

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL,
'C' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.:744 & 2197/Chny/2005
निर्धारण वर्ष / Assessment Years: 2000-01 & 1999 -2000

V. Ramakrishnan, 41, (Old No.49), 5 th Cross Street, Trustpuram, Kodambakkam, Chennai – 600 024.	vs.	The DCIT, Central Circle – III(4), Chennai.
[PAN: AAAPR-3927-K] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

IT(SS)A No.:162/Chny/2003
Block Period: 1989-90 to 1999-2000

V. Ramakrishnan, 41, (Old No.49), 5 th Cross Street, Trustpuram, Kodambakkam, Chennai – 600 024.	vs.	The DCIT, Central Circle – III(4), Chennai.
[PAN: AAAPR-3927-K] (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

IT(SS)A No.:153/Chny/2003
Block Period: 1989-90 to 1999-2000

The DCIT, Central Circle – III(4), Chennai.	vs.	V. Ramakrishnan, 41, (Old No.49), 5 th Cross Street, Trustpuram, Kodambakkam, Chennai – 600 024.
(अपीलार्थी/Appellant)		[PAN: AAAPR-3927-K] (प्रत्यर्थी/Respondent)

Assessee by : Shri. N. Arjun Raj, Advocate
Department by : Shri. Bipin. C.N., C.I.T.

सुनवाई की तारीख/Date of Hearing : 27.11.2025
घोषणा की तारीख/Date of Pronouncement : 26.12.2025

आदेश / O R D E R

PER BENCH :

This bunch of four appeals filed by the assessee as well as Revenue are directed against separate orders passed by the learned Commissioner of Income Tax (Appeals) Central -V, VI & II, Chennai dated 14.07.2005, 29.12.2004 & 29.03.2003 / assessment orders passed u/s.148 r.w.s. 143 (3), 144 and 158BC dated 31.03.2004 / 31.03.2003 & 29.12.2000 respectively.

2. These four appeals are reinstated before this Income Tax Appellate Tribunal in consequence to the order passed by the Hon'ble Madras High Court in TCA No(s). 650, 405, 1085 & 1086 of 2009 vide their common order dated 08.07.2025, wherein the Hon'ble Madras High Court had held as follows:

"Both counsel, in unison, submitted that all points which were submitted before the Tribunal have not been considered in the impugned orders and therefore, the Court may quash and set aside the impugned orders and remand the matters for de novo consideration.

2. Accordingly, the impugned orders are quashed and set aside and the matters are remanded to the Tribunal for de novo consideration.

3. We clarify that we have not expressed any opinion on the merits of the matter.

4. Since the matters pertain to block of 1989-90 to 1999-2000, the Tribunal is requested to dispose all these appeals at the earliest and preferably by 31.12.2025."

3. Since, facts are identical and issues are common, for the sake of convenience, the appeals filed by the assessee and the Revenue were heard together and are being disposed off, by this consolidated order.

4. The brief facts of the case insofar the cross appeals for the block period under consideration in IT(SS)A No.153 & 162/Mds/2003 are as follows:

The assessee is a Managing Director of M/s.Pentafour Products Limited, receiving income under the head "Salary", dividend income as well as the sitting fees during the block period. The Income Tax Department had conducted search and seizure action in terms of Section 132 of the Act on 09.12.1998 in the residential premises of the assessee as well as the office premises of the M/s.Pentafour Software & Exports Ltd (PSEL) and M/s.Pentafour Products Limited (PPL) and the said search proceedings were conducted on 16.12.1998.

5. The Income Tax Department during the course of search proceedings had seized certain books of accounts / documents from the premises of both the assessee as well as the company. The Assessing Officer had accordingly issued the notice u/s.158BC of the Act on 27.01.2000 and the assessee filed his return of income in Form No.2B for the block assessment in declaring undisclosed income assessable at Rs. NIL.

6. The Assessing Officer during the course of assessment proceedings had observed that the assessee had admitted the head "Salary", remuneration and commission as Managing Director from M/s PPL and by operation of Section 17(1)(iv) of the Act, salary includes commission, which the assessee had offered to tax for some of the previous years falling within the block period.

7. However, the Assessing Officer was of the view since M/s PPL had provided commission to the assessee as Managing Director for some of the previous years, the same ought to have been admitted in the return(s) of income on due basis as against the assessee offering / reporting of the same on receipt basis.

8. The Assessing Officer by placing reliance upon the provisions in clause (a) of Section 15 of the Act, had held that any salary due from an employer to the assessee in the previous year, whether paid or not, shall be chargeable to tax under the head "Salary" and in view of the assessee having not disclosed the commission receipts in the return(s) of income on due basis, the same would be assessed as "undisclosed income" of the assessee. The assessee, in response to the same, had submitted that the said commission income was not received by him and accordingly the same should not be considered as income of previous year in which the provision for the same has been made by M/s PPL. The assessee also objected to the same being assessed as undisclosed income.

9. However, the Assessing Officer had rejected the said submissions by placing reliance upon the provisions in Section 15 & 17 of the Act in holding that the income chargeable to tax under the head "Salary" would be assessed on "due basis" and in view of the same not being offered in the return(s) of income, had added back the same as "Undisclosed income" within the purview of Section 158B(b) of the Act.

