received from Sh. Roop Chand Indermal Singhi by holding as under:-

> "9.In view of the above observation, the submissions of the assessee that ₹ 10 lakhs received back from Mr. Singhi was utilized for making unaccounted expenses is not tenable. The entries as appearing on page no. 20,24 and 60 and ₹ 2,50,000/- cash seized from the assessee's premises and cost of jewellery ₹ 2,59,000/- and misc. items taken for ₹1,35,000/- are distinctively separate entities and items from ₹ 10 lakhs received by the assessee as per the agreement appearing on page No. 16 & 17 of Annexure A-1. In the light of the above, ₹ 10 lakhs on page No. 16 & 17 of Annexure A-1 represents the undisclosed income of the assessee u/s 68 of the IT Act 1961 for the FY 93-94 and 94-95 and is added to the undisclosed income of the assessee for the block period."

The Assessing Officer made an addition of ₹2,42,698/- as undisclos income on account of dividend received on canshares. We are not concerned with this addition in the present appeal. Further the Assessing Officer made an addition of ` 10,00,000/- on account of amount allegedly paid to Mr. Jitu Virmani as undisclosed income by holding as under:-

> "11.The seized documents throws light on the fact that GMS construction Co; in which the assessee is a Director is into the business of Real Estate i.e. purchase, development and sale of property. Properties as appearing on the seized documents in Annexure A-1 have been purchased in Bangalore such as Rajaji nagar property as appearing on page No. 54 and 27 of the seized documents. They have been purchased through a person named Mr. Jitu Virman. The identity of Mr. Jitu Virmani was revealed by the assessee in his statement recorded on oath during the search. "he is a builder stationed at Banglore with whom various joint ventures are under consideration". During the assessment proceedings it further came to light that Mr. Jitu Virmani was closely associated with the Real Estate business of the assessee and various purchases were undertaken by the assessee with Mr. Virmani for development of Real Estate business in and around Banglore. As borne out by the seized documents Mr. Jitu Virmani is a builder of Banglore with whom the assesse had been regularly dealing in Real Estate Business. On page no. 54 of Annexure A-1 of the seized documents, the details of land belonging to the area Rrjaji Nagar is depicted. As per this, the area is approximately 34,000 sq. feet. The payment is shown as 10C + 25 CH. The payment schedule is worked as ₹5,00,000/- per week and at the end of the paper it is mentioned 'plans from Jitu'. At page No.27, it is mentioned 'received from Jitu on account of Rajaji Nagar property ` 20 L'. The assessee was required to furnish complete details of the notings of these two pages i.e. page No. 54 and 27 of the seized documents at Annexure A-1. The

assessee stated vide his letters dated 20th February, 2002 that 10 C and 25 CH as appearing on page No. 54 represent cheque and no element of cash. The assessee maintained that this transaction pertains to GMS Construction Co. (P) Ltd. and both C and CH denotes cheques. It was further stated that only a sum of ₹25 lakhs has been paid by the Company. Since the agreement could not materialize due to recession in the market, the balance amount of ₹ 10 lakhs was not paid. This transaction of the Co; it was averred is duly recorded in the books of GMS Construction Co.(P) Ltd. and reflected in its return. It was further clarified that the assessee could not read due to severe eye sight problem and he must have omitted to write the letter H while writing 10C by being interrupted by a visitor/telephone call. Thus, it was stated that there is no element of cash transaction on these papers which belongs to GMS Construction Co (P) Ltd.. During the course of search, the assessee's statement was recorded and he was asked to comment on page No. 54 as above. He was asked to comment on the suffix C and Ch. It was stated by him that both the terminologies are of cheques and that it was agreed that ₹10 lakh will be paid on MOU and ₹25 lakhs on agreement. However, since the terms changed, no MOU was prepared and direct agreement was made. Therefore, first ₹25 lakhs was paid and the balance is yet to be aid. The assessee was also asked in the said statement to produce any copy of the agreement which states that ₹10 lakhs was to be paid on MOU and ₹ 25 lakhs on final agreement. The assessee replied that there was no agreement and the said paper is a part of their verbal discussion prior to entering into a joint venture. The above explanations of the assessee is not tenable given the fact that no satisfactory evidences have been furnished by the assessee so as to rebut that ₹10 lakhs as mentioned as 10 C was not given to Mr. Jitu Virmani. Furthermore, page No.27 corroborates the fact that cash money indeed formed part of the business transactions and the same was received back by the assessee from Mr. Jitu Virmani. The assessee's explanations that he had omitted to write CH is only an afterthought and an attempt to evade and conceal the amount of ₹10 lakhs which he had paid to Mr. Jitu

> Virmani. In view of the above observations, ₹10 lakhs as appearing on page No.54 written as 10 C is added to the undisclosed income of the assessee as representing is concealed income for the block period."

The Assessing Officer made an addition of ₹20,00,000/- on account of amount received from Mr. Jitu Virmani as undisclosed income, by holding as under:-

> "13. Importantly enough, this document dated 12.2.1996 was found at the office premises of the assessee and was seized during the course of raid u/s 132 of the IT Act on 19.11.1999. If this document did not have any bearing or was not related with the transactions of the assessee, there was no justification for this document to be found at the assessee's office premises even after a span of more than three years. It is clear also that page No.54 as detailed above indicates cash transactions between the assessee and Mr. Jitu Virmani and the amount of money returned by Mr.Jitu Virmani as appearing at page no.27 of ₹ 20 lakhs is certainly a part of the agreement between the assessee and Mr. Jitu Virmani regarding development of property at Rajaji Nagar, Banglore. In view of the above, the assessee's argument that the receipt of ₹20 lakhs as appearing on page no.27 is not connected with him does not hold ground A sum of ₹20 lakhs as appearing on page no. 27 is hence treated as undisclosed income of the assessee for the F.Y.95-96 and is added to the undisclosed income of the assessee for the block period."

