

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (Appeal) No.353 of 2006

R.Srinivasan
43, Brindavan Street Extension
West Mambalam
Chennai-600 033. .. Appellant

versus

The Asst. Deputy Commissioner of Income-Tax
Central Circle-I
Coimbatore. .. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 01.08.2005 in ITA (SS) A 85/Mds/97 for the block assessment period 01.04.1986 to 13.02.1996 and 1987-88 to 1996-97.

For appellant : Mr.Arvind P.Datar
Senior Advocate for
M/s.Thryambala

For respondent : Mr.M.Swaminathan
Standing Counsel for Income Tax

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

The assessee is on appeal as against the order of the Tribunal relating to the block assessment covering the period 1.4.1986 to 13.02.1996.

2. It is seen from the narration of facts that there was a search in the residential premises of the assessee, who is the Managing Director Sri Ramadoss Finance (P) Ltd., Chennai, on 13.02.1996. There was also a search in the business premises of the company. The search revealed assets pertaining to the assessee, his wife Jamuna, mother R.Sakunthala, brother R.Venkatakrishnan, sister-in-law V.Manjula, sister S.Alamelu and brother-in-law V.Srinivasan. The bank lockers in the name of the assessee with the Indian Bank, T.Nagar, Madras (locker No.663) and another locker with KarUr Vysya Bank, Madras (Locker No.200) were also searched, thus resulting in seizure of cash, jewellery, shares and investments. Based on the seized materials, notice under Section 158BC was issued. After giving an opportunity to the assessee, the assessment was completed.

3. Aggrieved by this, the assessee went on appeal before the Income Tax Appellate Tribunal. The assessee raised an issue regarding the jurisdiction to make assessment under Section 158BC, contending that there was no search warrant shown in the assessee's name to result in a block assessment. As far as this contention is concerned, the Tribunal held that on a perusal of the search warrant, it was clear that the warrant of authorisation was in the name of the assessee. Based on the search material, the assessment was taken up under Chapter XIVB. Thus, the Tribunal rejected the assessee's contention that there was no search warrant in the name of the assessee, as without any basis.

4. As regards the merits of assessment, the assessee challenged the value of the demolished material taken at Rs.50,000/- as against the value of Rs.4,00,000/-, declared by the assessee as well as the amount withdrawn from the partnership firm. The assessee also questioned the assessment treating the gifts received by the assessee at the time of marriage, the gifts received at the time of valaikappu function and the investment in shares in the case of M/s.Talent Alloys (P) Ltd., Talent Steel Industries Pvt. Ltd. and M/s.Anchor Breweries Ltd., as undisclosed income; The transfer certificates stood in the name of the assessee as well as the in the name of the assessee's family members. Apart from that, the investment in house property was also a subject matter of consideration by the Tribunal.

5. While the Tribunal granted the relief in respect of the value of the old building and debris at Rs.1,00,000/- instead of Rs.50,000/-, as regards the cash flow balance of Rs.2,00,000/- as on 01.04.1986, the Income Tax Officer treated a sum of Rs.1,90,000/- as undisclosed income. Giving the benefit of past savings and the gift received for Rs.10,000/-, the Tribunal refixed the cash treated as undisclosed income at Rs.25,000/-. As regards the gifts received, the Tribunal confirmed the Assessing Officer's view, fixing the undisclosed income at Rs.2,50,000/- and Rs.1,24,374/-. As regards the investment in shares, it confirmed the assessment in respect of the investment made in the shares of the companies, where the share certificates stood in the name of the assessee and the other family members.

6. The questions raised before this Court are principally on the jurisdiction of the Officer to make an assessment under Section 158BC, on the ground that there was no search warrant issued in the assessee's name and consequently, the assessment made at the hands of the assessee in respect of the shares held by the assessee's relatives, is without basis and finally, the valuation of shares of M/s.Anchor Breweries based on the valuation of the property done through the Valuation Officer.

7. As far as this aspect is concerned, the serious grievance projected by the learned senior counsel is that the assessee was not favoured with any Valuation Officer's report to place his objection and in any event, the valuation report not being a search material, the investment in M/s.Anchor Breweries cannot be a matter of assessment under Chapter XIVB.