10. Furthermore, the Assessing Officer observed that the non-disclosure of the dividend income in the return of income filed would lead to the conclusion as to the assessment of the same as undisclosed income within the ambit of the provisions in Chapter XIV of the Act. The Assessing Officer accordingly had issued the Show Cause Notice in this regard. The assessee in response to the same had submitted as follows:

"The assessee is a Promoter/Director of Pentafour Software & Exports Limited, Pentafour Solec Technology Limited, Pentafour Communications Limited and Pentafour Products Limited. The assessee holds substantial shares in the above referred companies. As a Promoter he is required to furnish guarantees or called upon to pledge his shares whenever loans are obtained for the business purposes of the various companies. Inter corporate loans were taken for Pentafour Solec Tech. Ltd as well as Pentafour Products Ltd. which were passing through a severe recession

and financial crunch. To secure the ICDs, the assessee was compelled to pledge the shares. As the two companies could not make payment of interest in view of their financial position, the assessee had to part with the dividends from various companies towards part settlement of interest dues. It would therefore be appreciated that the dividend receipt is immediately paid towards interest on ICD taken for Pentafour Solec Tech. Ltd and Pentafour Products Ltd. The assessee is compelled to pay interest with a view to sustain the operations of the company as promoter and interest expenditure would thus be a deductible expenditure towards the earning of the dividend income. Therefore, there is, no taxable dividend income after the deduction of interest.

As far as Pentafour Products Ltd. is concerned the Assessee has not received the dividend as it has been withheld. Confirmation from the company that the dividend has not been paid to the assessee will be submitted to you within a couple of days.

Assuming but not admitting that the interest paid is not allowable as expenditure against dividend income, the dividend paid is after deduction of income tax at source by the respective companies and respective companies have filed their returns of TDS. Therefore, it is submitted that the Dividend income cannot be treated as undisclosed income as the Department is in knowledge of the Dividend Income.

The Pune Bench of the ITAT in the case of M/s.Salvi Divakar Shankar V. vs Assistant Commissioner of Income Tax (2000)72 ITD 552, that once tax is deducted at source from income, the Department has knowledge of the income of the payee and therefore there is no undisclosed income. In view of this it is submitted that the dividend income need not be treated as undisclosed income. Such income can be brought to tax only under regular assessment proceeding.”

11. However, the Assessing Officer had held that the non-receipt of the dividend income would not alter the accrual of the dividend income inasmuch as the provisions of Section 8 of the Act envisage assessment of dividend as income of the previous year in which the same was declared and not on receipt basis. Further the Assessing Officer had observed that not claiming TDS effected by the respective companies on the accrual of dividend would clearly establish the intention of the assessee.

12. The Assessing Officer in the process had further held that the adjustment of the dividend income against the interest payable by the companies in which

the Assessee had interest as a promoter even though as a consequence to the personal guarantee could not be admissible in terms of Section 57 of the Act. The assessment order in terms of Section 158BC of the Act came to be passed on 29.12.2000 in consequent to the search conducted by the Income Tax Department on 09.12.1998 in adding the aforesaid sums as undisclosed income within the purview of the provisions in Section 158B(b) of the Act for the block period under consideration.

13. The assessee being aggrieved by the said search / block assessment order had challenged the same before the First Appellate Authority in contending that the disputed sums comprising commission (reckoned as salary as per Section 15 of the Act) and dividend pertaining to the assessment year(s): 1990-91 (salary), 1991-92(salary), 1992-93(salary), 1993-94(salary), 1995-96(salary), 1996-97(salary), 1997-98(salary & dividend), 1998-99(salary) comprised in the block period under consideration would not fall within the ambit of undisclosed income in terms of Section 158B(b) of the Act and relied on various judicial precedents.

14. Furthermore, it was contended that out of total dividend of Rs.54,51,539/- dividend to the extent of Rs.26,25,840/- though declared by M/s.PPL on 20.12.1996 was not paid as the declaration was not approved by the Financial Institutions. It was further contended that the Assessing Officer was not justified in assessing the same as undisclosed income for the Assessment Year 1997-98 comprised in the Block on the basis of the declaration inasmuch as the distinction in the words 'declaration', 'distribution', and 'paid' should be appreciated.

15. The assessee submitted before the First Appellate Authority that the legislature had not made dividend income taxable in the year in which it became due by express words in the statute, it was taxable only in the year in which it was paid, credited or distributed or was deemed to be paid, credited or

distributed and thus in the absence of any evidence to show that the dividend warrants were handed over to the Assessee within the years of account it could not be held that there was a liability to pay income tax on the same. In so far as the balance amount of Rs.28,25,699/-, it was submitted that the dividend had never reached the assessee inasmuch as the assessee was a promoter of these companies and holding substantial investments was obliged to give the shares as a security for better running of the companies and earning dividend. The assessee brought to the notice of the Id.CIT(A) that the dividend income was adjusted by the lenders against the interest due by the companies and as a consequence, the said interest should be construed as expenditure to earn the said dividend income.

16. The Ld.CIT(Appeals) after considering the submissions of the assessee, had deleted the said amount of Rs.26,25,840/- out of the total dividend of Rs.54,51,539/- while sustaining the other component by holding as follows vide impugned appellate order dated 29.03.2003 at para 7.2 as follows:

"I have carefully considered the submissions made by the Appellant in the light of the facts of the case and in my opinion they do not carry sufficient force. The Appellant has been taking the stand that the dividend income had all along been admitted not on due basis but on receipt basis. However, the dividend in question, viz., Rs.28,25,699/- which were declared were not admitted in the Assessment Year 1997-98 on 'receipt basis'. On the other hand, the Appellant is taking a stand that the shares were pledged as securities with the financial institutions which subsequently adjusted the dividends against the interest due by M/s PPL of which the Appellant happens to be the Managing Director and Promoter and, therefore, this adjustment of dividends against interest constituted diversion of income by overriding title as held by the Kerala High Court in the case, Thressiamma Abraham cited supra. At the outset, it should be mentioned that the Appellant in the capacity of Managing Director of M/s PPL is a separate and distinct entity from M/s PPL. In this case, the Appellant has sought to claim by way of deduction the interest due by M/s PPL to various financial institutions. It should be noted that it is the nature of obligation, which is the decisive factor.

