$~

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

\+ **ITA 145/2001**

Reserved on: February 11, 2016
Date of decision: March 23, 2016

COMMISSIONER OF INCOME TAX DELHI-XI ..... Appellant
Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Raghvendra Singh, Advocate.

versus

INDIAN NATIONAL CONGRESS (I)/ALL INDIA CONGRESS COMMITTEE ..... Respondent
Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Mr. Gautam Jain, Ms. Pushpa Sharma and Mr.Madhur Aggarwal, Advocates.

AND

\+ **ITA 180/2001**

INDIAN NATIONAL CONGRESS (I)/ALL INDIA CONGRESS COMMITTEE ..... Appellant
Through: Mr. C.S. Aggarwal, Senior Advocate with Mr. Prakash Kumar, Mr. Gautam Jain, Ms. Pushpa Sharma and Mr.Madhur Aggarwal, Advocates.

versus

COMMISSIONER OF INCOME TAX DELHI-XI ... Respondent
Through: Mr. Rahul Chaudhary, Senior Standing Counsel with Mr. Raghvendra Singh, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

J U D G M E N T

% 23.03.2016

Dr.S.Muralidhar,J:

Introduction

1.1 More than four decades ago, while noting the distortion that large contributions of money made to political parties and candidates could bring about to the electoral process, the Supreme Court observed in ***Kanwar Lal Gupta v. Amar Nath Chawla, (1975) 3 SCC 646*** (at p. 654) as under:

> "The availability of disproportionately larger resources is also likely to lend itself to misuse or abuse for securing to the political party or individual possessed of such resources, undue advantage over other political parties or individuals. Douglas points out in his book called *Ethics in Government* at p. 72, "If one party ever attains overwhelming superiority in money, newspaper support, and (Government) patronage, it will be almost impossible, barring an economic collapse, for it ever to be defeated". This produces anti-democratic effects in that a political party or individual backed by the affluent and wealthy would be able to secure a greater representation than a political party or individual who is without any links with affluence or wealth. This would result in serious discrimination between one political party or individual and another on the basis of money power and that in its turn would mean that "some voters are denied an 'equal' voice and some candidates are denied an 'equal chance' ".

1.2 The Supreme Court also noted that: "The small man's chance is the essence of Indian democracy and that would be stultified if large contributions from rich and affluent individuals or groups are not divorced from the electoral process."

1.3 Till the Supreme Court began actively examining the issue in a public interest litigation (PIL) instituted in 1995 by 'Common Cause', most of the registered political parties in this country, both at the national and state levels, did not file income tax returns, despite it being made mandatory under Section 139 (4B) of the Income Tax Act, 1961 ('Act'), introduced with effect from 1st April 1979. They also failed to maintain proper accounts of their income and expenditure although this was too mandatory for them to claim exemption from payment of income tax under Section 13A of the Act.

1.4 The problem persisted despite the judgment of the Supreme Court in the PIL by Common Cause. The Election Commission of India noted in its 'Guidelines on Transparency and Accountability in Party Funds and Election Expenditure' issued on 29th August 2014 that "concerns have been expressed in various quarters that money power is disturbing the level playing field and vitiating the purity of elections."

1.5 This was echoed by the Law Commission of India ('LCI') in its 255th Report on 'Electoral Reforms' when it said:

> "Money, often from illegitimate sources, results in "undisguised bullying" when it is used (both authorised and unauthorised) to buy muscle power, weapons, or to unduly influence voters through liquor, cash, gifts. Currency notes come first in containers, then in truckloads, moving to wholesale/small retail forms, and finally to suitcases and in people's pockets."

1.6 Referring to a study conducted by Association for Democratic Reforms ('ADR'), the LCI noted that: "more than 75% of parties' sources are unknown, while donations over Rs. 20,000 comprise only 9% of parties' funding." Further ADR's analysis of the funding of political parties for financial years 2004-05 to 2011-12 revealed that the total income of political parties from unknown sources was Rs 3,674.50 crores which constituted 75.05% of the total income of the parties.

1.7. The above introductory narrative serves as a backdrop for proceeding to examine the case on hand which is about a claim by the Indian National Congress (I) ('INC'), a political party, for exemption from paying income tax for the Assessment Year ('AY') 1994-95. The significance of this case, which has had a chequered history, lies in it being symbolic of the general lack of transparency and accountability of political parties in this country. By a separate judgment today the Court is disposing of a similar case involving the Janata Party for AY 1995-96.

The present appeals

2. The present appeals under Section 260A of the Act are directed against an order dated 9th April 2001 of the Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 4181/Del/98 and 5100/Del/98 for AY 1994-95. While ITA No. 145 of 2001 is by the Revenue, ITA No. 180 of 2001 is by the Assessee, INC, a political party registered as such under Section 29A of the Representation of People Act, 1951 ('RP Act').

3. The central issue in these appeals involves the interpretation of the words 'income by way of voluntary contributions received by a political party' occurring in Section 13A of the Act. The ITAT by its impugned order held that the accounts of the Assessee for the AY 1994-95 were incomplete and therefore, the exemption under Section 13A of the Act was not available to it. At the same time, the ITAT held that the Assessing Officer ('AO') could not invoke the provisions of Sections 144 and 145 of the Act to estimate the quantum of income earned by the Assessee by way of voluntary contributions. Accordingly, the matter was remanded to the AO with the direction to the AO that he should undertake afresh the exercise of computing the taxable income of the Assessee.

4. By this judgment, the Court holds that the INC was not entitled to claim exemption from paying income tax for AY 1994-95 since it failed to maintain properly audited accounts for the said AY, thereby not fulfilling the mandatory condition for claiming such exemption under the proviso to Section 13A of the Act.

Relevant facts

5. The facts relevant to the present appeals are that the Assessee INC is a political party registered under the RP Act and satisfies the description of a 'political party' for the purpose of Section 13A of the Act.

6. The Assessee was initially not filing its annual returns of income in terms of Section 139 (4B) of the Act which was introduced by the

Taxation Laws (Amendment) Act, 1978 with effect from 1st April 1979. This was simultaneous with the insertion of Section 13A of the Act.

7. In terms of Section 13A of the Act, income under the following heads were exempt from tax as far as political parties were concerned:

(a) income from house property

(b) income from other sources

(c) capital gains

(d) any income by way of voluntary contribution received by a political party.

8. However, in order to avail of such exemption a political party has to fulfil the conditions detailed in clauses (a), (b) and (c) of the proviso to Section 13A. A political party has to:

(a) keep and maintain such books of accounts and other documents as would enable the AO to properly deduce its income therefrom,

(b) in respect of each voluntary contribution in excess of Rs. 10,000 keep and maintain a record of such contribution and the name and address of the person who has made such contribution;

(c) have its accounts audited by an Accountant as defined in the Explanation below Section 288 (2) of the Act.

9. A further proviso to Section 13A was inserted by the Taxation Laws Amendment Act, 2003 (Act 46 of 2003) which stated that on failure by

a political party to submit a report under Section 29C (3) of the RP Act for a financial year to the Election Commission of India , no exemption under Section 13A would be available to it for such financial year.

The decision of the Gujarat High Court

10.1 At this stage it is important to notice two developments on the judicial side which have a bearing on the question of political parties filing returns. In ***Commissioner of Income Tax v. Gujarat Pradesh Congress Samiti [1994] 207 ITR 622 (Guj)***, the Gujarat High Court considered the question whether the Gujarat Pradesh Congress Samiti ('GPCS') was an independent taxable entity.

10.2 The facts there were that the Income Tax Officer ('ITO') served a notice under Section 148 of the Act on the GPCS for AYs 1960-61, 1961-62 and 1962-63 on the basis that it was a taxable entity having an income of its own. The ITO proceeded to tax GPCS as an association of persons. The Appellate Assistant Commissioner accepted the contention of GPCS that it was only a unit of the INC and annulled the assessments for the said three AYs.

10.3 After the ITAT dismissed the appeal of the Revenue, a reference was made to the Gujarat High Court, which agreed with the ITAT that a comparison of the constitution of the INC and the GPCS showed that the GPCS was one of the constituents and committees of the INC and did not have a separate existence.

11. The aforementioned decision of the Gujarat High Court made explicit the legal requirement of the INC having to file consolidated income tax returns for both the central office and the State units. Nevertheless, the INC did not file a return of income, much less the consolidated accounts of its central office and state units, even thereafter.

The decision in 'Common Cause'

12. In 1995 the Supreme Court was seized of a PIL filed by Common Cause, a civil society organisation. In ***Common Cause v. Union of India (1996) 222 ITR 260 (SC)***, the Supreme Court by a judgement dated 4th April 1996, dealt with the question of political parties not filing returns of income for several years thereby violating the mandatory requirement of Section 139(4B) of the Act. The summary of the main conclusions of the Supreme Court was as under:

> (i) Political parties were not above the law. A political party that was not maintaining audited and authentic accounts and not filing returns could not be permitted to contend that it had incurred authorised expenditure in connection with the election of a party candidate.
>
> (ii) The Income Tax authorities had been remiss in invoking the statutory provisions against the defaulting political parties.
>
> (iii) The Ministry of Finance, Department of Revenue was directed to have an investigation/inquiry conducted against each

defaulting political party and initiate necessary action in accordance with law including penal action under Section 276CC of the Act.

Proceedings before the AO

13. Turning to the case on hand, the Income Tax Department ('Department') first issued a notice to the INC on 20th September 1995 under Section 142(1) of the Act asking it to file its income tax returns for AY 1995-96. A reminder notice was issued on 30th November 1995. The INC was also requested to furnish audited accounts in respect of AYs 1993-94 and 1994-95. Yet another reminder was issued on 17th January, 1996.

14. It is only thereafter that the INC filed income tax returns for AYs 1993-94, 1994-95 and 1995-96 together for the first time on 14th February, 1996. The returns for the earlier AYs i.e., 1991-92 and 1992-93, were filed later on, i.e. on 30th October, 1996. Each of the returns was filed showing Nil income after claiming exemption under Section 13A of the Act.

15. On 25th September 1996, the AO while issuing notice under Sections 143(2) and 142(1) of the Act to the INC for AY 1994-95, asked for specific details in terms of the annexure to the said notice. The INC was asked to furnish:

(i) its consolidated accounts on an all-India basis by incorporating all the accounts of the State Units;

(ii) complete books of accounts and other documents that may enable the AO to properly deduce the income of the party therefrom; and

(iii) the list of all donors, who had given voluntary contributions in excess of Rs.10,000/- with their names and addresses.

