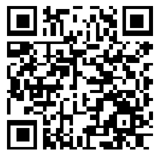


* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 21st August, 2012
% *Date of Decision : 4th October, 2012*

+ **ITA NO. 1132/2007**

COMMISSIONER OF INCOME TAX ..... Appellant
Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel with Ms. Gayatri Verma, Advocate.

versus

SONAL CONSTRUCTIONS ..... Respondent
Through: Mr. P. N. Monga with Mr. Manu Monga, Advocates.

+ **ITA NO.583/2010**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Sanjeev Sabharwal, Sr. Standing Counsel with Mr. Puneet Gupta, Jr. Standing Counsel with Ms. Gayatri Verma, Advocate.

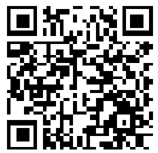
Versus

URMILA LODHI ......Respondent
Through: Mr. R. K. Sharma, Advocate.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J.:

These two appeals have been filed by the Revenue. Since they are connected and were also heard together, they are disposed of by this common judgment.



2. We may first take up ITA No.1132/2007 for disposal. The assessee is a partnership firm. There was a search of its premises under Section 132 of the Income Tax Act, 1961 ('Act', for short), on 17.12.1999 and on the basis of the materials found and seized, notice under Section 158 BC of the Act was issued on 05.07.2001 calling upon the assessee to furnish a return of income in the prescribed form, for the block period from 01.04.1989 to 17.12.1999. The assessee filed the block return on 27.08.2001. Thereafter several hearings took place and eventually by block assessment order dated 31.12.2001, the assessee's total undisclosed income was computed at ₹3,69,27,587/-. This consisted of several additions as undisclosed income as follows:-

S.No.	Details of additions as per annexures	Amount	Asstt. Year
1	As per Para 1 of annexure	8,269,600	94-95
2	As per Para 2 "	18,213,900	96-97
3	As per Para 3 "	4,335,737	97-98
4	As per Para 4 "	6,108,350	97-98
	Total	36,927,587	

3. The assessment order itself does not contain the break-up or other details of the additions and these are all appended to the assessment order as annexure. The assessee filed an appeal to the CIT (Appeals) who restricted the addition to ₹2,67,87,137/- on the basis that this amount represented the peak investment made by the assessee in different construction projects undertaken by it. The benefit of telescoping was given to the assessee, which resulted in a relief of ₹1,01,39,950/-.

4. The assessee and the Revenue filed cross appeals to the Income Tax Tribunal ('Tribunal', for short) and by order dated 2.3.2007, the Tribunal allowed the appeal of the assessee and dismissed the appeal of the department, with the result that the entire addition of ₹3,69,27,587/- stood. It is the correctness of the order of the Tribunal that is called in question in the appeal by the Revenue, which

was admitted on 5.3.2008 and the following substantial question of law was framed:-

> "*Whether the Income Tax Appellate Tribunal was correct in law in deleting the addition of ₹3,69,27,587/- made by the Assessing Officer on account of undisclosed income in a block period?*"

5. We have examined the facts and the rival contentions. The Revenue argues that the documents seized during the search disclosed several investments by the firm in properties which were not fully disclosed to the Revenue; the profits from these properties were also not fully disclosed, according to the Revenue. The general basis adopted by the Assessing Officer, as per the annexure to the assessment order was to arrive at the undisclosed income in the following manner. The sale consideration was reduced by the cost of the plot and the construction cost to arrive at the actual profit. In doing so, the sale consideration was taken as per the seized material, which was reduced by the consideration declared in the Income Tax returns, so as to arrive at the undisclosed consideration. From this figure, supervision charges of 10% was reduced. The balance of undisclosed investment and profit was proportionately worked out as per the shares of the partners as specified in the partnership deeds. In this way, the undisclosed income was arrived at in respect of 20 properties, the details of which are given in the annexure to the assessment order.