Where, by legal obligation, income is diverted before it reaches the assessee it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the Appellant, the same consequences, in law, does not follow:

CIT, Bombay v. Sitaldas Tirathdas (1961) 41 ITR 367 (SC)

CIT, W.B. v. Imperial Chemical Industries Pvt. Ltd. (1969) 74 ITR 17 (SC)

M.K. Brother Pvt. Ltd. v. CIT, Kanpur (1972) 86 ITR 38 (SC)

Addl. CIT v. Rani Preetam Kunwar (1980) 125 ITR 102 (All)

Tuticorin Alikali Chemicals & Fertilizers Ltd. 227 ITR 172 (SC)

As already observed, M/s PPL was liable to pay interest on the loans taken from various financial institutions. The Appellant in the capacity of Managing Director was under no legal obligation to discharge the liabilities of interest belonging to M/s PPL even though he was its promoter. It is in this context the principles enunciated by the Apex Court in the cases cited supra are to be understood and applied. Since the Appellant was not under any legal obligation to pay the liabilities of interest incurred by M/s PPL, he is not entitled to claim, by way of deduction, the interest adjusted against the dividend incomes. Basically, the dividend incomes in question belonged to the Appellant in his individual capacity and, if he had chosen to clear the liabilities of M/s PPL, it amounted to application of his income. In view of these facts and circumstances, the contention raised by the Appellant is not tenable at law and is, therefore, rejected. In other words, the Assessing Officer's action in assessing dividend income to the extent of Rs.28,25,699/- treating the same undisclosed income for the Assessment Year 1997-98, is hereby approved."

17. With regard to the assessment of salary as undisclosed income, in para 6.1 of the appellate order, the Id.CIT(A) had held that mere provision of managerial commission equated to salary in the books maintained in the regular course should not be considered as such sum being taxable within the scope of Section 15(a) of the Act on due basis. The Id.CIT(A) was of the opinion that provision of managerial commission / salary in the books would not to be reckoned as payable / receivable by the assessee herein. Based on the above legal principles, Id.CIT(A) had deleted additions while upholding the additions for certain assessment years forming part of the block period. In the process, the Id.CIT(A) had also obtained the remand report from the original authority and adjudicated the issue of taxability of salary / managerial remuneration from page 10 to page 15 of the appellate order / impugned order.

18. With regard to the third addition of unexplained investment / expenditure, the same was also deleted by the Ld.CIT(Appeals) in view of the same being

assessed to tax under regular assessment proceedings vide para No.8.0 of the appellate order.

19. Aggrieved by the order of the Ld. CIT(Appeals), the present appeals were filed both by the assessee as well as the Income Tax Department.

IT(SS)A No.153/Mds/2003 – Block Period – Appeal filed by Revenue:

20. We find that tax effect in the Revenue's appeal in IT(SS)A No.153/Mds/2003 is less than the monetary limit prescribed by the Central Board of Direct Taxes, New Delhi in Circular No. 9/2024 17.09.2024, wherein the monetary limit for filing appeals before the Income Tax Appellate Tribunal by the Income Tax Department was fixed at Rs.60,00,000/-. The Ld.DR during the course of hearing of the revenue's appeal had also confirmed that the tax effect was indeed less than Rs.60,00,000/- in the revenue's appeal. Recording the said submission by the Ld. Departmental Representative, the revenue's appeal in IT(SS)A No.153/Mds/2003 is dismissed as not maintainable.

IT(SS)A No.162/Mds/2003 – Block Period – Appeal filed by Assessee:

21. In so far as the assessee's appeal in IT(SS)A No.162/Mds/2003 is concerned, the Ld.AR during the course of hearing had argued that the assessment of salary and dividend by the Assessing Officer within the context of "undisclosed income" in terms of Section 158B(b) of the Act was not in accordance with the scheme of the Act. The Ld. AR argued that taxes were deducted at source on the said sums and the investments made thereon were reflected in the Wealth tax returns of the assessee and as result, the same would not come within the realm of "undisclosed income" so as to assess the same in the block assessment proceedings. The Ld. AR further argued that the dividend income had not accrued to the assessee and the assessment of such sums which was never received by the assessee would be contrary to the fundamental principles of fairness in taxation and accordingly pleaded for deleting the disputed component of addition sustained by the Ld. CIT(Appeals).

22. Per contra, the Ld.DR argued that the fact of the assessee not reporting the same in the relevant return(s) of income would in itself result in the same being assessed as “undisclosed income” within Section 158B(b) of the Act. Further, it was argued that the Ld. CIT(Appeals) after considering the submissions of the assessee put forth during appellate proceedings had rightly come to a conclusion in sustaining the disputed component of addition. The Departmental Representative accordingly pleaded for dismissing the appeal of the assessee in confirming the action of the Ld.CIT(Appeals) sustaining the disputed component of addition as ‘undisclosed income’ of the assessee.

23. We have heard the rival contentions perused the material available on record and gone through the orders of the lower authorities along with judicial precedents relied on. We find it necessary to examine the scope of block assessment proceedings in terms of Chapter-XIV-B of the Income Tax Act, 1961 “SPECIAL PROCEDURE FOR ASSESSMENT OF SEARCH CASES” which empowers the Income Tax Department to make an addition in the context of block assessment years in consequence to search in terms of Section 132 of the Act.

24. The Section 158B of the Act in this regard reads as follows:

“In this Chapter, unless the context otherwise requires,—

(a) “Block period” means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted u/s.132 or any requisition was made u/s.132A of the Act and also includes the period up to the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made :

Provided that where the search is initiated or the requisition is made before the 1st day of June, 2001, the provisions of this clause shall have effect as if for the words “six assessment years”, the words “ten assessment years” had been substituted;

(b) “undisclosed income” includes any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the books of account or other document or transaction represents wholly or partly income or property which has not been or would not have been

disclosed for the purposes of this Act , or any expense, deduction or allowance claimed under this Act which is found to be false.”