8. It is seen from the facts contained in the order of the Tribunal and that of the Assessing Officer, that during the course of search proceedings, the Authorised Officer found the share certificates in the name of the assessee, his wife and other relatives in M/s.Talent Alloys (P) Ltd. and M/s.Talent Steel Industries Pvt. Ltd. These share certificates were found from Locker No.663, maintained with the Indian Bank, Chennai, in the name of the assessee. The assessee contended that the allotment of the shares in the name of the assessee and his family members were in consideration of certain property belonging to the mother and sister-in-law of the assessee being provided as under collateral security to the said companies, so as to enable them to obtain bank finance. In the circumstances, the assessee had not invested any money on the shares allotted to him or to his family members.

9. The assessee made an alternative submission that there was no case for making addition at the hands of the assessee in respect of the shares standing in the name of the family members. The assessee took the plea that there were no materials to show that the shares held in the name of his family members were in the nature of benami holdings. As far as this aspect is concerned, the Assessing Officer pointed out that the application forms for shares given by the assessee and his family members and the cash book of M/s.Talent Alloys (P) Ltd and M/s.Talent Steel Industries Pvt. Ltd. seized, showed that the cash was received on the allotment of shares. Thus the contention that the assessee had not parted with any money for the purpose of allotment of shares, could not be accepted and that the only conclusion that could be taken on this issue was that the assessee had invested his undisclosed income for the purposes of having the shares allotted to him and his family members. The Officer further

pointed out that the receipts and payments account filed with the return did not show any investment made by the assessee or any other member of his family. Thus, based on the materials available, the Officer concluded that the entire share investment had to be assessed at the hands of the assessee.

10. The Tribunal pointed out that the shares were found in the records maintained by the assessee and the total investment made was to the tune of Rs.17,50,000/- and Rs.9,00,000/- in the assessee's name and his family members. The sources of investment were not explained by the assessee properly. The relatives were not assessed. The investments were reflected in the books of accounts of the companies. In the light of the above, the Tribunal upheld the assessment at the hands of the assessee in respect of the shares not only standing in the name of the assessee, but equally in the name of the other members of his family and that the family members were only benamidars of the assessee.

11. As far as the shares held in M/s.Anchor Breweries is concerned, the contention of the assessee was that the locker held by the assessee showed 660 shares in the name of the assessee and further 660 shares in the name of his wife and 1680 shares in the name of the assessee's relatives. As far as this aspect is concerned, the assessee contended that he never parted with any consideration for the purchase of shares. Consequently, not only the shares standing in his name and his wife's name, but even the shares standing in the name of his family members could not be assessed at the hands of the assessee. The Assessing Officer pointed out that during the course of search, the register on transfer of shares of M/s.Anchor Breweries Limited, a folder containing the original documents of the property at Arcot Road, Madras owned by M/s.Anchor Breweries Limited, application of the assessee in Form No.29 to the Registrar of Companies, giving consent to act as Director of M/s.Anchor Breweries Limited, were found and seized. The register of transfer of shares clearly indicated that the assessee had acquired 300 shares from one V.R.Venkatachalam and 330 shares from Mrs.Radha Venkatachalam on 21.12.1995. His sister Alamelu acquired 330 shares from R.Kamalam, wife of N.P.V.Ramaswamy Udayar and another set of 330 shares from S.Arundhathi, wife of K.Shanmugam on 21.12.1995. The share transfer register also showed that the assessee's brother-in-law Srinivasan acquired 360 shares on 21.12.1995 from N.P.V.Ramaswamy Udayar and also from A.S.Thillainayagam to the extent of 330 shares on the same date. Mrs.Jamuna, on 21.02.1995, had acquired 330 shares each from C.Padma and also T.Amutha. Mrs.V.Manjula, his brother's wife, had acquired 330 shares from R.Andal on 21.12.1995. Thus, 3000 shares, for which forms were issued, were acquired by the members of the assessee's family. Even though the assessee contended that he had not paid any consideration for the transfer of shares, in the course of investigation, he stated that the company belonged to N.P.V.Ramaswamy Udayar, and his family members came forward to transfer the shares in the name of the assessee. Since Ramaswamy Udayar fell ill and proceeded to the United States, no negotiations were held. The Officer pointed out that the seized materials contained share transfer forms (Form No.7B), signed by the transferors in favour of the assessee and his family members. The memorandum of transfer on the back side of the share certificates showed that the shares were transferred to the assessee. The seized material also contained a letter written by V.R.Venkatachalam, Director of M/s.Anchor Breweries Limited, addressed to the assessee,

stating that the Board of Directors of the company approved the transfer of shares in favour of the assessee. Going by these details, the Officer held that the company had, in fact, transferred the shares to the assessee and his other family members. The family members had no source of income and they were not assessed to tax. Thus the Tribunal confirmed the view of the Tribunal that the shares actually belonged to the assessee and the family members were all benamidars.

