REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2688 OF 2006

THE ASSISTANT COMMISSIONER OF INCOME TAX, CHENNAI — APPELLANT

VERSUS

M/S A.R. ENTERPRISES — RESPONDENT

WITH
CIVIL APPEAL NO.3127 OF 2006,
CIVIL APPEAL NO.3848 OF 2006,
CIVIL APPEAL NO.2580 OF 2010,

CIVIL APPEAL NO. 270 OF 2013
(Arising Out of SLP (C) NO.12537 of 2006)

AND

CIVIL APPEAL NO. 271 OF 2013
(Arising Out of SLP (C) NO.7635 of 2008)

J U D G M E N T

D.K. JAIN, J.

1. Leave granted in all the Special Leave Petitions.

2. This batch of six appeals, arises from separate judgments of the High Court of Madras in the appeals preferred by the revenue under Section 260A of the Income Tax Act, 1961 (for short "the Act") rendered in Tax Case (Appeal) Nos.238 of 2000 on 8th September 2004; 1371, 1372, 1373 of 2005 on 2nd January 2006; 687 of 2007 on 18th June 2007; and 620 of 2009 on 21st July 2009. This judgment shall govern all these appeals since they entail a common substantial question of law, as is evident from the adjudication of the High Court. However, to appreciate the issue involved, Civil Appeal No.2688 of 2006 is treated as the lead case. At the outset we may note that despite service of notice, no appearance was entered for the respondent-assesses, except in C.A. No. 2688/2006 and C.A. No. 2580/2010.

Facts

3. The respondent-assessee is a firm which came into existence on 25th June, 1992. On 23rd February, 1996, a search operation under Section 132 of the Act was carried

out at the premises of another concern, *viz.* M/s A.R. Mercantile Private Limited. During the course of search, certain books and documents pertaining to the assessee i. e. M/s A.R. Enterprises, were seized. On scrutiny, the Assessing Officer found that though the assessee had taxable income for the assessment year 1995-96, no return of income had been filed (due to be filed on or before 31st October, 1995) till the date of search. Based on the material seized by virtue of the aforesaid search, the Assessing Officer was satisfied that the assessee had not disclosed their income pertaining to the assessment year 1995-96. Accordingly (without recording any reasons for his satisfaction), he initiated action under Section 158BD of the Act requiring the assessee to file their return of income. The assessee, after filing return for the block period (ten years preceding the previous year), which covered assessment years 1993-94 to 1995-96, pointed out that they had already filed returns for the assessment years 1993-94 and 1994-95. They objected to action initiated under Chapter XIVB of the Act on the ground that

in relation to the assessment year 1995-96, Advance Tax had already been paid in three installments and, therefore, income for that period could not be deemed to be undisclosed.

4. Rejecting the plea of the assessee, the Assessing Officer formed the opinion that the assessee had failed to file the return as on the date of search, and the seized documents did show income, which had not been or would not have been declared. Accordingly, he proceeded to compute total undisclosed income for the block period 1993-94 to 1995-96 (upto the date of search), treating the income returned by the assessee for the period 1995-96 as NIL, as stipulated in Section 158BB (1)(c) of the Act.

5. Against the said order, the assessee preferred an appeal before the Tribunal. Accepting the stand of the assessee, the Tribunal allowed the appeal, and held that having paid the Advance Tax, the assessee had disclosed his income for the relevant assessment year. The Tribunal observed thus:

"Now coming to the facts of the present case, as stated supra, the assessee has not filed his return in time, but even after that date the assessee has filed his return voluntarily. Moreover not only that the assessee has also estimated his income for the year and paid advance tax thereon as detailed below:

15.09.1994	Bank of Baroda, T.Nagard.	Rs.1,60,000
12.12.1994	-do-	Rs.1,60,000
16.03.1994	-do-	Rs.1,60,000
		Rs.4,80,000

This would indicate that the assessee has made known to the income tax department his income for the year and also paid the income tax thereon well before the due dates and of course well before the date of search also. Even this fact of income was voluntarily disclosed by the assessee to the ADI (inv.)..."

Consequently, the Tribunal declared the said assessment, made under Section 158BD of the Act, as null and void.

6. Being dissatisfied, the Revenue preferred an appeal before the High Court of Madras under Section 260A of the Act, questioning the validity of the order of the Tribunal.

Entertaining the appeal, the High Court formulated the following substantial question of law for adjudication:

> "Whether the Appellate Tribunal is right in law in cancelling the assessment under Chapter XIV-B in light of the specific provision contained in Section 158BB(1) (c) of the Income Tax Act?"

7. Before the High Court, the stand of the Revenue was that since return for the assessment year 1995-96 had not been filed by the due date, by filing the return after the search, the assessee could not escape the consequences as stipulated in Chapter XIVB of the Act. It was contended that payment of Advance Tax by itself did not establish the intention to disclose the income. In support of the proposition, reliance was placed on the decision of the High Court of Madras in ***B. Noorsingh*** *Vs.* ***Union of India & Ors.***[1]. In that judgment, the High Court had observed:

> "...Counsel submitted that in cases (sic) whereas in the case of the present petitioner, the assessee had paid advance tax, such payment would clearly indicate his intention to disclose his income and it could not be said that such person would not have disclosed his income. The payment of advance tax

[1] (2001) 249 ITR 378

by itself does not establish an intent to disclose the income. The disclosure is to be made by filing the return. Even in search cases where the time for filing the return under section 139(1) has not expired, income disclosed in the books of account is not treated as undisclosed income. All that is denied to the assessee in search cases is the opportunity to file a return after the period specified in section 139(1) and to claim that the income that he would have disclosed in a belated return is not to be regarded as undisclosed income. The reason for denying such opportunity in search cases is obvious. After having suffered a search, the assessee is not to be enabled to escape the consequences of his failure to disclose all his income by filing a return after the search and after the expiry of the time prescribed under section 139(1) and by disclosing therein income which had remained undisclosed upto the date of the search."

8. Revenue's plea did not find favour with the High Court. *Inter-alia*, observing that payment of Advance Tax itself necessarily implies disclosure of the income on which the advance is paid, the High Court held as follows:

"Under clause (d) of sub-section(1) of section 158BB while assessing the aggregate of the total income, the income recorded in the books of account and other documents maintained in the normal course on or before the date of the search or requisition relating to such previous year shall be taken into consideration where the previous year has not ended or the date of filing the return of the income under sub-section (1) of section 139 has not expired. When the assessee is required to

file the self-assessment for payment of the advance tax before the income-tax authorities the return of assessment would fall within the documents maintained in the normal course by the assessee and as such the income disclosed on payment of the advance tax would fall within clause (d) of sub-section (1) of section 158BB. In any case although there is a difference between the regular assessment and the block assessment, as we have already noticed, unless the provisions of the block assessment specifically bar the assessing authority from taking into consideration the income disclosed by the assessee on payment of the advance tax to be taken into consideration, the income disclosed by the assessee on payment of advance tax would be an income disclosed to the Revenue and cannot be treated as an income undisclosed for the relevant assessment year."

9. Aggrieved thereby, as aforesaid, the Revenue is before us in these appeals.

10. The short question for consideration is whether payment of Advance Tax by an assessee would by itself tantamount to disclosure of income for the relevant assessment year and whether such income can be treated as undisclosed income for the purpose of application of Chapter XIVB of the Act?

Scope of Chapter XIV-B and its Provisions

11. Sections 132 and 132A of the Act incorporate provision of search, seizure and requisition which were resorted to for the conduct of search at the premises of M/s A.R. Mercantile Pvt. Ltd. For the evaluation of the material seized during the operation or proceedings under Sections 132 or 132A of the Act, as the case may be, the provisions contained in Chapter XIV-B come into play. This chapter, consisting of sections 158B to 158BH was inserted by the Finance Act, 1995 with effect from 1.07.1995. The heading of Chapter XIV-B reads "Special Procedure for Assessment of Search Cases". It was introduced for the assessment of undisclosed income determined as a result of search carried out under Section 132 of the Act or requisitioning of documents or assets under Section 132A of the Act. The chapter is a self-contained code and gets attracted as a result of search proceedings initiated by the income tax authorities, under Section 132 of the Act, notwithstanding any other provisions of the Act except to the extent provided for in the chapter.

12. In the facts before us, resort to this chapter was required to be made since on conduct of search at the premises of M/s A.R. Mercantile Pvt. Ltd., documents of M/s A.R. Enterprises, i.e. the assessee were recovered, that indicated non-disclosure of income by the latter. In such a scenario, Section 158BD gets attracted, which reads as follows:

> "**Undisclosed income of any other person.**
>
> **158BD.** Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under section 132 or whose books of account or other documents or any assets were requisitioned under section 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed [under section 158BC] against such other person and the provisions of this Chapter shall apply accordingly."

13. A bare reading of the afore-extracted provision makes it clear that the condition precedent for invoking a block assessment is a search conducted under Section 132, or documents or assets requisitioned under Section 132-A.

Moreover, Section 158BD permits the application of the provisions of this chapter only on the satisfaction of the assessing officer that the seized documents show undisclosed income of a person other than the person with respect to whom search was conducted or a requisition was made. It is trite law that such satisfaction must be recorded for the benefit of the assessee. In ***Manish Maheshwari*** *Vs.* ***Asstt. Commissioner of Income Tax & Anr[2].,*** this Court summarized the prerequisites of Section 158BD of the Act as follows:

> "11. ...(*i*) satisfaction must be recorded by the assessing officer that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act; (*ii*) the books of accounts or other documents or assets seized or requisitioned had been handed over to the assessing officer having jurisdiction over such other person; and (*iii*) the assessing officer has proceeded under Section 158-BC against such other person."

14. In ***Assistant Commissioner of Income Tax*** *Vs.* ***Hotel Blue Moon[3]***, one of us (H.L. Dattu, J.) while explaining the

[2] (2007) 3 SCC 794
[3] (2010) 3 SCC 259 at page 264

purport of Chapter XIVB of the Act, has observed that a 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, intended to provide a mode of assessment of undisclosed income, which has been detected as a result of search. Hence, from the aforementioned discussion it is clear that a valid search under Section 132 of the Act is a *sine qua non* for invoking block assessment proceedings under Chapter XIVB. Further according to Section 158BD of the Act the assessing officer must record his or her satisfaction that any undisclosed income belongs to any person, other than the person with respect to whom search was made under Section 132 of the Act.

15. It seems that these requisites were in fact not adhered to in the present case. During the course of hearing, learned counsel for the assessee did contend that the Revenue did not have jurisdiction to invoke Chapter XIVB

of the Act, against the assessee. According to the learned counsel, before initiating proceedings under Section 158BD of the Act, the assessing officer had not recorded his satisfaction that any undisclosed income belonged to the assessee or that the assessee did not have the intention to disclose their income. Hence, the block assessment proceedings against the assessee should be quashed. However, we are unable to appreciate the submission of the learned counsel at this stage, since the same was never urged before the High Court and the Tribunal. Hence, we refrain from making any observations on a contention that had never been argued before the High Court and the Tribunal. We shall restrict our opinion strictly to the issue before us, *viz.* whether the payment of Advance Tax for the relevant assessment year is tantamount to disclosure of income for the purpose of application of Chapter XIVB of the Act.

16. The relevant provisions for assessment, computation and procedure of block assessment, which would come

into play on the application of Section 158BD, in their erstwhile form at the relevant time, read as follows: -

> "**Assessment of undisclosed income as a result of search.**
>
> **158BA.** (1) Notwithstanding anything contained in any other provisions of this Act, where after the 30th day of June, 1995 a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of any person, then, the Assessing Officer shall proceed to assess the undisclosed income in accordance with the provisions of this Chapter.
>
> **Procedure for block assessment.**
>
> **158BC.** Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,—
>
> (*a*) the Assessing Officer shall—
>
> (*i*) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;
>
> XXX XXX XXX
>
> (*b*) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143

section 144 and section 145 shall, so far as may be, apply;..."

[Emphasis supplied]

17. Section 158B of the Act, which encompasses the crux of the issue, reads as follows:

"**Definitions.**
158B. In this Chapter, unless the context otherwise requires, -
(a) "block period" means the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under section 132 or any requisition was made under section 132A, and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition;

(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*."

[Emphasis supplied]

18. The genesis of the issue before us lies within the folds of this section. Sections 158BD and 158BC, along with the

rest of Chapter XIV-B, find application only in the event of discovery of "undisclosed income" of an assessee. Undisclosed income is defined by Section 158B as that income "which has not been or would not have been disclosed for the purposes of this Act". The legislature has chosen to define "undisclosed income" in terms of income not disclosed, without providing any definition of "disclosure" of income in the first place. We are of the view that the only way of disclosing income, on the part of an assessee, is through filing of a return, as stipulated in the Act, and therefore an "undisclosed income" signifies income not stated in the return filed. Keeping that in mind, it seems that the legislature has clearly carved out two scenarios for income to be deemed as undisclosed: (i) where the income has clearly not been disclosed and (ii) where the income *would* not have been disclosed. If a situation is covered by any one of the two, income would be undisclosed in the eyes of the Act and hence subject to the machinery provisions of Chapter XIVB. The second category, *viz.* where income *would* not have been

disclosed, contemplates the likelihood of disclosure; it is a presumption of the intention of the assessee since in concluding that an assessee would or would not have disclosed income, one is *ipso facto* making a statement with respect to whether or not the assessee possessed the intention to do the same. To gauge this, however, reliance must be placed on the surrounding facts and circumstances of the case.

19. One such fact, as the assessee claims, is the payment of Advance Tax. However, in our opinion, the degree of its material significance depends on the time at which the search is conducted in relation to the due date for filing return. Depending on which side of the due date the search is conducted, material significance of payment of Advance Taxes vacillates in construing the intention of the assessee. If the search is conducted after the expiry of the due date for filing return, payment of Advance Tax is irrelevant in construing the intention of the assessee to disclose income. Such a situation would find place within the first category carved out by Section 158B of the Act

i.e. where income has clearly not been disclosed. The possibility of the intention to disclose does not arise since, as held earlier, the opportunity of disclosure has lapsed i.e. through filing of return of income by the due date. If, on the other hand, search is conducted prior to the due date for filing return, the opportunity to disclose income or, in other words, to file return and disclose income still persists. In which case, payment of Advance Tax may be a material fact for construing whether an assessee intended to disclose. An assessee is entitled to make the legitimate claim that even though the search or the documents recovered, show an income earned by him, he has paid Advance Tax for the relevant assessment year and has an opportunity to declare the total income, in the return of income, which he would file by the due date. Hence, the fulcrum of such a decision is the due date for filing of return of income vis-à-vis date of search. Payment of Advance Tax may be a relevant factor in construing intention to disclose income or filing return as long as the assessee continues to have the opportunity to file return

and disclose his income and not past the due date of filing return. Therefore, there can be no generic rule as to the significance of payment of Advance Tax in construing intention of disclosure of income. The same depends on the facts of the case, and hinges on the positioning of the search operations qua the due date for filing returns.

20. Thus, at the very outset, in our view, the question that whether payment of Advance Tax by an assessee *per se* is tantamount to disclosure of total income, for the relevant assessment year, must be answered in the negative. On further scrutiny, we find yet another reason to opine so. Payment of Advance Tax and filing of return are functions of completely different notions of income i.e. estimated income and total income respectively. The payment of Advance Tax is based on an ***estimation*** of the total income that is chargeable to tax and not on the ***total income*** itself.

21. Section 2(45) of Act defines “total income” as-

"total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act ;"

22. Section 5 of the Act lays down the "scope of total income" as-

> **"5.** (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—
>
> (*a*) is received or is deemed to be received in India in such year by or on behalf of such person ; or
> (*b*) accrues or arises or is deemed to accrue or arise to him in India during such year ; or
> (*c*) accrues or arises to him outside India during such year :..."

23. Section 158BB(1) of the Act provides the method of computation of undisclosed income for a block period. It is significant to note that the computation of the undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period, computed in accordance with the provisions of the Act. This amount is reduced by the aggregate of the total income, or as increased by the losses returned or determined earlier, in respect of such previous years in accordance with the provisions of this section.

24. Section 158BB(1) reads as follows-

> **"158BB.** (1) The undisclosed income of the block period shall be the aggregate of the total income of the previous years falling within the block period computed, in accordance with the provisions of this Act, on the basis of evidence found as a result of search or requisition of books of account or other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence, as reduced by the aggregate of the total income, or as the case may be, as increased by the aggregate of the losses of such previous years, determined,—
>
> (a) XXX XXX XXX
>
> (b) XXX XXX XXX
>
> (c) *where the due date for filing a return of income has expired but no return of income has been filed, as nil*

25. Further, the explanation to Section 158BB(1) reads-

> "Explanation: For the purposes of determination of undisclosed income,—
>
> (a) the total income or loss of each previous year shall, for the purpose of aggregation, be taken as the total income or loss computed in accordance with the provisions of Chapter IV without giving effect to set off of brought forward losses under Chapter VI or unabsorbed depreciation under sub-section (2) of section 32;
>
> (b) of a firm, or its partners, the method of computation of undisclosed income and its allocation to the partners shall be in accordance with the method adopted for determining the as-

sessed income or returned income for each of the previous years falling within the block period;..."

26. Hence, the computation of "undisclosed income" for the purposes of Chapter XIVB has to be construed in terms of the "total income" received, accrued, arisen; or which is deemed to have been received, accrued or arisen in the previous year, and is computed according to the provisions of the Act. According to Section 139(1) of the Act, every person who is assessable under the Act, must file a return declaring his or her total income during the previous year on or before the due date, for assessment under Section 143 of the Act. Hence, the 'disclosure of income' is the disclosure of the total income in a valid return under Section 139, subject to assessment and chargeable to tax under the provisions of the Act. It is important to bear in mind that ***total*** income is distinct from the ***estimated*** income, upon the basis of which, Advance Tax is paid by an assessee. Advance Tax is based on estimated income, and hence, it cannot result in the

disclosure of the total income assessable and chargeable to tax.

27. Before we proceed further to elaborate upon this distinction, it would be useful to refer to the provisions relating to payment of Advance Tax under the Act. Chapter XVII of the Act, which deals with "Collection and Recovery of Tax", contains provisions for the payment of Advance Tax and tax deducted at source. Advance Tax is the tax payable on the *estimated* total income of the relevant financial year which is chargeable to tax in the assessment year but is payable in that very financial year.

28. Section 207 of the Act lays down the liability for payment of Advance Tax as:-

> "**207.** Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, such income being hereafter in this Chapter referred to as "current income."

29. Section 208 specifies the conditions of liability to pay Advance Tax as:-

> "**208.** Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is one thousand five hundred rupees or more."

30. Thus, in every case where the amount of tax payable on the total income earned during the financial year is one thousand five hundred rupees or more, then, an assessee would be liable to pay in the financial year itself, Advance Tax on such income, also known as "current income." It is in this context the following questions arise: (i) What is the nature of the "current income" upon which the Advance Tax is paid and is it the same as the total income? and (ii) Whether the payment of Advance Tax results in the disclosure of the actual total income?

31. Section 210(1) of the Act refers to the payment of Advance Tax by the assessee of his own accord:-

> **"210.** (1) Every person who is liable to pay advance tax under section 208 (whether or not he has been previously assessed by way of regular

assessment) shall, of his own accord, pay, on or before each of the due dates specified in section 211, the appropriate percentage, specified in that section, of the advance tax on his current income, calculated in the manner laid down in section 209."

32. Section 209(1)(a) lays down the method of computation of Advance Tax to be paid by an assessee as follows:

> **"209.** [(1) The amount of advance tax payable by an assessee in the financial year shall, subject to the provisions of sub-sections (2) and (3), be computed as follows, namely :—
>
> (*a*) where the calculation is made by the assessee for the purposes of payment of advance tax under sub-section (1) or sub-section (2) or sub-section (5) or sub-section (6) of section 210, he shall first estimate his current income and income-tax thereon shall be calculated at the rates in force in the financial year.."

33. According to Section 210(1) of the Act, every person who is liable to pay Advance Tax under Section 208 (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay Advance Tax on his "current income", calculated in the manner laid down in section 209. Further according to Section 209(1)(a), the assessee shall first estimate his

"current income" and thereafter pay income tax calculated on this *estimated income* on the rates in force in the relevant financial year. It is significant to note that this income is an estimation that is made by the assessee and may not be the exact income, which may ultimately be declared in the return under Section 139 and assessed under Section 143 of the Act. Needless to emphasise that payment of Advance Tax does not absolve an assessee from an obligation to file return disclosing total income for the relevant assessment year. In short, the disclosure of total income by the filing of return under Section 139 of the Act is mandatory even after the payment of Advance Tax by an assessee, since the "current income" which forms the basis of the Advance Tax is a mere estimation and not the *final* total income for the relevant assessment year liable to be assessed.

34. In ***Brij Lal & Ors.*** *Vs.* ***Commissioner of Income Tax, Jalandhar[4],*** while explaining the scope of the provisions on Advance Tax, this Court expressed the view that the

[4] (2011) 1 SCC 1

"current income" in respect of which the assessee pays Advance Tax is not the same as understood in Section 2(45). In this regard, the Court held**:**

> "**8.** Liability to pay advance tax arises under Section 207. The said section is based on the principle "pay as you earn". It requires tax to be paid during the financial year. It has to be in respect of the total income of the assessee which would be chargeable to tax under the Act. The said total income is not as understood in Section 2(45) but it is equated to "current income" for the purposes of Chapter XVII. After the amending Act of 1987, advance tax is to be paid on the current income which would be chargeable to tax for the assessment year immediately following the financial year. Section 210 casts the responsibility of payment of advance tax on the assessee without requiring the assessee to submit his estimate of advance tax payable. Provision for payment of advance tax is a mode of quick collection of tax.
>
> **9.** Thus, Section 207 defines liability to pay advance tax in respect of incomes referred to in Section 208. However, advance tax paid is adjustable towards the tax due. Advance tax is collected even before the income tax becomes due and payable. By its very nature, advance tax is pre-assessment collection of taxes either by deduction of tax at source or by payment of advance tax which has to be adjusted towards income tax levied on the total income. The above two methods of realisation even before any assessment is authorised by Section 4(2) are incorporated in Chapter XVII which deals with "collection and recovery".

> **15.** Now, Chapter XVII deals with "collection and recovery". It covers tax deduction at source and advance payment of taxes (see Section 190). Part C Chapter XVII deals with advance payment of taxes. Section 207 refers to liability to pay advance tax whereas Section 209 deals with computation of advance tax. Section 215 refers to interest payable by the assessee. Section 210(1) inter alia provides that every person who is liable to pay interest (*sic* advance tax) under Section 208, shall of his own accord pay, on each of the due dates specified in Section 211, the appropriate percentage of advance tax on his current income calculated in the manner under Section 209."

35. A catena of decisions by various High Courts has reiterated that the Advance Tax payable under Chapter XVII is based on an estimate of the total income of the assessee for the relevant financial year, and is not the final "total income" which must be disclosed for assessment through the filing of a return under Section 139 of the Act in the following assessment year. An estimate always has an element of guesswork. There could be various reasons due to which an estimate may be faulty and inaccurate which is why, there is a provision for payment of interest on deficient or excess payment of

advance tax when there is variation between advance tax paid and actual liability to tax. [See: ***Commissioner of Income Tax*** *Vs.* ***Smt. Premlata Jalani***[5], ***Bill & Peggy Marketing India Pvt. Ltd.*** *Vs.* ***Assistant Commissioner of Income Tax***[6], ***Prime Securities Ltd.*** *Vs.* ***Assistant Commissioner of Income Tax***[7], ***Commissioner of Income Tax*** *Vs.* ***Nilgiri Tea Estate Ltd.***[8], ***Kwality Biscuits Ltd.*** *Vs.* ***Commissioner of Income Tax***[9] which was subsequently affirmed in ***Commissioner of Income Tax*** *Vs.* ***Kwality Biscuits Ltd.***[10]].

36. The Punjab and Haryana High Court in ***Commissioner of Income Tax*** *Vs.* ***Upper India Steel Mfg. and Engg. Co. Ltd.***[11] made the following important observations:

> "24. We fully concur with the view expressed in the aforesaid judgments. The Madras High Court has correctly pointed out that for the purpose of payment of advance tax, all assessees including companies, are required to make an estimate of

[5] [2003] 264 ITR 744 (Raj)
[6] 191 (2012) DLT 249
[7] [2011] 333 ITR 464 (Bom)
[8] [2009] 312 ITR 161 (Ker)
[9] [2000) 243 ITR 519 (Kar)
[10] [2006] 284 ITR 434 (SC)
[11] [2005] 279 ITR 123 (P&H)

their current income. Even before the introduction of the provisions of Section 115J of the Act, companies had been estimating their total income after providing deductions admissible under the Act. In fact, all assessees who maintain books of account have to undertake this exercise for the purpose of payment of advance tax. If a profit and loss account can be drawn up on estimate basis for the purpose of Income-tax Act, it is not understood as to why a similar profit and loss account on estimate basis under the Companies Act cannot be drawn up. If the explanation of the companies that the profits under Section 115J of the Act can only be determined after the close of the year were to be accepted, then no assessee who maintains regular books of account would be liable to pay advance tax as in those cases also, income can only be determined after the close of the books of account at the end of the year."

37. We are, therefore, of the view that since the Advance Tax payable by an assessee is an estimate of his "current income" for the relevant financial year, it is not the actual total income, to be disclosed in the return of income. To repeat, the vital distinction being that the "current income" is an estimation or approximation, which may not be accurate or final; whereas the "total income" is the exact income disclosed in a valid return, assessable by the Revenue. The fact that the "current income" is an

estimation implies that it is not final and is subject to further adjustments in the form of additions or reductions, as the case may be, and would have to be succeeded by the disclosure of final and total income in a valid return. It will be a misconstruction of the law to construe the undisclosed income for purposes of Chapter XIVB as an "estimate" of the total income, which is assessable and chargeable to tax. Therefore, we are unable to accept that payment of Advance Tax based on "current income" involves the disclosure of "total income", as defined in Section 2(45) of the Act, which has to be stated in the return of income. The same is evidenced in the scheme of Chapter XIVB, in particular.

38. Section 158BB(3) of the Act states-

> (3) The burden of proving to the satisfaction of the Assessing Officer that any undisclosed income had already been disclosed in any return of income filed by the assessee before the commencement of search or of the requisition, as the case may be, shall be on the assessee.

39. Thus, for the purposes of computation of undisclosed income under Chapter XIVB, an assessee can rebut the Assessing Officer's finding of undisclosed income by showing that such income was disclosed in the return of income filed by him before the commencement of search or the requisition. In other words, when Section 158BB(3) is read with Section 158B(b), which defines undisclosed income, we reach the conclusion that for income to be considered as disclosed income, the same should have been disclosed in the return filed by the assessee before the search or requisition. In our opinion, on failure to file return of income by the due date under Section 139 of the Act, payment of Advance Tax *per se* cannot indicate the intention of an assessee to disclose his income.

40. If we were to hold that the payment of Advance Tax reflects the intention of the assessee to disclose its income, it could result in a situation where the mandatory obligation of filing a return for disclosure of income under the provisions of the Act, would not be necessary. It will be

open to an assessee to contend that payment of Advance Tax is tantamount to disclosure of income. Such a proposition would be contrary to the very purpose of filing of return, which ultimately leads to assessment of total income for the relevant assessment year. Any anomaly in the return entails serious consequences, which may not otherwise be attracted on estimation of income for the purpose of payment of Advance Tax. It would thus, be difficult to accept the plea that payment of Advance Tax is tantamount to the disclosure of income or that it indicates the intention of the assessee to disclose income.

41. In the instant case, after the search was conducted on 23rd February 2006, it was found that for the assessment year 1995-96, the respondent-assessee had not filed its return of income by the due date. It is only when block assessment proceedings were initiated by the assessing officer, that the assessee filed its return for the said assessment year on 11th July, 1996 under Section 158BC of the Act, showing its total income as Rs.7,02,768/-. The

assessee claimed, that since Advance Tax had been paid in three installments, it could not have been said that the income had not been disclosed or that there was no intention to disclose income. We have already held that the payment of Advance Tax, which is based upon estimated income, cannot tantamount to the disclosure of the total income, which must be declared in the return. In our opinion, the fact that the assessee had not filed its return of income by the due date, the Assessing Officer was correct in assuming that the assessee would not have disclosed its total income. For all these reasons, the decision of the High Court cannot be sustained.

42. Lastly, since C.A. No. 2580/2010 refers to a slightly different issue, we deem it fit to record our observations with respect to the same. In this appeal, the issue is whether tax deducted at source (and not payment of Advance Tax) amounts to the disclosure of income.

43. Section 190 of the Act states-

> **190** (1) Notwithstanding that the regular assessment in respect of any income is to be made

in a later assessment year, the tax on such income shall be payable by deduction [12][or collection] at source or by advance payment [13][or by payment under sub-section (1A) of section 192], as the case may be, in accordance with the provisions of this Chapter.

(2) Nothing in this section shall prejudice the charge of tax on such income under the provisions of sub-section (1) of section 4.

44. Since the tax to be deducted at source is also computed on the estimated income of an assessee for the relevant financial year, such deduction cannot result in the disclosure of the total income for the relevant assessment year. Subject to the monetary limit of the total income, every person is obligated to file his return of income even after tax is deducted at source. Hence, for the reasons stated in the preceding paragraphs, we are of the opinion that mere deduction of tax at source, also, does not amount to disclosure of income, nor does it indicate the intention to disclose income most definitely when the same is not disclosed in the returns filed for the concerned assessment year.

[12] Inserted by the Direct Tax Laws (Amendment) Act, 1989, w.r.e.f. 1-6-1988.
[13] Inserted by the Finance Act, 2002, w.e.f. 1-6-2002.

45. Consequently, we allow the appeals; set aside the impugned judgments and answer the question formulated by the High Court, extracted in para 6 (supra), in favour of the Revenue. The Revenue shall be entitled to costs, quantified at Rs.50,000/- in each set of appeals.

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(D.K. JAIN, J.)

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(H.L. DATTU, J.)

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(JAGDISH SINGH KHEHAR, J.)

NEW DELHI,
JANUARY 14, 2013.

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