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

**ITA 1093/2011**

VISHWADHARMAYATAN TRUST ..... Appellant  
Through: Mr. Ashish Mohan with Mr. Mohit  
Kumar and Mr. Chetan R. Wali, Advocates.

Versus

ASST. COMMISSIONER OF INCOME TAX ..... Respondent  
Through: Mr. Rohit Madan, Senior Standing  
counsel with Mr. Akash Vajpai, Advocate.

**WITH**

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**ITA 1144/2011**

CIT ..... Appellant  
Through: Mr. Rohit Madan, Senior Standing  
counsel with Mr. Akash Vajpai, Advocate.

Versus

CHANDRA SWAMI ..... Respondent  
Through: Mr. Ashish Mohan with Mr. Mohit  
Kumar and Mr. Chetan R. Wali, Advocates.

**WITH**

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**ITA 1094/2011**

CHANDRA SWAMI ..... Appellant  
Through: Mr. Ashish Mohan with Mr. Mohit  
Kumar and Mr. Chetan R. Wali, Advocates.

Versus

ASST. COMMISSIONER OF INCOME TAX ..... Respondent



Through: Mr. Rohit Madan, Senior Standing  
counsel with Mr. Akash Vajpai, Advocate.

**WITH**

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**ITA 1143/2011**

CIT

..... Appellant

Through: Mr. Rohit Madan, Senior Standing  
counsel with Mr. Akash Vajpai, Advocate.

Versus

VISHWADHARMAYATAN TRUST

..... Respondent

Through: Mr. Ashish Mohan with Mr. Mohit  
Kumar and Mr. Chetan R. Wali, Advocates.

**CORAM:**

**HON'BLE DR. JUSTICE S. MURALIDHAR**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**27.08.2015**

***Background***

1. These are four appeals under Section 260A of the Income Tax Act, 1961 ('Act') directed against the impugned common order dated 6<sup>th</sup> April 2011 passed by the Income Tax Appellate Tribunal ('ITAT') in IT (SS) A No. 376/Del/1997 and IT (SS) A No. 377/Del/1997 for the block assessment year ('AY') 1<sup>st</sup> April 1986 to 1<sup>st</sup> November 1996. Two of the appeals viz., ITA Nos. 1093 of 2011 and 1094 of 2011 are by the Assessee, i.e., Vishwadharmayatan Trust ('Trust') and Mr. Chandra Swami respectively and ITA Nos. 1143 of 2011 and 1144 of 2011 are by the Revenue.



2. The background to these appeals are that the Trust was created by a Trust Deed dated 30<sup>th</sup> June 1980 with the main objects of maintaining cultural centres, educational institutions, hospitals, clinics, relief and rehabilitation centres and other welfare units. Mr. Chandra Swami is its founder and trustee. The Trust was granted registration under Section 12A of the Act on 22<sup>nd</sup> December 1980 and recognition for the purpose of Section 80G of the Act on 11<sup>th</sup> February 1983.

3. On 1<sup>st</sup> November 1996 the Income Tax Department ('Department') undertook a search at the premises of the Assessee at C-18-19, Qutab Institutional Area, New Delhi under Section 132 of the Act. It is claimed that during the search certain documents were seized and an inventory was prepared. Notices were thereafter issued under Section 158BC of the Act to both the Trustee and Mr. Chandra Swami on 19<sup>th</sup> March 1997 calling upon them to file income tax returns for the block period from 1<sup>st</sup> April 1986 to 1<sup>st</sup> November 1996.

***The block assessment order***

4. A block assessment order was passed by the Assessing Officer ('AO') on 28<sup>th</sup> November 1997. The said order may be summarized as under:

(a) The investigation into the affairs of Mr. Chandra Swami and the Trust was monitored by the Supreme Court in the public interest litigation filed by Mr. Anukul Chandra Pradhan [Writ Petition (Civil) No. 640 of 1995].

(b) The cases of the Trust and Mr. Chandra Swami, Mr. K.N.



Aggarwal @ Mamaji, Mr. Vikram Singh and other connected cases were centralized with the Assistant Commissioner of Income Tax ('ACIT'), Central Circle, New Delhi.