The appellant being aggrieved from the aforesaid order u/s 158BC of the Act, filed an appeal before Commissioner of Income Tax (Appeals)-XXX, New Delhi and challenged the additions made to the declared undisclosed income which was made by the Assessing Officer on various grounds.

3. The Commissioner of Income Tax (Appeals) disposed off the appeal vide orders dated 24th March, 2003. The learned CIT (A) not only confirmed the additions made by the Assessing Officer but also enhanced the assessment made u/s 158 BC of the Act. The CIT (A) in terms of the aforesaid order enhanced the assessment of undisclosed income made by the Assessing Officer in respect of following alleged transactions:

i. Chellagatta Properties

ii. R.T. Nagar Properties

iii. NRE accounts of R.P.S. Baweja & Mrs. Rekhi.

The CIT (A) enhanced the assessment of undisclosed income of the appellant by ₹ 1,05,00,000/- on account of alleged deal in respect of Chellagatta properties by holding as under:-

> "13.5 The facts mentioned above very clearly point out the following:
> i. The notings on the page are in the handwriting of Sh. G.M. Singh
> ii. In his statement on 5.2.2000 Sh. G.M. Singh has confirmed that the notings relate to Chellagatta properties.
> iii. It was also confirmed by him that ₹1,35,80,000 was invested in Chellagatta properties which were received back.
> iv. On 8.2.02 Sh. G.M. Singh said that ₹ 1.35 crores was paid to various individuals on behalf of Soloman David by him and his wife (Sh.G.M. Singh `67.81 lacs, Mrs. Praveen Nindrajog ₹67,86 lacs). In this reply he also mentioned that these amounts were subsequently

received by him. The statement of accounts reproduced above show that these amounts were advanced to different persons on 30.3.96, i.e., after 4.9.95, the date recorded in the seized document. The statements of accounts further show that some of the amounts were received back much after 4.9.95 as follows:

22.1.99	₹ 9 lacs
24.1.99	₹ 1 lac
23.5.2000	₹ 5 lacs
23.6.2000	₹ 19,64,218
4.2.2002	₹,29,255
23.5.2000	₹ 5 lacs
23.6.2000	₹16,37,625
4.2.2002	₹ 6,48,945
6.2.2002	₹10 lacs

The dates mentioned above for advancing the amount as well as the receipt of amount cannot be related to the seized document at all for two important reasons as follows:-

i. The documents record "Recd. 1.05 crores + 35 lacs chq. On 4.9.95". This noting cannot be broken up in two parts – one for ` 35 lacs and other for ` 1.05 crores, particularly when the notings have been made in the past tense, i.e. Sh. G.M. Singh has recorded that on 4.9.95 itself both amount of ₹1.05 crores and ₹35 lacs were received. It cannot be said that ₹ 1.05 crores were received after 4.9.95 but Sh. G.M. Singh recorded the same on the date of receipt of ₹ 35 lacs. The appellant is trying to defend himself only by saying that on 4.9.95 ₹ 1.05 crores was not received even though this is recorded as such.

ii. In his first statement given on 5.2.2000 Sh. G.M. Singh had also stated that ₹ 1.35 crores were already invested. Therefore, it was not open for him to change his stand that this amount was advanced in the year 1996 as per the statement of accounts given during the course of assessment proceedings.

(f) The notings mentioned two amounts of ₹ 1.05 crores and ₹ 35 lacs whereas the explanation given during the course of assessment proceedings mentioned two different amounts i.e. ₹ 67.81 lacs for Sh. G.M. Singh and ` 67.86 lacs for Mrs. Praveen Nindrajog. There is no correlation between these two sets of figures and the explanation given cannot explain the notings on page 21.

(g) As Sh. G.M. Singh had confirmed that ₹1.35 crores were already invested, it is logical to believe the writings on page 21 that the same amount was received back on 4.9.95, after the deal was not finalized.

13.6 On the basis of above mentioned facts and analysis of the same the conclusion that can be arrived at is that the deal in this property was made in the year 1995 and approximately ₹ 1.35 crores were paid to different persons through Sh. Jeet Virmani. The deal did not materialize subsequently and the amount given was received back on 4.9.95 ₹ 35 lacs were received in cheque and ₹ 1.05 crores were received back in cash which was not accounted for. All explanations offered subsequently are afterthought. Accordingly ₹ 1.05 crores will be treated as income of Sh. G.M. Singh."

4. The CIT (A) further enhanced the assessment of the undisclosed income of the appellant by ₹25,00,000/- on account of amount allegedly received separately in respect of R.T. Nagar Property, by holding as under:

"14.1 In his reply before the AO given on 8.2.02 he mentioned that the balance amount of ₹25 lacs was not received and this amount had been adjusted against the amount due to Sh. G.M. Singh and his wife from Soloman David Holdings P. Ltd. I wanted to know how the balance amount had been adjusted and in response to this query the appellant's AR replied on 17.3.2003 that the assumption that Mr. Jeetu paid the remaining balance of ₹ 25 lacs was not correct at all. On the basis of nothings in the seized documents and his reply given before the AO I

am unable to agree with the changed stand of the appellant because of the following reasons:

1. On page 21 it has been clearly mentioned that the amount receivable was ₹ 50 lacs.
2. On 8.2.2002 it was again clearly explained that "this amount (the balance amount of ₹25 lakhs) had been adjusted against the amount due to Mr./Mrs. G.M. Singh from Soloman David Holding P. Ltd." in view of this the stand of the appellant now that the additional amount of ₹ 25 lacs was neither received nor adjusted cannot be accepted. Therefore, the only conclusion pssobiel fro these facts is that ₹ 25 lacs was received separately and has not been reflected in the regular books of accounts. Accordingly, ₹ 25 lacs is treated as unaccounted in income of the appellant."

Being aggrieved from the order of the CIT (A) dated 24th March, 2003 the appellant assessee preferred an appeal before the Tribunal. Before the Tribunal, the appellant reiterated its submissions as made before the Assessing Officer and the CIT (A). It was further contended that the CIT (A) had no power to enhance the assessment by discovering a new source of income not considered by the AO in his order which was under challenge. The appellant placed reliance on the Full Bench judgment of this Court in the case of ***Commissioner of Income Tax*** Vs. ***Sardari Lal & Co***. 251 ITR 864. It was further submitted before the Tribunal that whenever the question of taxability of income from a new source which had not been considered by the AO is concerned, the jurisdiction to deal with the same in appropriate cases may be dealt with under Section 147/148 of the Act and Section

263 of the Act if requisite conditions are fulfilled. It was also submitted t enhancement of income made by the CIT (A) was not as per law.

5. The Tribunal has, however, affirmed the order of the CIT (A) on all the aforesaid additions. Only one enhancement made by the CIT (A) of ₹2,12,17,681/- as undisclosed income on account of treating the NRE accounts in the name of Mr. Manjit Rekhi and Mrs. RPS Baweja as benami accounts of the assessee has been deleted with which we are not concerned in the present appeal. This appeal is admitted on the questions of law which are reproduced in the opening para of the present judgment.

6. With this background we proceed to take note of the arguments of each addition in the light of arguments advanced by counsel for either side.

Question No. 1 (i) Addition of ₹10,00,000 on the basis of pages 16 and 17 of Annexure A-1 representing the amount received from Mr. Roop Chand.

7. Insofar as this addition is concerned, it was based on pages 16 and 17 of AnnexureA-1 which were the documents seized at the time of search at the premises of the assessee. Indisputably, a sum of ₹10 lacs, as per these documents were received by him from Mr. Roop Chand Indermal Singhi was utilized for

making unaccounted expenses which explanation was found to be tota untenable. The assessee had relied upon the entries appearing on pages 20,24 and 60 as well as ₹2,50,000/- of cash seized from the premises of the appellant and cost of jewellery found at ₹2,59,000/- and misc. items valued at ₹1,35,000/-. However, a definite finding is arrived at by all the authorities below that those are distinct and separate entities and items from ₹10 lacs received by the assessee as per the agreement entered into with Mr. Roop Chand Indermal Singhi. The Tribunal has further recorded that the assessee has been taking different stand at different times to explain pages 16 & 17 of Annexure A-1 and he should have come out with a definite stand while explaining the amount of ₹ 10 lacs. We may reiterate that no serious attempt was made to challenge or shake the aforesaid finding. We, thus, are of the opinion that this addition was rightly made.

Question No. 1(ii) Addition of Rs.10,00,000/- on account of an alleged purported payment made to Sh. Jitu Virmani on the basis of notes on page No. 24 of Annexure A-1 of the seized documents.

8. We have already reproduced in detail the order of the Assessing Officer which contained reasons prevailed while making addition of this amount. The extracted portion gives the nature of transaction appearing in the seized documents. To put it in nutshell as per the seized documents, certain properties in Banglore were purchased by GMS Construction Company in which the assessee is the Director. These were purchased through one Mr. Jitu Virmani who was a builder

stationed at Banglore with whom various joint ventures were under considerati Mr. Jitu Virmani was closely associated with the real estate business of the assessee. The seized documents disclosed about the dealings of land at Rajaji Nagar, Banglore which was approximately 34,000 sq. ft. The payment is shown as 10 C + 25 CH (from this it was inferred that 10 lacs was in cash and ₹ 25 lacs in cheque). The document further mentioned the payment schedule i.e. ₹ 5 lacs per week. The explanation of the assessee that both 10 C and 25 CH represented cheques was not accepted and rightly so. These are again the findings which have been arrived at after minute analytical assessment of the documents in question by all the three authorities below.

9. We agree with the observation of the Tribunal that the documents seized were rightly treated as document depicting the transactions between the assessee and the Jitu Virmani who was a business associate of the assessee and whatever has been written off in the seized document was not the figment of imagination. We again reiterate that no serious attempt was made to question the aforesaid findings of the authorities below with which we are in agreement and hold that this addition was also rightly made.

Question No. 1 (iii). Addition of Rs.20,00,000/- on account an amount receiv from Jeetu Vitrmani, on the basis of the notings on page 27 of Annexure-1 of the seized documents.

10. This addition is made on the basis of notings on page 27 of Annexure A-1. The relationship between Jitu Virmani and the assessee has already been noted above. Notings on this page clearly revealed that this was also dealing in respect of Rajaji Nagar land and as per this document a further sum of ₹ 25 lacs was received as a part of the agreement between the assessee and Jitu Virmani regarding the development of property at Rajaji Nagar. Therefore, for the same reasons given in respect of an addition of ₹ 20 lacs based on page -54 this addition is also perfectly justified.

11. In fact, we may state at this stage that the entire thrust of argument of Mr. C.S. Aggarwal learned Senior Counsel appearing for the appellant/assessee pertain to the addition of ₹ 25 lacs and ₹1,05,00,000/- made by the CIT (A) thereby enhancing the amount of undisclosed income. It is these two additions which were not only decided on merits but main focus of the submission of Mr. Aggarwal was that the CIT (A) had no power to enhance the income not considered by the Assessing Officer. On this aspect Question of law no.2 is framed. Therefore, before dealing with the merits of the two additions, it would be appropriate to

answer Question no.2. For the sake of convenience this question is reproduc again:-

> "Whether the Income Tax Appellate Tribunal has failed to appreciate that in view of the judgment of this Hon'ble Court in the case of ***Commissioner of Income Tax*** Vs. ***Sardari Lal & Co.,*** reported in 251 ITR 864 (Delhi) [FB], the Commissioner of Income Tax (Appeals) could not have enhanced the income not considered by the Assessing Officer?"

12. As already pointed out above, when the appeal was being dealt with by the CIT (A) he noticed that certain notings at page 21 of Annexure A-1 of the seized documents disclosed certain payments allegedly received by the assessee on which no addition was made by the Assessing Officer. He thus issued show cause notice to the assessee to why said additions be not made. After receiving reply from the assessee and considering the matter the CIT (A) made those additions as well which are sustained by the ITAT. Challenging the jurisdiction of the CIT (A) to adopt such course of action, Mr. Aggarwal, argued that while making the assessment order if an income has escaped assessment then there are different modes provided under the Act but they do not include any such procedure adopted by the Assessing Officer which was in their jurisdiction. Dilating this submission, it was argued that different remedial measures which can be taken recourse are contained in Section 251 (1) (a), 263,154 and 147 of the Income-Tax Act. In the present case, where the CIT (A) is to decide the appeal, scope of his powers is stated in Station 251 (1)(a)

of the Act which empowers the CIT (A) to enhance the assessment as framed the Assessing Officer. However, his contention was that such power as are provided u/s 251(1)(a) of the Act is limited to those cases wherein, the Assessing Officer had in the body of order of assessment has dealt the claim and in respect of which item of income, he had made the addition, which addition so made required enhancement under this sub-clause (a). The CIT (A) does not have any power to enhance an order of assessment in respect of an issue not dealt by him in the body of the order of assessment, though might have been discussed by the Assessing Officer during the course of hearing before him, incidentally or collateral examination as held by the Apex Court in the case of ***CIT*** Vs. ***Rai Bahadur Hardutroy Motilal Chamaria,*** 66 ITR 443. This is a ratio of the judgment of Full Bench of this Court in the case of ***Sardari Lal & Sons*** 251 ITR 864 (Delhi). The submission, thus, was that where an Assessing Officer has failed to make an addition or disallowance with regard to an item of income or expenditure, though has dealt the same in the course of assessment proceeding, same cannot be subject matter of power of enhancement by CIT (A). It was further argued that in the instant case since the Assessing Officer had not dealt with the aforesaid sums, the exclusive jurisdiction to enhance the said assessment, if it was so justified, was with the Commissioner of Income Tax who could have exercised his powers under Explanation (c) to section 263 (1) of the Act. It was further argued that the reasons

given by the CIT (A) or ITAT in assessing the addition and holding that CIT ( ) had such powers were totally untenable. According the learned Senior Counsel, the subject matter of appeal before the CIT (A) was not in respect of the source by which income has been enhanced by the CIT (A). In the instant case, every source of addition though may be falling under one head of income, would still remain a different source of income and hence it is submitted that since the said sums of ₹ 25,00,000/- and of ₹ 1,05,00,000/- were thus not a subject matter of appeal, the CIT (A) could not have enhanced the income by invoking his powers under Section 251 (2), as the power to do so could be stated to be available to CIT who could have exercised his jurisdiction under Section 263 of the Act or else the Assessing Officer could have invoked the provisions of Section 147 of the Act by issuing notice under section 148 of the Act.

13. Mr. Sabharwal learned counsel for the respondent/department justified the orders of the CIT (A) and ITAT in enhancing the assessment submitting that such a power could be traced in Section 251(1)(a) of the Act and was rightly done in the instant case. He relied upon the reasoning given by the Tribunal in support of his argument.

14. We have considered the submissions of both the parties. There is no dou about the fact that while framing the assessment even under Section 143 (3) of the Act, the Assessing Officer may omit to make certain additions of income or omit to disallow certain claims which are not admissible under the provisions of the Act thereby leading to escapement of income. The Income-Tax Act provides for remedial measures which can be taken under these circumstances. While framing an assessment under Section 143 (3) of the Act, any of the following situation may occur:-

(a) The Assessing Officer may accept the return of income without making any addition or disallowance; or
(b) The assessment is framed and the Assessing Officer makes certain addition or disallowance and in making such additions or disallowances, he deals with such item or items of income in the body of order of assessment but he under-assessed such sums; or
(c) He makes no addition in respect of some of the items, though in the course of hearing before him holds a discussion of such items of income
(d) Yet, there can be another situation where the Assessing Officer inadvertently omits to tax an amount which ought to have been taxed and in respect of which he does not make any enquiry.
(e) Further another situation may arise, where an item or items of income or expenditure, incurred and claimed is not at all considered and an assessment is framed, as a result thereof, a prejudice is caused to the revenue, or
(f) Where an item of income which ought to have been taxed remained untaxed, and there is an escapement of income, as a result of the assessee's failure to disclose fully and truly all material facts necessary for computation of income.

To ensure for each of such situations, an income which ought to have be taxed and remained untaxed, the legislature has provided different remedial measures as are contained in section 251 (1)(a), 263, 154 and 147 of the Act.

In the category stated in (a), obviously if an income escapes an assessment, the provisions of Section 147 of the Act can be invoked, subject to the condition stated in the proviso of the said section. In the category of cases falling in category (b), section 251 (1)(a) provides the CIT (A) could enhance such an assessment qua the under-assessed sum i.e. where the AO had dealt the issue in the assessment and was the subject matter of appeal. In category falling in (c) & (e), the CIT has been empowered to take an appropriate action under section 263 of the Act In category of cases falling under clause (d) and (f), appropriate action under section 147 of the Act can be taken to tax the income which has escaped assessment or had remained to be taxed. There can be situations where an item has been dealt with in the body of the order of assessment and the assessee being aggrieved from the addition or disallowances so made, had preferred an appeal before the CIT (A) against the said addition and disallowance, the said disallowance and addition being the subject matter of appeal before the CIT (A) in such cases, the CIT (A) has been empowered u/s 251 (1)(a) of the Act, to enhance such an income where the Assessing Officer had proceeded to make addition or disallowance by dealing with the same in the body of order of assessment by under assessing the same as the

same was the subject matter of the appeal as per the grounds of the appeal rais before him. In other words, the CIT (A) has a power of enhancement in respect of such item or items of income which has been dealt with in the body of the order of the assessment, and arose for his consideration as per the grounds of appeal raised before him, being the subject matter of appeal.