16. The order sheets of the proceedings before the AO have been placed on record. On 28th October 1996, the AO noted that there was no compliance or any communication received from the INC. The same position continued on 28th November, 1996 and 16th December, 1996. The proceedings of 29th January 1994 read as under:

> "There has been a continued non-compliance from the Party and no details have been placed on record by the Party. In between Shri C.P. Malhotra had appeared in connection with the filing of I.T. Return was again reminded. In view of this, a specific show cause is being issued for a final opportunity on the 14.02.1997. In case of non-compliance, the Party has been informed that as ex-parte assessment will be made."

17. The proceedings of 14th February, 1997, again showed that there was non-compliance and there was no communication received from the INC. The proceedings of 25th March, 1997 read as under:

> "Shri Rajesh Sharma, Chief Accountant of the Party attended and filed a copy of A/c's of 14 State units. It is seen from the above.
>
> 1. In the R & P A/c of the AICC (I), the donations shown are Rs.10,50,000/- but no details of them are furnished as required u/s 13A. The AR expressed his inability to do so. Furthermore, it is noticed that the Party has furnished R &

P A/c's in respect of the Distt. Units also. No Balance Sheet was filed.

2. In the A/c's of the following State Units.

1. Haryana
2. Bihar
3. Himachal Pradesh
4. Kerala
5. Madhya Pradesh
6. Manipur
7. Uttar Pradesh
8. Andaman & Nicobar Islands
9. Dadra & Nagar Haveli

The following points have noticed.

(i) The Party has shown donations in respect of donors. No certificate from the Auditor concerned is placed on record regarding the same.

(ii) The Party has not given the list of donors who have given contributions in excess of Rs.10,000/-.

(iii) The Party has shown other receipts like coupons sales etc. but no details are filed.

(iv) No books of A/c's of these units have been produced.

(v) No documentary evidence regarding the other receipts like Membership etc. has been placed on record.

3. In the case of other Units namely-Mizoram, the Party has furnished a list of donors in excess of Rs. 10,000/- but the complete addresses is not mentioned. Further, as above the books of A/c's of the respective units were not produced neither any supporting vouchers.

> 4. The A/c's in respect of UPCC (I) bear the same as discussed above but also have a specific note that the membership fee adjustment has not been made in respect of the Distt. Committees.
>
> 5. The AR has furnished the A/c's in respect 14 units only. The AR has submitted that the A/c's in respect of the others are not available with him. The AR has further stated that the books of A/c's in respect of Central Office will be produced. The AR, is requested to produce the same for verification."

18. The proceedings recorded on 25th March 1997 showed that Mr. Rajesh Sharma, Chief Accountant and Mr. C.P. Malhotra, Accountant, attended the proceedings and produced the cash book and ledger of the Central Office. The AO then noted as under:

> "1. From the "Sale of coupons" A/c's there are deposits exceeding Rs.10,000/- The AR have explained that the Treasurer of the Party is in custody of the same & it is he who gets collection from Sale thereof.
>
> 2. From the donations A/c in page 650 of Ledger, the name of donors is mentioned but the addresses is not shown. No supporting documents produced.
>
> 3. From Misc. receipts it is noticed that no. entry is in excess of Rs.10,000/-.
>
> With these observation, case is discussed."

The assessment order

19. Thereafter on 31st March 1997, the AO passed the assessment order for AY 1994-95. In para 3.1 of the assessment order, the AO noted that

the returns pertained to the accounts of the Central Office alone. It disclosed the following receipts:

"(i) Collection from sale of Coupons & Purse money, etc.	Rs.8,20,75,000/-
(ii) Other income	Rs.3,12,65,500/-
(iii) AICC membership fee	Rs. 3,220/-
(iv) Delegation fee	Rs. 13,375/-
(v) AICC Membership fund	Rs. 600/-"

20. The details of 'other income' were furnished in Schedule 6 of the accounts and read as under:

"Other Income	
i. Interest on Fixed deposits	Rs. 89,72,827/-
ii. Miscellaneous Receipts	Rs. 13,532/-
iii. Donation	Rs.2,22,73,430/-
iv. Literature Sale	Rs. 5,710/-
	Rs.3,12,65,500/-"

21. The AO proceeded to note that the INC had given a break-up of the collection from sale of coupons in the denomination of Rs. 50, Rs. 100, Rs. 500 and Rs. 1,000 amounting to Rs. 8,20,75,000. There was purse money of Rs. 46,150 presented to the Congress President in the shape of garlands and purse money of Rs. 26,280 presented to the Deputy Home Minister. Rs. 2,22,01,000 was under the head 'as per list attached (A)'. This list (A) contained the break-up of the donors who had given voluntary contributions in excess of Rs. 10,000. The AO noted that the list was incomplete since it did not contain the complete address of such donors as was required by Section 13A of the Act. The AO noted that "despite repeated opportunities, the party failed to fulfil this statutory requirement."

22. Less than a week prior to the deadline for framing of the order, the INC on 25th March 1997, furnished some of the details. The AO noted that a ledger account of the donations reflecting those in excess of Rs. 10,000/- did not mention the complete address of the donors. The Authorised Representative (AR) of the INC sought to explain that these represented coupon sales but could not produce receipts or other supporting documents or counterfoils of the said coupons for verification of the claim.

23. The AO then turned to the three donations received from abroad and noted that while the INC had placed on record its correspondence with the bank, it expressed its inability to give further details. These three donations were discussed by the AO in para 5.1 of the assessment order. They were shown to be of the same date, i.e., 24th December, 1993. The first was a sum of Rs. 40 lakh from 'Dominion Trading Company'. The two others were of Rs.30 lakh each from 'Decor Trading Company'. The addresses of the above parties were not furnished. According to the INC, the details were being obtained from the banks from which the drafts had been received. The Treasurer of the INC addressed a letter on 14th November 1996 stating that addresses of the above contributors were not available with the party and were being ascertained from their bankers. However, till the time of framing of the assessment by the AO, these details were not furnished.

24. The AO then discussed the accounts of 14 State units furnished by the INC. The AO noted that the details of the donations or the list of donors in excess of Rs. 10,000 were not furnished. No documentary evidence in respect of sale of coupons was also furnished. In sum, the conclusion drawn by the AO was that the INC had failed to furnish the true and fair picture of the receipts on all India basis; it could not produce the books of accounts and other documents in order that the income of the party may be properly deduced therefrom; in respect of the 14 State units none of the accounts could be treated as genuine.

25. The AO discussed at length the provisions of the Act governing political parties. The AO noted that the INC had failed to satisfy the conditions mentioned in Section 13A of the Act in all three respects, i.e., (i) furnish consolidated accounts that would reflect its income on all India basis; (ii) produce books of accounts and other documents to enable the AO to properly deduce the figures of its income therefrom; and (3) place on record the list of all donors, who had made voluntary contributions in excess of Rs. 10,000 with their complete names and addresses.

26. Consequently, the AO concluded that the INC's claim under Section 13A of the Act could not be allowed and that the receipts would be subject to tax. The AO noted the note in the Auditor’s report that since all the Pradesh Committees had not supplied necessary details of their primary and active members, and that no adjustment of membership fee could be made in the books of accounts.

27. The AO had to make an estimate of the receipts since despite several requests the Assessee was unable to furnish the details of the collections made by the state units. Even the accounts of the 14 state units submitted on 25th March 1997 had a number of deficiencies. The AO accordingly observed:

> "[I]n the absence of authentic and verifiable accounts of the activities of the state units, I am compelled to estimate receipts therefrom on account of membership fee, sale of coupons and collection by way of purse money together at Rs. 15 crores that could make the total receipts of the party after including this estimated sum of Rs. 15 crores shall be Rs. 26,33,57,696/- (Rs. 11,33,57,696 + Rs. 15,00,00,000)."

28. The AO then noted that the claimed expenditure of Rs.16,45,27,326 under various heads were mostly related to political activities and that the establishment expenditure had to be treated as the only non-political expenditure. Only those expenses which could be said to be laid out wholly and exclusively for earning income under the head 'income from house property' and 'income from other sources' were allowable. In respect of 'income by way of voluntary contributions' no expenses were allowed. Interest on fixed deposits amounting to Rs. 89,72,827.78 was assessed as 'income from other sources'. For AY 1994-95, there was no income under 'income from house property'.

29. As regards the expenditure towards salaries and other benefits to its employees, postage and telegrams, travelling, rent and taxes, water and

electricity, printing and stationery etc. in the sum of Rs.1,45,98,768.16, the AO allowed the entire expenditure of Rs. 37,58,036 on the employees and only 10% of the expenses under the head 'other expenses' as per schedule 7 of the accounts.

30. Thus a total expenditure of Rs. 52,17,912 was allowed in relation to the Central office establishment. The expenditure of state units was computed at Rs. 68,71,700. The total expenses worked out to Rs. 1,20,89,616 which when adjusted against the receipts (Rs. 26,33,57,696), gave a taxable income of Rs. 25,12,68,081.

31. Towards the end of the order, the AO observed "Charge interest. Penalty proceedings under Section 271(1)(b) and 271(1)(c) have been separately initiated".

Appeal before the CIT (A)

32. The INC then filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)']. The appeal was filed on 4th November 1997 along an application under Rule 46A of the Income Tax Rules, 1962 ('Rules'). In this application, it was stated that the dates for compliance in the proceedings referred to in the order of the AO pertained to AY 1995-96 which assessment was still pending and, therefore, the INC had not been granted sufficient opportunity to comply with the various requisitions of the AO.

33. The INC stated that the task of consolidating the accounts of the party including all its state units was a herculean task "as the aforesaid attempt was being made for the first time". The INC had 26 Pradesh Congress Committees, 6 territorial Congress Committees, 2 Regional Committees, as also the account of All India Youth Congress, All India Mahila Congress Committee, All India Congress Seva Dal, National Students Union of India & Congress Parliamentary Party. It was claimed that "the Assessee, under such a tremendous pressure could not consolidate and also file the complete details pertaining to the voluntary contributions, as was directed".

34. Accordingly, the INC sought to place on record

> "[F]urther additional evidence, i.e., a complete audited income and expenditure account for the year ending 31.3.1994 containing the accounts of 26 Pradesh Congress Committees, 6 Territorial Congress Committees, 2 Regional Congress Committee, All India Youth Congress, All India Mahila Congress Committee, All India Congress Sewa Dal, National Students Union of India and Congress Parliamentary Party, which has been placed in the Paper Book and appears from Pages 37 to 39 of the Paper Book. It is, therefore, prayed that having regard to the aforesaid facts, the evidence now the assessee is seeking to place on record may kindly be admitted".