(c) Apart from the documents seized during the search on 1st November 1996 documents available with other investigating agencies in India, scrutinized details and document relating to the earlier search were also set out. Enquiries were also being made in countries where Mr. Chandra Swami and his associates, Mr. Adnan Khasoggi, Mr. Ernest Miller, Mr. Som Chai Chawla and others resided, visited and transacted business.

(d) Mr. Chandra Swami claimed to be religious person earning and declaring nominal income from practising astrology and palmistry.. He deposed before the Jain Commission investigating into the assassination of the former Prime Minister, Mr. Rajiv Gandhi, and accepted that he might have gone abroad 900-1000 times and that "from January 1987 to December 1991 I must have travelled about 70-80 countries." He also stated before the Jain Commission that he has been meeting Mr. Khasoggi, Mr. Miller and such other disciples.

(e) Both Mr. Khasoggi and Mr. Miller were known international arms dealers and are considered to be thoroughly unscrupulous in their business dealings and have been interrogated for their role in Iran Arms deal. The enquiries revealed that Mr. Miller has been closely associated with Mr. Chandra Swami and has been handling "millions of dollars".



(f) Both Mr. Khasoggi and Mr. Miller and some other associates of Mr. Chandra Swami had been transferring funds to each other and had also handled huge payments on behalf of Mr. Chandra Swami. Instructions were given by Mr. Chandra Swami regarding money transactions which were carried out by them and then reported back to him either through fax messages or orally.

(g) Mr. Chandra Swami had failed to give any reply during the proceedings when he was asked to explain why they have not been transferring huge funds on his instructions. Although the monies were kept abroad with 'trusted disciples' like Mr. Khasoggi and others, brought into India, as and when required, in the form of donations to his Trust and gifts. The fact remains that these monies belong to Mr. Chandra Swami and were his income.

(h) Whenever inquiries could be completed the case of Assessee had fallen apart. The evidence suggested that Mr. Chandra Swami had been associated with all kinds of international arms and commercial deals. These commercial and other activities of Mr. Chandra Swami by no stretch of imagination can even remotely be called as spiritual activity as proclaimed by him.

(i) Mr. Chandra Swami had admitted before the AO as well as before Jain Commission to undertaking several travels within the country and owned up the travelling expenses and the entire group of his followers. The total expenses from AY 87-88 upto 97-98, both



international and domestic, worked out anywhere between Rs. 2-3 crores every year. For AY 96-97 it was computed at Rs. 3,53,04,056. The total undisclosed expenditure for the block period worked out to Rs. 28,53,36,849 and had to be computed to his income as his unexplained expenditure under Section 69C of the Act.

(j) During the search and seizure operations which were carried out on 23<sup>rd</sup> February 1988 the statement recorded of one Mr. Vallabh Vyas revealed that the Trust building at C-4/41, S.D.A., New Delhi was being used as the personal residence of Mr. Chandra Swami and also as a guest house for his disciples. Likewise the third floor of the building at C-18, 19, Qutab Institutional Area, New Delhi was occupied by him for his personal use as evidenced during the survey conducted in the premises on 19<sup>th</sup> July 1996. Therefore, Mr. Chandra Swami was in full control of the Trust properties and all its activities. The Trust never undertook any charitable activity

(k) The purported donations of Mr. Khasoggi, Mr. Rakesh Saxena, Mr. Som Chai Chawla and Mr. Rajiv Lulla were in fact unexplained since it was Mr. Chandra Swami's own money which has been brought into the Trust in the form of donations. There were other several similar donations as well. The total undisclosed income thus worked out to Rs. 3,59,28,855 for the block period.

(l) Although the Trust disclosed the total cost of construction of the ashram at C-18, 19, Qutab Institutional Area, New Delhi at Rs. 1,87,11,298, the District Valuation Officer in his report dated 8<sup>th</sup> July



1996 valued the cost of construction at Rs. 2,21,91,939. Thus the cost of construction shown by the Assessee has been suppressed to the extent of Rs. 34,80,541. Further, the actual valuation of the cost of equipment at Ashram was Rs. 61,91,361 whereas the declared value was Rs. 52,88,733. Thirdly, the Trust had not declared any expenditure towards the interior decoration of the ashram which was expensive and included statues, furniture, bathroom fittings etc. An Interior Decorator who was engaged to estimate the cost submitted his report dated 21<sup>st</sup> February 1997 working out the same to be Rs. 44.36 lakhs whereas the Assessee had only shown the expenses of Rs. 4,27,635 towards procuring idols. Thus the total sums spent outside the books in the construction of the ashram worked out to Rs. 83,91,634. This was added to the income of the Assessee for AY 96-97 under Section 69C of the Act.