12. As regards the valuation of shares, the Officer pointed out that though the total issued and subscribed shares of the company is only 3000 shares of Rs.100/- each, the company owned properties in Arcot Road, Chennai. The market value of the land as on the date of transfer was taken. Since the same was much more than the value of the land shown in the balance sheet, the matter was referred to the Valuation Officer, based on which, the value of the shares was arrived at; thereby the undisclosed income of the assessee was arrived at. As far as this aspect is concerned, the Tribunal pointed out that as in the case of shares from M/s.Talent Alloys (P) Ltd. and M/s.Talent Steel Industries Pvt. Ltd., even though the shares stood in the name of the assessee's wife and relatives, the entire shares have to be assessed at the hands of the assessee only, as the other members of the family were only name lenders.

13. As far as the valuation of shares is concerned, the Tribunal pointed out that the assessee had not come out with any details on the consideration paid. In the circumstances, the Tribunal viewed that while valuing the shares of M/s.Anchor Breweries Ltd., valuation by referring to the assets would be the justifiable method. Thus, the break-up value method was considered as the first method for computing the value of the shares. It is seen that M/s.Anchor Breweries Ltd. owned a property in Arcot Road. The value was declared by the company in the balance sheet as on 31.03.1991 as Rs.90,738/-. The Valuation Officer, however, arrived at the value at Rs.298/- per sq.ft. on an area of 2 acres 90 cents at Rs.3,76,44,552/-. Taking note of the sale of 1.25 acres, he arrived at the value at Rs.2,19,20,801/-. Deducting the liability, the value of each share was taken at Rs.6,732/-. In the circumstances, the Tribunal confirmed this value and accordingly, the assessee's case was rejected. Thus, on the investments, the case of M/s.Talent Alloys (P) Ltd., M/s.Talent Steel Industries Pvt. Ltd. and M/s.Anchor Breweries Ltd., the Tribunal upheld the order of assessment, both on the question of assessment to be assessed at the hands of the assessee as well as the valuation thereto by the assessee. Aggrieved by this, the assessee is on appeal before this Court.

14. Learned senior counsel appearing for the assessee challenged the order of the Tribunal with reference to the correctness of the block assessment made, particularly when the search warrant was not in the name of the assessee. He pointed out that the original search warrant was issued in the case of M/s.Tamil Nadu Textile Corporation Limited and there was no independent search warrant standing in the name of the assessee. In the face of the above-said fact, the assessment under Section 158BC is illegal and void. As far as this contention is concerned, we directed the Revenue to produce the records pertaining to the issuance of search warrant. The records relating to the assessment under Chapter XIVB were produced before this Court. The search warrant reads under Caption A, "the warrant in the case of M/s.Tamil Nadu Textile Corporation". Under Column B, "warrant to search (Details and

ownership of place of search)", the name of the assessee is shown. The operative portion of the search warrant also pointed out that the warrant of authorisation dated 30.1.1996, issued in the case of M/s.Tamil Nadu Textile Corporation Limited, was shown to the assessee to search the place of the assessee mentioned at Column 'B', who was present in the said place at the time of search. The details as stated above are available in the search warrant as well as in the Panchnama. Rightly, on the basis of these documents, the Tribunal came to the conclusion that the search was conducted in the assessee's premises, leading to the assessment under Chapter XIVB.

15. It is no doubt true that the search in the assessee's premises was a result of the search in the case of M/s.Tamil Nadu Textile Corporation Limited. This, however, does not mean that there was no search warrant issued in the assessee's case under Section 132. On going through the search warrant, we have no hesitation in rejecting the said plea of the assessee and thereby confirming the order of the Tribunal.

16. Apart from the validity of the assessment made herein, learned senior counsel appearing for the appellant also raised an issue regarding the assessment made in Coimbatore. As far as this contention is concerned, we find from the file that referring to the Notification of the Commissioner of Income Tax in CCA 160(3)/96-97 dated 17.07.1996, in the letter dated 07.08.1996, the Assessing Officer, Chennai, addressed a letter to the Assistant Commissioner of Income Tax, Coimbatore, forwarding the files of the assessee and R.Venkatakrishnan relating to the assessment year 1996-97. On despatch of the said file, under notice dated 01.08.1996, the Assistant Commissioner of Income Tax, Coimbatore, called upon the assessee to file the return of income in the prescribed form within ten days from the date of service of notice dated 01.08.1996. Admittedly, the assessee addressed a letter dated 07.10.1996. Seeking time to file the return, the assessee also prayed for transfer of file to Madras, since the business activities were based at Madras.