35. The comments of the AO were then sought by the CIT (A) on the application and the accompanying documents. *Inter alia*, the AO pointed out that the specific instances in Explanation 1 to Section 153(3) of the Act, as it stood at that time, did not apply to the INC and, therefore, the INC could not be permitted to furnish the final accounts after the limitation period had expired. The AO turned down the

allegation of the INC that it had not been given a sufficient opportunity as 'irresponsible' since the Assessee had inspected the records for AY 1994-95 on 20th October 1997 and the notice dated 31st January 1997 asking it to furnish the accounts and other details was duly received in the office of the INC on 31st January 1997 itself. It was further pointed out by the AO that there was no case made out for entertaining any additional evidence at this stage.

Order of the CIT (A)

36. In the order dated 8th July 1998, the CIT (A) held that it had been proved beyond doubt that the INC had failed to discharge its statutory responsibility of filing the accounts in time which alone could have entitled it to the benefit of Section 13A of the Act. The CIT (A) declined to admit the fresh evidence adduced by the INC. The estimate of the income of the INC from the state units made by the AO at Rs.15 crores was upheld.

37. However, the CIT (A) found that the AO's decision as regards the expenditure incurred by the INC for the AY in question was erroneous. The expenses of the INC as a political party had to be viewed from the perspective of it having to implement its policies, objectives and manifesto and also to contest elections for which it needed a large number of vehicles, millions of leaflets, posters, banners, flags, loudspeakers etc. The employees' expenses were allowed in full. It was also held that depreciation to the extent of Rs. 1,15,46,998.17 also ought to have been allowed. The balance claim of expenses then came to Rs.

14,92,22,294. Consequently, an estimate was made of the expenses incurred by the INC as regards its political activities and the CIT (A) held it to be reasonable to restrict the INC's claim of expenses to 60% of the claim after excluding employees' expenses and depreciation. This worked out to Rs. 8,95,33,374. The total relief granted to the INC by the CIT(A) was to the extent of Rs. 9,27,48,793.

Appeals before the ITAT

38. Aggrieved by the above order of the CIT(A), both the INC and the Revenue filed appeals before the ITAT.

39. The INC was aggrieved that the CIT(A) had granted relief of only reducing the computable income by Rs. 9,27,48,793 (thereby computing the total income at Rs. 25,12,68,081 (-) Rs.9,27,48,793). Further according to the INC the CIT (A) ought to have considered the additional evidence tendered and no prejudice would have been caused to the Revenue if it had. It was, *inter alia*, pointed out that the estimate of the receipts on account of membership fee, coupon sales and purse money, etc. at Rs. 15 crores and the estimate of the total receipts at Rs. 26,33,57,966 were "without any basis or material on record and were merely based on the subjective opinion of the AO". It was further pointed out that the CIT(A) had also ignored the assessment order framed by the AO for AY 1995-96 where the assessment had been completed on 31st March 1998 determining the income of the INC as 'nil'.

40. It was urged by the INC that the non-consideration of the accounts produced by the INC s additional evidence under Rule 46A of the Rules amounted to a violation of the principles of natural justice. It was further submitted that unlike Section 145 of the Act, Section 13A of the Act did not empower the AO to estimate income from voluntary contributions and there was no material with the AO to make any such estimation. It was submitted that voluntary contributions did not fall under any head of income under Section 14 of the Act and was taxable only in terms of Section 13A of the Act.

41. It was submitted by the INC that there was no time limit under Section 13A of the Act for completing the audited accounts and, therefore, the audited accounts, which were completed after the assessment order for the AY 1994-95, should be considered after the matters were remanded to the AO for a fresh consideration. Reliance was placed on the CBDT's Circular dated 19th October 2000. It was submitted that there was no basis for the CIT (A) to restrict the expenditure to 60% of the claim.

42. It was submitted that for AY 1994-95, the question of granting exemption under Section 13A of the Act would arise only if there was income for the said AY. In view of the fact that there was an overall deficit in the consolidated account filed before the CIT(A) to the extent of Rs. 4.60 crores there was no justification in the CIT (A) confirming the estimate of receipts and allowing only part of the expenses.

Order of the ITAT

43. The ITAT in the impugned order dated 9th April 2001 came to the following conclusions:

(i) Till the completion of the assessment order on 31st March 1997, the Assessee failed to file the audited accounts of all the state units and produce the books of accounts. The auditing of the accounts of state units was completed only thereafter.

(ii) Even if there was no time limit for completion of the accounts and audit, they had to be completed within a reasonable time. Non-completion of accounts and their audit even within two years from the end of the relevant financial year ('FY') cannot be condoned and the Assessee cannot be given the benefit of a reasonable cause to enable the additional evidence to be tendered under Rule 46A of the Rules. In terms of Rules 46A(1)(b) and 45A(1)(c), there was no sufficient cause which prevented the Assessee from producing the requisite evidence before the AO. The CIT (A), therefore, was justified in declining to admit the additional evidence.

(iii) There was no violation of the principle of natural justice as sufficient opportunity was given to the Assessee to produce the books of accounts and audited accounts. After the decision of the Gujarat High Court in ***Commissioner of Income Tax v. Gujarat Pradesh Congress Samiti*** *(supra)* rendered in 1993, the Assessee could not have any doubt

about having to comply with the statutory requirements under Section 13A read with Section 139(4B) of the Act.

(iv) The Assessee did not fulfil the conditions (a), (b) and (c) under the proviso to Section 13A of the Act and, therefore, the AO was justified in not allowing exemption therein.

(v) The reasons given by the AO for making an estimate of receipts from state and other units at Rs. 15 crores was not convincing or satisfactory. The AO erred in making a lump sum estimate of all the receipts of the state and other units. Section 13A of the Act applied only to voluntary contributions actually received and would not apply to any 'accrued, deemed, notional or estimated voluntary contributions'. Even if the AO had taken a cue from the accounts of the 14 state units that were filed, the total receipts of all the state units and other units would not have worked out to Rs. 15 crores.

(vi) Likewise, the CIT(A) erred in confirming the AO's estimate of receipts. By this time, the Assessee had filed a complete account of the states and all other units. When the CIT (A) called for a remand report from the AO, he should have raised a specific query whether the AO's estimate on receipts could be considered as fair and reasonable in light of the audited accounts filed before the CIT(A). Even though the CIT(A) declined to accept the said additional evidence, it was relevant and imperative that these materials be appreciated to decide the estimate of receipts. A direction was issued to the AO "to accept the receipt

shown in central office account at Rs. 11,33,57,696 and from all the state and other units at Rs. 3,82,97,972 + Rs. 1,81,17,534." Further in case the AO had information about any specific receipt not disclosed in the accounts "he can take appropriate actions under the law".

(vii) There was a close nexus between the voluntary contributions and expenditure on political activity of a political party. This was because the expenditure on political activity is incurred from the voluntary contributions and the position of a political party was akin to the carrying out of the aims and objectives of a Trust.

(viii) But for Section 13A of the Act, voluntary contributions would not be taxable income since it did not fall under any of the heads of the income under Section 14 of the Act. It would not come under the head 'income from other sources'. The expenditure incurred by a political party on its political activities was allowable as a deduction since such expenditure was incurred to carry out its aims and objects for which the voluntary contributions were also received. The aims and objects of political party fell within the scope of the expression "any other object of general public utility" appearing in the definition of 'charitable purposes' under Section 2(15) of the Act.

(ix) The contention of the Assessee that exemption under Section 13A of the Act can be granted even if the prescribed conditions are fulfilled at the appellate stage was rejected. The Assessee did not deserve the grant of exempton at the appellate stage. At the same time, the Assessee

did not deserve its assessment to be set aside so that the AO could grant exemption under Section 13A of the Act.

(x) In view of the overall excess of expenditure over income and the decision of the Supreme Court in ***Ranchi Club Ltd. v. Commissioner of Income Tax (2001) 247 ITR 209 (SC)***, the interest charged under Section 234A and 234B of the Act was required to be deleted.

(xi) The Revenue's appeal was dismissed by observing that the allowance of depreciation and 60% of the expenditure by the CIT (A) could not be held to be erroneous.

(xii) The impugned order of the CIT (A) on the allowability of the expenditure was set aside and the matter was restored to the AO with the direction to decide it *de novo*. The expenditure could be allowed subject to the condition that "there exists a nexus between the expenditure and voluntary contributions, and the expenditure was incurred to attain the aims and objects of the party".

(xiii) Accordingly, the Assessee's appeal was partly allowed and the Revenue's appeal was dismissed.

Orders on remand

44. Initially when these appeals were heard on 3rd January 2002, certain questions of law were framed by the Court both in the Revenue's appeal as well as in the Assessee's appeal. Meanwhile, in terms of the

impugned order of the ITAT, the AO on remand, passed a fresh order on 31st March 2003 computing the taxable income of the Assessee for the AY as Rs. 1,44,42,290. The appeal against the said order by the Assessee was partly allowed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] which by an order dated 9th December 2004 led to the revision in the taxable income as Rs. 38,38,258.The further appeal by the Assessee against that order was disposed of by the ITAT by an order dated 18th July 2007 leading to the determination of the loss in the sum of Rs. 60,23,621.

45. On 12th November 2014 the Court framed a further question of law in addition to those already framed by its order dated 3rd January 2002. On 8th December 2015 in light of the submissions made by both learned counsel for the Revenue as well as learned Senior counsel for the Assessee, one further question of law was framed for consideration by the Court in the Revenue's appeal, i.e., ITA No. 145 of 2001.

46. Also, in substitution of the questions framed in the Assessee's appeal, ITA No. 180 of 2001 on 3rd January 2002, the Court framed three substantial questions of law by its order dated 8th December 2015.

Questions in the Revenue's appeal

47. Consequently, as far as the Revenue's appeal, ITA No. 145 of 2011 is concerned the following questions of law were framed for consideration:

1. Whether in the circumstances of the instant case and on the

basis of the material available on record, the total income adopted at Rs.25,12,68,08 was valid and in accordance with the provisions of Section 13A of the Income Tax Act and further, whether the assessee was not entitled to an exemption on or any part of the aforesaid amount?

2. Whether ITAT was justified in law in restricting the estimate of income to the figure disclosed by the Assessee in the books of accounts produced before the AO and CIT (A) despite its finding that Assessee failed to furnish the complete accounts and produce the books of accounts of all its units before AO in spite of ample opportunities given to it?