(m) Pursuant to the notice issued under Section 143 (2) of the Act Mr. Chandra Swami furnished copies of the affidavit of Mr. Khasoggi stating that the amounts reflected in certain fax messages recovered during the search were not for the benefit of Mr. Chandra Swami or any of the residents staying at his ashram. All the said remitted amounts belong to him and Mr. Chawla was his business associate. Letters sent to Mr. Khasoggi at his US address were returned unserved and attempts to fix up an interview with Mr. Khasoggi by the US tax authorities were not successful. Since the statements made by Mr. Khasoggi were self-serving and could not be independently confirmed, the said evidence was rejected. Consequently, a sum of



Rs. 2,81,17,000 was added to the income of the Assessee for AY 95-96 under Section 68 of the Act.

(n) As regards the payment made by Mr. Chawla it was held that in his statement Mr. Chawla stated on 1<sup>st</sup> March 1997 that Mr. Chandra Swami had taken a sum of 2 crores Thai Bahts from him in the form of two TTs favouring MGP in New York and Ajay Bararia, Washington. Since Mr. Chandra Swami could not dispute the statement of Mr. Chawla, the AO concluded that money was received by the two aforementioned entities on behalf of Mr. Chandra Swami and the sum of Rs. 2 crores (as converted to Indian rupees) was added to his income for AY 95-96. There were several additions made under heads which was discussed in detail in the AO. The total undisclosed income for the block period was calculated at Rs. 38,19,70,457.

### ***The order of the ITAT***

5. In its impugned order dated 6<sup>th</sup> April 2011 the ITAT first took up the appeal of Mr. Chandra Swami. The ITAT referred to the decisions of this Court in *CIT v. Ravi Kant Jain (2001) 250 ITR 141 (Del)*; *CIT v. Ashok Khetrapal (2007) 294 ITR 143 (Del)* and *CIT v. Bansal High Carbons (P) Ltd. (2007) 165 Taxman 243 (Del)* and concluded that the scope and ambit of a block assessment was limited to evidence and/or materials unearthed during the search and such other materials and information as available with the AO which were relatable to the evidence or materials found during the course of search.



6. It was noted that at the time when the search took place on 1<sup>st</sup> November 1996 Mr. Chandra Swami was lodged in Tihar Jail. He was confined there from 2<sup>nd</sup> May 1996 up to 19<sup>th</sup> November 1996. Even if it was presumed that all the donations received by the Trust were not genuine and its activities were also not genuine “there is no sufficient evidence or material on record found during the course of search conducted on 1<sup>st</sup> November 1996 that the donations on various receipts introduced in the books of account of the Trust are actually the Assessee’s money. There is no live link or nexus between the facts found by the AO and the conclusion drawn by him.”

7. The AO had referred to the earlier search that took place on 23<sup>rd</sup> February 1988 and the statements made by Mr. Chandra Swami before the Jain Commission. From the orders of ITAT in the case of Trust for the AYs 1989-90 to 1993-94 it was plain that the fact that property of the Trust was used by Mr. Chandra Swami and the donations received by the Trust remained unexplained was considered in the regular assessment of the Trust. Thus, “the same facts already taken into account while making regular assessment of earlier years cannot be made a basis to determine income in the block assessment required to be made under Section 158BC of the Act within the meaning of Chapter XIV-B of the Act.” The ITAT came to the categorical finding that “in the present block assessment, the AO has not been able to point out any piece of evidence or material found during the course of search conducted on 1<sup>st</sup> November 1996 and other material or information relatable to seized evidences to establish that the donations/receipts reflected in the books of the Trust during various years



was actually the income of the present Assessee.” Consequently, the ITAT directed the exclusion of the receipt shown in the books of the Trust as undisclosed income.