The Hon’ble Supreme Court in the case of Asstt. CIT v. Hotel Blue Moon, reported in 321 ITR 362, while examining the scope of assessment under Chapter XIV-B had held as follows:

“12. Chapter XIV-B provides for an assessment of the undisclosed income unearthed as a result of search without affecting the regular assessment made or to be made. Search is the sine qua non for the block assessment. The special provisions are devised to operate in the distinct field of undisclosed income and are clearly in addition to the regular assessments covering the previous years falling in the block period. The special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. It is not intended to be substituted for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to the regular assessment already done or to be done. The assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account, or documents and such other materials or information as are available with the Assessing Officer, Therefore, the income assessable in block assessment under chapter XIV-B is the income not disclosed but found and determined as the result of search u/s.132 or requisition u/s.132A of the Act.”

25. The Hon’ble Supreme Court in the aforesaid landmark judgment had held that a block assessment is to be carried out on the basis of the material found during the course of search conducted u/s.132 of the Act and not as a result of other documents or material, either available with him before the search or comes to his possession after the search operation unless and until such material has a relationship or connection with certain material or evidence found during the course of search.

26. Thus, it can be inferred that the procedure laid down in Chapter-XIV-B is intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. The scope and ambit of a block assessment is limited to materials unearthed during search and the assessment for the block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the AO.

27. The Hon'ble Delhi High Court in the case of CIT v. Ravi Kant Jain, reported in 250 ITR 141 under identical circumstances had held as follows:

"3. We have heard the learned counsels for the parties. In this appeal, it has been stated that the Tribunal was not justified in deleting the additions made by the Assessing Officer as undisclosed income on the ground that additions could not be termed as undisclosed income within the meaning of clause (b) of section 158B of the Act. The learned counsel for the revenue with reference to the order passed by the Assessing Officer submitted that special auditor was appointed to indicate its views vis-a-vis the seized material and, therefore, it cannot be said that the income as determined was not on the basis of any seized material but on the basis of change of opinion. The learned counsel for the assessee, on the other hand, submitted that the Assessing Officer proceeded on the basis that the only question which needs to be decided was whether in the block assessment period an income which was hitherto being returned under a particular section of the Act could be brought to tax under different heads of 'income' as contemplated in the Act.

6. The procedure for block assessment is indicated in section 158BC. The said provision reads as follows :.....

The assessment of 'undisclosed income' as defined in section 158B(b) is only relatable to material found as a result of search. Unless the materials are unearthed as a result of search, there is no question of assessment of undisclosed income in terms of section 158BA in Chapter XIV-B.

"7. Sub-section (1) of section 158BA starts with a non obstante clause. With effect from 1-7-1995 said section has overriding effect over other provisions of the Act. Clause (a) of the Explanation to section 158BA(2) postulates that assessment made under Chapter XIV-B shall be in addition to the regular assessment in respect of each previous year included in the block period. Clause (b) of the Explanation further clarifies the position that total undisclosed income relating to block period shall not include income assessed in any regular assessment as income of related block period. Clause (c) puts a ban on treating any income assessed under the 'block assessment' so as to form part of regular assessment of any previous year included in the 'block period'.

8. Special procedure of Chapter XIV-B is intended to provide a mode of assessment of undisclosed income which has been detected as a result of search. As the statutory provisions go to show, it is not intended to be a substitute for regular assessment. Its scope and ambit is limited in that sense to materials unearthed during search. It is in addition to regular assessment already done or to be done. Assessment for block period can only be done on the basis of evidence found as a result of search or requisition of books of account or documents and such other materials or information as are available with the Assessing Officer. Evidence found as a result of search is clearly relatable to sections 132 and 132A.

9. At this juncture, it would be relevant to take note of the basis on which Assessing Officer proceeded. In paragraph 9.1 of the order of assessment he has, inter alia, held as follows :

"The basic point revolves around the issue that whether in the block assessment period it could be considered about the income which has been hitherto being returned under particular section of the I.T. Act could be brought to tax under different heads of 'income' as contemplated under the Income-tax Act. Section 14 of the Income-tax Act enumerates the heads of 'income' and, inter alia, provides that save as otherwise provided by the Act all income shall for the purpose of charge of income-tax and computation of total income be classified under the heads "A" to "F". Part B refers to profits and gains of business or profession and Part E refers to the capital gains."

In other words, he was proceeding with the scope of the assessment and was not really addressing himself as to the scope of exercising jurisdiction under Chapter XIV-B and section 158BA. The Tribunal, on analysis of the materials placed before it, has recorded the following finding :

"In the case in hand admittedly undisclosed income is not on the basis of any search material but on the basis of change of opinion, particularly on the basis of report of special auditors who had given different colour to the existing facts which stood assessed by the income-tax authorities in the earlier assessment orders." [Emphasis supplied]

Admitted position before the Tribunal was that the undisclosed income was not determined on the basis of any search material. That being the position, the Tribunal was justified in its view that section 158BA had no application to the facts of the case. Inevitable conclusion is that no substantial question of law arises out of the order of the Tribunal which needs adjudication. The appeal is dismissed."