3. Whether ITAT was justified in law and on the facts in holding that the objects of a political party fall within the scope and expression "any other object of general public utility" appearing in Section 2(15) of the Act?

4. Whether ITAT was justified in deleting the interest charged under Sections 234A & 234B of the Act altogether?"

5. Whether the voluntary contributions received by a political party in view of Section 13-A is income *per se* and whether expenditure incurred by a political party for political purposes or for aims and objects of the political party can be allowed as a deduction for calculating income, when conditions of the first proviso are not satisfied?

6. Whether the ITAT was justified in holding that the voluntary contributions received by the political party cannot be considered as income from other sources in the absence of availability of relief of benefit of Section 13-A of the Act?

Questions in the Assessee's appeal

48. As far as the Assessee's appeal, ITA No. 180 of 2001, is concerned, the following substantial questions of law were re-framed by the Court by its order dated 8th December 2015:

1. Whether the ITAT was correct in law in holding that the audited accounts filed by the Assessee before the CIT (A) could not be accepted as evidence as the same were not audited till the assessment was framed and therefore, the Assessee was not entitled to exemption under Section 13A of the Act?

2. Whether, in the circumstances of the case and on the basis of material on record, the ITAT was justified in denying exemption to the Assessee under Section 13A of the Act and even refusing to condone the delay that had occurred in audit of some of the State units?

3. Whether, the ITAT was right in holding that the Assessee had failed to fulfil the three conditions envisaged under Clauses (a), (b) and (c) of Section 13A of the Act?

Background to Section 13A

49. A central issue that arises involves the interpretation of Section 13A of the Act and in particular the expression 'income from voluntary contributions received' found therein.

50. Before proceeding to interpret Section 13A, certain other terms and expressions used in the provisions of the Act require to be noticed. The expression 'voluntary contributions' has been defined under Section 2(24)(iia) of the Act as under:

> "voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub clause (iv) or sub- clause (v) of clause (23C) of section 10.

> Explanation.- For the purposes of this sub- clause, "trust" includes any other legal obligation;"

51. It is significant that the above definition does not include 'voluntary contributions received by a political party'. However, does that mean that voluntary contributions received by a political party, which finds mention as an exempted category of income under Section 13A of the Act, is not otherwise 'income'?

52. In order to understand this, the purpose of inserting Section 13A of the Act has to be examined. Section 13A of the Act was introduced by the Taxation Laws (Amendment) Act, 1978 with effect from 1st April 1979. Section 13A as it stood during the period relevant to the AY in question reads thus:

> "**13A. Special provision relating to incomes of political parties.-** Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :
>
> Provided that—
>
> (a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;
>
> (b) in respect of each such voluntary contribution in excess of ten thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288.

Explanation.—For the purposes of this section, "political party" means an association or body of individual citizens of India registered with the Election Commission of India as a political party under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968, and includes a political party deemed to be registered with that Commission under the proviso to sub-paragraph (2) of that paragraph."

53. This was simultaneous with the insertion of Section 139(4B) of the Act which reads as under:

"139 (4B). The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total income for this purpose being computed under this Act without giving effect to the provisions of Section 13A exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act, shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

54. The expression 'political party', as stated by the explanation to Section 13A of the Act, as it stood at the relevant time, meant a political party registered with the Election Commission of India under paragraph 3 of the Election Symbols (Reservation and Allotment) Order, 1968, and includes a political party deemed to be registered with the Commission under the proviso to sub-paragraph (2) of that paragraph.. The scheme of

the these provisions appears to be that, after 1st April 1979, it was incumbent on every registered political party to furnish a return of income, if the total assessable of such political party exceeded the maximum amount which is not chargeable to income tax. In determining the total income, the computation has to take place under the Act "without giving effect to the provisions of Section 13A".

55. Apart from the above amendments, the Taxation Laws (Amendment) Act, 1978 also amended the Wealth Tax Act, 1957 to exempt political parties from the levy of wealth tax.

56. The statement of objects and reasons accompanying the Taxation Laws (Amendment) Bill, 1978 that introduced the above amendments reads as under:

> "Political parties are essential in any democratic set-up. The taxation of their income, however, reduces their disposable funds thereby adversely affecting their capacity to finance their activities from legitimate sources of income. It is, therefore, proposed to provide for exemption from income tax in respect of specified categories of income derived by political parties, namely income from investments both in movable and immovable properties and income by way of voluntary contributions. The proposed exemption will be available only in the case of political parties which are registered or deemed to be registered with the Election Commission of India under the Election Symbols (Reservation and Allotment) Order, 1968. The exemption will not be allowed unless the political party maintains proper books of account; records the name and address of every person who has made a voluntary contribution of more than ten thousand rupees at a time; and the accounts of the

political party are audited by a chartered accountant or other qualified accountant.

2. Payments made for advertisements in souvenirs, brochures and the like published by political parties are not made on considerations of commercial expediency, but are in the nature of disguised donations made with the twin objective of circumventing the ban on company donations and for securing their deduction in the computation of taxable profits. It is, therefore, proposed to provide that expenditure incurred by a taxpayer for purposes of advertisement in any souvenir, brochure and the like published by a political party will not be allowed as a deduction in computing the taxable profits.

3. One of the principal objects of wealth-tax is to reduce disparities in personal incomes and wealth. As this consideration does not apply in the case of political parties, it is proposed to exempt them from the levy of wealth-tax.

4. This Bill accordingly seeks to amend the Income-tax Act, 1961, and the Wealth-tax Act, 1957, mainly with a view to achieving the aforementioned objects."

57. The Income Tax Circular No. 245 dated 11th August 1978 also explained the purport of the above provisions. It was clarified in para 4 of the said circular that the exemption under Section 13A of the Act would not be available unless a political party fulfils the following conditions:

(i) it keeps and maintains such books of accounts and other documents that would enable the income tax officer to properly deduce its income therefrom.

(ii) it keeps and maintains records of each voluntary contribution in the excess of Rs.10,000 and all the names and addresses of persons who have made such contributions.

(iii) the accounts of the political party are audited by a Chartered Accountant or other qualified accountant as defined below Section 288(2) of the Act.

58. It requires to be noticed at this stage that Section 13-A of the Act has undergone further changes in 2003 and as at present it reads as under:

"**13A. Special provision relating to incomes of political parties.-** Any income of a political party which is chargeable under the head "Income from house property" or "Income from other sources" or "Capital gains" or any income by way of voluntary contributions received by a political party from any person shall not be included in the total income of the previous year of such political party :

Provided that—

(a) such political party keeps and maintains such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom;

(b) in respect of each such voluntary contribution in excess of twenty thousand rupees, such political party keeps and maintains a record of such contribution and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by an accountant as defined in the Explanation below sub-section (2) of section 288 :

Provided further that if the treasurer of such political party or any

other person authorised by that political party in this behalf fails to submit a report under sub-section (3) of section 29C of the Representation of the People Act, 1951 (43 of 1951) for a financial year, no exemption under this section shall be available for that political party for such financial year.

Explanation.—For the purposes of this section, "political party" means a political party registered under section 29A of the Representation of the People Act, 1951 (43 of 1951).

59. Thus the basic requirement under Section 13 A of the Act for a registered political party to be able to claim exemption from income tax remains the same. To strengthen the provision, the second proviso was added to make it mandatory for a political party to submit a report to the Election Commission of India under Section 29C (3) of the RP Act if it wanted to seek exemption in terms of Section 13A of the Act.

Submissions of Senior counsel for the INC

60. The submission of Mr. C.S.Aggarwal, learned Senior counsel for the INC was that 'voluntary contribution' is in the nature of a gift and can never be regarded as income under Section 2(24) of the Act. According to him even for the purposes of Section 11 of the Act in the case of a Trust, voluntary contributions received by a Trust is deemed to be income derived from property held under Trust and is not income. He pointed out that if indeed voluntary contributions received by a political party would have been income per se under Section 2(24) of the Act, then clearly there would not have been any need to enact Section

2(24)(iia) of the Act. He further submitted that voluntary contributions could never be considered to be a regular source of income.

61. Mr. Aggarwal referred to the decision in ***Commissioner of Expenditure Tax v. P.V.G. Raju (1975) 101 ITR 465 (SC)*** where it was held:

> "when a person a person gives money to another without any material return, he donates that sum. An act by which the owner of a thing voluntarily transfers the title and possession of the same from himself to another, without any consideration, is a donation. A gift or gratuitous payment is, in simple English, a donation".

62. Mr. Aggarwal also referred to the decisions in ***Commissioner of Income Tax v. Harprasad & Company Private Limited (1975) 99 ITR 118 (SC)*** and ***Parimisetti Seetharamamma v. Commissioner of Income Tax (1965) 57 ITR 532 (SC)*** to urge that all receipts were not income and the burden was on the Revenue to establish that a voluntary contribution was income within the meaning of the Act. He submitted that the only test was "material return" which in the present case was absent. Mr Aggarwal submitted that in a voluntary contribution, the voluntariness of the donor was the "originating cause" but not the expectancy or the acts of the political party.' By way of analogy he pointed out that it was felt necessary to term a voluntary contribution as a 'deemed income' under Section 11 of the Act since otherwise it was not.

63. Mr Aggarwal pointed out that under Section 14 of the Act, there were various heads of income provided but there was no head of income

by way of 'voluntary contribution'. In any event since it did not fall within the definition of income under Section 2(24) of the Act it could not be held liable to be assessed as that would be beyond the scope of Section 5 of the Act.

64. Mr Aggarwal submitted that had income by way of voluntary contributions been 'income from other sources,' there would have been no occasion to separately provide for it under Section 13A of the Act. It the expression 'income from other sources' implied that there had to be in the first place income from some 'source'. Since the originating cause of the voluntary contribution was the will of the contributor, it cannot be said to be 'income from other sources'.

65. Mr Aggarwal referred to the memorandum accompanying the Finance Bill, 1972 which inserted Section 2(24)(iia) of the Act. Reference was also made to Instruction No. 1988 dated 19th October 2000 issued by the CBDT which clarified that income of political parties from voluntary contributions cannot be said to be 'income from other sources'. A distinction was also drawn between the expression 'income by way of voluntary contributions received' occurring in Section 13A of the Act and 'any voluntary contribution received by an electoral Trust' occurring in Section 13B of the Act.