8. The ITAT then took up the question of the addition of Rs. 28,53,36,849 on account of undisclosed expenditure incurred by Mr. Chandra Swami on foreign and domestic travel and on account of boarding and lodging expenses during the block assessment year. It was found on perusal of the assessment order that the seized material was not the basis of the addition of the undisclosed expenditure in the hands of Mr. Chandra Swami. However, these materials included certain documents which showed that Mr. Chandra Swami had visited various places and stayed there for varying periods and these pertained to the period from December 1988 to August 1990. These were found during the course of search and “can be made the basis to determine undisclosed income in the nature of unexplained expenditure incurred by the Assessee towards his travelling, lodging and boarding and other expenses in the present block assessment” However since the AO had not examined and verified the said material which go to the root of the matter, the ITAT was of the opinion that the said seized material was required to be admitted for consideration and sent back to the AO for his examination and verification and “then to decide the issue about determination of undisclosed expenditure on travelling etc. in the present block assessment made under Section 158BC of the Act afresh as per law.”

9. In the later part of the impugned order the ITAT also dealt with the additions made on the basis of any material or evidence or information or



circumstances “other than the seized material found during the course of search” and stated that “sort of addition shall be a subject matter of regular assessment.” It was mentioned that the statements of the Assessee recorded were taken prior to or after the search was conducted, could not be made the basis to determine undisclosed income in the block assessment. “However, these can be used in regular assessment.” For the purpose of examining and verifying the seized material and determining what additions to the expenditure incurred during the block assessment year can be added to the income of the office of Mr. Chandra Swami, the ITAT remanded the matter to the AO. It was held that the AO should give a reasonable opportunity of being heard to the Assessee “with regard to the determination of quantum of expenditure of various years falling within the block period.”

10. The ITAT then took up the issue of addition of Rs. 2,81,17,000 being the amount sent by telegraphic remittance to Mr. Khasoggi. The ITAT held that Mr. Chandra Swami had failed to give any explanation as to how and under what circumstances, the fax messages dated 2<sup>nd</sup> November 1994 pertaining to the transfer of money via electronic remittances, copies of which during the course of search, happened to be in the control and custody of Mr. Chandra Swami. The statement made by Mr. Khasoggi in his letter dated 15<sup>th</sup> November 1997 could not be relied upon without him being examined by the AO. Consequently, the addition made by the AO of the aforementioned sum in the hands of Mr. Chandra Swami was sustained.

11. The ITAT then dealt with the issue of addition of Rs. 2 crores being the amount handed over to Mr. Chandra Swami by Mr. Som Chai Chawla. It



was found that the AO had not made reference to any search material or information while making this addition. It was only on account of the statement made by Mr. Chawla made on 1<sup>st</sup> March 1987, which was after the search was concluded, that the addition was made. The ITAT held that although such statement could “be considered by the AO in regular assessment made under the normal provision of the Act,” it could not be considered under the present block assessment. The amount was, therefore, directed to be excluded.

12. The next issue considered by the ITAT was the addition of Rs. 1,38,000 made by the AO on account of some deposit made by the Assessee in the High Court of Justice Queen Bench Division, London. The addition was confirmed since the nature of the sum from Mr. Khasoggi was not explained by Mr. Chandra Swami.

13. On the question of addition of Rs. 83,91,635 on account of an unexplained investment in the construction of the Ashram building, the ITAT came to the conclusion that this addition was not with regard to any material/ information found as a result of the search and therefore, the addition was not sustained in the hands of the Assessee. It was observed that the AO would be at liberty to consider and decide the same in the assessment of the Trust “as per the law.”

14. Next the ITAT considered the addition made by the AO of Rs. 9 lakhs on account of the alleged unexplained payment to Jupiter Developers Private Limited (‘JDPL’) by the Trust on behalf of Ambassador Construction



Private Limited ('ACPL'). The ITAT found that the payment was made by the Trust to ACPL on behalf of JDPL. There was nothing to show that the Ashram building was used and utilized for the object of the Trust and therefore, that sum could be considered as income of the Trust within the meaning of Section 11 to 13 of the Act. This was added in the hands of the Trust. This was directed to stand excluded from the purview of the undisclosed income of Mr. Chandra Swami for the block assessment year.

