

Bombay High Court Commissioner Of Income Tax vs Vinod Danchand Ghodawat on 26 June, 2000 Equivalent citations: (2000) 163 CTR Bom 432 Author: S Kapadia JUDGMENT S.H. Kapadia, J. The short point which arises for consideration in this appeal is whether the Tribunal was right in limiting the scope of determination of undisclosed income under Chapter XIV-B of the Income Tax Act, 1961, to the material found during the course of search under section 132 of the Act. 2. The brief facts giving raise to this appeal are as follows: 2. The brief facts giving raise to this appeal are as follows: On 28-9-1995, the premises of the assessee was searched. Thereafter, the assessee filed his return declaring undisclosed income of Rs. 10,54,383 for the block period 1984-1996. On the basis of material found during the search, the assessing officer finalised the assessment on 30-9-1996, on total undisclosed income of Rs. 24,66,850 for the above block period. Being aggrieved, the assessee filed an appeal to the Tribunal, who reduced the income to Rs. 13,32,120 as against the declared income of Rs. 10,54,383. The addition made by the assessing officer on account of unexplained gold ornaments, investment in bungalow and unexplained household expenses came to be deleted by the department. Hence, this appeal. 3. Broadly, three questions have been raised in this appeal. Question Nos. 1 and 2 read as follows : 3. Broadly, three questions have been raised in this appeal. Question Nos. 1 and 2 read as follows : "Question No. 1 : Whether the Tribunal was right in deleting the addition of Rs. 1, 14,950 made on account of unexplained investment in gold ?" Question No. 1 : Whether the Tribunal was right in deleting the addition of Rs. 1, 14,950 made on account of unexplained investment in gold ? Question No. 2 : Whether in law, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 21,426 made on account of unexplained investment in silver, weighing 3.0 kgs. relying on wealth-tax return for assessment year 1993-94 filed only on 15-3-1994 and ignoring any enquiry of sources of investments as required under section 69C of the Income Tax Act, 1961, when for the purposes of assessment order under section 158BC of the Income Tax Act, the income which is disclosed in the income-tax returns has only to be considered as per provisions of section 158BB(1) of the Act." Question No. 2 : Whether in law, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 21,426 made on account of unexplained investment in silver, weighing 3.0 kgs. relying on wealth-tax return for assessment year 1993-94 filed only on 15-3-1994 and ignoring any enquiry of sources of investments as required under section 69C of the Income Tax Act, 1961, when for the purposes of assessment order under section 158BC of the Income Tax Act, the income which is disclosed in the income-tax returns has only to be considered as per provisions of section 158BB(1) of the Act." Chapter XIV-B of the Income Tax Act, essentially proceeds on the basis that where an investment is made by an assessee which is unexplained, then the department is entitled to invoke the block assessment procedure. In the present matter the assessing officer found that the source of acquiring the jewellery has not been explained by the assessee and, therefore, the assessing officer came to the conclusion that the unexplained investments in the ornaments was required to be treated as undisclosed income for the assess-

ment year 1994-95. The same reasoning has been given by the assessing officer with regard to the silver articles and utensils which came to be detected during the above search. However, the Tribunal found that all the above-mentioned articles have been declared by the assessee in his return of wealth. The said return has been duly assessed, Under the above circumstances, the Tribunal was right in coming to the conclusion that the assessee has disclosed the value of the said article, in the wealth-tax return, which was accepted by the department and, therefore, the addition made by the department on the ground of undisclosed income was erroneous. In the present matter, the assessee had disclosed the above jewellery in his returns, The said returns were processed. The said returns were duly accepted. In the circumstances, Chapter XIV-B has no application to the facts of the case, For the above reason, question Nos. 1 and 2 are answered in the affirmative i.e., in favour of the assessee and against the department. Question No. 3 reads as follows : Question No. 3 : Whether in law, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 2,49,350 made on account of unexplained expenses in construction of the residential bungalow at Jaysingpur, when the same was properly made by the assessing officer. Question No. 3 : Whether in law, on the facts and in the circumstances of the case, the Tribunal was justified in deleting the addition of Rs. 2,49,350 made on account of unexplained expenses in construction of the residential bungalow at Jaysingpur, when the same was properly made by the assessing officer. The said question refers to addition of Rs. 2,49,350 made on account of unexplained expenses in construction of residential bungalow by the assessee. Here also, Chapter XIV-B has no application. The Tribunal, rightly, found that the addition is made on the basis of the report of the department Valuer, According to the assessing officer, during the search, it was found that the assessee, had constructed a bungalow. It was found that the assessee had incurred an expenses of Rs. 4.16 lakhs. The assessing officer, thereafter, referred the matter to the department valuer, who valued the property at Rs. 6,66 lakhs and, accordingly, the difference has been added to the income of the assessee as undisclosed income. The above basis clearly shows that the department has not understood the scope of Chapter XIV-B of the Income Tax Act, By no stretch of imagination, the impugned addition fell within Chapter XIV-B. There would be no finality if the department is permitted to add back to the income of the assessee on the basis of the department valuer's report obtained subsequent to the order of the regular assessment. Hence, the Tribunal was right in deleting the said addition. Accordingly, question No. 3 is answered in the affirmative i.e., in favour of the assessee and against the department. 4. For the above reasons, question Nos. 4 and 5 are also answered accordingly, in the affirmative i.e., in favour of the assessee and against the department. 4. For the above reasons, question Nos. 4 and 5 are also answered accordingly, in the affirmative i.e., in favour of the assessee and against the department. 5. Accordingly, the appeal is dismissed. 5. Accordingly, the appeal is dismissed.