17. With reference to the request of the assessee for retransfer to Chennai, on 11.10.1996, the Assistant Commissioner of Income Tax, Coimbatore, replied to the assessee, directing him to approach the Commissioner of Income Tax Central-I, Madras-34 and called upon the assessee to file the return. On 29.12.1996, the assessee once again wrote a letter to the Assistant Commissioner of Income Tax, Central Circle-I, Coimbatore, reporting filing of the return and as to the discharge of the liability of tax, the assessee agreed that the gold jewellery seized could be disposed of and the proceeds credited towards the tax liability. The family members from whom gold jewellery were seized, had also expressed their willingness and consent letters were obtained from them also. The letters, however, did not say anything as to whether the assessee had addressed the Commissioner of Income Tax for transfer of the files to Chennai. Thus, as the matter stood, the assessment was completed by the Officer and we do not find any justifiable ground to accept the plea of the assessee herein that the assessment done by the Commissioner suffered from want of jurisdiction. Thus, on the aspect of validity of the search and on the assessment under Article XIVB, we agree with the Tribunal's view and we have no hesitation in rejecting the appeals.

18. As far as the assessment of shares at the hands of the assessee is concerned, the fact is that the assessment in the name of the assessee as well as the family members were done based on the materials seized from the bank locker. The shares related to M/s.Talent Steel Industries Pvt. Ltd., M/s.Talent Alloys (P) Ltd. and M/s.Anchor Breweries Limited.

19. As far as M/s.Talent Alloys Pvt. Ltd. and M/s.Talent Steel Industries Pvt. Ltd. are concerned, learned senior counsel pointed out that at no point of time, the assessee parted with any money for investment in shares. The assessee's relatives, namely, mother and sister-in-law, provided collateral security for these concerns for the purpose of availing of credit facilities from the bank and in consideration of the same alone, the company had allotted the shares. Consequently, he pointed out that there are absolutely no material available with the Revenue, nor any enquiry made to that end, to hold that the shares held by the family members, in fact, belonged to the assessee only. In the absence of any material available with the Revenue, the question of treating the other family members as mere name lenders in respect the shares standing in their name, could not be sustained. In any event, at best, the assessment could be confined only to those shares standing in the name of the assessee and the assessee's wife and not to others.

20. As far as this contention is concerned, it is no doubt true that the properties standing in the name of the assessee's mother and sister-in-law were given as collateral security to M/s.Talent Alloys (P) Ltd. and M/s.Talent Steel Industries Pvt. Ltd., for the purpose of enabling the said companies to obtain finance from the Bank. However, the fact, as had been stated in the order of the Tribunal, is that the shares were allotted only in consideration of a collateral security furnished by the assessee's relatives, in which event, the allotment has to have some relevance to the extent of value of the security furnished, to enable these two companies to have financial accommodation from the Bank. In the circumstances, we do not find any justifiable ground to accept the assessee's contention that there were no money flowing from the assessee for the purpose of having the shares allotted to the assessee and his family members. Thus the investment aspect of the contention fails. It may however be noted that the shares of these two companies were seized from the assessee's locker maintained with the Indian Bank, T.Nagar Branch, Madras. Except for the assessment of these certificates from the Bank, we do not find that there was no enquiry at all to find out the details as to the source of income of other members of the family. We may point out that the assessee does not deny that the allotment of the shares was on account of the security furnished for these two concerns, so as to enable the companies to obtain financial assistance from the Bank. The fact that the properties stood in the name of the assessee's family members, hence, cannot be taken as indicator of the fact that the allotment of the shares to these members should be taken at its face value. The possibility of the assessee giving the properties of his mother and sister-in-law by way of collateral security for the purpose of allotment of shares in the manner in which he wanted to have them allotted, could not be ruled out herein. Thus, in the absence of any substantial material from the assessee's side, it is too difficult to accept the case of the assessee that there was no consideration passed on, on the allotment of shares. But then, as already pointed out, there being no further enquiry made on the aspect of allotment, we have no other option except to accept the plea of the assessee that the assessment could be sustained

only to the extent of shares, which stand in the name of the assessee and his wife alone and that the value of the shares standing in the name of his other relatives could not be included as unexplained investment, for the purpose of assessment under Chapter XIVB. In the circumstances, the extent to which the investment income has to be assessed in respect of these two companies, has to be worked out by the Assessing Officer pro-rata.

21. It is seen from the order that the total investment made in the two companies was taken at Rs.17,50,000/- and Rs.9,00,000/-. The investment is reflected in the books of accounts of both the companies in the year 1993-94. Having thus valued, we direct the Officer to fix the value of the shares allotted to the assessee and the assessee's wife to be assessed at the hands of the assessee.

22. As far as the assessment made in the case of M/s.Anchor Breweries Ltd. is concerned, the total number of shares standing to the credit of assessee is 1320 and 1680 shares stood in the name of the assessee's relatives.

23. As submitted by the learned senior counsel appearing for the assessee, as in the case of M/s.Talent Alloys (P) Ltd and M/s.Talent Steel Industries Pvt. Ltd., we do not find any material to assert that the other family members were merely name lenders. The fact remains that the share transfer register shows the shares standing in the name of the assessee, his wife and other family members. Even though the assessee contended that there was no consideration passed on and there were no grounds for assessing the share value at the hands of the assessee, yet, going by the available material which are indicative of allotment of the shares in the name of the assessee and his family members, we reject the plea of the assessee. However, as regards the valuation of shares, it is seen from the order of the Tribunal that it had approved the break-up value method of valuation, taking the market value of the property, by placing reliance on the decisions reported in [1971] 82 ITR 540 (CIT Vs. Durgaprasad More), [1972] 86 ITR 621 (CWT Vs. Mahadeo Jalan and others) and [1980] 122 ITR 38 (CGT Vs. Smt.Kusumben D.Mahadevia). Even herein, apart from the method of valuation adopted, the serious contention of the assessee is that the report of the Valuation Officer, not being a seized material, could not lead to an assessment under Chapter XIVB. The said contention was based on the order of the Tribunal deleting the addition made in the case of investment in house property at Anusuya Street. A reading of the order of the Tribunal, at paragraphs 15 and 16, shows that the Assessing Officer adopted the value as determined by the Assessing Officer at Rs.8,95,380/- and assessed the differential amount as an undisclosed income. The Officer referred the matter to the Valuation Officer by reason of the fact that the assessee had paid the enhanced stamp duty for the property at Anusuya Street and Karanai Village, as per the guidelines and the Valuation Officer debited the said value, leading to the addition. The Tribunal viewed that the Assessing Officer arbitrarily made the addition on the basis of the valuation report, which was not a seized material, nor in any way connected with the seized material. Thus the Tribunal deleted the addition. Even though learned senior counsel placed much emphasis on this to support his contention as regards the valuation of the shares of M/s.Anchor Breweries Ltd., wherein the property of the said company was valued based on the valuation report, yet, we do not think that the reasoning of the Tribunal in respect

of the property at Anusuya Street and at Karanai village would, in any manner, assist the assessee's case, as far as the value of the shares of M/s.Anchor Breweries Ltd. is concerned.

24. It is seen from the order of the Tribunal that as far as the properties at Anusuya Street and at Karanai Village are concerned, the assessee paid the enhanced stamp duty based on the guideline value, which prompted the Officer to go in for the differential amount treated as an undisclosed income. However, as far as the shares allotted to M/s.Anchor Breweries Ltd. is concerned, the possible way by which one can value the shares, being, one based on the assets of the company, the Officer had to necessarily adopt one of the known methods. In this case, leaving aside the correctness of the break-up value method as the basis for valuing the shares, the issue herein is regarding the value of the property adopted by the Officer, which is principally based on the Valuation Officer's report.