15. The next issue considered was the addition of Rs. 7,06,000 made by the AO on account of two receipts aggregating to the said sum shown as contribution in the books of Vishwa Dharmayatan Educational Society ('VDES') during the AYs 1996-97 and 1997-98 respectively. The additions were made on the basis of the post search enquiry made with regard to the details of the contributions filed by the VDES during the block assessment proceedings. The Department was unable to point any material found during the course of the search which would link to the said amount to the Trust. Accordingly, it was directed to be excluded.

16. As regards the payments made to Jain Medical Centre for the treatment taken by Mr. Chandra Swami it was again found that there was no document/material found during the search to substantiate the above addition.

17. As regards the addition of Rs. 20,45,634 being payment of telephone bill to MTNL, the ITAT found that the admitted position as stated by Mr. Chandra Swami himself is that of the eight telephone numbers in use, the



payments for one telephone were made by his disciple and one telephone number was in the Assessee's name. The ITAT directed that the expenses incurred on these two numbers are to be treated as undisclosed income in the hands of the present Assessee while the expenditure on rest of the telephones was directed to be considered in the hands of the Trust. As regards the payments made to Mehta Tours, Globe Offset Press and Ayan Prakashan, the ITAT held that again there was no material in that regard to sustain the issue and directed to be deleted.

18. As regards the payment of Rs. 40,000 towards gold card issue by Apollo Hospital, the ITAT upheld the addition as undisclosed income in light of the fact that the gold card was found during the course of the search and the fact that the Assessee had failed to explain the details of expenses and the source thereof incurred at Apollo Hospital in 1996. The addition of Rs. 1,00,000 on account of unexplained investment in jewellery was directed to be deleted as the same was recovered from the residence of Mr. Vikram Singh, Trustee of the Trust and therefore, could not be treated as in the hands of Mr. Chandra Swami in the absence of any material.

19. Turning to the appeals filed by the Trust it was held by the ITAT that in order to protect the interest of the Revenue, there was no bar to including the same income on protective basis in the hands of another Assessee so that the matter may be ultimately finalized by the appellate authorities, if challenged. The ITAT found that there was no material during the course of search indicating that the donations and receipts shown by the Trust in its books are sham and bogus so as to treat the same as undisclosed income of the Trust



and therefore, it could not be the subject matter of an addition under the block assessment. Further, it was clear that donations and funds received by the Assessee in the AY 94-95 had been considered in the regular assessment and therefore, it could not be considered for the block assessment order. It was held that addition was beyond the scope and purview of the block assessment since it was a subject matter of the regular assessment required to be made either in the hands of the Trust or Mr. Chandra Swami as facts warranted.

20. The ITAT next turned to the additions made to the extent of Rs. 35,33,357 and Rs. 15,68,882 made for AYs 1996-97 and 1997-98. It was held that these could not be a subject matter of the block assessment and could only be assessed in a regular assessment. Accordingly, the AO was directed to consider the same in the regular assessment or reassessment of the Trust required to be made under Section 143 (3) or 147 of the Act.

21. As regards the addition of Rs. 28,53,36,849 under Section 69-C of the Act constituted the alleged unexplained expenditure on foreign and domestic travels it was held that the addition made in the hands of the Trust on protective basis in this regard has to stand excluded since it was found assessable in the hands of Mr. Chandra Swami. Likewise the addition of Rs. 2,81,17,000 had already been assessed in the hands of Mr. Chandra Swami on a substantive basis. The said sum was directed to be deleted in hands of the Trust on a protective basis.

22. The addition of Rs. 2 crores being the sum paid by Mr. Chawla to Mr.



Chandra Swami was directed to be deleted from the block assessment of the Trust. The addition of Rs. 1,38,000 being the sum deposited with the High Court of Justice Queen Bench Division, London was also directed to be deleted in the hands of the Trust. As regards the addition of Rs. 83,91,635 on account of construction of Ashram building, it was held that this could not be a subject matter of the block assessment. As regards the addition of Rs. 40,08,365 towards interior decoration of the Ashram Building, it was held that since the Trust had been unable to explain the source of the income it had to be added in the hands of the Trust on substantive basis.