28. Thus, it can be said the block assessment proceedings are very distinct from regular / re-assessment proceedings, which distinction was observed by the Hon'ble Gauhati High Court in Dr. Mrs. Alaka Goswami v. CIT, reported 268 ITR 178, wherein it was observed as follows:

"Chapter XIVB of the Act lays down the special procedure for assessment of search cases and provides for assessment of undisclosed income as a result of search. U/s. 158BB(1) read with section 158BC of the Act, what is assessed is the undisclosed income of the block period and not the total income or loss of the previous year required to be assessed in the normal regular assessment u/s. 143(3) of the Act. The exercise u/s. 143(2) and (3) for regular assessment stands on a different footing than the exercise undertaken by the Assessing Officer u/s. 158BB read with section 158BC(b), where the Assessing Officer has to assess only the undisclosed income of the block period on the basis of the evidence found and material available as a

result of the search conducted u/s. 132 of the Act. The regular assessment is to assess the total income or loss of the previous year where a return is filed u/s. 139 and the Assessing Officer considers it necessary or expedient u/s. 143(2) to ensure that the assessee had not understated the income or has not computed excessive loss or has not underpaid tax in any manner. The proceedings under the regular assessment and the assessment for the block period stand to operate on different fields. Therefore, the considerations which would be attracted while making the assessment in exercise of the powers u/s. 143(2) and (3) for the regular assessment would stand on a different footing and will be governed by different provisions of the Act whereas the assessment for the block period as a result of the search and seizure would be governed by different provisions of the Act and would be made by the Assessing Officer in accordance therewith."

29. On the facts of the present case, the Assessing Officer had added back the disputed component of the dividend income as income of the assessee, as undisclosed income in terms of Section 158B(b) of the Act on the ground that same was not disclosed in the return(s) of income filed by the assessee. We find the Assessing Officer has not brought on record any incriminating material which was unearthed during the course of search in support of the disputed addition sustained by the Ld.CIT(Appeals).

30. Further, we find the taxes were deducted at source by the company and the investments in relation thereto were admittedly disclosed / reported in the wealth tax return(s) filed by the assessee. Thus, it is to be construed that the information regarding the dividend said to have accrued to the tax payer was very much available within the knowledge of Income Tax Department. Hence, in this factual scenario, the disputed dividend component could not be reckoned as 'undisclosed income' within the ambit of Section 158B(b) of the Act.

31. We find that the Hon'ble Bombay High Court in the case of CIT v. Vinod Danchand Ghodawat, reported in 247 ITR 448 under identical circumstances also held when the assessee had made disclosure in their wealth tax return, which was accepted by the Department, additions made by the Department on the ground of undisclosed income was erroneous. The relevant extract of the said judgement is as follows:

“2. The brief facts giving rise 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 :

"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 the assessment year 1993-94 filed only on 15-3 -1994 and ignoring any enquiry of sources of investments as required u/s. 69C of the Income-tax Act, 1961, when for the purposes of assessment order u/s. 158BC of the Income-tax Act, the income which is disclosed in the income-tax returns has only to be considered as per the provisions of section 158BB(1) of the Act ?"

Chapter XIV-B of the 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 investment in the ornaments was required to be treated as undisclosed income for the assessment 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 had 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 had disclosed the value of the said articles in the wealth-tax return which was accepted by the department and, therefore, the additions 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."

32. The jurisdictional High Court in the case of Commissioner of Income-tax v. J.K. Narayanan, reported in 293 ITR 179, under identical circumstances had held by explaining the scope of block proceedings under the statute which is now under consideration in the present proceedings:

“It is not the case of the Revenue that in the present case, any undisclosed income had come to light as a result of search. On the other hand, the assessee had filed already a belated return disclosing such income. Keeping in view the provisions contained in section 158BB of the Act, in the facts and circumstances of the case, it cannot be said that the assessment was required to be made under Chapter XIV-B. The belated returns, which had been filed, even though invalid, contained information showing the earning of the corresponding income and such information having been imparted by the assessee to the Assessing Officer long before the search, it would not be proper to hold that there was any undisclosed income requiring assessment under Chapter XIV-B.”

33. Respectfully following the aforesaid judicial precedents, we hereby delete the disputed addition made towards dividend on the basis of the information already available in the domain of the Income Tax Department since the same would not fall within the ambit of undisclosed income in terms of Section 158B(b) of the Act. Since, we have allowed the issue on the preliminary plea, the other ground relating to whether the dividend is taxable on accrual basis or receipt basis would become academic.

34. Similarly, the portion of the salary income reckoned as undisclosed income by the Id.CIT(A) cannot be brought into the computation as part of the search / block assessment order in the absence of direct evidence / seized material forming part of the search records and accordingly the sustained portion of the salary in the order of the Id.CIT(A) stands deleted as the same cannot be assessed as “undisclosed income”.

35. Accordingly, the related grounds raised by the assessee in IT(SS)A No.162/Mds/2003 stands allowed.

ITA No. 2197/Mds/2005 – AY 1999-2000 – Appeal filed by Assessee:

36. The facts of the case insofar as the appeal in ITA No.2197/Mds/2005 for the A.Y.1999-2000 is concerned as follows:

37. The assessee was subjected to original scrutiny assessment proceedings for the A.Y.1999-2000 in terms of Section 143(3) of the Act,

wherein the total income was determined at Rs.9,29,732/- vide assessment order dated 28.03.2002 u/s.144 of the Act.

38. The AO during the course of assessment proceedings for A.Y.2000-01, had noticed that the 6,00,000 shares of the assessee held in M/s.Pentamedia Graphics Limited were sold during the Assessment Year 1999-2000 for a sale consideration of Rs.48,58,81,200/- for which no capital gains were offered by the assessee. The Assessing Officer had accordingly issued the notice u/s.148 of the Act. The assessee before the AO had contended as follows:

“With reference to the above, it is submitted that 6,19,500/- equity shares of Rs.10/- each held in M/s.Pentamedia Graphics Limited was in the custody of VESA Holding Pvt. Ltd.

It appears that VESA Holdings Pvt.Ltd. have raised loans by pledge of these shares from Global Trust Bank and Global Trust Bank seems to have sold the shares without any intimation to me. I have no details of the numbers of shares sold or price at which they have been sold. I have not received any consideration on the same of these shares except for the amounts that have got credited in my bank account with Syndicate Bank in the month of April, 1999, which has been brought to tax in the Assessment Year 2000-01 and which matter is pending before the Commissioner of Income Tax (Appeal).