6. Before the CIT (Appeals), several objections to the block assessment order appear to have been taken by the assessee, including the preliminary objection that the assessment order was made beyond the period of limitation, that the search under Section 132 was itself invalid, and so on and so forth. These objections were rejected by the CIT (Appeals) and those issues have become final. An objection to the effect that Section 158 BC was wrongly invoked was also dealt with by the CIT (Appeals) who rejected the same. As regards the merits of the additions of the investment in and profits from various properties and projects, the CIT (Appeals)

dealt with each of them in some detail. The submissions were forwarded by him to the Assessing Officer for furnishing a remand report. When the remand report was filed, the assessee too filed a rejoinder. The sum and substance of the assessee's objections were that there was no independent evidence or material on the basis of which additions could be made in respect of each of the properties. It was submitted further that the Assessing Officer had failed to appreciate the effect of all the documents found during the search. According to the assessee, the undisclosed income was computed by the Assessing Officer by merely looking into the documents and the entries therein on selective basis and by ignoring those entries which were in favour of the assessee. It was thus contended that relevant material which was gathered during the search itself was ignored, which vitiated the entire block assessment order.

7. This submission was considered by the CIT (Appeals) and dealt with in the following manner by him: -

> "*7.10 I have examined the reply of the appellant and submissions of the AO and facts of the case carefully. I find that the additions have been made by the AO on the basis of various documents which were seized from the resident and premises of the appellant firm. Therefore, these are important documents which have been written by the partner in his own hand writing and all the entries regarding the various properties have been written clearly indicating the various properties. As these documents have been written by the partner in his own hand writing and which have been seized from the resident of the partner which depict true profit and investments which were not hitherto disclosed to the Department. Therefore, any extra investment or extra profit which was not shown to the department is liable to be taxed as undisclosed income within the meaning of Section 158B(b) of the I.T. Act, 1961.*
>
> *7.11 The appellant has submitted that the submissions made by it were not incorporated in the assessment order which clearly shows haste on the part of the AO in passing the block assessment order. Nevertheless, the appellant was given opportunity by the AO and he was also given various opportunities at the appellate stage to explain the nature of the transactions which have been recorded in the seized papers found at the time of search. The assessment has been framed on the basis of documents which are related to the*

> *properties and which disclose the extra profit and investment. The onus was on the appellant to explain the nature and source of investment recorded on the various seized documents which he failed to do so. The undisclosed investment and undisclosed profit are clearly mentioned in various documents mentioned by the AO in the order. On the basis of these documents, the AO found out that there was an extra profit and undisclosed investment in respect of aforesaid properties. In view of the these facts and circumstances, and the fact that the appellant has failed to offer any satisfactory explanation in respect of these unexplained investment/profit, the AO was justified in making the additions of ₹82,69,600/-, ₹1,82,13,900/- ₹43,35,237/- and ₹61,08,358/- which are hereby confirmed. The appellant fails in respect of grounds of appeal nos.5 to 8.*"

8. The assessee had argued before the CIT (Appeals) that there was double addition inasmuch as both the undisclosed income and the investment made out of such income were both brought to tax which was contrary to the basic principles of assessment. It was contended, without prejudice, that the undisclosed income and the undisclosed investment were to be set off against each other, thus giving benefit of telescoping to the assessee. It was also submitted that by applying the rule of telescoping the Assessing Officer ought to have assessed only the peak amount of undisclosed income. The assessee even calculated the peak profit/investment, again without prejudice, at ₹2,11,40,737/-. This aspect of the matter was also sent to the Assessing Officer for his response with a direction to him to comment on the accuracy of the peak amount as worked out by the assessee. The Assessing Officer in his report dated 17.7.2003 stated that the plea of telescoping or the peak theory was put forth by the assessee for the first time before the CIT (Appeals) and it would amount to a fresh piece of evidence which should not be admitted. The assessee disputed the comment of the Assessing Officer by pointing out to the CIT (Appeals) that it is only on the basis of the materials brought on record that the alternative plea of telescoping or peak investment was being projected before the CIT (Appeals) which was not a fresh piece of evidence, but was only an alternative plea on the basis of materials already on record.

9. The CIT (Appeals) rejected the objection of the Assessing Officer that the plea based on the peak theory was an additional evidence. According to him, there was no additional evidence involved and it was only an alternative plea of the assessee on the basis of the very same materials which were already on record; no new fact or evidence was sought to be introduced. He noticed that the assessee had worked out the peak amount, even as per the assessment order, at ₹1,73,34,387/- and thus the excess addition amounted to ₹1,95,92,700/-. He referred to the well settled proposition laid down by the Andhra Pradesh High Court in *Lagadapati Subba Ramaiah v. CIT*, (1956) 30 ITR 593 and by the Madras High Court in *S. Kupuswami Mudaliar v. CIT***,** (1964) 51 ITR 757 as also the judgment of the Supreme Court in *CIT v. S. Nelliappan*, (1967) 66 ITR 722 and held that if there was a connection between the profits withheld from the books and the amounts entered as cash credits, it is possible to hold that the former constituted the source for the latter and if such a finding is entered on the basis of the facts, the Court will be reluctant to disturb the finding. Considering the legal position laid down in the aforesaid decisions, the CIT (Appeals) accepted the alternative plea based on the peak theory and gave the benefit of telescopic adjustment to the assessee. He accordingly held that the undisclosed profits would be available to the assessee for making the unexplained investment. He calculated the peak profit/investment at ₹2,67,87,137/-, on which addition was sustained and granted a relief of ₹1,01,39,950/-. These calculations are given in Paragraph 9.6 of his order.