23. As regards the addition made of Rs. 9 lakhs on account of payment made on behalf of ACPL to JDPL, it was held that since the Assessee had not been able to prove that the construction was made to attain the object of the Trust, the amount is assessable in the Trust's hands in the regular assessment or re-assessment to be made in the normal course of the assessment since the investment has already been shown in the regular books of account.

24. As regards the addition of Rs. 7,06,000 on account of the receipts shown in the books of VDES, the ITAT reiterated its finding in relation to the discussion on this ground by Mr. Chandra Swami viz., that as no incriminating material or evidence was found during the course of the search, the above addition stands deleted. The addition of payment made to the Medical Centre and for telephone bills was made consistent with the decision on the said grounds in the appeals filed by Mr. Chandra Swami.

***The application by the Assessee under Section 254 (2)***



25. An application was filed under Section 254 (2) of the Act by the Trust and Mr. Chandra Swami seeking rectification of the order dated 6<sup>th</sup> April 2011 and *inter alia* pointing out certain factual errors as regards paras 68 to 76 of the ITAT's order. *Inter alia* it was pointed out in this application that as regards the addition of Rs. 2,81,17,000 in the hands of Mr. Chandra Swami on substantive basis, three fax messages were found in the Ashram premises of the Trust. It was pointed out that telegraphic remittances were to the accounts of Mr. Khasoggi and that addition should have been made in his hands. For the first time it was sought to be urged that Mr. Chandra Swami was a non-resident during the financial year 1994-95 since "he was outside India for 183 days during the period 1<sup>st</sup> April 1994 to 31<sup>st</sup> March 1995" and therefore the addition made on the substantive basis in his hands was not legal and sustainable. A similar application has also been filed as regards the accompanying appeal. The ITAT dismissed both the applications on 16<sup>th</sup> October 2011 declining the request of the Assessee to urge new grounds.

### ***Submissions of counsel***

26. The four broad submissions were made by Mr. Ashish Mohan, learned counsel appearing for the Trust and Mr. Chandra Swami, one of which related to the point concerning Mr. Chandra Swami being an NRI. The second broad ground concerns the addition of the sum of Rs. 2.81 crores. The third ground is that certain observations have been made by the ITAT in the impugned order regarding additions that could be made on the basis of the materials, not unearthed during search, in the regular assessment. The fourth broad submission was that in block assessment proceedings there



could not be additions on substantive basis in the hands of one Assessee and on protective basis in the hands of another. In other words, the submission was that as far as the block assessment proceeding, additions could be made only in the hands of one assessee on substantive basis. As regards ITA No. 1093 of 2011, the ground urged was that addition of Rs. 40,08,365 on account of the value of the interior decoration in the Ashram premises ought to be deleted since it was based on a valuation report obtained not during the search but after the search was concluded.

***The questions of law in ITA Nos. 1093 and 1094 of 2011***

27. In ITA Nos. 1093 of 2011 and 1094 of 2011 filed by the Trust and Mr. Chandra Swami respectively, the questions of law framed for consideration read as under:

- (a) Whether the Income Tax Appellate Tribunal committed an error of law in holding that the expenditure incurred by the Appellant towards journeys, lodging and boarding etc. could be deemed to be undisclosed income of the Appellant in the block assessment proceedings to the extent it is relatable to the documents seized during the search conducted on 1<sup>st</sup> November 1996 in the backdrop that for the financial year 1990-91, the Appellant was not a resident of India?
- (b) Whether the finding recorded by the Income Tax Appellate Tribunal that the amounts of Rs. 2,81,17,000 sent by telegraphic remittances to Mr. Adnan Khasoggi constituted undisclosed income of the Appellant is perverse, based on no material evidence and is consequently liable to be set aside?
- (c) Whether the Income Tax Appellate Tribunal while dealing with the legality and correctness of additions made by the Assessing Officer in the present block assessment proceedings could not have given findings that such income was liable to be added in regular assessment proceedings which was not subject matter of the present



proceedings at all and consequently were beyond the jurisdiction of the Income Tax Appellate Tribunal?

(d) Whether an addition of Rs. 40,08,365 on account of alleged expenditure incurred on interior decorations of the Ashram of the Trust could be made on the basis of an inventory and a post search valuation/inquiry in Block Assessment proceedings under Chapter XIV-B of the Income Tax Act?