In the circumstances beyond my control, I plead my inability to furnish the details called for by you. It is respectfully submitted that I have not received any sale consideration in respect of the shares of Pentamedia Graphics Limited other than what has been credited to my Bank Account in April, 1999.”

39. However, the above submissions of the assessee were rejected by the Assessing Officer and according to the Assessing Officer, the incidence of capital gains arising on the sale of these shares during the Assessment Year under consideration especially in view of the fact that the said sum had passed through the bank account of the Assessee and accordingly the re-assessment order came to be passed in terms of Section 147 of the Act on 31.03.2004 in assessing the Long Term Capital Gains at Rs.47,79,56,455/-.

40. The assessee aggrieved by passing of the aforesaid re-assessment order, had filed an appeal before the Id.CIT(A), wherein before the Id.CIT(A), the assessee had contended as follows:

"1) The assessee is the promoter of M/s.Pentafour Products Limited (PPL) Limited and M/s.Penta Solec Technologies Limited (PSTL) which are listed companies. M/s.Pentafour Products Limited and M/s.Penta Solec Technologies Limited had taken loans from Global Trust Bank Limited through a financial intermediary Vesa Holdings. As promoter, the personal guarantee of V.Ramakrishnan was taken. His holdings in Penta Media Graphics Limited were taken as security by Vesa Holdings together with the transfer deed duly signed when the loans were granted to the two public limited companies.

2) The financial conditions of these companies became bad and they were not able to honour the repayment commitments and Vesa Holdings therefore sold the shares of the assessee, Shri V.Ramakrishnan in Pentamedia Graphics Limited and adjusted against the dues to Global Trust Bank Ltd. Thus it may be observed that no money was received by the assessee in his bank account when the loans were taken by the two public limited companies and the shares were given as security/guarantee when the shares were sold by Vesa Holdings, no part of the money reached the assessee or his bank account in respect of six lakhs shares sold by Vesa Holdings which have been brought to tax by the Assessing Officer.

3) As no money, i.e. no part of sale consideration was reached by the assessee and was diverted by over riding title, it is not subjected to tax as held by the Kerala High Court in the case of CTR vs Smt.Thressiamma Abraham (227 ITR 802).

4) The facts of the case for the Assessment Year 1999-2000 are different from the Assessment Year 2000-2001 where the Commissioner of Income Tax (Appeals) had decided the issue against the assessee.

5) Without prejudice to the above, it is further submitted that the Appellant is not an investor or a dealer in shares, he is the promoter of the three public limited companies for which various banks and financial institutions have extended loans. These loans were secured by pledge of the shares held by him in the companies he promoted as well as by his personal guarantee. In the event of default by the company, the Appellant's assets have to be realized and further he is made liable for the debts of the company in terms of the personal guarantee. The two companies, i.e. M/s Pentafour Solec Ltd. and M/s Pentafour Products Limited have since turned sick and copies of BIFR proceedings are

enclosed. In fact, ICICI have appointed receivers through High Court orders.”

41. The Ld.CIT(A) while considering the submissions of the assessee, at para 7.1 of the impugned appellate order dated 14.7.2005 had held as follows:

“I do not agree with the Appellant’s contention. Whether the assessee has received the sale consideration or not, on sale of shares by Vesa Holdings Pvt. Ltd is immaterial. Whether the sale of shares is effected by himself or by any other person is immaterial. Such claims and contentions were raised before the Commissioner of Income Tax (Appeals) for the Assessment Year 2000-2001 in the Appellant’s case, wherein the facts are identical. The Appellant has also cited all the case law mentioned above, before the Commissioner of Income Tax (Appeals). My learned colleague, Commissioner of Income Tax (Appeals) – VI, Chennai, has considered all the relevant issues and found that the assessee’s contentions have no merit and the decision of the Kerala High Court in the case of CIT vs Smt. Thressiamma Abraham (227 ITR 802) is no longer valid or applicable in view of the decision of the Honourable Supreme Court in the case of Commissioner of Income Tax vs Attili N Rao (252 ITR 880). In this case the Honourable Supreme Court had held as under:

“Reversing the decision of the High Court, that what was sold at the auction was immovable property belonging to the assessee and the price realized therefore belonging to the assessee. From that price the State deducted its dues towards Kist Capital Gains had to be computed on the full price (less admissible deductions) that the capital gain and the tax thereon has to be computed.”

42. The assessee being further aggrieved by the order of the Ld.CIT(A) had filed the present appeal before us.

43. The Ld.AR argued that the assessee was the promoter of Pentafour Products Ltd and Penta Solec Technologies Ltd. and had given shares for security of loan to these companies by Global Trust Bank Limited. In the event of default by the companies, the assessee’s shares shall be realised by the lender for the debts of the said companies. The Ld.AR therefore argued that the amount became irrecoverable and becomes a capital loss to be set off against the purported capital gains and as a result the presumption of escapement of income in the hands of the assessee was wrong.

44. Furthermore, the Ld.AR argued that on facts and in the circumstances of the present case, the question of taxation of capital gains would also not arise in view of the fact there was a diversion of income at source. The assessee was neither an investor nor a dealer in shares and as a promoter of the companies

under consideration for which various banks and financial institutions had extended loan facilities. The said loan facility extended was secured by pledging of shares by the assessee as a Promoter as well as extending personal guarantee. The Ld. AR argued that on these factual background, the investment made in the shares of the company had only resulted in a loss, thereby negating the computation adopted by the Assessing Officer.

45. Per Contra, the Ld.DR argued that fund was received by the assessee and the subsequent payment should only be considered as an application of income and not as diversion at source.