15. This is succinctly stated in ***CIT*** Vs. ***Edward Keventer (Successors) Pvt. Ltd.*** 123 ITR 200:-

16. The only question is as to whether the CIT (A), in exercise of power under Section 251 (1) (a) of the Act has the power to enhance the assessment in the manner done in the instant case. As noted above, the submission of learned counsel for the appellant was that the Assessing Officer had not dealt with the issue in question (on which additions are made) in the assessment order at all and therefore, the CIT (A) had no power to make any additions under Section 251(1) (a) of the Act. According to the assessee, even if the Assessing Officer might have discussed such an issue during the course of hearing before him, i.e. incidental or collateral examination, that itself would not have given power to the CIT (A) unless the issue was specifically dealt with by the AO in the body of the order of the assessment. It is this aspect which needs consideration in the present case.

17. Before adverting to this, we may note that, as a fact, the Assessing Officer had issued a questionnaire specifically on the aforesaid two items in respect of which CIT (A) has made the additions by enhancing the income of the assessee. The assessee had even replied to the said questionnaire. It is also to be kept in mind that it is a case of search and during the search certain documents were seized. The assessment of that period has been made on the basis of that search. The Assessing Officer undertaken the exercise as to whether the income is to be brought to tax or not on the basis of various documents seized. Based on seized documents queries were raised and the assessee had even furnished the specific reply thereto before the Assessing Officer. However, it is also a matter of record that in the final assessment order passed, there is no mention about the aforesaid two items. According to the assessee the CIT (A) had discovered a new source of income not considered by the AO in his order and, therefore, the CIT (A) had no such power under Section 251(a) (a) of the Act. The case of the Revenue, on the other hand is that the AO had already considered the seized document and had asked for the explanation of the assessee and found the explanation to be acceptable because of which the AO did not mention anything in the assessment order regarding the two items. On the other hand, the CIT (A) found some factual error in the explanation of the assessee and in these circumstances, he made the enhancement of income. It

was, therefore, not a case of the discovery of new source of income which was considered by the Assessing Officer. To appreciate the rival contentions, we reproduce the provisions of Section 251(1)(a) of the Act:-

> "251. Powers of the Commissioner (Appeals)
>
> (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-
> (a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annual the assessment.

18. In ***Rai Bahadur Hardutroy Motilal Chamaria*** (supra) where the Supreme Court interpreted the corresponding provision under the old Income-Tax Act, 1922, the legal position was stated as under:-

> "The principle that emerges as a result of the authorities of this Court is that the Appellate Assistant Commissioner has no jurisdiction under s. 31(3) of the Act, to assess a source of income which has not been processed by the Income-tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and therefore the Appellate Assistant Commissioner cannot travel beyond the subject-matter of the assessment. In other words, the power of enhancement under s. 31(3) of the Act is restricted to the subject-matter of assessment or the sources of income which have been considered expressly or by clear implication by the Income-tax Officer from the point of view of the taxability of the assessee. It was argued by Mr. Vishwanath Iyer on behalf of the appellant that by applying the principle to the present case, the Appellate Assistant Commissioner had jurisdiction to enhance the quantum of income of the assessee. It was pointed out that the fact of alleged transfer of Rs. 5,85,000 to Forbesganj branch was noted by the Income-tax Officer and also the fact that it did not reach

Forbesganj on the same day. So it was argued that in the appeal the Appellate Assistant Commissioner had jurisdiction to deal with the question of the taxability of the amount of Rs. 5,85,000 and to hold that it was taxable as undisclosed profits in the hands of the assessee. We are unable to accept the argument put forward on behalf of the appellant as correct. It is true that the Income-tax Officer has referred to the remittance of Rs. 5,85,000 from the Calcutta branch, but the Income-tax Officer considered the dispatch of this amount only with a view to test the genuineness of the entries relating to Rs. 4,30,000 in the books of the Forbesganj branch. It is manifest that the Income-tax Officer did not consider the remittance of Rs. 5,85,000 in the process of assessment from the point of view of its taxability. It is also manifest that the Appellate Assistant Commissioner has considered the amount of remittance of Rs. 5,85,000 from a different aspect, namely, the point of view of its taxability. but since the Income-tax Officer has not applied his mind to the question of the taxability or non-taxability of the amount of Rs. 5,85,000 the Appellate Assistant Commissioner had not jurisdiction, in the circumstances of the present case, to enhance the taxable income of the assessee on the basis of this amount of Rs. 5,85,000 or of any portion thereof. As we have already stated, it is not open to the Appellate Assistant Commissioner to travel outside the record i.e. the return made by the assessee or the assessment order of the Income-tax Officer with a view to find out new sources of income and the power of enhancement under s. 31(3) of the Act is restricted to the sources of income which have been the subject-matter of consideration by the Income-tax Officer from the point of view of taxability. In this context "consideration" does not mean "incidental" or "collateral" examination of any matter by the Income-tax Officer in the proves of assessment. There must be something in the assessment order to show that the Income-tax Officer applied his mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection. In the present case it is manifest

> that the Income-tax Officer has not considered the entry of Rs. 5,85,000 from the points of view of its taxability and therefore the Appellate Assistant Commissioner had no jurisdiction in an appeal under s. 31 of the Act, to enhance the assessment".