***Discussion of the above questions***

28. At the outset the Court would like to observe that although in question (a) above, the issue concerning the Appellant not being a resident in India in 1990-91 has been mentioned, it is not in dispute that the said point was not urged at any time during the pendency of the matters either before the AO or the ITAT. The application filed by the Assessee under Section 254 (2) of the Act by the Assessee seeking to urge, *inter alia*, the above issue, was rejected by the ITAT. The Court finds no reason why the Appellant should be permitted to urge such point at this stage for the first time in this Court.

29. On question (a) above, the Court notices that the ITAT has remitted the issue to the AO to the limited extent of examining the seized material and determining what additions could be made to the expenditure incurred during the block assessment period. Since there was some material seized during the search which showed the various places where the Assessee had stayed between December 1988 to August 1990 it is only right for the ITAT to have remanded the matter to the AO for the above limited extent. The Court is unable to find any error in the order of the ITAT in this regard. However, in such remand proceedings it will be open to the Assessee to urge before the AO that there should be no addition on the ground that all or any



part of the expenditure was incurred during the relevant period when the Assessee may not have been a resident in India. The Court clarifies that it has not expressed any opinion on this aspect and it will be for the AO to take a decision on such plea on merits.

30. Turning to question (b) above, the ITAT has correctly held that the Assessee failed to explain the source of the money sent to Mr. Khasoggi, through telegraphic remittances, the details of which were contained in the fax message that was seized during the course of the search. This is a pure finding of fact. Added to this is the fact that the self-serving affidavit of Mr. Khasoggi could not be substantiated by producing him before the AO. The question is, therefore, answered against the Assessee and in favour of the Revenue by holding that the finding recorded by the ITAT cannot be said to be perverse or not based on any material evidence.

31. As regards question (c) the Court finds on a perusal of the impugned order of the ITAT that its observations that material not unearthed during the course of the search being liable to be taken into consideration in regular assessment proceedings should be considered to be *obiter* and not binding on the AO. As rightly pointed out by learned counsel for the Assessee, the question whether such material could be acted upon in the regular assessment proceedings did not arise in the block assessment proceedings and there was no need for the ITAT to have made any observations in that regard. Consequently it is ordered that the AO will take a decision in the remand only to the extent of examining whether the material seized during the search can be acted upon for the block assessment proceedings.



32. As regards question (d) above, the Court finds that the addition of Rs.40,08,365 on account of the alleged expenditure incurred on interior decorations was made on the basis of valuation of such interior decorations. The discovery of such decorations happened during the search and what was added was the value of the decoration which was determined by inquiry after the search. Since this pertained to material unearthed during the search, the Court finds no illegality committed in adding the value of decorations which was not substantiated by the Trust. Since in any event the addition was made substantively in the hands of the Trust the question whether the AO could frame a protective assessment in the hands of Mr. Chandra Swami does not arise for consideration. The addition of the said amount in the hands of the Trust on substantive basis is upheld. The Court, therefore, finds it not necessary to answer the first question "whether the AO could frame the protective assessment in the block assessment proceedings?" The said question is left open for decision in an appropriate case.

***ITA Nos. 1143 and 1144 of 2011***

33. Turning to the two appeals of the Revenue, the questions framed for consideration in the Revenue's appeal ITA No.1143/2011 against the Trust are as under:

"(i) Whether the Income Tax Appellate Tribunal is correct in deleting the addition of Rs 3,59,28,855/- from the block assessment of the assessee which was made by the Assessing Officer in the hands of the assessee on protective basis on account of the receipt of Rs 3,59,28,855/-



(ii) Whether the Income Tax Appellate Tribunal is correct in law in deleting the addition of Rs 2 crore from the block assessment of the assessee which was made by the Assessing Officer in the hands of the assessee on protective basis on account the amount paid by one Shri Som Chai Chawla to the assessee or his business associates?

(iii) Whether the Income Tax Appellate Tribunal is correct in law in deleting the addition of Rs 43,83,269/- out of the total addition of Rs 83,91,635/- made in the hands of the assessee on protective basis on account of unexplained investment on construction of Ashram Building?"