10. Both the assessee and the Revenue preferred cross appeals before the Tribunal. A perusal of the order of the Tribunal shows that it has examined the case in considerable detail and has referred to the various seized documents, the manner in which the entries were made therein, the statements of the partners of the assessee firm etc. and ultimately recorded its findings in Paragraph 22 of its order, which can be summarized as follows:-

a) The documents seized during the search (Annexure-A1, pages 21 and 29) are loose papers and not books of accounts. In these

documents, the break-up of all the alleged payments made or the alleged sale proceeds received are not recorded.

b) From the seized documents it cannot be said that the figures stated therein were the actual investment made by the assessee and the actual sale proceeds received by the assessee.

c) No corroborative evidence of the writings or notings found in the loose papers was found during the search.

d) There was no doubt that the seized documents did contain certain figures pertaining to the four housing projects undertaken by the assessee in the course of its business.

e) The Revenue has merely relied upon the correlation between the projects executed by the assessee and the difference in the cost of land and investment in construction and the price at which the properties were sold as revealed in the seized document on the one hand and as recorded in the books of accounts of the assessee, on the other. This correlation alone is not sufficient to justify the impugned addition.

11. For the conclusion that the correlation established by the Revenue between the seized material and the books of accounts alone was not sufficient to justify the additions, the Tribunal gave the following reasons:-

i) Firstly, the documents in question were seized from the residential premises of one of the partners (V.K. Narang) of the assessee firm. When his statement was recorded at the time of the search, he disowned any knowledge about the seized documents.

ii) Though the partner was examined at the time of the search, he was not examined during the assessment proceedings with reference to the documents.

iii) The other partner, S.S. Sodhi, who had admitted in the statement recorded from him at the time of the search that pages 21 and 29 of Annexure-A1 were in the handwriting of V.K. Narang, was also not examined in the course of the assessment proceedings of the assessee – firm. These are fatal omissions, notwithstanding that the recovery of documents pertaining to the firm from the possession of the partner is a vital piece of evidence against the firm.

iv) While making the additions, the Assessing Officer had merely relied upon the presumption about the genuineness and the truth of the contents of the documents found in the course of the search as provided in Section 132(4A) of the Act. This is not permissible. As held by the Supreme Court in the case of *P.R. Metrani v. CIT*, 287 ITR 209, the presumption cannot be used in the assessment proceedings and it was limited to the search proceedings only. Even the general rule in law that it is for the person from whose possession the document is recovered to explain its contents cannot aid the department because Narang, from whose possession the document was recovered, disowned any knowledge about its contents and if the Assessing Officer wanted to contradict his statement, the best occasion to do so was to call upon him in the course of the assessment proceedings to explain the contents of the document. It was not known as to why the Assessing Officer did not think fit to examine Narang during the assessment proceedings.

v) The non-examination of the other partner S.S. Sodhi in the course of the assessment proceedings was equally fatal to the case of the Revenue.

12. For the above reasons, the Tribunal held that the seized documents alone were not sufficient to draw any definite conclusion regarding the existence of undisclosed income. It was therefore, not possible, according to the Tribunal to draw any inference on the basis of the seized documents.

13. In addition to the above reasoning the Tribunal also opined that the omission on the part of the Assessing Officer to get the property valued by the Departmental Valuation Officer to find out the real investment and the failure to examine the purchasers of the property to find out if they had paid any consideration over and above what was recorded by the assessee in its books of accounts etc., were fatal to the merits of the Revenue's stand in the block assessment proceedings. In this view of the matter, the Tribunal cancelled the entire addition of ₹3,69,27,587/-.