19. To the same effect is the judgment of another Division Bench of this Court in ***Commissioner of Income Tax*** Vs. ***Union Tires,*** 240 ITR 556 reiterating that first appellate authority cannot consider new scope of income under Section 251 (1) of the Act. Following question from the same judgment can aptly be:

> "Section 251 of the Act prescribes the power of the Appellate Assistant Commissioner, now Commissioner (Appeals). Section 251(1)(a) of the Act empowers the Appellate Assistant Commissioner in disposing of an appeal by the assessed against an order of assessment to confirm, reduce, enhance or annul the assessment or to set aside and refer the case back to the Income Tax Officer for making fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner. "Explanation" to Section 251 provides that the Appellate Commissioner may hear and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding that such a matter was not raised before the Appellate Commissioner by the appellant.
>
> The issue with regard to the scope of powers of the first Appellate Authority in disposing of an appeal has come up before the Courts umpteen times but we do not propose to burden the judgment by making reference to all the decisions on the point. We will notice a few decisions which we consider are relevant to answer the question referred. In CIT, Bombay Vs. Shapoor ji Pallonji Mistry [1962] 44ITR 891(SC) , while construing the corresponding provisions of the Indian Income Tax Act, 1922, relating to the jurisdiction of the Appellate

> Commissioner in such an appeal, the Supreme Court held that, in an appeal filed by the assessee, the Appellate Assistant Commissioner has no power to enhance the assessment by discovering a new source of income, not considered by the Income Tax Officer in the order appealed against. Similar views were expressed by the Apex Court in CIT (Central) Calcutta Vs . Rai Bahadur Hardutory Motilal Chamaria [1967] 66 ITR 443(SC) . It was held that the power of enhancement under Section 31(3) of the 1922 Act was restricted to the Subject-matter of the assessment or the source of income which had been considered expressly or by clear implication by the ITO form the point of view of taxability and that the Appellate Commissioner had no power to assess a source of income which had been processed by the Assessing Officer."

At the same time, the Court also clarified that the power of the first appellate authority is not restricted to examine only those aspects of assessment about which the assessee makes a grievance but it covers the whole assessment to correct the order of the Assessing Officer not only with regard to the matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. This principle can be traced to the following discussion in the said judgment.

> "Thus, the principle emerging from the aforenoted pronouncements of the Supreme Court is, that the first Appellate Authority is invested with very wide powers under Section 251(1)(a) of the Act and once an assessment order is brought before the authority, his competence is not restricted to examining only those aspects of the assessment about which the assessed makes a grievance and ranges over the whole assessment to correct the Assessing Officer not only with regard to a matter raised by the assessed in appeal but

> also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of assessment. However, there is a solitary but significant limitation to the power of revision, viz. that it is not open to the Appellate Commissioner to introduce in the Assessment a new source of income and the assessment has to be confined to those items of income which where the subject-matter of original assessment."

The aforesaid view taken by the Division Bench was confirmed by the Full Bench of this Court in ***Sardari Lal***(supra) observing as under:-

> "Looking from the aforesaid angles, the inevitable conclusion is that whenever the question of taxability of income from a new source of income is concerned, which had not been considered by the assessing officer, the jurisdiction to deal with the same in appropriate cases may be dealt with under section 147/148 of the Act and section 263 of the Act, if requisite conditions are fulfillled. It is inconceivable that in the presence of such specific provisions, a similar power is available to the first appellate authority. That being the position, the decision in *Union Tyres'* case (supra) of this court expresses the correct view and does not need reconsideration. This reference is accordingly disposed of."

20. Mr. Sabharwal, learned counsel appearing for the Revenue could not and did not dispute the aforesaid position in law. His submission was that the Assessing officer had considered the issue which was clear from the questionnaire and, therefore the CIT (A) was vested with power to look into the same. As pointed out above, the Assessing Officer had issued a questionnaire on the basis of documents seized during the search. He had specifically undertaken the exercise as

to whether the income has to be brought to tax or not on the basis of vario seized documents. The reply of the assessee was elicited on this very aspect as well i.e. seized documents (page 21) which related to the transactions in question. It was pointed out that the document contains various notings of cash payments, advances etc. made through Mr. Tameez. The assessee was asked to furnish complete explanation thereof with sources for the same and was asked to explain with documentary evidences where it was accounted for. It was also mentioned that the document pertains to the property at Bangalore and the assessee was required to furnish full and complete details thereof. Page no. 21 reads as under:-

> "i. R.T. Nagar
>
> That GMS Construction Co. Pvt. Wanted to start the development of some properties at R.T. Nagar, Bangalore alongwith Mr. Jeetu on joint venture basis. As per their verbal understanding 60% of built up area would go to Mr. Jeetu and the balance 40% to GMS Construction Co. Pvt. Ltd. In consideration of this under standing Mr. Jeetu was to pay ` 50 lacs as non adjustable deposit. That initially a deposit of ` 25 lacs was received from Mr. Jeetu and the same was deposited with Canara Bank Bangalore on 16-10-1995. The copy of Bank statement is enclosed herewith. The balance amount of ` 25 lacs was not received as the joint development could not be carried on due to depression in the real estate business and fall in the market prices of the properties. This amount has been adjusted against the amount due to Mr./Mrs. G.M.Singh from Soloman David holding private limited. It may however be stated that the assessee is not connected with this transaction in his individual capacity and the same are not related to his books of accounts.
>
> ii. Shanti Nagar

> This again was a joint venture proposal by GMS Construction Co. Pvt. Ltd. with Mr. Jeetu for the development of properties at Shanti Nagar. That both Mr. Jeetu and GMS Construction Co. Pvt. Ltd, were to invest and share the profit in equal proportion as stated on the paper under reference. All the initial payments for the purchase of land were made by GMS Construction Co. Pvt. Ltd. and no contribution was received from Mr. Jeetu. This joint venture could not be finalized due to the same reason as state above i.e. recession in the real estate business and fall in the market price of the properties. The advances made for Shanti Nagar properties are not related to the assessee and hence to his block assessment.

The assessee furnished its comments to the said page which reflected the transactions relating to property purchase at R.T. Nagar, Shanti Nagar and Chellagatta etc. It is thus clear that this very property in respect of which additions are made by the CIT(A) was the subject matter of consideration before the Assessing Officer. It is a different matter that after the reply submitted by the assessee, the Assessing Officer chose not to make any addition on this count and nothing is mentioned in the assessment order. That, however, would not mean that the Assessing Officer had not considered this matter. It was in our opinion duly considered.