25. Learned senior counsel appearing for the assessee pointed out that in a case of search, reference to a Valuation Officer for valuing the property to arrive at the undisclosed income could not be accepted as a correct method, particularly when the assessment under Chapter XIVB has to be raised on the seized material only. The report of the Valuation Officer could not be treated as a seized material and hence, the value adopted based on this, is incorrect. In this connection, he placed reliance on the decision of the Gujarat High Court reported in [2011] 337 ITR 187 (Guj) (Commissioner of Income-tax Vs. Kantilal B. Kansara (HUF)) and that of this Court reported in [2010] 329 ITR 342 (Commissioner of Income-tax Vs. Sri Krishna Saraf). We reject this contention straight away, for the reason that even in respect of the assessment under Chapter XIVB, the procedure for assessment has to necessarily go through the procedure which is contemplated under the provisions of the Act. The only difference one can find between the regular assessment and the assessment under Chapter XIVB is that while under the regular assessment, the period of assessment could be only one year, in the case of block assessment, it is the block period, as defined under the Act and the assessment should be fixed in respect of the block assessment. Barring that, the procedure for considering an assessment as contained under Section 158BC shows that the Officer has to determine the undisclosed income of the block period in the manner laid down under Section 158BB and the provisions of Section 142, Sub Sections (2) and (3) of Section 143 and Section 144 shall, so far as may be, apply. The Assessing Officer, in determining the undisclosed income of the company in accordance with the Chapter, has to pass the order of assessment and determine the tax payable on the basis of such assessment. Thus, given the fact that the assessment under Section 158BC, nevertheless, has to go through the procedure as contained under the Act and that the source for the investment in shares remained unexplained and hence, the investment being of an undisclosed nature unearthed during the search, the only option available to arrive at the extent of the suppressed income on investment is through valuation of the shares by the valuation of the assets of the company. Thus, we do not find any justifiable ground to accept the plea of the assessee herein that it is not open to the Assessing Officer to refer the valuation to a Valuation Officer for the purpose of arriving at the undisclosed income. We do not subscribe to the view that in making a block assessment, the Officer cannot take any assistance of a Valuation Officer to arrive at the value of the property. In the circumstances, we reject the reliance placed on the decisions reported in [2011] 337 ITR 187

(Guj) (Commissioner of Income-tax Vs. Kantilal B. Kansara (HUF)) and [2010] 329 ITR 342 (Commissioner of Income-tax Vs. Sri Krishna Saraf).

26. This, however, does not conclude the issue as far as the Revenue is concerned, before this Court. It is seen from the order of assessment as well as the Tribunal's order that the Assessing Officer ascertained the market value of the shares by valuing the shares on the basis of break-up value method. To find out the break-up value of the shares, the Officer referred the same to the Valuation Officer to find out the value of the immovable properties of the company. The assessee company was having land at Arcot Road, Madras and the balance sheet declared as on 31.03.1991 showed the value at Rs.90,738/-. After going through the sale instance and after considering other parameters, he arrived at the value at Rs.298/- per sq.ft. Thus, the final value arrived at by the Officer on pro-rata basis of the vacant land to the extent of 2 acres 90 cents was Rs.3,76,44,552/-. Ultimately, the Assessing Officer found that the company had subsequently sold 1.25 acres of land and the extent of 1.65 acres alone was available. Accordingly, he arrived at the value at Rs.2,14,18,320/- and arrived at the value of the share at Rs.6,732/- each.

27. A reading of the order of the Assessing Officer shows that nowhere the assessee was favoured with a copy of the Valuation Officer's assessment, enabling the assessee to place his objection on this value. Even though the Officer has a right to refer the document for valuation by a Valuation officer, yet, when he seeks to make use of this piece of evidence to arrive at the undisclosed income, in fairness to the claim of the assessee, a copy of the valuation report should have been given to the assessee, so as to enable him to place his objection, by following the principles of natural justice. In the absence of any material shown that this requirement had been complied with, we have no hesitation in accepting the plea of the assessee that this portion of the order merits to be set aside and the matter be remitted back to the Assessing Officer so as to furnish a copy of the valuation report to the assessee, for placing his objections. After giving this opportunity, it is open to the Assessing Officer to pass such orders in accordance with law, on the valuation. It is also open to the assessee to place his objections as are available as regards the valuation, for the purpose of arriving at the undisclosed income.

28. As already pointed out, in the absence of any material to show that the entirety of the shares of M/s.Anchor Breweries Limited were to be taken in as the shares proved by the assessee, the liability that could be fastened on the assessee has to be only with reference to the 1320 shares, which stood in the name of the assessee and his wife.

29. In the light of the view that we have thus arrived at, we set aside the order of the Tribunal and remand the assessment back to files of the Assessing Officer. The Tax Case stands partly allowed and to the extent referred above, the order of the Tribunal is partly set aside. No costs.

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To

1. The Income Tax Appellate Tribunal, "B" Bench, Chennai.
2. The Assistant Commissioner of Income Tax, Central Circle-I,
Coimbatore 641 018