



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

+ **INCOME TAX APPEAL NO. 1525 OF 2010**

% **Reserved on : 18th October, 2011.**
Date of Decision : 11th November, 2011.

VENAD PROPERTIES PRIVATE LIMITED Appellant
 Through Mr. C.S. Aggarwal, Sr. Advocate with
 Mr. Prakash Kumar, Advocate.

VERSUS

COMMISSIONER OF INCOME TAXRespondent
 Through Mr. Sanjeev Rajpal, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

SANJIV KHANNA, J.:

The appellant-Venad Properties Private Limited in this appeal under Section 260A of the Income Tax Act, 1961 (Act, for short), has challenged the order dated 18th December, 2009 passed in ITA No. 374/DEL/1997 on the following grounds:

- (1) No search under Section 132 of the Act was conducted on the appellant.



- (2) Notice under Section 158BC of the Act was not served on the appellant and, therefore, the block assessment order dated 28th November, 1997 under Section 158BC read with Section 144 of the Act is void ab initio.
- (3) The tribunal has erred in holding that even if the notice under Section 158BC of the Act was not served on the appellant, it amounts to a mere procedural irregularity which can be rectified and is not an illegality. The tribunal has erred in relying upon the judgment of the Bombay High Court in ***Shirish Madhukar Dalvi versus Assistant Commissioner of Income Tax***, [2006] 287 ITR 242, whereas there is a contrary binding judgment of the jurisdictional Delhi High Court in ITA No. 411/2004 dated 16th August, 2004 titled ***Commissioner of Income Tax versus N.K. Parwanda***.
- (4) The direction of remit to the Assessing Officer is a futile exercise as no material or evidence was found in the alleged search.
2. On the first contention, the tribunal in the impugned order in paragraph 3 has recorded as under:

“3. In ground No. 1, the grievance of assessee is that assessment order framed



under sec. 158-BC dated 28.11.1997 is invalid because no search in the case of assessee was ever conducted. Learned DR at the time of hearing produced a copy of the warrant of authorization exhibiting the search action taken on the premises of the assessee. He also produced the copy of the panchnama. In view of these documents, it cannot be said that no search was carried out at the premises of the assessee. Therefore, this ground of appeal is also rejected.”

3. The appellant along with the appeal has placed on record, photocopy of the panchnama dated 7th November, 1996. Column 1 of the said panchnama, in addition to other names, mentions the name of the appellant. Form No. 35, i.e. the authorization under Section 132 placed on record also mentions the name of the appellant. In view of the aforesaid, the first contention of the appellant is factually incorrect and has been rightly rejected by the tribunal.

4. During the course of arguments, learned counsel for the appellant had submitted that the search warrant and the panchnama are of no relevance as the appellant was not operating from the address mentioned therein, i.e., 204, Aradhana Apartments, R.K. Puram, New Delhi, but had only one place of business at ‘Ushus’, Jawahar Nagar, Trivandrum, Kerala. This is a question of fact. In this connection, it may be



noted that as per the block assessment order, search was also carried out at Trivandrum and certain documents were seized. The seizure of these documents is mentioned in paragraphs 9 to 20 of the assessment order. The appellant had filed a writ petition before the High Court of Kerala at Ernakulam being Original Petition No. 23000/1997. In this writ petition, the appellant had challenged the order under Section 127 of the Act transferring the jurisdiction of the appellant from Trivandrum to the Assistant Commissioner of Income Tax, Central Circle, New Delhi. In paragraph G of the said writ petition, the appellant had admitted that there was search and seizure operation at 'Ushus', Jawahar Nagar, Trivandrum, Kerala on 6th November, 1996, but it was alleged that the order Exhibit P-4 did not state that the search and seizure operation was directed against the appellant company. As noticed above, the search warrant and panchnama mention the name of the appellant. The appellant has, therefore, taken conflicting and contrary stands in different proceedings. The first contention, therefore, fails.

5. The second contention relates to service of the notice dated 17th October, 1997 under Section 158BC of the Act. The said notice was addressed to the Principal Officer of the appellant at 'Ushus', Jawahar Nagar, Trivandrum, Kerala. The



contention of the appellant is that this notice was not served, there is no proof of service and the finding of the tribunal is perverse.

6. The Revenue had not placed on record any postal receipt for service of the notice or an affidavit or statement of the process server for having served the said notice. However, the tribunal has held that the notice on the basis of preponderance of probabilities was served on the appellant, inter alia, recording as under:-

“10.....From perusal of the copy of the notice dated 17.10.1997 available at page 8 of the paper book filed by the revenue, it reveals that signatures of recipient are available at the bottom of this notice. The recipient had received it on 23.10.1997. The name of the recipient is not discernible. It is quite difficult to ascertain who has received this notice. The department is unable to produce copy of the acknowledgement or postal receipt exhibiting the issue of notice before us at the time of hearing. The second circumstance produced by the department in support of its version that notice was issued and served upon the assessee is the copy of letter written by the CAs from Thakur Vaidyanath Aiyer & Co., Shri AK Mishra is the person who delivered this letter to the Assessing officer. The third evidence is the copy of the notice dated 24.10.1997. It was received on 24.10.2007 and Shri AK Mishra has



signed as a recipient. This notice has been admitted by the assessee to have been received by the director and it has been replied through a detailed submissions dated 17.11.1997. Thus, on the one hand there is a copy of the notice issued under sec. 158-BC, adjournment letter from Thakur Vaidyanath Aiyer & Co., copy of the notice received by Shri AK Mishra which has been replied by the assessee and admitted as a receipt by the director. On the other hand, there is no positive evidence except simply denial by the assessee on the basis of the affidavit. After the hearing, one of the directors Mrs. Usha Krishna Kumar had filed an affidavit sworn on 8th October, 2009 deposing therein that Thakur Vaidyanath Aiyer & Co., were not appointed by the assessee for the block assessment. This declaration has been made on the basis of her belief and personal knowledge. Except this, there is nothing on the record in support of assessee's submissions. If we analysis both these two sets of circumstances on human probability, then it will reveal that right from the beginning assessee was aware about the proceedings, a show-cause notice was given to it while its jurisdiction was being transferred under sec. 127 of the IT Act from Trivananthpuram to New Delhi. Thereafter, it had filed writ petition in the Hon'ble High Court challenging the transfer of its jurisdiction. The writ petition was filed in the month of December, 1997 by that time assessment order was already passed but assessee sought to amend the writ petition in order to challenge the



assessment order also. These facts do indicate that assessee was aware about the proceedings but now wants to persuade the revenue to demonstrate the service of notice under sec. 158-BC. When any explanation of a party based on number of facts supported by evidence and circumstances required consideration whether explanation is sound or not must be determined not by considering the weight to be attached to each single fact in isolation but by assessing the cumulative effect of all the facts in their setting as a whole. If we see the cumulative effect of all the evidence produced by the revenue then it would reveal that there cannot be any reason for the revenue to cooked up a story. They have carried out a search, they had issued a notice on 17.10.1997. Somebody has received on 23.10.1997. Thus, we infer that a notice was duly served upon the assessee under sec. 158-BC of the Act. Though we are satisfied that notice was served upon the assessee but even if there is any irregularity in service we would be setting aside the issue to the file of the Assessing officer on merit because the additions have not been made on the basis of the seized material. We would discuss this issue later on in the order.”

7. We have considered the aforesaid reasoning by the tribunal and do not find them to be perverse. The view taken by the tribunal is reasonable and justified keeping in view the facts of the present case. In this connection, we have examined the



contentions and arguments raised by the appellant and the fact ...
and the documents filed by the appellant. It has been noticed as
under:-

- i. Notice dated 17th October, 1997 was served by hand and has been received and bears signature/initial, but the name of the recipient is not stated/mentioned.
- ii. By notice under Section 142 dated 24th October, 1997 the Assessing Officer had required the appellant assessee to furnish details as per the questionnaire attached. The questionnaire has been placed on record and goes into 6 closely typed pages and consists of 30 questions. The first paragraph of the notice under Section 142 of the Act states that the same was being issued in connection with the assessment for the assessment block period 1-4-86 to 6-11-96 and in this connection various details were required and the appellant was required to attend the proceedings on 4th November, 1997.
- iii. Pursuant to this notice as per the stand of the Revenue, A.K. Mishra had appear on behalf of the appellant and Thakur, Vidyanath & Co., Chartered Accountants and had filed a letter dated 8th November, 1997. The said letter reads as under:



**“Re: Venad Property (P) Ltd.
A-2/151, Safdarjung Enclave, New Delhi.**

This has reference to the Questionnaire dated 24.10.1997 regarding Assessment Proceedings for the block period 1.4.1996 to 6.11.1996. We have been instructed by the Assessee to communicate to you that the required information is being obtained and replies to the queries raised vide aforementioned Questionnaire would be submitted for you perusal,

Thanking you,
Yours faithfully,

Chartered Accountants”

iv. The appellant had/has disputed and denied that they know any person by the name of A.K. Mishra or had appointed Thakur, Vidhyanath and Co. as Chartered Accountants. In the grounds of appeal before the tribunal in paragraphs 4 and 5, the appellant had stated as under:-

“4. The Company has not authorized anyone to appear before the Assessing Officer at New Delhi for notice u/s 142(1) dt 5-11-97 stated to have been served.

5. The assessment order has been passed without granting the appellant an effective and adequate opportunity of being heard. No notices u/s 142(1) or u/s 158BC was served on the Assessee. Thus the assessment order has been passed in violation of the principles of natural justice and hence it ought to be annulled.”

v. Similarly, in the writ petition filed before the High Court of Kerala at Ernakulum, the stand taken by the appellant was as under:-



“The notice under section 158BC dated 17-10-1997 as also the notice under section 142(1) dated 24-10-1997 and 5-11-1997 have not been received or served on the petitioner. The petitioner has also not authorized anyone to appear on its behalf before the third respondent.”

vi. The aforesaid stand of the appellant that they had not been served with any notice under Section 142 of the Act is false. During the block assessment proceedings, the appellant had filed a letter dated 17th November, 1997, before the Assistant Commissioner of Income Tax (Central), Circle VIII, New Delhi, in connection with the block assessment proceedings. The said letter is detailed, consisting of 4 pages and refers to and tries to answer queries raised in the questionnaire attached to the notice under Section 142 of the Act dated 24th October, 1997.

vii. The subject and first paragraph of the reply of the appellant dated 17th November, 1997, reads as under:-

“Sub: Venad Properties (P) Ltd-Enquiry for the Block period 01.04.96 to 06.11.96 regarding

Ref: your notice AC IT/CC8 dt.24.10.97

Please refer to the notice cited, which was passed on to us though sent to a wrong address. The registered office of the company is ‘Ushus, Jawahar Nagar, Trivandrum 695041, and the Managing Director Shri. S. Padmakumar is the only person duly authorized to act or speak on behalf of the company. It is requested that future correspondence, if any, may be addressed to him. A detailed note on the company, Management,



operations and funding is enclosed as Annexure-I. The note inter alia answers many of the items in the questionnaire attached to the notice cited.”

Another paragraph in the reply states that the remaining questions in the questionnaire which relate to facts and documents were in the possession of the addressee, (i.e. the Assessing Officer), the appellant company had no information.

viii. In this reply to the notice under Section 142 of the Act, there is no allegation that the appellant was not served with the notice under Section 158 BC dated 17th October, 1997.

ix. A cursory reading of the said reply clearly shows that it has been written by either an Advocate or a Chartered Accountant, well conversant with the nuisances and provisions of the Act. It is not a letter written by a lay man, ignorant of the provisions or the statutory requirements of the Act. In case, notice under Section 158 BC dated 17th October, 1997 had not been served, it would have been objected to and so stated.



x. With regard to the fact whether the appellant knew any person by the name of A.K. Mishra, the following facts are relevant;-

(a). Name and appearance of A.K. Mishra, on behalf of the appellant, was mentioned in the assessment order. In the grounds of appeal filed before the tribunal, it was not stated that the appellant or its principal officers did not know A.K. Mishra.

(b). Before the tribunal, directors of the appellant company had filed affidavits dated 21st August/11th November, 2008 stating, inter-alia, that the notice under Section 158 BC dated 17th October, 1997, had not been served on the company and the notice bears un-discernible signature. It was further stated that the company had only seven employees, whose signatures did not tally with the signature on the notice dated 17th October, 1997. The said affidavits did not state that the Directors did not know any person by the name of A.K. Mishra.

(c). On 7th October, 2009, the appellant company was asked to file an affidavit stating, whether they had appointed Thakur Vaidyanath and Co., Chartered



Accountants. Usha Krishan Kumar, then filed an affidavit dated 8th October, 2009. In this affidavit, she has stated as under:-

“5. That the deponent further states that in fact there could have been no occasion for it to have ever appointed any authorized representative earlier to 15.11.1997 when it had received a notice u/s 142(1) dated 24.10.1997 of the Act, for the first time when it was received from A-2/151, Safdarjung Enclave, New Delhi-110029, the rented premises of the deponent.

6. That the deponent further states that the notice u/s 142(1) dated 24.10.1997 was also not received by it from or through M/s Thakur, Vaidyanath Aiyer and Company, Chartered Accountants and it had also never instructed them to represent the assessee company before any authority as the petitioner company had not even known (sic) them.

7. That the deponent further states that the notice u/s 158BC dated 17.10.1997 which is allegedly served either on 20.10.1997 or on 23.10.1997 on A K Mishra was never known to it. The petitioner company is also unaware who is Sri A K Mishra.”

With regard to this affidavit, it will be appropriate to highlight the following facts;-



- Notice under section 142 dated 24th October, 1996, was served on A.K. Mishra, and thereafter the appellant company had filed their reply.
- The notice dated 24th October, 1997, was addressed to the appellant company at their Delhi address, namely A-2/151, Safdarjung Enclave, New Delhi and was served on A K Mishra. The reply dated 17th November, 1996, quoted above clearly shows that this was replied from Thiruvanthapuram. Only a person who knew the address of the appellant at Thiruvanthapuram would have sent the notice to Thiruvanthapuram. It is mentioned in paragraph 5 of the affidavit that the notice was received from the said Delhi address. Thus, A.K.Mishra was associated and known to the appellant.
- Lastly, during the course of hearing, the learned senior counsel appearing for the appellant admitted that A.K. Mishra was the authorized representative of the husband of a Director of the appellant company.

xi. Thus, the statement that the appellant company was not aware of A K Mishra is factually incorrect and false. The factual



matrix justifies and establishes that A.K.Mishra had appeared and acted on behalf of the appellant company. The appellant had wrongly feigned ignorance and knowledge about appearance by A.K. Mishra on their behalf.

8. Learned counsel for the appellant had accepted that if it is held that the notice dated 17th October, 1997 had been received by the appellant company, then the second and third contention must fail. However, later on a short written note was filed that Rule 19A of Order V of the Code of Civil Procedure, 1908 was not complied with and the compliance was/is mandatory in all cases, where the party/person who is to be served, does not admit service under Rules 10 to 15 of Order V of the said Code. Thus the service of notice dated 17th October, 1997 was bad or void. Reliance was placed on ***Commissioner of Income Tax versus Hotline International Private Limited***, [2008] 296 ITR 333 (Delhi) and ***Commissioner of Income Tax versus Eqbal Singh Sindhana***, [2008] 304 ITR 177 (Delhi).

9. Section 282 of the Act provides that notice or requisition may be served on a person either by post or as if summons were issued by a Court under the Code of Civil Procedure. Order V of the aforesaid Code prescribes for mode, procedure and manner of service of notices. Formalities and procedure



prescribed is to curtail and minimize possibilities of disputes arising from technical questions about service of summons/notices. Procedural rules and stipulations are means to deliver justice and not technical contrives to stall/obstruct proceedings, even when no prejudice is caused due to non observance of the technical formalities. The object and purpose of service of notice/summon is to inform and intimate the addressee about the proceedings and the date of hearing. If the notice is served or received by the party concerned and this is established/ proved, then the manner and mode of service is not relevant.

10. ***In Mahadev Govind Gharge v. LAO***, (2011) 6 SCC 321, the Supreme Court has held;-

“31. In Justice G.P. Singh’s *Principles of Statutory Interpretation* (11th Edn., 2008), the learned author while referring to the judgments of different courts states (at p. 134) that procedural laws regulating the proceedings in court are to be construed as to render justice wherever reasonably possible and to avoid injustice from a mistake of the court. He further states (at pp. 135 and 136) that:

“Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. The argument ‘ab



inconvenient’, said Lord Moulton, ‘is one which requires to be used with great caution’.”

