



15 & 16

% 02.12.2010

Present: Mr. Rashmi Chopra, Advocate for the appellant.
Mr. S. Krishnan, Advocate for the respondent.

+ITA No.1134/2010 & ITA No. 1149/2010

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(Common Order)

Search and seizure operation was conducted at the premises of respondent/assessee on 21.07.2004. As a result thereof, notice under Section 158BC of the Act was issued to the respondent for the block period 01.04.1996 to 03.03.2003. Pursuant thereto, the assessee filed its return of income at 'NIL' undisclosed income. The Assessing Officer, however, made additions to the tune of Rs. 74,95,740/- on the ground that these payments were made against purported purchases from one M/s R.M. Traders, but the investigations revealed that no party in the name of M/s R.M. Traders existed at the given address. The Assessing Officer had issued summons to said M/s M/s R.M. Traders at the given address which had been received back with the report that no such firm exists at that address. The Assessing Officer had also taken note of the fact that during the course of search, enquiry was made by the Investigation Wing which had reported that no party in the name of M/s R.M. Traders existed at the given address.

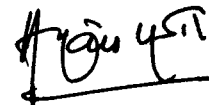


The CIT(A) however deleted the aforesaid additions after recording a finding of fact that against the purchases made by the assessee from M/s R.M. Traders, payments were made in cheques. The assessee had also produced bank statement of M/s R.M. Traders, as per which all the cheques issued by the assessee in favour of M/s R.M. Traders were duly deposited in the said bank account. A certificate of the bankers of M/s R.M. Traders was also produced in this behalf. On the basis of these documents, the CIT(Appeals) recorded a finding of fact that M/s R.M. Traders was not a bogus/non-existing party. It may be noted that M/s R.M. Traders was stated to a sole proprietorship concern of one Sh. Rajender Singh. According to CIT(Appeals), if he was not available at the given address at the time when enquiries were made by the investigation wing or when the summons were issued, that would not mean that during the relevant period when the assessee was having trading relations with the said firm, the said firm was not non-existing. This conclusion of the CIT(A) was on the basis of two remand reports which were called for by the CIT(A) from the assessing officer. The ITAT has sustained the aforesaid order of CIT(A).

This, being pure finding of facts about the existence of M/s R.M. Traders holding that existence and genuineness of said firm stands established, we do not find any question of law arises for consideration.



Learned counsel for the appellant has submitted that the Tribunal has also given additional grounds to quash the proceedings namely the report of the investigation wing was not the material seized during the investigation and therefore, on that basis notice under Section 158BC of the Act was could not be issued. Her submission was that these enquiries were made during the course of search and therefore, the conclusion of the Tribunal on this score is entirely incorrect. It is not necessary to deal with this issue as in any case, on merits, it is found that M/s R.M. Traders was not a bogus party but genuine party, which had trade dealings with the assessee and the additions made by the assessing officer is rightly deleted on this ground. Leaving this question open, the appeals are dismissed.


A.K. SIKRI, J.


SURESH KAIT, J.

DECEMBER 2, 2010/'rs'