21. Mr. C.S. Aggarwal, learned Senior Counsel had submitted that as per the judgments of this court in ***Union Tires*** and ***Sardari Lal*** (supra), the jurisdiction of the first appellate authority could exercise his powers only "with regard to any

other matter which has been considered by the Assessing Officer and determined the course of the assessment. His submission was that there was no such determination.

22. We do not agree with this submission. Obviously, when this matter/item is considered but addition on that account is not made in the assessment order, it would clearly follow that the Assessing Officer had "determined" the same in the course of assessment by deciding not to make any addition.

23. In the case of ***Commissioner of Income-Tax, Bombay*** Vs. ***Shapporji Pallonji Mistry*** 34 ITR 342 (which has been affirmed by the Supreme Court), the Bombay High Court clarified that "source" of income would not mean source in the sense of head of income as used in the Income-Tax Act but would mean a specific source from which a particular income spank or arose. It was clarified that:-

> "…….If a particular source or item of income had been considered by the Income-tax Officer and had been subjected to the process of assessment, then even though the assessee may not have appealed against that particular source or item, one once the appeal was before the Appellate Assistant Commissioner his power extended not merely to the subject-matter of the appeal, but to the whole subject-matter of assessment. What gave the power to the Appellate Assistant Commissioner was the fact that a particular item or source had been

> subjected to the process of assessment. Now, the process of assessment would include, not only the subjecting of an item or source to tax, but equally holding that the particular source or item was not subjected to tax..”

We are of the opinion that the aforesaid item or source had been subjected to the process of assessment. Merely because the ultimate order passed by the Assessing Officer is silent about this item and there is no discussion thereupon would not mean that the Assessing officer had not considered the same. It is trite law that the Assessing Officer is not supposed to frame the assessment order like a judgment of the Court and would discuss each and every item and aspects specifically. It is clear from the record that import and impact of every document seized including page no.21 was considered by the Assessing Officer; he went into the matter by issuing a questionnaire; calling upon the assessee to give reply and reply/clarification was received from the assessee. It is thereafter only that addition on the basis of page no.21 was not made in respect of the properties in question.

24. We thus answer question no.2 in favour of the Revenue and against the assessee holding that on the facts of this case, the CIT (A) rightly exercised his powers under Section 251 (1) of the Act.

25. In view of our aforesaid answer to question no.2, we revert back to the additions mentioned at (iv) and (v) under Question No.1, which are now to be dealt with on merits.

Question No.1 (iv): The enhancement of assessment of undisclosed income of assessee of Rs. 25,00,000/- on account of payment allegedly received from Jeetu Virmani on the basis of notings in page 21 of Annexure A-1 of the seized documents.

26. Insofar as addition of this amount is concerned, it is pointed out by the learned CIT(A) that at page 21 of the seized documents itself it was mentioned that receipt of ₹ 25 lacs from Mr.Jitu Virmani was in respect of property at RT Nagar, Bangalore. In his statement dated 5.2.2000, Mr. G.M. Singh explained that Mr. Jitu Virmani was to give ₹50 lacs for joint venture in respect of that property. He had given ₹ 25 lacs and balance was to be received. The CIT (A) further observed that in his reply given by the assessee before the Assessing Officer on 8th February, 2002 he mentioned that balance amount of ₹25 lacs was not received and that amount has been adjustable against the amount due to Mr. G.M. Singh from Solomon Davi Holding Pvt. Ltd. Before the CIT (A), the response of the assessee was that the assumption of Mr. Jitu Virmani was not correct and thus, according to the CIT (A), this was not only a change of stand but not acceptable either because of the following reasons:-

> "1. On page 21 it has been clearly mentioned that the amount receivable was ₹50 lacs.

> 2. On 8.2.02 it was again clearly explained that "this amount (the balance amount of ` 25 lakhs) had been adjusted against the amount due to Mr/Mrs. G.M. Singh from Soloman David Holding P. Ltd." In view of this the stand of the appellant now that the additional amount of `25 lacs was neither received nor adjusted cannot be accepted. Therefore the only conclusion possible from these facts is that ₹ 25 lacs was received separately and has not been reflected in the regular books of accounts. Accordingly, ₹ 25 lacs is treated as unaccounted income of the appellant."

27. The learned Tribunal revisited the issue again discussing the contents of the seized documents at page 21 of the AnnexureA-1,statement of Mr. G.M. Singh and also the explanation of the assessee. Before the ITAT, the assessee had reiterated his contention that Mr. Jitu Virmani paid the remaining balance amount of ₹ 25 lacs in cash and was not correct and dealt with the said contention concluding its discussion as under:-

> "42. Heard both the parties and perused the record. It is an admitted fact that the seized document has been found as the time of search from the premises of the assessee and was also owned by him. In the light of his fact the assessee should have come with clear hands and take a definite stand while explaining the noting on the seized documents. But we find that the assessee is changing his stand while explaining the Noting on the seized documents. Before the AO his explanation was that ₹ 25,00,000 was adjusted against the amount due to Mr. & Mrs. Singh from M/s Solomon David Holdings Pvt. Ltd. and before the Ld. CIT (A) the

> explanation of the assessee was that this amount of ₹ 25,00,000/- was neither received nor adjusted, in such a factual position we are not inclined to interfere with the order of the Ld. CIT (A) on this issue. This ground of the assessee is also dismissed."

28. We are of the opinion that Mr. Sabharwal, learned counsel appearing for the Revenue is correct in his submission that issue pertains to the appreciation of evidence by the two authorities below.

29. In ***Aradhna Oil Mills*** Vs. ***CIT***, the Madhya Pradesh High Court categorically held that it was not for the High Courts to exercise its power under Section 260A of the Act relying the evidence. That case also related to search and seizure and on the basis of documents seized addition was made by the ITO which was upheld by the Tribunal as well. The explanation of the assessee was not accepted by the quasi judicial authorities and dismissing the appeal of the assessee, the Court observed:-

> "In effect, the question whether a particular entry in the account book is genuine or not, or whether the assessee is able to show its source is a question of fact. In other words, it only involves appreciation of evidence tendered by the assessee pursuant to a query made by the Revenue. It is for the Assessing Officer to accept the explanation offered or not. No doubt, the first appellate court as also the second appellate court are also empowered to examine the factual background of the issue with a view to examine whether the explanation offered is reliable, adequate or/and proper.

> But that exercise, the High Court in its third appellate jurisdiction cannot do by virtue of the specific language employed in Section 260A of the Act."

30. In a recent judgment pronounced by the Supreme Court in the case of ***Commissioner of Income Tax*** Vs. ***P. Mohanakala,*** [2007] 291 ITR 278 (SC) this well established principle is reiterated and affirmed by making following pertinent observations:-

> "The findings of fact arrived at by the authorities below are based on proper appreciation of the facts and the material available on record and surrounding circumstances. The doubtful nature of the transaction and the manner in which the sums were found credited in the books of accounts maintained by the assessee have been duly taken into consideration by the authorities below. The transactions though apparent were held to be not real one. May be the money came by way of bank cheques and paid through the process of banking transaction but that itself is of no consequence.
>
> No question of law much less any substantial question of law had arisen for consideration of the High Court. The High Court misdirected itself and committed error in disturbing the concurrent findings of facts."

31. It cannot be said that the findings are in any way perverse or based upon no evidence This addition is, therefore, sustained.

Question No. 1 (v) The enhancement of assessment of an alleged undisclosed income of assessee of Rs.1,05,00,000/- on account of an alleged payment received back in respect of transactions of Chellegata property on the basis of notings in page 21 of Annexure A-1 of the seized documents.

32. Insofar as addition of `1.05 crores is concerned, it pertains to Chellagatta property. It was again a joint venture between the assessee and Jitu Virmani. From the seized documents it was found that the amount of ₹1,35,80,000 was invested in the said properties. This amount was paid on behalf of 'Soleman David Private Ltd'. The explanation of the assessee was that these amounts were subsequently received and statement of account was produced. As per the CIT (A), the dates on which the amounts were advanced and the amounts were received back could not be related to seized documents at all for the following reasons:-

> "i. The documents record "Recd. 1.05 crores + 35 chq. On 4.9.95". This noting cannot be broken up in two parts – one for ` 35 lacs and other for ` 1.05 crores, particularly when the nothings have been made in the past tense, i.e. Sh. G.M. Singh has recorded that on 4.9.95 itself both amount of ` 1.05 crores and ` 35 lacs were received. It cannot be said that ` 1.05 crores were received after 4.9.95 but Sh. G.M. Singh recorded the same on the date of receipt of ` 35 lacs. The appellant is trying to defend himself only by saying that on 4.9.95 ` 1.05 crores was not received even though this is recorded as such.
>
> ii. In his first statement given on 5.2.2000 Sh. G.M. Singh had also stated that ` 1.35 crores were already invested. Therefore, it was not open for him to change his stand that this amount was advanced in the year 1996 as per the statement of accounts given during the course of assessment proceedings."

The CIT (A) further found as under:-

> "f) the notings mentioned two amounts of ` 1.05 crores and ` 35 lacs whereas the explanation given during the course of assessment proceedings mentioned two different amounts i.e. ` 67.81 lacs for Sh. G.M. Singh and ` 67.86 lacs for Mrs. Praveen Nindrajog. There is no correlation between these two sets of figures and the explanation given cannot explain the notings on page 21.
> g) As Sh. G.M. Singh had confirmed that ` 1.35 crores were already invested, it is logical to believe the writings on page 21 that the same amount was received back on 4.9.95, after the deal was not finalized.
> 13.6 On the basis of above mentioned facts and analysis of the same the conclusion that can be arrived at is that the deal in this property was made in the year 1995 and approximately ` 1.35 crores were paid to different persons through Sh. Jeetu Virmani. The deal did not materialize subsequently and the amount given was received back on 4.9.95 ` 35 lacs were received in cheque and rs.105 crores were received back in cash which was not accounted for. All explanations offered subsequently are afterthought. Accordingly ` 1.05 crores will be treated as income of Sh. G.M. Singh."

33. The ITAT thoroughly reconsidered this matter as well in the light of explanation of the assessee. The Tribunal has reproduced the discrepancy pointed out by the CIT (A) in the explanation furnished by the assessee before the Assessing Officer vide his show cause notice and the reply thereto by the assessee as well as the findings of the CIT (A). The Tribunal further pointed out that notings at page 21 were in the hand writing of the assessee. In his statement dated 5.2.2000 the assessee confirmed that these notings related to Chellagatta property. On the basis of admitted position and analysis done by the CIT (A) the Tribunal agreed with the findings of the CIT (A). Having regard to the discussion while considering item

(iv) pertaining to addition of ₹ 25 lacs above, we are of the view that there is perversity in the findings of the two authorities below which are factual in nature. The submissions of the learned Senior Counsel appearing for the appellant before us, again, was the same which was pressed before the authorities below. It was sought to be highlighted that major portion of the amount namely ₹ 70 lacs out of ₹1.35 crores was received before the date of search and there was no material to assume that the amount of ₹1.05 crores was received in cash. However, the two authorities below have found, as a fact, that the amount of ₹70 lacs allegedly received could not be related to the transaction in question.

34. We, therefore, do not find any justification for interfering with this finding as well. With this question no.3 also stands answered against the assessee.

35. As a result the appeal warrants to be dismissed which is dismissed.

(A.K. SIKRI)
JUDGE

(M.L.MEHTA)
JUDGE

SEPTEMBER 30, 2011
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