46. We have heard the rival contentions, perused the material available on record and gone through the orders of the lower authorities along with judicial precedents relied on. The shares were held by the assessee in the capacity of the promoter of the 2 companies and the said shares were pledged for obtaining loans for the said companies. Upon such loans becoming bad, the shares which were pledged was sold and adjusted against the loan obtained from Global Trust Bank. There are two issues raised before us, namely, whether such diversion should be treated as diversion over-riding title and other issue being whether the Assessee's alternate contention that the sale of shares had resulted only on capital loss is correct.

47. It is an admitted fact that the Assessee had invested in the subject shares as a promoter and his shares was given as security for the loans obtained by the companies. It is further not disputed that the said companies became sick and BIFR proceedings were initiated which resulted in sale of subject shares to adjust the liabilities of the company. The issue to be decided now is on the quantification of the assessable capital gains in the hands of the shareholder whose shares were pledged towards the liabilities of the company.

48. From the facts brought out by the Assessing Officer, it is clear that there is no surplus enjoyed by the shareholder from investing in the shares of the said

companies especially in view of the admitted fact that the said companies became sick resulting in loss of investment made by the shares holder. Hence, the shares given as security had become unredeemable inasmuch as there was complete value erosion in the hands of the assessee as a consequence. The capital loss is very explicit from the transaction narrated by the Assessing Officer in the assessment order and the assessment of capital gains in consequence to sale by the other entity is accordingly mis-directed and not sustainable in law.

49. The distinction between capital loss and loss of capital is brought out by the jurisdictional High Court in the case of Commissioner of Income-tax v. R.Chidambaranatha Mudaliar, reported 240 ITR 552, wherein the Madras High Court on the consideration of non-recoverability of the deposit due to bad performance of the company in which said deposit was maintained by the assessee, is held to be loss of capital and not a capital loss. Applying the subtle distinction brought out by the Jurisdictional High Court, the ownership over the asset / shares under consideration by virtue of non-performance of the loans obtained by the assessee for which such shares were given as security is clearly discernible and accordingly it is held that the assessment of capital gains on the presumption of transfer of shares is incorrect and not sustainable in law. Hence, on the peculiar facts of the present case, the loss suffered by the Assessee from investing in the said companies is apparent and the action of the Assessing Officer to assess capital gains in the hands of the assessee is incorrect, not valid on the complex facts brought out by the Assessee, accordingly we delete the addition made by the Assessing Officer in its entirety by allowing the related grounds of appeal for the A.Y.1999-2000.

50. In result, the appeal filed by the assessee is allowed.

ITA No.744/Mds/2005 – AY 2000-01 – Appeal filed by Assessee:

51. The facts of the case insofar as the appeal in ITA No.744/Mds/2005 for the A.Y.2000-01 is concerned is as follows:

52. The assessment order came to be passed u/s.144 of the Act on 31.03.2003 for A.Y.2000-01, wherein the Long Term Capital Gains to the extent of Rs.9,74,47,540/- was brought to tax. The AO had observed that the assessee's bank account No.17795 with the Syndicate Bank, Kodambakkam Branch, Chennai the following amounts were credited triggering further probe into the matter:

Rs.4,75,00,000/-
Rs.2,00,00,000/-
Rs.1,00,00,000/-
Rs.1,50,00,000/-
Rs.1,49,47,542/-

53. In the process of examination, it was further observed that the assessee had authorized M/s.VESA Holding Limited to deal with the 6,91,500 shares of M/s.Pentamedia Graphics Limited and on security of these shares, a loan of Rs.20.00 Crores was obtained from M/s.Global Trust Bank Limited for advancing to M/s.Pentafor Product Ltd., and M/s.Pentafor Solec Technology Ltd., during the A.Y.1999-2000. It was further observed that in order to settle the loan with interest to M/s.Global Trust Bank, M/s.VESA Holding Ltd. had sold the shares held by it and the sale proceeds were credited to the account of the assessee while simultaneously transferred to M/s.Pentafor Products Ltd. who in turn settled the dues of M/s.Global Trust Bank. In the process of examining the above facts and while treating the above mentioned credits in the bank account of the assessee, the Assessing Officer had treated those credits as Long Term Capital Gains for the purpose of taxation by observing as follows:

"In view of the above it is considered that the sum of Rs.10,74,47,542/- mentioned above credited to the assessee's account with the Syndicate Bank, Kodambakkam, is nothing but the part of the sale proceeds of the shares of PMG. It is seen that for

the purpose of dividend declared by PMG for the F.Y. 1998-99, no dividend was paid to the assessee as he was not holder of these shares on the date of closure of the books in May, 1999. Therefore, it is evident that the sale of the shares of PMG has taken place during April, 1999. Judging from the amount credited and the prevalent market value of these shares, it is considered that the sale relates to 1 lakh shares of PMG and its cost at the rate of Rs.100 per share is taken at Rs.1 Crore. The gains arising on sale of these shares is assessed as Long Term Capital Gains. Therefore the capital gains arising on account of these shares is determined at Rs.9,74,47,542/- for this Assessment Year. Applying the proviso to Section 112, tax is determined at 10% thereof."

54. Aggrieved by the said assessment order, the assessee had challenged the said before the Id.CIT(A), wherein during the course of appellate proceedings, the assessee had held as follows:

"2.The Assessing Officer having noted that 6,91,500 shares of Penta Media Graphics were given to Vesa Holdings Limited to secure a loan of Rs.20 Crores from Global Trust Bank Limited to be advanced to M/s Pentafour Products Limited and Penta Solec Technologies Ltd., and the said shares were sold by Vesa Holdings to adjust the loan of Rs.20 Crores given by Global Trust Bank Ltd., to Pentafour Products Ltd., and Penta Solec Technologies Ltd., he should have found that was diversion of income by overriding title and is covered by Kerala High Court decision in the case of CIT vs. Therasemba Abraham 223 ITR 802.