Submissions of counsel for the Revenue

66. Countering the above submissions, it was pointed out by Mr. Raghvendra Singh, learned counsel for the Revenue that collection from

sale of coupons and purse money and donations and other such receipts constitute voluntary contributions under Section 13A of the Act. Referring to Section 29B of the RP Act and Section 293A of the Companies Act 1956, he submitted that a wider meaning has to be given to the expression 'voluntary contributions'. After 11th September 2003, the date on which Election and Other Related Laws (Amendment) Act, 2003 came to force, a political party had to maintain records of each voluntary contribution in excess of Rs. 20,000 in substitution of Rs. 10,000.

67. Mr. Singh referred to the decision in ***Commissioner of Income Tax v. MP Anaj Tilhan Vyapari Mahasangh (1988) 171 ITR 677 (MP)*** and submitted that voluntary contributions received by a political party was income under Section 2(24) of the Act and was a revenue receipt. Reliance was placed on the decisions in ***Karanpura Development Co. Ltd. v. Commissioner of Income Tax (1962) 44 ITR 362 (SC)*** and ***Aroon Purie v CIT. (2015) 375 ITR 188 (Del)***.

68. Mr Singh submitted that whether a receipt is income or not is a mixed question of fact or law and the matter ought to be remanded to the ITAT to call for and examine the complete books and decide the question afresh.

Interpreting Section 13A

69. Section 2(15) of the Act defines what is 'charitable purpose'. This is relevant for Section 11 of the Act. A political party cannot be said to be

carrying on an activity that is comparable to that carried on by a 'charitable trust.' Treating the income of a political party to be that of a Trust and using the same principle to test the treatment of its expenses is inconsistent with the very scheme of the Act.

70. It is clear, therefore, that for understanding and interpreting Section 13A of the Act, it would serve no purpose to compare it with Section 11 of the Act which applies to Trusts.

71. The charging provision as far as the Act is concerned is Section 4 of the Act. Section 5 of the Act says that the total income of a person includes all income from whatever sources derived. For an income to come within the purview of 'total income' it must satisfy the requirements of Section 5 and must be computed in the manner laid down under the Act. Section 2 (24) of the Act sets out the definition of 'income'.

72. In ***Karanpura Development Co. Ltd. v. Commissioner of Income Tax*** *(supra)*, the question that arose was whether amounts received by the Assessee as 'Salami' for the mining sub-lease constituted a trading receipt in its hands and the profits therefrom were assessable to tax under the Indian Income Tax Act, 1922. The Supreme Court made the following observations:

> "6. The words "income" has not been defined in the Income-tax Act. In the definition which is enacted certain receipts are said to be included in the concept of income; but it does not say that "income" itself means. Certain working definitions have been given by Courts, chief among which is by the Judicial Committee

in ***Commissioner of Income-tax v. Shaw Wallace & Co. (1932) L.R. 59 I.A. 206***, where it was held that by income is meant a periodical monetary receipt, not in the nature of a windfall but coming in with some sort of regularity or expected regularity. In business, it was also pointed out, income was the produce of something "loosely spoken of as capital". This income in business is profit which is earned by a process of production, or, in other words, by the continuous exercise of an activity. These observations of the Privy Council were quoted with approval by this Court in many cases and recently in ***Senairam Doongarmall v. Commissioner of Income-tax [1961] 42 ITR 392 (SC)***. In the last case, it was also pointed out that the addition of the words "profits and gains" in the phrase "income, profits and gains" used in the Income-tax Act does not restrict the meaning of the word "income" by implication, and that the whole expression is "income" writ large.

7. But whatever "income" may include or mean it is however, clear that it does not include fixed capital or the realising of fixed Capital by turning it into some other form of capital or money. Fixed capital in something which the owner keeps in his possession but turns to profit; circulating capital however, is turned over in the process of profit making. It may sometimes happen that in the process of production, fixed capital may be consumed or wasted, but that is a reduction of capital and not an expenditure in the business claimable as an allowance in the reduction of assessable income in the shape of profits of the business."

73. It is, therefore, clear that an income has to necessarily arise from a receipt of money but all receipts do not qualify as 'income'. What is clear is that income does not include fixed capital or realising of fixed capital by turning it to some other form of capital or money. It has to be a periodical monetary receipt not in the nature of windfall. It has to be earned with some sort of regularity from definite sources.

74. That takes us to Section 14 of the Act which specifies the heads of income. Five distinct heads of income that are identified are:

(i) Salaries (Section 14 clause A)

(ii) Income from house property (Section 14 clause C)

(iii) Profits and gains of business or profession (Section 14 clause D)

(iv) Capital gains (Section 14 clause E), and

(v) Income from other sources (Section 14 clause F)

75. When the above heads of income are compared with the heads of exempt income under Section 13A of the Act, as far as a political party is concerned, three of the above heads are exempt from tax. These are income from house property, income from other sources and capital gains (the latter having been inserted by Finance Act, 2003 with retrospective effect from 1st April 1979). Apart from the above three, there is also mentioned 'any income by way of voluntary contributions received by a political party' from any person.

76. The question that arises is whether income by way of voluntary contributions received by a political party is a species different and distinct from 'income from other sources', particularly since it is separately mentioned in Section 13A of the Act. According to the INC, this question has to be answered in the affirmative. It is submitted that but for Section 13A of the Act, income by way of voluntary contributions received by a political party would not be income at all.

77. Although the above argument appears attractive at the first blush, on

a careful perusal of the entire scheme of the Act, it is not possible to accept it. As rightly pointed out, Section 13A of the Act is not a computation section. It is only a provision that tells us what types of receipts of a political party would not be included in determining its taxable income. While it is true that income by way of voluntary contributions is not identified as a separate head of income in Section 14 of the Act, the legislative intent was not to exclude it altogether from the taxable income. It would be excluded only subject to fulfilment of the conditions stipulated under Section 13A of the Act. It could never have been the legislative intention that voluntary contributions received by a political party that does not satisfy the requirement of Section 13A of the Act - viz., maintaining books of accounts, keeping a record of voluntary contributions in excess of Rs. 10,000 and getting the accounts audited - would be exempt from tax. If the above conditions are not fulfilled, the income of a political party by way of voluntary contributions would be included in the taxable income.

Nature of voluntary contributions

78. If that was the legislative intent, the question that arises is whether there is an anomaly in not specifying income by way of voluntary contributions as a head of income under Section 14 or not even deeming it to be income for the purposes of Section 2(24)(iia) of the Act? This requires the discussion to turn to what is meant by 'income from other sources'. An elaboration of this expression occurs in Section 56 of the Act.

79. Section 56(1) reads as under:

> "56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in Section 14, items A to E".

80. The above provision makes it clear that clause F of Section 14 is a residuary provision. If an income which is not to be excluded from the total income and is not chargeable to income tax under heads A to E, then it has to be treated as 'income from other sources'. Section 14 of the Act no doubt opens with the words "save as otherwise provided by this Act" and that would include both Section 13A as well as Section 56 of the Act. However Section 13A of the Act does not open with a non-obstante clause. In other words, Section 13A of the Act is not exclusive of Section 14 F or Section 56(1) of the Act. This clinches the issue. In other words, if the total income by way of voluntary contributions of a political party cannot be excluded from its total income because such political party has not complied with any of the conditions in the proviso to Section 13A of the Act, then by virtue of Section 56(1) of the Act, such income by way of voluntary contribution would be 'income from other sources' under Section 56(1) of the Act.

81. It is true that income by way of voluntary contribution of a political party is not deemed to be income under Section 2(24)(iia) of the Act. However that does not place it outside the purview of 'income from other sources' for the purposes of Section 13 A read with Section 56 (1) of the Act. The Privy Council in ***Commissioner of Income Tax v. Shaw***

Wallace & Co. AIR 1932 PC 138, in the context of the Income Tax Act, 1922, held that Section 4(3)(v) of that Act was only clarificatory and "must be due to the over anxiety of the draftsman to make this clear beyond possibility of doubt". Applying that analogy it has to be held that the mere fact that income by way of voluntary contributions in the hands of Trusts and other entities (other than the political party) is deemed to be income under Section 2 (24) (iia) of the Act, will not mean that it is not income as far as the political party is concerned.

82. The submission that there has to be in the first place a source of income and in relation to it there has to be income from 'other sources' does not hold good in the present context since admittedly the INC has also income from house property, which is reflected in its returns. That apart, Section 56 (1) of the Act makes it clear that even if there was no income under clauses A to E of Section 14 of the Act, there could be income from other sources under clause F of Section 14 of the Act.

83. Mr Singh is right in the submission that collection by sale of coupons, purse money and donations do constitute 'voluntary contributions' and they are part of the essential sources of a political party's income. This is clear from the reading of statements of objects and reasons for the introduction of Section 13A of the Act. It is definitely one of the sources of income of a political party.

84. A political party cannot be equated with other types of Assessees, for e.g., a company, whose income is subject to tax. The theory of there

having to be some ‘material return’ for the donor may not be apposite in the context of donations made to a political party. Such donation could be a result of the donor endorsing the ideology or the manifesto of a political party. It may be simply be an act of participation in a democracy. An elector may believe that a plurality of political parties is good for democracy. She may want to make donations to one or more political parties while reserving to herself the right of deciding which political party to support at the time of election. There could be multiple reasons for donations.

85. The known tests for determining what could be said to be 'income' for the purposes of the Act are, therefore, inadequate for determining whether the voluntary contribution to a political party is ‘income’ in its hands. It definitely forms the corpus from which expenses are incurred by the political party. It is a regular source of income. It may or may not be a windfall depending on the size of the donation.

Voluntary contributions are not capital receipt

86. In this context, the Court is unable to accept the contention that these kinds of voluntary contributions are ‘capital receipts’ as contended by Mr. Aggarwal. Although it is true that all receipts are not income, clause F of Section 14 read with Section 56(1) of the Act, provides an affirmative answer to the question whether income by way of voluntary contributions is ‘income from other sources’ in a situation where the proviso to Section 13A(1) of the Act is not fulfilled by a political party.

87. The decision in ***Commissioner of Expenditure Tax v. P.V.G. Raju*** (*supra*) is distinguishable on facts. In that case, the context was that the Expenditure Tax Act, 1958 ('ET Act') which taxed certain forms of expenditure. Section 5(j) of the ET Act specifically excluded expenditure incurred by an Assessee by way of a gift, donation or settlement on Trust or otherwise for the benefit of any other person. It is in this context that it was held that the donation made to a political party qualifies for exemption under Section 5(j) of the ET Act.

88. The situation here is hardly comparable. What is sought to be exempted for the purposes of Section 13A of the Act is not expenditure by way of a donation but income by way a voluntary contribution.

89. Consequently, on this aspect, it is held that the voluntary contributions received by the INC during the AY in question has to be treated as 'income from other sources'.

Non-furnishing of audited accounts within time

90. This next takes us to the question of whether the CIT(A) and the ITAT ought to have permitted the Assessee to place on record its audited accounts although they were not completed and audited prior to the passing of assessment order by the AO for the AY in question.

91. Mr. Aggarwal makes an earnest plea that for the purposes of Section 13A of the Act, there is, in fact, no time limit specified for furnishing the audited accounts. It is submitted that unlike certain other provisions

like Sections 10 (23C)(via), 32AB, 80 HHC, and numerous other such provisions which require that the audited report should be furnished along with the returns or before the due date of the filing of return, there is no such requirement in Section 13A of the Act. Accordingly, it is submitted that the filing of the audit report is only directory and it can be filed during the course of assessment and even if the auditor's report is filed during the course of the appellate proceedings, the requirement of law should be taken to have been complied with. Reliance is placed on the decision in ***Commissioner of Income Tax v. American Data Solutions India (P.) Ltd. [2014] 45 taxmann.com 379 (Kar)***, ***Commissioner of Income Tax v. Jayant Patel 248 ITR 199 (Mad)***, ***Commissioner of Income Tax v. Trehan Enterprises (2001) 248 ITR 333 (J&K)***, ***Commissioner of Income Tax v. Magnum Export (P.) Ltd. (2003) 262 ITR 10 (Cal)*** and ***Commissioner of Income Tax v. Medicaps Ltd. (2010) 323 ITR 554 (MP)***. Reference was also made to the decision in ***Commissioner of Income Tax v. Bijli Cotton Mills Pvt. Ltd. (1979) 116 ITR 60 (SC)*** to contend that the income tax authorities ought to have accepted the audit reports produced before the CIT(A).

92. At the outset it should be noted that there is a distinction between accounts needing to be maintained and audited, and, the requirement that an auditor's report should be filed. In other words, the filing of an auditor's report is distinct from the filing of audited accounts. There is no option for a political party not to file audited accounts as far as Section 13A of the Act is concerned. It is only when the accounts, duly certified by a chartered accountant who satisfies the description in terms

of the Explanation to sub-section (2) of Section 288 of the Act, are filed that the AO may reasonably deduce the taxable income of the political party therefrom. In other words, the requirement of maintaining the audited accounts and furnishing those accounts in terms of the proviso to Section 13A of the Act is not merely directory.

93. The decisions cited by Mr. Aggarwal are distinguishable as each of them talks of the non-filing of an auditor's report and not the non-filing of audited accounts themselves. Given the context in which Section 13A of the Act was introduced, it was critical from the point of view of the legislature that political parties are made to disclose what their state of financial affairs is in any given financial year. It was felt necessary to make them account for the receipts and expenses in any financial year. After all, political parties do deal with monies contributed by the public. Political parties are purportedly incurring expenses for their political activities. It is with a view to placing a check on the financial transactions of political parties that the proviso to Section 13A was enacted. In this context, the object of Section 13 A of the Act will be defeated if the compliance with the requirements of the proviso thereto are held not to be mandatory.

94. Section 13A has to be read as a whole. It is a provision beneficial to a political party. It exempts various items of income of a political party from tax. If it has to be strictly construed, so too should the conditionality attached to Section 13A. If a political party seeks exemption from paying income tax in a particular AY, it is incumbent

on such political party to strictly comply with each of the requirements in the proviso to Section 13A and to do so by the time the assessment is completed. At the highest, there can be a leeway between the time of filing of the return and the completion of the assessment but certainly not thereafter. This is a reasonable interpretation to be placed on the said provision as far as the time period for compliance with the requirement of the proviso to Section 13A of the Act is concerned.

95. It is not in dispute that as far as AY 1994-95 is concerned, the INC did not submit the complete audited accounts by the time the assessment was completed. What was submitted was only the accounts of the central office and not the state units. It was only before the CIT (A) that an application was filed under Rule 46A seeking to place on record the consolidated accounts of the central office, 26 Pradesh Congress Committees, 6 Territorial Congress Committees, 2 Regional Congress Committee, All India youth Congress, All India Mahila Congress Committee, All India Congress Sewa Dal, National Students Union of India and the Congress Parliamentary Party. That attempt was rebuffed by the CIT(A) and the decision in this regard was upheld by the ITAT.

96. Given the above legal position regarding the mandatory requirement of Section 13A of the Act, the CIT (A) was justified, and so was the ITAT, in declining the application of the INC under Rule 46A seeking permission to place on record the consolidated accounts at the appellate stage.

97. The mere fact that the INC may have units in each of the states in the country, which makes the task of consolidating the accounts a tedious one, does not absolve it from the mandatory statutory requirement of filing consolidated accounts of the central office and the state units. A company can have branches all over the country and may be required to file consolidated accounts of all those branches. There can be no excuse for such company not doing so for any given AY. Without there being audited accounts, none of the figures mentioned by an Assessee in the returns can be verified. Where the accounts of an Assessee fail to inspire confidence and merit rejection, or where there is no full and true disclosure by the Assessee, a combination of Sections 143 and 144 of the Act would come into play and the AO would have to deploy the best judgment assessment. Therefore, in the present case, merely because the INC had several state units and other associated bodies, whose individual accounts had to be tallied and finalised, was not a sufficient cause for it not to comply with the requirements of the proviso to Section 13A of the Act by the time of completion of the assessment.

98. The Court, therefore, holds that the INC failed to demonstrate sufficient cause in terms of Rule 46A(1)(b) and 46A(1)(c) of the Rules. The decision of the CIT(A) as affirmed by the ITAT, is upheld.

The accounts do not give a true and fair picture

99. Admittedly, in the present case, the accounts for AY 1994-95 were audited only on 1st July 1997. This was more than two years after the

end of the relevant FY. The consolidated accounts were tendered before the CIT (A) only on 4th November 1997. This was certainly an unacceptable and inordinate delay. Given the context of Section 13A of the Act, such delay could not possibly have been condoned.

100. In any event, The audited 'consolidated' accounts filed before the CIT (A) also do not satisfy the mandatory legal requirement. The Court pointed out to Mr Aggarwal during the course of hearing various discrepancies and shortcomings therein. The auditor's report is not in the format that one expects a duly qualified CA to adopt. When it was plain to the CA that the receipts of the state units and the items of expenditure incurred by them units were not supported by documents, a qualified report ought to have been furnished. On the other hand, the Court finds that a standard format report has been adopted. The auditor's report dated 1st July 1997 for the AY 1994-95 reads as under:

> "The President
> Indian National Congress
> New Delhi.
>
> We have audited the first attached consolidated Balance Sheet of Indian National Congress, as on 31st March 1994 and the Income & Expenditure account of the Party for the year ended on that date in which are incorporated the Audited accounts of All India Congress Committee, 26 Pradesh Congress Committees, 6 Territorial Congress Committees, 2 Regional Congress Committees, All India Youth Congress, All India Mahila Congress Committee, All India Congress Sewa Dal, National Students Union of India and Congress Parliamentary Party and report that:
>
> Subject to the notes on accounts as per schedule 'A' of the Balance Sheet.

The Balance Sheet as on 31.3.94 and Income and Expenditure account for the year ended on that date are in agreement with the books of accounts, vouchers, receipts books etc. produced before us."

101. The Schedule 'A' to the balance sheet reads as under:

"Notes on Accounts Forming part of the Balance Sheet as on 31.03.94

1. Generally cash system of accounting has been followed by the party except the interest on F.D.Rs which has been accounted for on accrual basis.

2. Certain additions to the existing building at 24, Akbar Road have been made during the year. Since the building is on rent from Government of India and the ownership does not vest in AICC, the amount spent on additions has been charged as depreciation during the year.

3. Certain Committees have prepared their final accounts in the form of receipt and payment account. Hence while drawing the Balance Sheet as on 31.3.94 of those offices, fixed Assets and moveable assets have been estimated by the said committees/office bearers and taken into account with corresponding credit to the Reserve Fund account. Assets and liabilities have been incorporated in the financial statement on the basis of details provided to us by the Pradesh Committees.

4. As no financial accounts were drawn for the year in the case of Tamil Nadu and Arunachal Pradesh Committees due to split of the party, the same could not be incorporated in the Balance Sheet of Indian National Congress as on 31.3.94.

5. During the year, the party had received certain donations from outside India amounting to Rs.1.00 crore

> by demand drafts. A public interest petition has been moved in Delhi High Court challenging the acceptability of these donations under the provisions of the Foreign Contribution (Regulation) Act, 1976. The party is of the opinion that the acceptance of these donations are not in contravention of the Foreign Contribution (Regulation) Act, 1976.
>
> 6. Income Tax Department has raised a demand amounting to Rs.22.96 crore for the assessment year 1994-95. The Party has gone in appeal against this demand and the recovery of the same has been stayed by the department till the disposal of the first appeal."

102. It is not understood how despite the above note, the auditor can simply certify that the balance sheet and the statement of income and expenditure as on 31st March 1994 are in agreement with the books of accounts, vouchers, receipts, books etc. "produced before us". In the facts of the present case, when admittedly the complete figure of the receipts and expenditure of all the state units was not available, it should not have been possible for an auditor to make that kind of a statement. The purpose of whole exercise of audit undertaken by a CA, is to examine if the accounts maintained by an Assessee give a true and fair view of its financial affairs. Significantly, the above report does not use the expression 'true and fair view' at all. There is also a difference between an Auditor saying that the accounts are in accordance with the Assessee's books of accounts and the Auditor saying that they are in accordance with the books of accounts "produced before us". If an Assessee has failed to maintain or produce all the books of accounts, receipts, vouchers etc., in accordance with the mandatory legal

requirement, it was incumbent on an auditor to qualify his report to that extent.

103. It is also disconcerting to note that the same auditor has issued identical certificates for other AYs for which simultaneously accounts have been finalised. This kind of an auditor's report, to say the least, leaves much to be desired. It does not comport with the degree of seriousness with which a duly qualified auditor is expected to discharge his statutory obligations. An auditor is discharging both the professional and a statutory duty. He is licensed under the expectation that he will faithfully discharge the above obligations. In the present case, the Court is constrained to note that the auditor's report submitted before the CIT (A) on 4th November 1997 is woefully short of the requirement of the law.

104. Mr. Aggarwal tried to suggest that a format was prescribed by the Institute of Chartered Accountants of India ('ICAI') for accounts to be tendered by political parties only recently, i.e. in February 2012. He also referred to the instructions recently issued regarding the filing of income tax returns by political parties.

105. The ICAI issued a 'Guidance Note on Accounting and Auditing of Political Parties' in February 2012. The covering note of the President, ICAI states inter alia:

> "Political Parties are one of the core organisations for functioning of a democracy. In this dynamic scenario, where the sources of funding of the Political Parties are

> diversified, the objectives of accountability and transparency seem to be of great importance. Transparent accounting and financial reporting are also central to the fulfilment of new age governance, The introduction of acceptable accounting practices and disclosure norms are not just technical practices but the foundations for the integrity and maturity of the Political Parties. Political Parties would, therefore, need to reflect their 'financial position' and 'financial performance' which should indicate their ability to achieve their developmental goals, meet their programme targets, their efficiency in the use of resources.

106. The covering note of the President ICAI acknowledges that "the present system of accounting and financial reporting followed by political parties in India does not adequately meet the accountability concerns of the stakeholders." The 'Illustrative format of Auditor's report' appended to the note requires the auditors to state *inter alia* that:

> "In our opinion and to the best of our information and according to the explanations given to us, the said accounts give a true and fair view in conformity with the accounting principles generally accepted in India"

107. The above guidance note of the ICAI can be said to clarify the legal requirement regarding the standard of reporting that is expected of an auditor discharging both a professional and a statutory responsibility. It does not mean, as was suggested by Mr Aggarwal, that prior thereto there was no such requirement of a auditor's report to satisfy the statutory mandate of Section 13A of the Act.

108. Since no attempt has been made by the INC to place before the AO, or even before the CIT (A), acceptable audited accounts, from

which the AO could deduce the taxable income of the assessee, the Court has no hesitation to hold that the mandatory requirement of the proviso to Section 13A of the Act was not fulfilled by the Assessee. Such a failure could not have been condoned either by the CIT (A) or the AO.

Effect of remand proceedings

109. It was contended by Mr. Aggarwal that in the remand proceedings, pursuant to the impugned order of the ITAT, the AO had relied on the very figures in the consolidated audited accounts submitted by the INC before the CIT (A). He pointed out that in fact the AO had accepted the expenditure of the Assessee as shown therein. The remand proceedings ultimately resulted in the assessment being finalised at a deficit, i.e., at a net loss. On this basis, it is contended that once there is no assessable income as such, the question of exemption under Section 13A of the Act could not arise at all.

110. The above submission proceeds on a basic misconception. With the Revenue having preferred an appeal before this Court against the impugned order of the ITAT, all further proceedings consequent upon the remand to the AO would obviously be subject to the outcome of the present appeal. It is, therefore, to no avail as far as the INC is concerned, that in the remand proceedings the AO may have relied on the audited accounts submitted by the INC at the appellate stage. There is no estoppel in such situations particularly since the Assessee has been put

on notice that all orders passed on remand are subject to the outcome of the appeal filed by the Revenue in this Court.

111. It is, therefore, to no avail that the AO on remand assessment relied on these audited accounts to determine whether there was a taxable income or a deficit for the AY in question. The INC cannot possibly take advantage of what happened in the remand proceedings.

The rule of consistency

112. Another contention that was urged was based on the rule of consistency. It was contended that when the accounts of the INC for all the AYs, earlier to and later than AY 1994-95, have been accepted by the Department without demur, then why must only AY 1994-95 be picked up for a different treatment? Reliance was placed on the decision in ***Excel International Ltd. v. CIT (2013) 358 ITR 295 (SC)*** which reiterated the decision in ***Radha Saomi Satsang v. CIT (1992)193 ITR 321(SC)***

113. As already noticed, the so-called audited accounts that were presented to the AO by the INC for AY 1994-95, and later in a 'consolidated' form on 4th November 1997 before the CIT(A), does not inspire confidence. The same type of incomplete accounts have been prepared and submitted by the same auditor, for several AYs earlier to and subsequent to the AY in question. There appears to be a laxity on the part of the income tax authorities in not insisting on strict compliance with the mandatory requirement of Section 139(4B) read

with Section 13A of the Act, thereby defeating the very purpose of the said provisions as was foreseen by the Supreme Court in ***Common Cause v. Union of India*** *(supra)*. In the circumstances, the rule of consistency cannot be applied to condone the violation of the law by the INC.

Estimation of voluntary contributions to state units

114. The next question that arises is whether there can be an estimation of either the income by way of voluntary contributions received by state units or the expenditure incurred by such state units in the absence of any vouchers. To recapitulate, what the AO has done is to estimate the income by way of voluntary contributions received by the state units of the INC as Rs. 15 crores in the absence of any reliable document or voucher.

115. In this context it was submitted by learned counsel for the Revenue that although the AO did not mention Section 144 of the Act, it was permissible for him to have made such an estimation of income. It is further stated that estimation is possible even under Section 143(3) of the Act. Reliance was placed on the decisions in ***Seth Gunmukh Singh v CIT [1944] 12 ITR 393 (Lahore)*** and ***Dhakeshwari Cotton Mills v CIT [1954] 26 ITR 775 (SC)***. It was submitted that this kind of a defect is curable under Section 292B of the Act. It was submitted that in the facts of the case since the INC failed to comply with the terms of notice under Section 142(1) of the Act, it was open to the AO to make a best

judgment assessment. Reliance was placed on the decision in ***CIT v R. Narayanrao (2011 338 ITR 625 (AP)***.

116. As has already been noted, the INC failed to comply with the requirements of the proviso to Section 13A of the Act and was therefore not eligible to claim exemption from payment of income tax. The INC failed to produce the authentic and audited consolidated accounts of its central office and state units which could be said to represent the true and fair view of its financial affairs. It is also true that by the time the assessment was completed, the INC could produce only the accounts of its central office and 14 state units. The question that arises is whether, in such circumstances, an AO could have resorted to best judgment assessment?

117. As rightly pointed out by Mr Aggarwal, estimation of income of a political party is different from estimation of income of other taxable entities. It is not possible to even reasonably guess what could be the contribution to a political party in a given year because a variety of factors are involved. In an election year, closer to the actual dates of election, and because of the extraordinary efforts made by members of a political party, the extent of voluntary contributions might show a marked increase. In a year which is not an election year, the contributions might show a decline. Again, this will depend on whether the party is in power in a certain state. Even in such case, the anti-incumbency factor, and when that might surface are all matters of speculation.

118. The types of elections held would also have a bearing on the income of the party. For e.g., elections to the Parliament would require a different level of activity when compared to elections to a state Legislative Assembly or to a local body. Also the profile of the contributors may determine the size and frequency of the contribution. For instance, just a few corporate entities could make a very sizeable donation to a political party compared to a political party which has a large number of individual donors. Therefore, there are too many imponderables that make the task of estimating, with a degree of certainty, the income of a political party extremely difficult. This kind of an exercise would require collating a vast amount of data which as of now does not exist in the public domain particularly with political parties resisting attempts at bringing them within the ambit of the Right to Information Act, 2005. Although accounts have to be furnished by candidates to the Election Commission of India, that *per se* cannot form a reliable source of estimation of the voluntary contributions that may be made to a political party.

119. As far as the Act is concerned, there is at present a lacuna inasmuch as upon failure of a political party to comply with Section 139 (4B) of the Act in letter and spirit, and with auditors not discharging their statutory obligation, the income tax authority is hamstrung by the lack of reliable data on which to base a reasonably accurate estimation of income of a political party.

120. Turning to the facts of present case, there is no basis indicated by the AO for estimating the figure of voluntary contributions received by the state units during AY 1994-95 at Rs 15 crores. It appears to have been 'pulled out of the hat'. The Court is, therefore, unable to sustain that estimation. To that extent, the ITAT is right.

121. The question that then arises is whether the ITAT ought to have remanded the matter to the AO for re-computing the INC's taxable income for the Ay 1994-95? Here the Court would like to recapitulate that we are dealing with AY 1994-95 and the current year is 2016. What was unable to produced in these 22 years cannot suddenly be produced by the INC even if the matter is sent back to the AO at this stage. It would be a futile exercise particularly since even the so-called audited accounts of the INC, submitted on 4th November 1997 at the stage of the appeal before the CIT (A), are not reliable. The AO would be unable, in the circumstances, to determine the possible extent of voluntary contributions received by the state units.

122. However, as far as the present case is concerned since it is impossible to meaningfully of estimate the income by way of voluntary contributions made to state units, the Court sees no purpose in remanding the matter to the AO for that purpose. The impugned order of the ITAT to the extent it remands the matter to the AO is hereby set aside. Consequently all proceedings consequent upon such remand are rendered non-est.

Expenditure of a political party

123. Here it is important to address another submission made on behalf of the Revenue which finds favour with the Court. Under the head 'income from other sources', no expenditure can be allowed as a deduction on the ground that the expenditure has been incurred by a political party for attaining the aims and objects of political party. As rightly pointed out, the only deduction is under Section 57(iii) of the Act and this cannot be granted since the INC did not place on record the factual basis for such a claim.

124. The legal position is that no deduction can be allowed with respect to the expenditure incurred by the political party for any purpose whatsoever if it fails to comply with the basic requirements of Section 13A of the Act.

125. Therefore, the only way to proceed in the present matter is to wholly disallow the expenditure claimed by the INC as relatable to 'income from other sources'. On the receipts side, the Revenue will simply have to go by whatever is disclosed by the INC as income by way of voluntary contributions in the return as originally filed and treat that as income from other sources.

126. Consequently, the Court disagrees with the decision of the CIT (A) restricting the expenditure of the Assessee to 60% of the amount claimed and order of the CIT (A) and the ITAT to that extent are set aside.

Comparison with a Trust misplaced

127. The ITAT was in error in proceeding to draw a comparison between the Assessee and a charitable trust under Section 11 of the Act The question of a political party carrying out any charitable activity within the meaning of Section 2(15) of the Act does not arise. Further, there was no factual basis to support such a plea at any stage of the proceedings. Further the ITAT was required to examine the memorandum and rules and regulations of the Assessee to determine whether any of its objects fall within the scope of "any other object of general public utility". Since the dominant purpose of a political party is political activity, it cannot be brought under the expression 'any other object of general public utility.'

