

Bombay High Court Commissioner Of Income-Tax vs Shamlal Balram Gurbani on 28 February, 2000 Equivalent citations: 2001 249 ITR 501 Bom Bench: S Kapadia, A Shah JUDGMENT 1. By this appeal, the Department seeks to challenge the decision of the Income-tax Appellate Tribunal, Nagpur, by which it has been held that invocation of Chapter XIV-B of the Income-tax Act, 1961, was erroneous inasmuch as no material came to be detected during the search operations. 2. The facts giving rise to this appeal, briefly, are as follows. A search was conducted at the residential premises of the assessee on March 25, 1996. A notice under Section 158BC was issued to the assessee requiring him to furnish the return of income for the block period, i.e., April 1, 1985, to March 25, 1996. On verification of the record, it was found that the assessee did not file the returns for the assessment years 1993-94, 1994-95 and 1995-96 under Section 139(1). Accordingly, the Assessing Officer treated the income of the three years as the income of the assessee for the block period. Being aggrieved by the order of the Assessing Officer, the matter was carried in appeal to the Tribunal. The Tribunal found that the assessee's income was from interest, salary and rent. The Tribunal found that the income from interest and salary from the firm was reflected in the schedule to the audited balance-sheet of the firm for the assessment year 1993-94 and for the assessment years 1994-95 and 1995-96. The representative of the assessee also pointed out to the Tribunal that the returns of the firm for the three years were filed on October 31, 1993, October 31, 1994 and March 31, 1995, respectively. The Tribunal further found, on facts, that the return of undisclosed income filed before the Assessing Officer under Chapter XIV-B also indicated that income had been disclosed by the firm to the Department, that tax deducted at source has been paid, that advance tax has also been paid and, in the circumstances, the Tribunal, on facts, came to the conclusion that the findings of the Assessing Officer regarding undisclosed income were not to be based on any material found in the search operations and that he had taken the total income for the earlier assessment years as undisclosed income without any material being found during the search and, in the circumstances, the Tribunal came to the conclusion that there was no reason for treating the said total income as undisclosed income for the purposes of Chapter XIV-B. Under the above circumstances, the Tribunal allowed the appeal. We do not find any reason to interfere with the findings of facts recorded by the Tribunal. 3. Since, no substantial question of law arises, the appeal is dismissed.