32. The learned author while referring to the judgment of this Court in *Sangram Singh v. Election Tribunal* recorded (at p. 384) that:

“while considering the non-compliance with a procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and further its ends and therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory....”

33. This Court in *Byram Pestonji Gariwala v. Union Bank of India* referred to *Crawford’s Statutory Construction* (para 254) to say that: (SCC p. 44, para 29)

“29. ... Statutes relating to remedies and procedure must receive a liberal construction ‘especially so as to secure a more effective, a speedier, a simpler, and a less expensive administration of law’.”

34. The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public



and to avoid multiplicity of litigation. In *Dondapati Narayana Reddy v. Duggireddy*

Venkatanarayana Reddy—this Court expressed similar view in relation to amendment of pleadings. The principles stated in that judgment may aptly be applied generally in relation to the interpretation of provisions of the Code. Strict construction of a procedural law is called for where there is complete extinguishment of rights, as opposed to the cases where discretion is vested in the courts to balance the equities between the parties to meet the ends of justice which would invite liberal construction. For example, under Order 41 Rule 22 of the Code, cross-objections can be filed at any subsequent time, even after expiry of statutory period of one month, as may be allowed by the court. Thus, it is evidently clear that there is no complete or indefeasible extinguishment of right to file cross-objections after the expiry of statutory period of limitation provided under the said provision. Cross-objections within the scheme of Order 41 Rule 22 of the Code are to be treated as separate appeal and must be disposed of on same principles in accordance with



the provisions of Order 41 of
the Code

11. In ***Sardar Amarjit Singh Kalra v. Pramod Gupta*** [2003] 3 SCC 212, a Constitution Bench of the Supreme Court has held:

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to hamper the cause of justice or sanctify miscarriage of justice.”

12. Similar views are also expressed by the Supreme Court in ***State of Punjab v. Shamlal Murari*** [1976] 1 SCC 719, where it was held as under:

“8. ... We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. Where the non-compliance, tho' procedural, will thwart fair hearing or prejudice doing of justice to parties, the rule is mandatory. But, grammar apart, if the breach can be corrected without injury to a just disposal of the case, we should not enthrone a regulatory requirement into a dominant desideratum. After all, courts are to do



justice, not to wreck this end product on technicalities.”

13. In the present case, as noted above, there is ample evidence and material that notice under section 158 BC was served/received by the appellant. There is implied, if not a direct admission by the appellant that the block assessment notice dated 17th October, 1997 was served in view of the reply by the appellant company dated 17th November, 1997 to the notice under Section 142 of the Act. Further, there is evidence to show that A.K. Mishra who had represented the appellant company and was in touch with the director/officers of the appellant company. The contention that A.K. Mishra was not representing the appellant stands falsified and negated.

14. In ***Hotline International Private Limited*** (supra), the notice for reassessment was sent at the registered office, which was closed due to holidays on account of festivals and the security guard at the gate had refused to accept the notice. The Inspector thereupon pasted or affixed the notice. In these circumstances it was examined whether the security guard could be regarded as an agent of the assessee and whether service by affixture was correct. It was held that no attempt was made to serve the notice on the assessee or its principal officers and,



therefore, the entire reassessment proceedings were bad in law.

The facts of the present case are clearly distinguishable as in the present case there is evidence and material to show that the notice dated 17th October, 1997 was received by the appellant company. In case the appellant company had not received the notice, the same would have been mentioned in the reply dated 17th November, 1997. If any such contention was raised, the Assessing Officer could have served the notice afresh.

15. In ***Eqbal Singh Sindhana*** (supra), notice for scrutiny under Section 143(2) of the Act was sent by post but was returned back with the remark of the postal authorities that the premises/house number mentioned did not exist. Subsequently, another notice under Section 143(2) was issued but this notice was beyond the prescribed period and an ex parte assessment order was framed. Question arose whether the first notice under Section 143(2) was served within the prescribed period or not. The court noticed that the postal authorities had not tried to serve the notice on the assessee at the correct address, i.e., B-226, Vivek Vihar, Delhi but had reported that property No. 226 did not exist. It was further mentioned that there was an interpolation in the address of the assessee mentioned in the notice. The facts of the present case noted above are different.