14. On a careful consideration of the rival contentions and on a fair reading of the order of the Tribunal, we are of the view that its order cannot be sustained. While cancelling the entire addition of ₹3,69,27,587/- the Tribunal found fault with the Assessing Officer for not carrying out certain procedural steps which according to the Tribunal were vital for validity of the additions. Further, the Tribunal has also held that the presumption about the genuineness and truth of the contents of the documents seized, as provided in Section 132(4A), was not available to the Assessing Officer in the assessment proceedings. The judgment of the Supreme Court in the case of *P.R. Metrani* (*supra),* no doubt held that the presumption was not available to the Assessing Officer while completing the assessment and that it was limited to the prior proceedings in connection with the search. However, there was a later statutory amendment; Section 292C was introduced by the Finance Act, 2007 with retrospective effect from 1.10.1975. Sub-section (1), which is relevant for our purpose, reads as follows:-

> "***292C. Presumption as to assets, books of account, etc.-*** *(1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under*

> *section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed—*
>
> > *(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*
> >
> > *(ii) that the contents of such books of account and other documents are true; and*
> >
> > *(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.*"

15. The phrase "in any proceeding under this Act" are important. They permit the Assessing Officer to invoke the presumption that the seized documents belonged to the person searched, that the contents of the seized documents/books of accounts are true and that the signature of every other part of the books of accounts or documents which purports to be in the handwriting of any particular person are in that person's handwriting etc., even in the assessment proceedings. After the insertion of the section, the judgment of the Supreme Court cited above can no longer be called in aid to hold that the presumption is not available to the Assessing Officer in making the assessment.

16. The Tribunal has reasoned that the seized papers are loose papers and not books of accounts. We are unable to appreciate the significance or *sequitur* of the statement made by the Tribunal. It is not necessary that the seized documents should be in the form of proper books of accounts so that they can be relied upon for the purpose of making additions. They could be in any form, including loose papers on which notings or scribblings have been made. While commenting on the

seized documents, the Tribunal contradicted itself by first observing that it cannot be stated that the figures in the papers were the actual investment or the actual sale proceeds and thereafter, in the very next sentence, stating that the seized documents "did give out certain figures regarding the four projects that the assessee had undertaken in the course of his business." If the seized papers did in fact contain figures relating to the four projects which were admittedly undertaken by the assessee, we do not see how the Tribunal could hold that the Revenue could not rely on the correlation between the position shown by the seized documents and what has been recorded by the assessee in its books of account. The Tribunal does not dispute that there existed a correlation; but it yet held that the correlation alone was not sufficient to make the impugned additions. This observation was sought to be supported by some reasons. We have already summarized them. An examination of those reasons shows that they are far from convincing. The Tribunal held on the basis of the judgment of the Supreme Court in the case of *P.R. Metrani* (*supra)* that the presumption about the truth and genuineness of the contents of the seized documents and its handwriting was not available to the Assessing Officer in the course of the assessment proceedings. This position has now been nullified by the retrospective amendment which we have already referred to. Even otherwise, we do not find any merit in the conclusion of the Tribunal that the correlation between the seized material and the books of account, on which reliance was placed by the Assessing Officer, was not sufficient for the purpose of making the additions. V.K. Narang, from whose possession the documents were recovered, was a partner of the assessee – firm and the Tribunal itself observes in paragraph 22 of its order that "*it is no doubt true that recovery of document pertaining to the firm from the possession of the partner of a firm is a vital piece of evidence against the firm*". Notwithstanding this observation, the Tribunal proceeded to attach weight to the denial by Narang about any knowledge of the seized documents. It is strange that the Tribunal accepted Narang's denial as credible, observing at the same time that recovery of documents pertaining to the firm from the possession of the partner of the firm is a vital piece of evidence

against the firm. A firm is merely a compendious name given to the partners collectively and when we say that the firm is carrying on the business, what we really mean is that the partners are carrying on the business. The firm and the partners are one and the firm does not have a separate or a distinct personality or existence apart from its partners, except for certain very limited purposes, such as an assessment to income tax or for the purposes of Order XXX Rule 1 of the Code of Civil Procedure. Similarly, the Tribunal has found fault with the Assessing Officer for not examining the other partner S.S. Sodhi in the course of the assessment proceedings of the firm, though he was examined by the investigating authorities with reference to the seized documents. Sodhi had even stated that the documents were in the handwriting of the other partner Narang. In any case, we are unable to approve the approach of the Tribunal to the extent that it has been held by it that the statements made during the search are of no use in the assessment proceedings. What can at best be stated is that the presumption under Section 132(4A) was not available to the Assessing Officer on the basis of the seized documents, but merely because the partners were not examined by the Assessing Officer at the time of the assessment, it cannot be stated that no reliance can be placed on them for the purpose of making additions.