3. Without prejudice to the above, the Assessing Officer failed to note that

(a) the Appellant is the promoter of Pentafour Products Ltd and Penta Solec Technologies Ltd.

(b) Appellant gave shares for security of loan to these companies by Global Trust Bank Limited.

(c) Upon adjustment of the sale proceeds of the PSTL shares, the Appellant became a creditor of Penta Solec Technologies Ltd. and Pentafour Products Limited which are sick companies.

(d) the amount became irrecoverable and becomes a capital loss to be set off against the purported capital gains and therefore there will be no income assessable to tax."

55. The assessee before the Id.CIT(A) had contended that the decision of Kerala High Court reported in 227 ITR 802 would fortify the stand of the assessee on the objections raised for taxation of capital gains on the facts and in the circumstances of the case. Further it was contended that there was a diversion of income at source and no part of the consideration reached the assessee on the facts of the case. Further it was contended that the assessee was neither an investor nor a dealer in shares and as a promoter of the

companies under consideration for which various banks and financial institutions had extended loan facilities. The said loan facility extended was secured by pledging of shares by the Assessee as a Promoter as well as extending personal guarantee. On these factual backgrounds, it was further submitted that the sale proceeds advanced to these companies were not recoverable in view of their financial sickness resulting in incurring of capital loss.”

56. The Ld.CIT(A) after considering the submissions of the assessee, had adjudicated the same at para 5.1.1 and 5.1.2 of the said order dated 29.12.2004 as follows:

“5.1.1. I have carefully considered the submission of the Appellant and found them not acceptable. As has been brought out by the Assessing Officer, the Appellant was having 1 lakh shares of PMG. These shares were pledged for taking the loan in respect of various companies and finally these shares were sold by VESA Holdings for a sum of Rs.10,74,47,542/- which was credited to Appellant’s account on various dates as mentioned in the assessment order. These facts have not been denied by the Appellant. The sale proceeds of these shares were utilized for discharging the loan of various companies of GTBL as stated above.

5.1.2. Thus, it would be seen from the above facts that the sale proceeds were first received by the Appellant as the proceeds were credited to the bank account of the Appellant. Thus the Appellant received the sale proceeds and hence the capital gains accrued to the Appellant, these amounts were subsequently utilized for discharge of loans. Hence there was no over-riding charge on these shares as has been claimed by the Appellant. Pledging these shares as security was a voluntary act on the part of the Appellant.”

57. The Id.CIT(A) further observed that that self created mortgage would not justify deduction as in the present case and in para 5.1.4 on the consideration of the decision of the Kerala High Court relied upon by the Assessee before him, it was held that capital gains was correctly computed by the Assessing Officer herein, while holding that the said decision of the Kerala High Court was not correctly decided in the light of the Supreme Court decision referred to therein. On the alternate contention, the Id.CIT(A) while rejecting the same had held as follows:

“5.2.2. On the fact of it, the argument of the Appellant appears to be attractive. However, a closure scrutiny would reveal that these loans did not become bad

during the previous year under consideration. At least no such evidence has been produced on record by the Appellant. Therefore, it cannot be said that the Appellant suffered any capital loss during the previous year under consideration.

5.2.3. Even presuming that the Appellant suffered a capital loss, in respect of the loans which became irrecoverable, the said capital loss cannot be set off against the capital gains. In fact when a loan becomes bad, it is a loss of the capital. What is popularly called as "capital gains" is computed under the provisions of the Income Tax Act from Sections 45 to 55. The said capital gains arise on a transfer of a capital asset. A loss suffered by an assessee on the transfer of a capital asset only can be set off against the capital gains. Such a loss under the Income Tax Act is called "Loss under the head Capital Gains" and its set off is governed by Sections 70 to 74. What the Appellant has suffered is a loss of capital which is separate from a loss under the head capital gains. The capital loss suffered by the appellate in the present case is a negative of the capital receipts. Since capital receipts are not liable to tax under the Income Tax Act, the capital loss suffered by the Appellant also cannot be allowed as deduction under the Income Tax Act."

58. Aggrieved by the order of the Ld.CIT(A), the present appeal is being adjudicated and according to the assessee, the issue could be decided based on the decision to be rendered for the A.Y.1999-2000. According to the assessee, the theory of diversion of income by over-riding title would get attracted to the facts and however, the authorities below rejected the applicability of the said legal theory by holding it a case of an application of income by sustaining the assessment of Capital Gains.

59. We are not getting into the applicability of the theory of diversion of income by over-riding title and however, the loss suffered on the global view of the entire issue, the assessee submitted for reckoning the same as capital loss in contra distinction to the isolated treatment of transfer of shares for the purpose of imposing capital gains tax by the revenue. We have already agreed with the assessee in adjudicating the grounds pertaining to the A.Y.1999-2000 under similar circumstances and we hold that the loss suffered by the Assessee from investment in the companies being apparent, the capital gains on the transaction is accordingly reversed / deleted by accepting the appeal of the assessee.

60. In the result, the appeal for the A.Y.2000-01 is allowed by reckoning the capital loss on the consideration of the undisputed facts brought out by the original authority as a capital loss while deleting the computation of capital gains which was based on a standalone treatment given by the revenue for justifying their action.

61. In the result the three appeals of the assessee in IT(SS)A No.162/Chny/2003 and ITA Nos.744 & 2197/Chny/2005 are allowed and the appeal of the revenue in IT(SS)A No.153/Chny/2003 is dismissed.

Order pronounced in the open court on 26th December, 2025 at Chennai.

Sd/-

(मनु कुमार गिरि)
(MANU KUMAR GIRI)

न्यायिक सदस्य/**Judicial Member**

Sd/-

(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 26th December, 2025

SP

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT– Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF