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IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: "I" NEW DELHI

BEFORE SRI NV VASUDEVAN, JM  
AND SHRI K.G.BANSAL, AM

IT(SS)A No: 439/Del/2005  
Block Period from 1.4.86 to 13.2.97

Sh. Tahir Ram Moolchandani  
AD - 27B, Shalimar Bagh  
Delhi

Vs. ACIT, Circle 19  
New Delhi

(Appellant)

(Respondent)

Appellant by: Shri Ved Jain & Ms. Rano Jain, C.As  
Respondent by: Sh. Bhasker Goswami, Sr.D.R.

**ORDER**

**PER NV VASUDEVAN, JUDICIAL MEMBER**

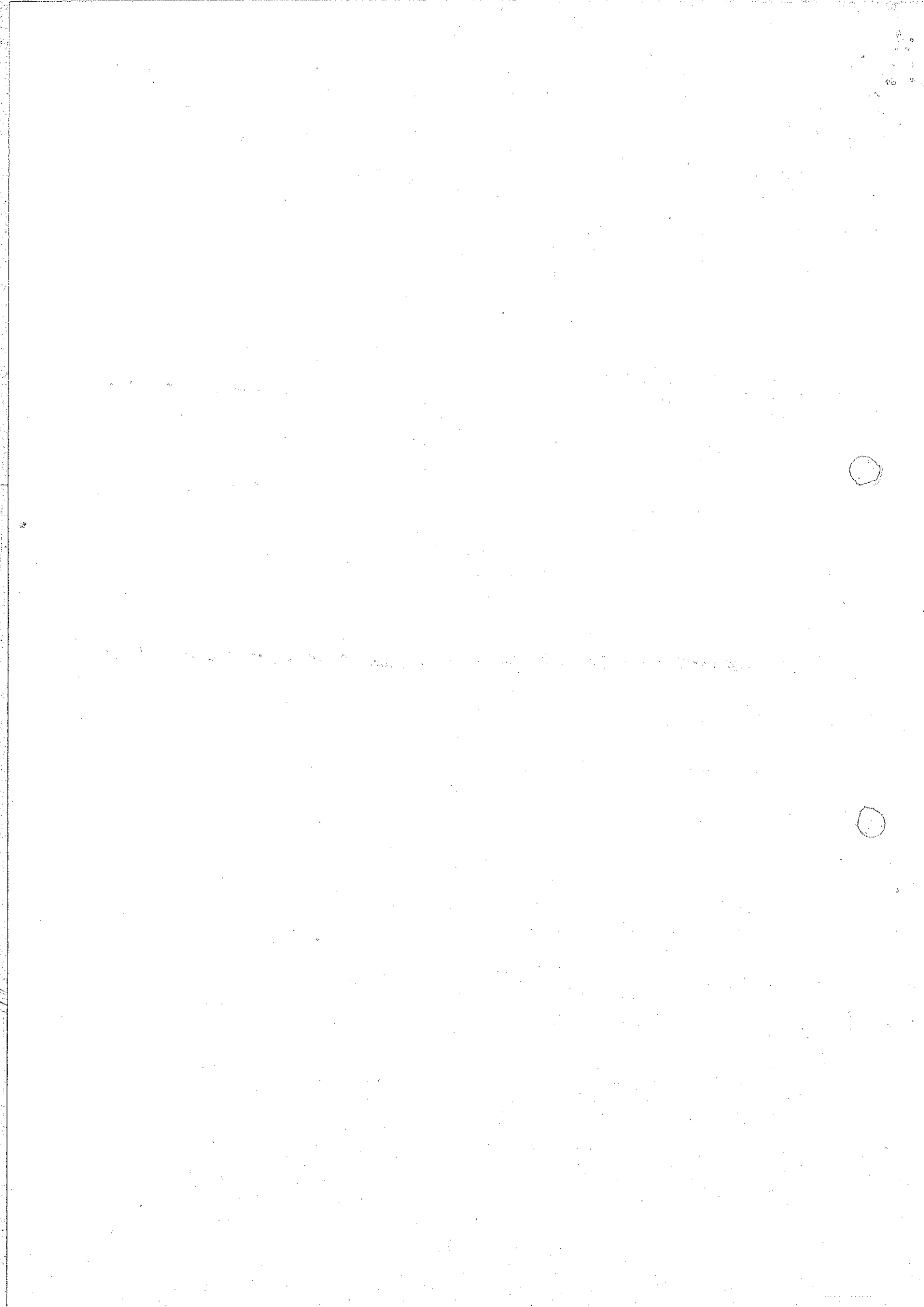
This is an appeal by the assessee against the Order dt.  
18.10.2005 of CIT(A)-XXII, New Delhi relating to the block period  
1.4.86 to 13.2.97.

2. Ground nos. 1 to 3 read as under

*"1. On the facts and circumstances of the case, the order passed by the CIT(A) is bad, both in the eye of law and on facts.*

*2. On the facts and circumstances of the case, the proceedings initiated u/s 158 BD of the Act against the appellant much after the framing of block assessment*

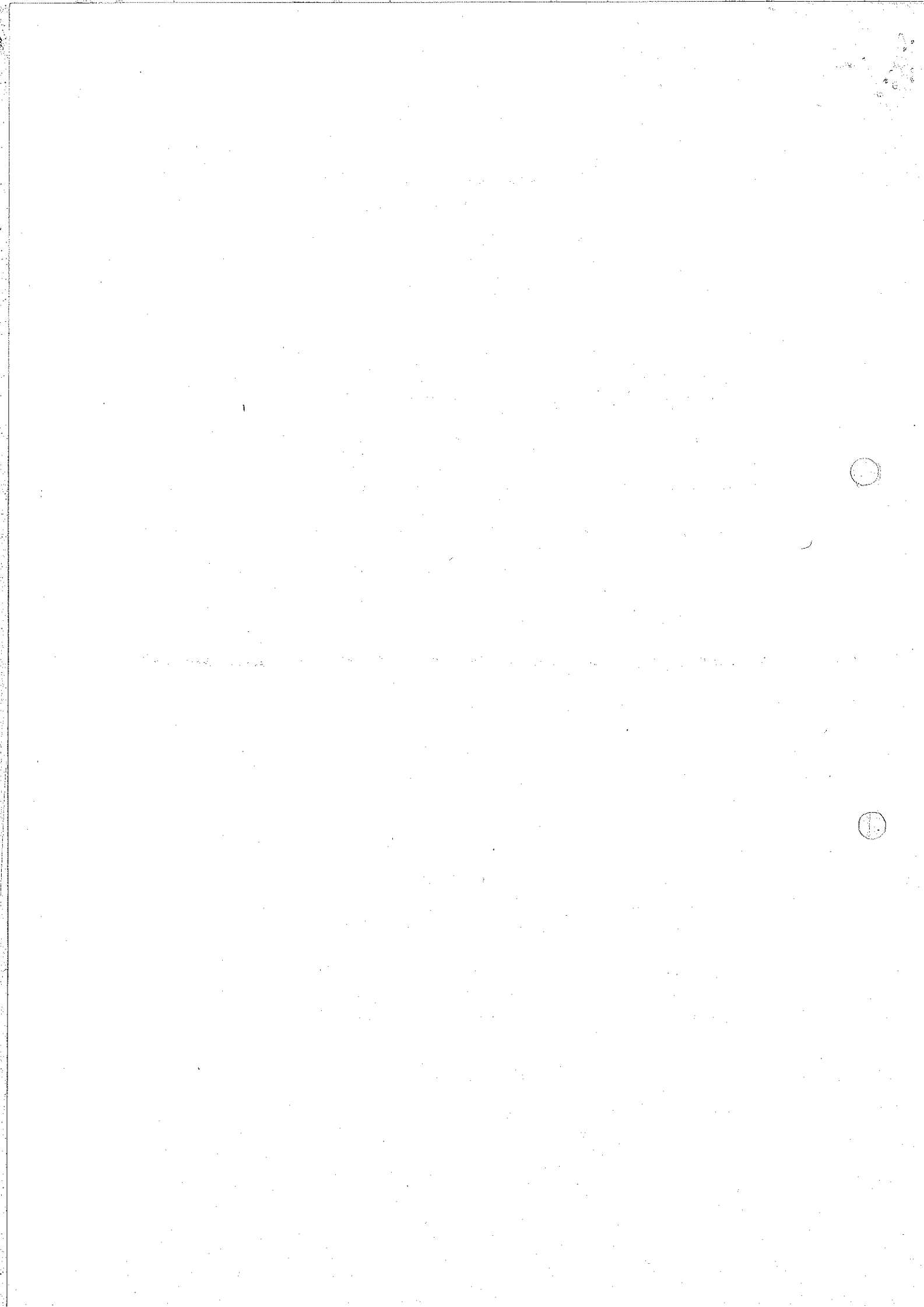




*of the searched person is bad in the eye of law and liable to be quashed.*

*3. On the facts and circumstances of the case, there was no justification for initiating the proceedings u/s 158 BD of the Act and as such the assessment framed thereof is null and void and liable to be declared so."*

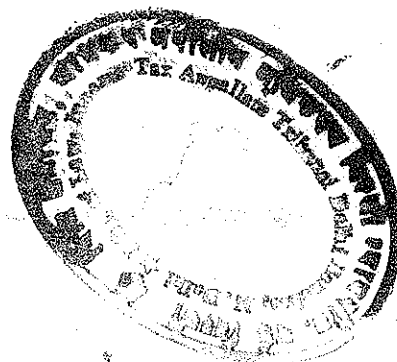
3. The facts and circumstances necessary for adjudication of the aforesaid grounds are as follows. The assessee is an individual engaged in the business of commission agent of fruits. The assessee along with his sons acts as a commission agent for Mangoes grown in Vijayawada during the Mango season starting in the middle of March till the end of June. Search and Seizure operation u/s 132(1) of the I.T. Act, 1961 was carried out by the investigation Wing of the Income Tax department, Vijayawada in the case of Shri Shaik Johny Saheb on 13.2.1997 and was concluded on 21.2.1997 in his premises at Door no. 18-4-28, Kedareshwarpet, Vijayawada. The Block Assessment u/s 158 BC for the Block period was completed in the case of Shaik Johny Saheb on 31.3.99. On 24.12.99 the AO assessing Mr. Shaik Johny Saheb addressed a letter to the ACIT, Circle 19(1), New Delhi forwarding certain seized material found in the course of search of Shaik Johnny Saheb and pertaining to Sh. Tahil Ram

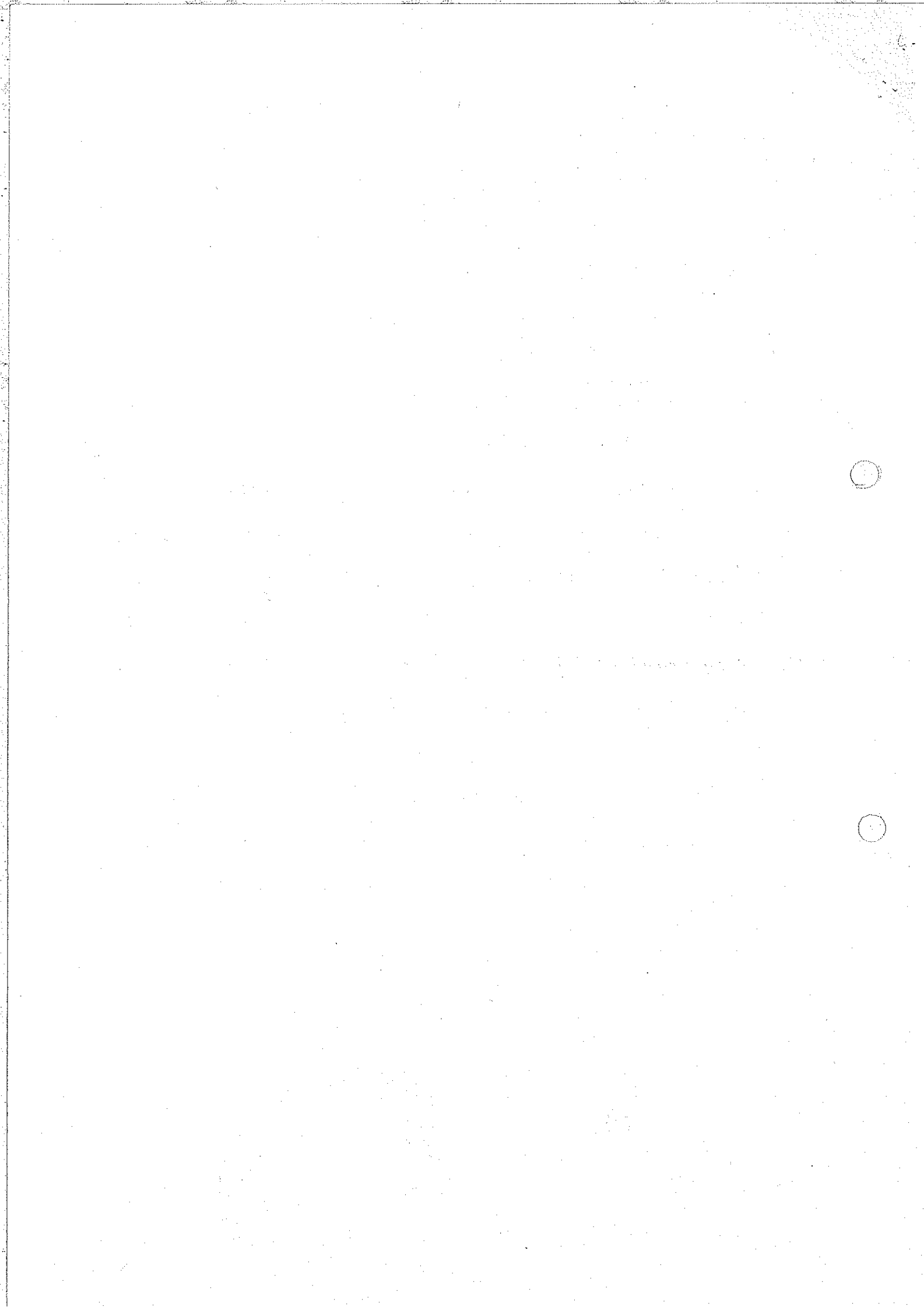


Moolchandani (the Assessee herein) and his group for necessary action. On 4.12.2001, the AO of the assessee viz., ACIT, Circle 19(1), New Delhi issued a notice u/s 158 BD to the assessee calling upon the assessee to file a return of income for the Block period. It is in the aforesaid facts and circumstances that ground nos. 1 to 3 raised by the assessee has to be adjudicated.

4. U/s 158 BD of the Act, if the AO of the person who was subjected to a search is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132, then he has to handover to the AO having jurisdiction over such other person and that AO shall proceed u/s 158 BC against such other person.

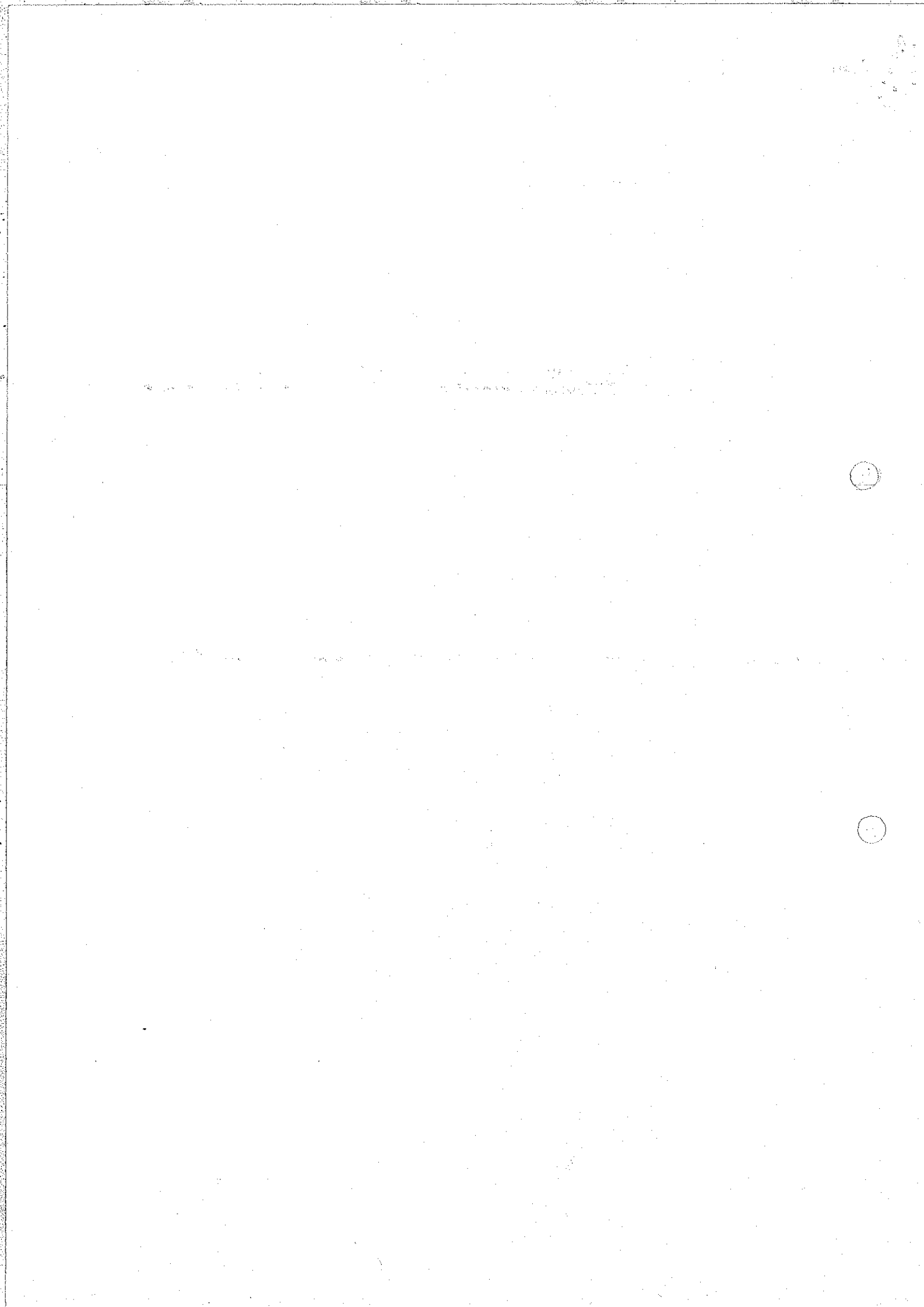
5. U/s 158 BE (2) the time limit for completion of block assessment in the case of the other person referred to <sup>above</sup> is 2 years from the end of the month in which the notice u/s 158BD is served on such other person.





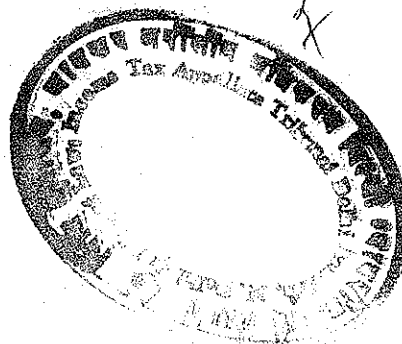
6. The question that has been raised by the assessee before us is as to whether the AO of the other person can issue notice u/s 158 BD at any time i.e. well beyond a reasonable time from the date on which he receives intimation from the AO of the person who was subjected to a search u/s 132 of the Act. In the present case the AO of the assessee has issued notice u/s 158 BD to the assessee on 4.12.2001 i.e. after a period of 23 months and 10 days from the time when he received intimation from the AO of the person who was subjected to a search. Similar question had arisen for consideration before the Delhi Bench of the Tribunal in the case of R.S.Bansal vs ACIT IT(SS)A no. 12/Del/07 and the Tribunal held as follows.

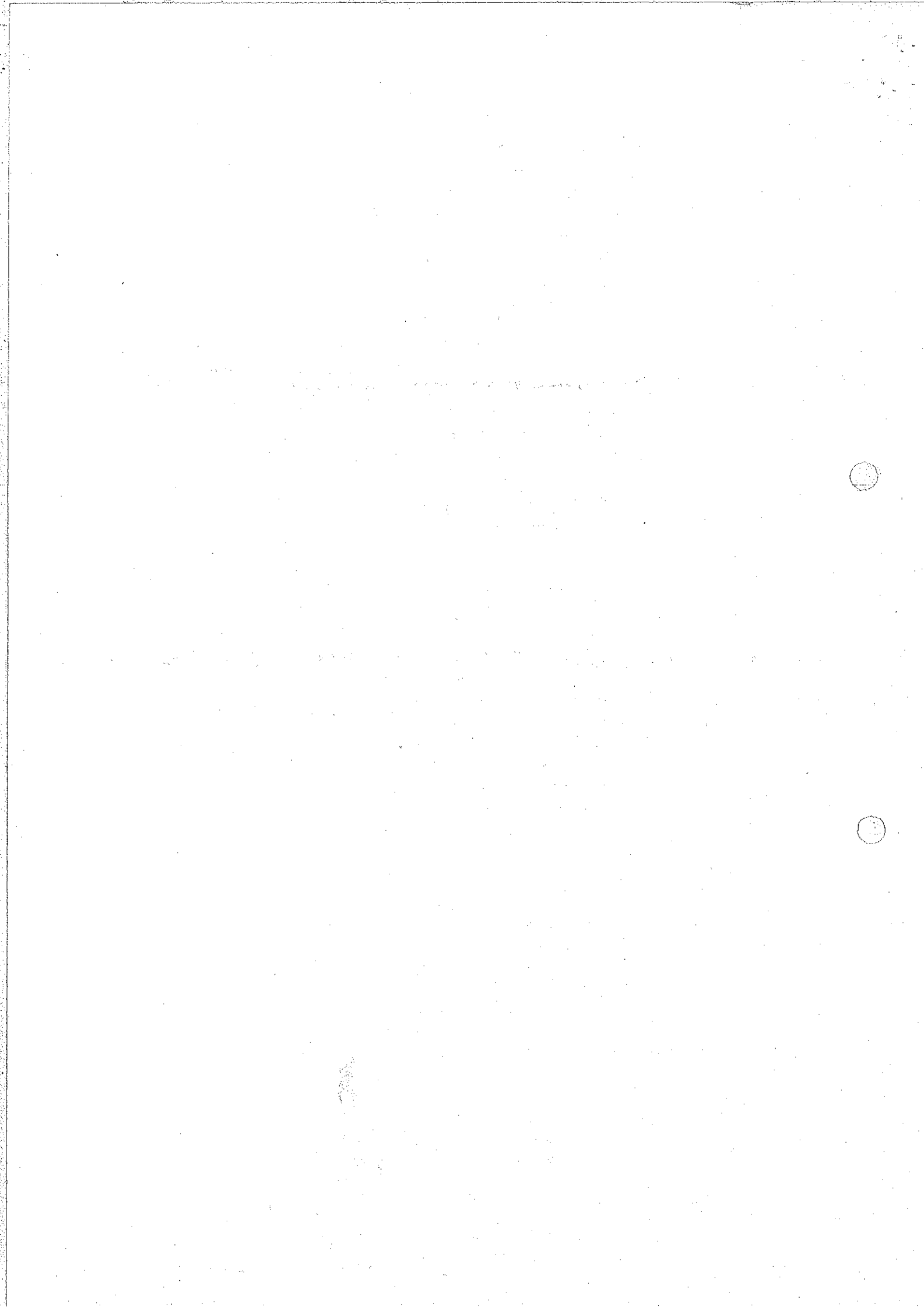
*"The next question to be addressed is whether the notice u/s 158 BD requires to be issued within a reasonable time and if it is not so issued, whether the assessment made pursuant to the notice is liable to be set aside on that ground. The contention of the ld. representative for the assessee, it may be recalled, was that the notice should have been issued at least within a reasonable time after the completion of the assessment of the searched person. In the present case, the block assessment of Manoj Aggarwal was completed on 29.8.2002 but the notice u/s 158 BD was issued only on 22.3.2004, that is about 19 months later. The further contention based on the judgment of the Gujarat High Court in Khandubhai Vasanti Desai's case (supra) was that the notice should be issued within 15 days from the date of completion of*





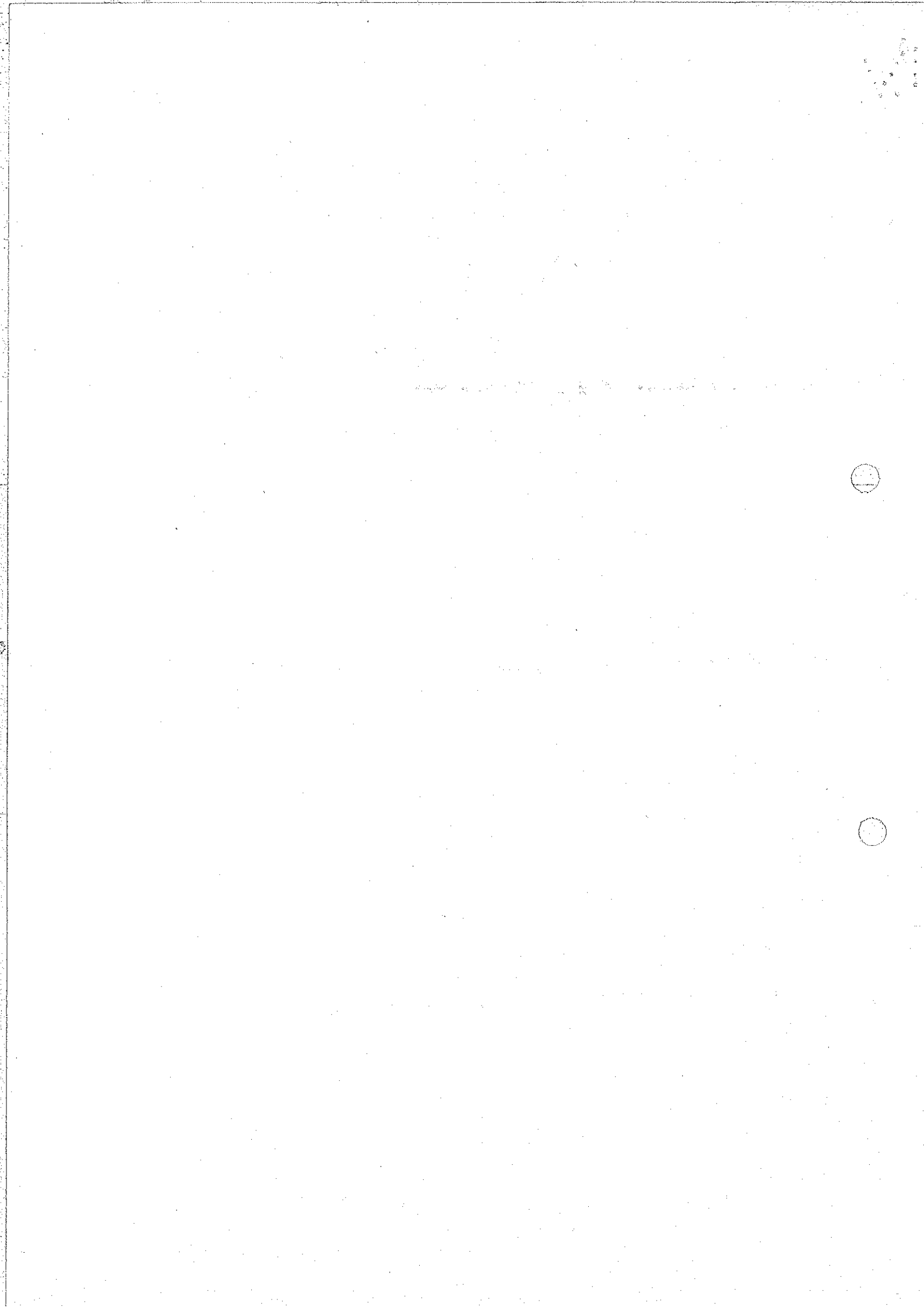
the block assessment in the case of the searched person or at any rate within 60 days from that date, the sanctity behind this period being the provisions of s.132(9A). In Khandubhai's case, the Gujarat High Court referred to the time limit of 15 days having regard to the fact that u/s 132(9A) as it stood at the relevant time the authorised officer who conducted the search against a person has to hand over the books of account, documents and assets seized to the ITO having jurisdiction over the person to whom the books of accounts, documents and assets seized relate, within 15 days of the seizure and thereafter the AO is required to serve notice on such person to whom the books of account etc. relate requiring him to furnish a block return u/s 158 BC. The Gujarat High Court was concerned with the constitutional validity of s.158 BD of the Act and one of the contentions was expressed in the form of an apprehension that a notice u/s 158 BD can be issued by the AO in the case of the other person (other than the person who was searched) at any time. While repelling this contention and putting at rest the apprehension saying that it is ill founded, the Gujarat High Court held that the notice u/s 158 BD has to be issued within a reasonable period from the date of the search itself and it was pointed out, taking cue from s.132 (9A); that it should be done within 15 days of the seizure. The obvious implication is that the satisfaction that the income reflected in the seized material belongs to some person other than the person searched should also be reached within the aforesaid period of 15 days so that the same can be transmitted along with the books of account, documents, etc. seized during the search. The period of 15 days has been amended to 60 days by the Finance Act, 2002 w.e.f. 1<sup>st</sup> June, 2002. It is noteworthy that the amendment had come into force even during the pendency of the block assessment proceedings in the case of Manjo Aggarwal. However, even after the completion of the block





assessment of Manoj Aggarwal on 29.8.2002, the AO of the assessee took about 19 months to issue the notice u/s 158 BD. The period of 60 days mentioned in s. 132(9A) is actually for handing over the books of account etc. to the AO having jurisdiction over the person who is a person other than the person searched and it actually starts from the date of search. The period was highlighted by the Gujarat High Court only to emphasis the speed and swiftness within which the proceedings should be taken against such persons. That object does not appear to have been achieved in the present case in view of the unreasonable delay in issuing the notice u/s 158 BD not only after the date of search but also after the date of completion of the block assessment of Manoj Aggarwal. Even if the period of 60 days is to be reckoned from 15.7.2003, the date on which the AO of Manoj Aggarwal wrote a letter to the AO of Radhey Shyam Bansal, there is a delay of almost 8 months before issue of the notice u/s 158 BD. In such circumstances, we hold that the notice having been issued well beyond a reasonable period of time, the assessment made on the assessee is bad in law."

7. As can be seen from the above order of the Tribunal, a period of 19 months was considered as not reasonable time by the Tribunal in the aforesaid case for issue of notice u/s 158 BD from the date of receipt of information by the AO. The Tribunal had placed reliance on the decision of the Hon'ble Gujarat High Court in the case of Khandubhai Vasanji Desai and others vs DCIT 236 ITR 73 (Gujarat). In our view the facts of the present case stands on the same footing as that of the case decided by the Tribunal



referred to above. Respectfully following the order of the Tribunal we hold that the order of Block Assessment deserves to be annulled. We hold accordingly. In view of the above, we deem it unnecessary to deal with the other grounds of appeal on merits.

8. In the result, appeal by the assessee is allowed.

Order pronounced in the Open Court on 16.11.07

*Sd/-*  
K.G. BANSAL  
(RC SHARMA)  
ACCOUNTANT MEMBER

*Sd/-*  
(NV VASUDEVAN)  
JUDICIAL MEMBER

Dated: 16.11.2007

\*manga

Copy of the Order forwarded to:

- 1. Appellant
- 2. Respondent
- 3. CIT
- 4. CIT(A)
- 5. DR
- 6. Guard File

*By Hand*

By Order

Assistant Registrar

अधीक्षक न्यायाधीश

Dy. Registrar

Income Tax Appellate Tribunal

विशेषी अी, नई दिल्ली

Delhi Benches, New Delhi



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