16. Reliance placed on the order of this Court dated 10 August, 2004 in the case of **N.K. Parwanda** (supra) is misconceived. In the said case notice for initiation of the block assessment proceedings was sought to be served at the address which was different from the address where the search was carried out. Notice was issued at the earlier or old address of the assessee, where he was not residing. Notice was accordingly returned with the remarks of the postal authorities, “addressee left”. Thereafter, the Assessing Officer did not bother to send/issue fresh notice at the correct address. Subsequently, assessee attended the proceedings but maintained that he had not received the notice for block assessment. The High Court dismissed the appeal, inter alia, recording as under:-

“ On an appreciation of facts, which have been discussed in detail, the Tribunal has arrived at a conclusion that no notice under section 158BC of the Income Tax Act, 1961 was served upon the assessee. Hence, no interference is called for.

Dismissed”

17. Thus, the finding of the High Court was that there was no evidence to show that the notice under Section 158BC was



served/recieved. In the present case, the finding of the tribur ...
and by us is to the contrary.

18. In view of our findings on the second contention, which are against the appellant-assessee and in favour of the Revenue, the third contention loses its relevance and is not required to be decided. However, we may notice that the tribunal in this regard has followed the judgment of the Bombay High Court in ***Shirish Madhukar Dalvi*** (supra), wherein distinction has been made between service of notice under Section 147 and 158BC of the Act. It has been held that Section 158BC is a procedural section and not a substantive section and, therefore, the ratio and decision in the ***State Bank of Patiala Vs. S.K.Sharma [1996]*** 3SCC 364 applies. In the said case the Supreme Court held that in the case of a procedural provision which is not of a mandatory character, the complaint of violation has to be examined from the standpoint of substantial compliance. An order passed in violation of such provision can be set aside only when such violation has occasioned prejudice to the subject. Even mandatory requirement can be waived by the person concerned, if the mandatory provision is conceived in his interest and not in the public interest. The conduct of the subject is required to be examined and kept in mind. Procedural rules are assigned to



afford a full and proper opportunity to the person concerned to defend himself.

19. There has been a gradual but a perceptible and distinct acceptance that in matters of due service of notice/summon, a practical and pragmatic approach, rather than mere compliance or non compliance of a formality(ies) is determinative and relevant. Amendment to Order XIII, Rule 9 of the Code of Civil Procedure, 1908 pursuant to the 27th report of the Law Commission in 1976 is a clear pointer and reflects an acceptable approach. Prejudice caused is relevant and apposite, but contrivance and stratagem once established should not be accepted.

20. The last and the fourth contention of the appellant is without substance and does not merit acceptance. The questionnaire attached to the notice refers to the material and evidence collected during the course of search. The block assessment order which was challenged before the tribunal also refers to documents, material etc. found during the search. The tribunal has set aside the ex-parte assessment order and has issued the following directions:-

“20. The assessment order is an ex parte order. The Assessing Officer has even not considered the submissions made by the



assessee vide letter dated 17.11.1997. Thus, taking into consideration the cumulative effect of all the facts i.e. any irregularity in the issue of notice under sec. 158-BC, ex parte assessment order and the additions made without any support of seized material, we are of the opinion that ends of justice would meet if we set aside the assessment order and restore all these issues to the file of the Assessing Officer for readjudication. The Assessing Officer shall provide due opportunity of hearing to the assessee and the assessee is directed to cooperate with the Assessing Officer. The Assessing Officer shall determine the undisclosed income of the assessee keeping in view the authoritative pronouncement of Hon'ble High Court in the case of Ravi Kant Jain (supra) and other decisions of Hon'ble High Courts as well as of Hon'ble Supreme Court on this point.”

21. The directions issued by the tribunal take care of the contention raised by the appellant.

22. In view of the aforesaid reasoning, we do not think that any substantial question of law arises for consideration in the present appeal and the same is accordingly dismissed. There will be no order as to costs.

**(SANJIV KHANNA)
JUDGE**

**(R.V. EASWAR)
JUDGE**

**November 11th, 2011
VKR/KKB**