17. As to the corroboration sought by the Tribunal in support of the seized documents, it is not an inviolable rule applicable to all situations and to all cases that every seized document should be corroborated before any addition can be made based on it. If calculations and computations have been made in the seized documents in such a manner that its probative value and genuineness cannot be doubted, nothing prevents the Assessing Officer from making additions on the basis of such documents despite the absence of any corroboration. It must be remembered that in such cases it is difficult to obtain corroboration, particularly of the type contemplated by the Tribunal. The Tribunal observed that corroboration could have come in the form of a valuation of the property by the Departmental Valuation Officer or from the purchasers of the property who could have said that they did pay consideration over and above what has been recorded by the assessee

in the books of accounts. The valuation of properties can at best be only an estimate. It may not be practical to expect the purchasers of the property to depose against the seller since both of them are party to the same transaction in which on-money is allegedly involved. When documents which are not meant for the eyes of the Revenue are unearthed after undertaking an exercise which involves an intrusion into the privacy of the assessee, it is not permissible to discount the veracity, genuineness and truthfulness of the contents therein for the flimsiest of reasons. It would be proper to insist upon strong evidence in rebuttal of the contents of the documents, particularly after the introduction of Section 292C with retrospective effect from 1.10.1975.

18. For the above reasons, we are unable to approve the approach adopted by the Tribunal. If it had found that there were procedural lapses on the part of the Assessing Officer while making the assessment, the proper course for it would be to not to invalidate the assessment or delete the additions but to remand the assessment to the Assessing Officer so that the procedural lapses which had prejudicially affected the assessee can be set right and the assessment be completed after duly complying with the rules of natural justice. Reference may be made to the recent decision of the Supreme Court in the case of *ITO v. Pirai Choodi*, (2011) 334 ITR 262.

19. Counsel for the assessee strongly objected to the remand, though he would contend that neither Narang nor Sodhi was examined in the course of the assessment proceedings and asked to explain the seized documents and that no cross-examination of Sodhi was afforded to Narang. He would also submit that the findings recorded by the Tribunal are pure findings of fact and it is not open to this Court to interfere with them lightly. We do agree that this Court has limited jurisdiction to interfere with findings of fact recorded by the Tribunal. Interference would be justified only if such findings are irrational, perverse or unreasonable. It would also be justified if a finding of fact is arrived at by the Tribunal without any evidence. It is equally true that while examining the evidence, the Tribunal is not

expected to put on blinkers; wherever necessary, it should scratch the surface, probe deeper and draw the appropriate inferences which accord with the normal course of human conduct and probabilities. It is again true that merely because the appellate Court would have reached a different conclusion on the same evidence, interference with the findings of the fact of the lower Court would not be justified. Even if we approach the impugned order of the Tribunal keeping in mind the above well settled principles, we are afraid we cannot resist the need to remand the matter to the Assessing Officer for a *denovo* consideration of the assessment.

20. Counsel for the assessee submitted that a paper book was submitted to the Tribunal along with detailed written submissions on the basis of which the Tribunal had arrived at its decision and therefore, no useful purpose would be served by remanding the proceedings over again. The problem lies in the approach of the Tribunal, as we have pointed out, to the evidence unearthed during the search. It failed to note while arriving at its decision that procedural irregularities committed by the Assessing Officer do not invalidate the additions; if necessary, the proceedings have to be directed to be completed over again after curing the lapses, provided they are not lapses of jurisdiction. Non-examination of Sodhi or Narang during the assessment proceedings, or lack of opportunity given to Narang to cross-examine Sodhi are all procedural irregularities which can be cured by remitting the matter over again to the Assessing Officer, a step which the Tribunal ought to have taken. The Tribunal has found fault with the Assessing Officer for having made the additions on the basis of the statements made by Sodhi and Narang in pre-assessment proceedings i.e. during the search and the consequent investigation proceedings, without asking them to explain those statements during the assessment proceedings. If the Tribunal was of the view that this was a serious lapse on the part of the Assessing Officer, it would have been well-advised to remit the matter to the Assessing Officer to enable him to examine those persons with reference to their statements made prior to the assessment proceedings in an attempt to elicit the truth. It was not open to the Tribunal to cancel the additions in such circumstances. We have also referred to certain statements made by the