Interest

128. While deleting the interest under Section 234A and 234B of the Act, the ITAT relied on the judgment of the Patna High Court in ***Ranchi Club v. CIT (1996) 217 ITR 72 (Pat)*** against which an SLP was dismissed by a one line order in ***CIT v Ranchi Club, [2001] 247 ITR 209***. However, recently in ***Commissioner of Income Tax v. Bhagat Construction Co. Pvt. Ltd. [2015] 279 CTR 185 (SC)***, the decision in ***Ranchi Club Ltd. v. Commissioner of Income Tax*** *(supra)* has been overruled. The consequent legal position is that notwithstanding that the AO may not have separately dealt with the issue of interest in the assessment order, interest can nevertheless be charged on the tax amount due under Section 234A and 234B of the Act. Consequently, the decision of the ITAT on this aspect is set aside.

Summary of conclusions

129. It is necessary at this stage for the Court to summarise its conclusions:

(i) For understanding and interpreting Section 13A of the Act, it would serve no purpose to compare it with Section 11 of the Act which applies to Trusts.

(ii) Section 13A of the Act is not a computation section. Income by way of voluntary contributions would be excluded only subject to fulfilment of the conditions stipulated under Section 13A of the Act.

(iii) It could never have been the legislative intention that voluntary contributions received by a political party that does not satisfy the requirement of Section 13A of the Act - viz., maintaining books of accounts, keeping a record of voluntary contributions in excess of Rs.10,000 (now enhanced to Rs. 20,000) and getting the accounts audited - would be exempt from tax. In such event, the income of a political party by way of voluntary contributions would be included in the taxable income. Voluntary contributions are not capital receipts.

(iv) Clause F of Section 14 of the Act is a residuary provision. An income which is not to be excluded from the total income and is not chargeable to income tax under heads A to E, has to be treated as 'income from other sources'. If the total income by way of voluntary

contributions of a political party cannot be excluded from its total income because such political party has not complied with any of the conditions in the proviso to Section 13A of the Act, then by virtue of Section 56(1) of the Act, such income by way of voluntary contribution would be ‘income from other sources’ under Section 56(1) of the Act.

(v) The mere fact that income by way of voluntary contribution of a political party is not deemed to be income under Section 2(24)(iia) of the Act, does not place it outside the purview of 'income from other sources.'

(vi) Donations to a political party may be made for a variety of reasons and is an act of participation in a democracy. The known tests for determining ‘income’ are, therefore, inadequate for determining whether the voluntary contribution in the hands of a political party is in fact ‘income’.

(vii) The requirement of maintaining audited accounts and furnishing those accounts in terms of the proviso to Section 13A of the Act is not merely directory.

(viii) It is with a view to placing a check on the financial transactions of political parties that the proviso to Section 13A was enacted. In this context, the object of Section 13A of the Act will be defeated if the requirements of the proviso thereto are held not to be mandatory.

(ix) The conditionality attached to Section 13A must be strictly construed. If a political party seeks exemption from payment of income tax in a given AY, it is incumbent on the political party to strictly comply with each of the requirements in the proviso to Section 13A. At the highest, the compliance has to be by the time the assessment is completed but certainly not thereafter.

(x) The INC failed to demonstrate sufficient cause in terms of Rule 46A(1)(b) and 46A(1)(c) of the Rules. The CIT(A) was correct in holding, and the ITAT in affirming, that the INC failed to make out a case for tendering additional evidence in the form of the consolidated audited accounts at the appellate stage.

(xi) The final audited accounts tendered at the appellate stage contained various discrepancies and shortcomings. The auditor's report submitted before the CIT (A) on 4th November 1997 is woefully short of the requirement of the law.

(xii) Since the INC failed to place before the AO, or even before the CIT (A), acceptable audited accounts, from which the AO could deduce the taxable income of the assessee, the mandatory requirement of the proviso to Section 13A of the Act was not fulfilled by the INC.

(xiii) With the Revenue having preferred an appeal before this Court against the impugned order of the ITAT, all further proceedings consequent upon the remand to the AO were subject to the outcome of

the present appeal. It is, therefore, to no avail as far as the INC is concerned, that in the remand proceedings the AO relied on the audited accounts submitted by the INC at the appellate stage.

(xiv) The rule of consistency cannot be applied to condone the violation of the law by the INC.

(xv) There is no basis indicated by the AO for estimating the figure of voluntary contributions received by the state units during AY 1994-95 at Rs 15 crores and therefore the above estimation cannot be sustained. However, it would be futile to remand the matter to the AO for such estimation as the submitted accounts are not reliable and it is not possible to even reasonably guess what could be the contribution to a political party in a given year because of the variety of factors involved.

(xvi) The expenditure claimed by the INC as relatable to 'income from other sources' is disallowed. On the receipts side, the Revenue will simply have to go by whatever is disclosed by the INC as income by way of voluntary contributions in the return as originally filed and treat that as income from other sources. Consequently, the decision of the CIT (A) and the ITAT restricting the expenditure of the INC to 60% of the amount claimed are set aside.

(xvii) Subsequent to the decision of the Supreme Court in ***Commissioner of Income Tax v. Bhagat Construction Co. Pvt. Ltd. [2015] 279 CTR 185 (SC)*** interest can be charged on the tax amount due

under Sections 234A and 234B of the Act, even if the same was not separately dealt with in the assessment order. The decision of the ITAT on this aspect is set aside.

Answers to the questions in the Revenue's appeal

130. The Court answers the questions framed by the order dated 3rd January 2002 in ITA 145/2001 as under:

Question No.1 is answered by holding that the Assessee INC was not entitled to any exemption in respect of the disclosed income by way of voluntary contributions i.e., Rs.25,12,68,081-Rs.15,00,00,000 (the latter amount being the estimate by the AO which has been set aside by this Court).

Question No.2 is answered in the negative by holding that the ITAT was not justified in restricting the estimate of income to the figure disclosed by the INC in the books of accounts produced by it.

Question No.3 is answered by holding that the ITAT was not justified in holding that the objects of a political party fall within the scope of the expression any other object of general public utility appearing in Section 2(15) of the Act.

Question No.4 is answered by holding that ITAT was not justified in deleting the interest charged under Section 234A and 234B of the Act.

Question No.5 (framed as Question No. 3A on 12th November 2014) is answered by holding that voluntary contributions received by a political party is in terms of Section 2(24) of the Act read with Section 14(F) and Section 56(1) of the Act taxable as 'income from other sources'. The corresponding expenditure incurred by a political party for attaining aims and objects of the party cannot be allowed as a deduction since it is not provided under Section 57 of the Act except to the extent that a political party is able to demonstrate that it is able to claim a deduction under Section 57(iii) of the Act. However any such expenditure can be allowed as a deduction, only if the conditions of the first proviso to Section 13A of the Act are cumulatively satisfied by the political party.

Question No. 6 (framed on 8th December 2015) is answered by holding that when the voluntary contributions received by a political party does not satisfy the requirement of Section 13A of the Act - viz., maintaining books of accounts, keeping a record of voluntary contributions in excess of Rs. 10,000 and getting the accounts audited, such voluntary contributions would be included in the taxable income under the head "income from other sources"

Answers to the questions in the Assessee's appeal

131. Now the Court proceeds to answer the questions that have been framed in ITA 180/2001 by the order dated 8th December 2015:

Question No.1 is answered in the affirmative by holding that the ITAT was correct in law in holding that the audited accounts filed by the INC

before the CIT (A) could not be accepted as evidence since they were not audited till the assessment was framed and, therefore, the INC was not entitled to exemption under Section 13A of the Act.

Question No.2 is answered in the affirmative by holding that the ITAT was justified in denying exemption to the INC under Section 13A of the Act and refusing to condone the delay that had occurred in the audit of some of the state units.

Question No.3 is answered in the affirmative by holding that the ITAT was right in its conclusion that the INC failed to fulfil the three conditions envisaged under clauses (a), (b) and (c) of Section 13A of the Act.

132. The impugned order dated 9th April 2001 of the ITAT in ITA Nos. 4181/Del/98 and 5100/Del/98 for AY 1994-95 and the corresponding order dated 31st March 1997 of the AO and the order dated 8th July 1998 of the CIT (A) shall stand modified in terms of this judgment. It is clarified that the inasmuch as this Court has set aside the impugned order of the ITAT to the extent it has remanded the proceedings to the AO, the orders passed on remand by the AO, the CIT (A) and the ITAT do not survive.

133. The appeals of the INC and the Revenue are disposed of in the above terms. There shall be no order as to costs.

Postscript

134. This case demonstrates the need for a slew of legislative measures that need to be put in place for an effective check on the influence of money on the electoral process. Recently in ***Ashok Shankarrao Chavan v. Madhavrao Kinhalkar (2014)7 SCC 99*** the Supreme Court observed:

> "48. It is common knowledge as is widely published in the Press and Media that nowadays in public elections payment of cash to the electorate is rampant and the Election Commission finds it extremely difficult to control such a menace. There is no truthfulness in the attitude and actions of the contesting candidates in sticking to the requirement of law, in particular to Section 77 and there is every attempt being made to violate the restrictions imposed in the matter of incurring election expenses with a view to woo the electorate concerned and thereby, gaining their votes in their favour by corrupt means viz by purchasing the votes..."

135. In its 255th Report on 'Electoral Reforms' submitted in March 2015 the LCI has suggested several changes to the RP Act, the Companies Act 1956 as well as the Act. Among the significant changes suggested is that "*only* up to Rs. twenty crore or twenty per cent of the total contribution of a political party's entire collection (whether cash/cheque), whichever is lesser, can be anonymous. Apart from this, the details and amounts of all donations and donors (including PAN cards, wherever applicable) need to be disclosed by political parties, regardless of their source or amount." The other significant recommendations are that (i) each recognised political party should maintain accounts clearly and fully disclosing all the amounts received and the expenditure incurred by them (ii) have the accounts audited by a qualified and practicing chartered accountant from a panel of such

accountants maintained by the Comptroller and Auditor General of India (iii) within six months of the close of each financial year submit accounts to the ECI which shall in turn make them publicly available on its website and for inspection on the payment of a prescribed fee.

136. Considering that political parties are an essential part of our democracy and are dealing in large sums of public money, much of which is unaccounted, the proper auditing of the accounts of the political parties is both imperative critical to the conduct of free and fair elections. The above recommendations of the LCI should receive serious and urgent attention at the hands of the executive and the legislature if money power should not be allowed to distort the conduct of free and fair elections. This will in turn infuse transparency and accountability into the functioning of the political parties thereby strengthening and deepening democracy.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 23, 2016
Rk/b'nesh/dn