(2011) 09 DEL CK 0036

In the Delhi High Court

Case No : ITA No. 465 of 2011 (A.Y. 2005-06)

Beutex India (P) Ltd. APPELLANT

Vs

CIT RESPONDENT

Date of Decision : 08-09-2011

Acts Referred:
Income Tax Act, 1961 — Section 131, 254(2), 260A, 68

Citation : (2012) 204 TAXMAN 181

Hon'ble Judges : M.L. Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Deepak Aggarwal, Rajesh Chauhan and Siddharth Mittal, for the Appellant; Abhishek Maratha, for the Respondent

Judgement

1. The instant appeal is preferred by the appellant/assessee against the impugned order dt. 25-9-2009 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the Tribunal) thereby dismissing the appeal of the appellant. Though there were three issues before the Tribunal, the present appeal is confined only to one issue, viz., addition of Rs. 22.50 lacs section 68 of the Income Tax Act (hereinafter referred to as the Act) on account of purported share capital contributed by eight shareholders holding that the assessee has not been able to substantiate their capacity to give money or the genuineness of transaction. The brief facts are that the assessee raised share application money of Rs. 27,40,600 from eight persons. Out of the above, during the year in question, only a sum of Rs. 22,50,000 was received towards share capital. The assessing officer (assessing officer) initiated enquiry proceedings in respect of shareholders and sent summons to Shri Amit Gupta, Shri Surender Kumar Srivastava, Shri Moolchand Nirmal and Shri Yogesh Saxena. The summons issued to Shri Amit Gupta and Shri Surender Kumar Srivastava were returned back with the remark incomplete address and no such person respectively. Further, in response to the summons issued to Shri Moolchand Nirmal and Shri Yogesh Saxena both appeared on dt. 5-12-2006 and 29-1-2007 respectively and their statements were recorded by the assessing officer. They denied investing any

amount in the assessee company. However, in the meantime, the assessee vide his reply dt. 2-2-2007, requested the assessing officer to issue notice u/s 131 of the Act to the shareholders to secure their attendance. Further, the assessing officer made enquiries and come to the conclusion that the share application money received from an account maintained in the name of Mr. Agarwal with ABN Amro Bank, Barakhamba Road, New Delhi. The assessing officer on 28-2-2007 issued a show cause notice along with the statements of Shri Moolchand Nirmal and Shri Yogesh Saxena to the assessee, which was replied by the assessee on 30-4-2007 where confirmations, receipt of filing income tax returns, affidavits were filed. Not satisfied with the aforesaid replies/documents, the assessing officer made an addition of Rs. 25,50,000 towards addition in share capital during the year and passed the assessment order on 30-4-2007.

2. Being aggrieved by the orders passed by the assessing officer, the assessee preferred an appeal before the Commissioner (Appeals), wherein the Commissioner (Appeals) held that the addition be made on account of introduction of share capital which was found credited during the impugned year i.e. Assessment year 2005-06 and the share capital which was received in earlier years cannot be added in the impugned year.

3. The assessee once again preferred appeal before the Tribunal against the order of the Commissioner (Appeals). The Tribunal vide impugned order affirmed the order of the Commissioner (Appeals) on this issue. Thereafter, the appellant also filed Misc. Application u/s 254(2) of the Act, which was again dismissed on 5-3-2010.

4. Still dissatisfied, the appellant preferred the instant appeal u/s 260A of the Act.

5. After perusing the orders of the three authorities below, we find that the findings of fact have been recorded by all the Authorities holding that the transaction relating to share application money was bogus and in fact, these persons had never invested in the assessees company. The assessee had not been able to discharge the primary onus put on him to prove the cash credit. The assessee had also not produced its shareholders of the company for verification and therefore, the identity of these shareholders was not proved. Two persons, viz., Mr. Yogesh Saxena and Mr. Moolchand Nirmal, who appeared before the assessing officer had specifically made statement denied that they had made any investment with the share application money. Further finding which is recorded by all the three Authorities that the money had not come from their accounts. In fact, it was found that the accounts from which those amounts were received as share application money was belonging to one Mr. Agarwal. Mr. Yogesh Saxena even stated that his signatures on confirmation as well as on affidavit were forged. As per the bank reports, the share application money were received from Mr. Agarwal through his proprietary concern and thus, transactions were not genuine. These are all findings of fact accorded by all the three Authorities below. Faced with these findings, the only contention which could be raised by the learned counsel for the appellant was that Shri Moolchand Nirmal and Mr.

Yogesh Saxena were not allowed to be cross-examined by the appellant even when specific opportunities were sought for. We may note that the Tribunal in the impugned judgment had categorically observed that no such cross-examination was sought for by the assessee and the learned counsel for the assessee argued that this was factually wrong observation, as vide communication dt. 02-2-2007, the assessee had made a specific request for summoning the investors u/s 131 of the Act.

6. In view of the aforesaid submissions, we had called for the original records vide our orders dt. 3-8-2011. Those records have been produced and we have gone through the same. From the order-sheet recorded by the assessing officer on various dates, we find that the assessee was specifically told about the statement of two persons, but he never asked for fresh cross-examination. When we go through the communication dt. 2-2-2007 along with the order-sheet and read the said communication in that perspective, we find that there was no such specific request made by the appellant. We, thus, do not find any infirmity in the impugned order. No question of law arises for consideration. This appeal is dismissed in limine.