34. The questions framed in ITA No. 1144 of 2011 by the Revenue against Mr. Chandra Swami are as under:

"(i) Whether the Income Tax Appellate Tribunal is correct in law in directing the Assessing Officer to exclude the addition of Rs. 3,59,28,855/- from the block assessment of the Respondent which was made by the Assessing officer in the hands of the Respondent on substantive basis on account of the receipt of Rs 3,59,28,855/- shown in the books of trust during different years in the hands of the respondent on substantive basis?

(ii) Whether the Income Tax Appellate Tribunal is correct in law in directing the Assessing Officer to exclude the addition of Rs 2 crore from the block assessment of the respondent which was made by the Assessing Officer in the hands of the respondent on substantive basis on account of the amount paid by one Shri Som Chai Chawla to the respondent or his business associate?



(iii) Whether the Income Tax Appellate Tribunal is correct in law in directing the Assessing Officer to exclude the addition of Rs 83,91,635/- from the block assessment of the respondent which was made in the hands of the respondent on substantive basis on account of unexplained investment on construction of Ashram Building?

(iv) Whether the Income Tax Appellate Tribunal is correct in law in directing the Assessing Officer that the telephone expenses amounting to Rs 20,45,634/- (Rs. 1121, Rs 4,50,268, Rs. 10,80,802 and Rs 5,13,443/-) alleged to be incurred by disciple of the respondent and expenditure incurred on telephone standing in the name of the respondent is to be treated as undisclosed income of the present respondent and the expenditure on rest of telephones shall be considered in the hands of the trust?"

### ***Discussion of the above questions***

35. Question (i) in both the appeals of the Revenue concerns the correctness of the addition of Rs.3,59,28,855 made on protective basis in the hands of the Trust and on substantive basis in the hands of Mr. Chandra Swami. It has been found as a matter of fact that no evidence or material was found during the course of the search conducted on 1<sup>st</sup> November, 1996, to show that the donations/receipts reflected in the books of the Trust was actually the income of Mr. Chandra Swami. Further the ITAT has returned a finding of fact that there was no material or evidence found in the course of the search proceedings to indicate that the various donations or receipts shown by the Trust in its books were sham and bogus so as to treat it as undisclosed income in the block assessment. Consequently, the question of adding the said sum to the income of Mr. Chandra Swami on substantive basis, and to



the income of the Trust on protective basis did not arise. The said deletions were rightly ordered by the ITAT. Question (i) in both appeals is answered in favour of the Assessee and against the Revenue.

36. Turning to question (ii) in both appeals, the Court finds that the statement of Mr. Som Chai Chawla was made subsequent to the search and not during the search. Therefore, the ITAT was right in holding that the addition of Rs. 2 crore made in the hands of the Trust on protective basis and on substantive basis in the hands of Mr. Chandra Swami was not warranted at all. Question (ii) in both appeals is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

37. Turning to question (iii) in both appeals concerning the deletion of the addition of Rs. 43,83,269 out of the total addition of Rs.83,91,635 made in the hands of the Trust on a protective basis, and Rs. 83,91,635 in the hands of Mr. Chandra Swami on substantive basis, on account of the unexplained investment in construction of the Ashram building, the ITAT correctly observed the valuation report was available with the Department even prior to the date of search. The said addition was, therefore, not based on any material found during the course of the search. In other words there was no evidence unearthed in the search to hold that the Trust made more investment in the properties and equipments than the declared value. The addition based on such report on protective basis in the hands of the Trust and on substantive basis in the hands of Mr. Chandra Swami was rightly ordered by the ITAT to be deleted. Consequently question (iii) is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.



38. Question (iv) in ITA No.1144/2011 concerns the addition of the telephone expenses in the sum of Rs.20,45,634 allegedly incurred by the disciple of Mr. Chandra Swami. The ITAT has discussed this aspect in great detail and found that there was no material unearthed during the course of search which could justify such addition. This finding has not been shown to be perverse. Consequently this question is answered in favour of the Assessee and against the Revenue.

39. The four appeals are accordingly disposed of in the above terms.

**S. MURALIDHAR, J**

**VIBHU BAKHRU, J**

**AUGUST 27, 2015**

*Rk/b'nesh*