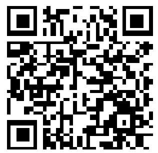
Tribunal in Paragraph 22 of its order to the effect that there was a correlation established by the Revenue between the seized material and the regular books of accounts of the assessee and to the effect that recovery of documents pertaining to the assessee – firm from the possession of Narang is a vital piece of evidence against the firm. In the light of these two observations it was for the assessee to firmly rebut the seized material with acceptable or credible evidence. If the Tribunal thought that the assessee had not been given an opportunity to do so, it ought to have remanded the matter to the Assessing Officer and not cancelled the additions as being without any basis.

21. In the above circumstances, we are of the considered view that the order of the Tribunal as it stands cannot be countenanced. We vacate the same and remand the matter to the Assessing Officer. The Assessing Officer shall afford adequate opportunity of being heard to the assessee and complete the assessment afresh in accordance with law. The substantial question of law is answered in the negative, in favour of the revenue and against the assessee, subject to the order of remit to the Assessing Officer. The appeal filed by the Revenue is allowed in the above terms, with no order as to costs.

22. In ITA No.583/2012, the respondent assessee is one Urmila Lodhi. In the block assessment made under Section 158BC for the block period 1.4.1989 to 17.12.1999, additions of ₹12,71,000/- and ₹5,62,000/- were made and the assessment was completed on a total undisclosed income of ₹18,33,000/-. The addition of ₹12,71,000/- was made on the basis of Annexure- A1 seized from the residence of Virender Narang, partner of M/s. Sonal Constructions on the ground that this amount represented on-money received by the assessee from Virender Narang as sale consideration of a property belonging to the assessee. The addition of ₹ 5,62,000/- was made on the ground that the assessee received consideration in kind from Virender Narang for superstructure, basement and ground floor. Both the additions were made under Section 69A of the Act for the assessment year 1994-1995 comprised in the block period.

23. The assessee filed an appeal to the CIT (Appeals) and by way of an additional ground challenged the basis of the assessment on the ground that the provisions of Section 158BC were wrongly invoked, since no search warrant was issued in the assessee's name. A prayer was made that the assessment may be quashed. The plea based on the additional ground was forwarded to the Assessing Officer for his comments. He stated that from the appraisal report it was clear that a search had been conducted at premises No.J-12, Saket, Ground Floor, New Delhi on 17.12.1999 and therefore the proceedings under Section 158 BC in the assessee's case were valid. On this basis and on the basis of the statement made in the memorandum of appeal filed by the assessee that there was a search operation under Section 132 of the Act at the assessee's residence on 17.12.1999, the CIT(Appeals) held that the proceedings under Section 158 BC were validly initiated. On merits, the CIT(Appeals) after examining the facts in some detail deleted both the additions. The Revenue filed an appeal before the Tribunal questioning the relief granted by the CIT(Appeals), whereas the assessee filed a cross-objection in the appeal filed by the Revenue, challenging the decision of the CIT(Appeals) regarding the validity of the block assessment. The Tribunal agreed with the decision of the CIT(Appeals) with regard to the merits of the additions and thus dismissed the appeal filed by the Revenue. As far as the cross-objection filed by the assessee is concerned, it was dismissed as infructuous or redundant. Moreover, the Tribunal noted that the assessee did not press the cross-objection.

24. The Revenue is in appeal contending that the Tribunal erred in deleting the additions made in the block assessment. The contention of the assessee is that since there was no search warrant issued in her name under Section132 of the Act, there can be no valid proceedings under Section 158BC. This factual position was not disputed on behalf of the Revenue. No search warrant against the assessee was produced before us. Since the provisions of Section 158 BC come into operation only where a search warrant is issued under Section 132 in the name of the assessee, the block assessment proceedings in the assessee's case were not validly



initiated. Accordingly the appeal filed by the Revenue is dismissed as no substantial question of law arises from the order of the Tribunal.

25. In the result, the substantial question of law framed in ITA No.1132/2007 is answered in the negative in favour of the Revenue and against the assessee. However, an order of remit is passed directing the Assessing Officer to make a fresh assessment in accordance with law. In ITA No.583/2010, no substantial question of law arises and it is accordingly dismissed. No costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

OCTOBER 04, 2012
gm