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(2013) 01 RAJ CK 0275

In the Rajasthan High Court

Case No : ITA No. 11 of 2008

CIT APPELLANT

Vs

Bhaval Synthetics RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Citation : (2013) 01 RAJ CK 0275

Hon'ble Judges : Dinesh Maheshwari, J;Arun Bhansali, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant; Dinesh Mehta, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the Revenue u/s 260A of the IT Act, 1961 (the Act), directed against the order dt. 16th Nov., 2007 as passed by the Tribunal, Jodhpur Bench, Jodhpur in ITA No. 249/Jd/2007 in relation to assessment years 1997-98, has been admitted on the following substantial question of law:

Whether in the facts and circumstances of the case as well as in law, the learned Tribunal was justified in upholding the order of the learned CIT(A) deleting the addition of Rs. 58,40,000 u/s 68 of the IT Act on account of unexplained share capital?

While passing the assessment order dt. 28th Feb., 2003 u/s 143(3)/263 of the Act, the AO ordered the addition which forms the subject-matter of this appeal u/s 68 of the Act, treating an amount of Rs. 58.40 lakhs, received by the assessee on account of share application money, to be the unexplained share capital on the ground that the assessee failed to furnish confirmation from the allottees/shareholders.

2. The CIT(A), Udaipur, in his order dt. 15th Jan., 2007, considered the appeal of the assessee against the aforesaid assessment order dt. 28th Feb., 2003; and, as regards the addition u/s 68 of the Act, while referring to the decision of this

Court in the case of Barkha Synthetics Ltd. Vs. Assistant Commissioner of Income Tax, held that if the transactions were made through banking channel and existence of persons in whose names shares had been issued was shown, the assessee-company could not be held responsible to prove as to whether the person himself invested the money or some other person did so and the burden shifted on the Revenue to establish that the investment came from the assessee-company itself. It was also observed that if at all the investment made by the shareholders is to be added, the assessment has to be carried out in their case and not in the hands of the appellant-company. The CIT(A), thus, deleted the additions made u/s 68 of the Act in the hands of the assessee-company.

3. In the appeal filed by the Revenue against the order aforesaid, the Tribunal referred to the fact that pursuant to the assessment order, action was taken u/s 263 of the Act by the CIT; and when the matter came up before the Tribunal, such an order was cancelled on 28th March, 2003 in ITA No. 212/Jd/2001 (reported as (2003) 130 TAXMAN 178 After finding the subject-matter of the order u/s 263 being the same i.e., relating to the introduction of share capital to the tune of Rs. 58.40 lakhs, the Tribunal declined to interfere. Hence, this appeal.

4. The learned counsel for the respondent-assessee submits that the question as formulated does not even arise in this case because it remains settled with the consistent decisions of the Courts that even in case of doubt about subscribers to the increased share capital, the amount of share capital cannot be regarded as undisclosed income of the company. The learned counsel has referred to the decision in the case of Barkha Synthetics Ltd. (supra) wherein this Court has noticed that iii Commissioner of Income Tax Vs. Steller Investment Ltd., the Hon''ble Supreme Court has affirmed the view of Delhi High Court in the case of Commissioner of Income Tax Vs. Stellar Investment Ltd., that reads as under:

It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been issued and the money may have been provided by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself."

(Emphasis, italicized in print, supplied)

5. The learned counsel for the appellant-Revenue is not in a position to dispute the proposition aforesaid.

6. In view of the above, we have no hesitation in upholding the objection of the learned counsel for the respondent that the question as formulated does not arise in this case because so far as the assessee company is concerned, the amount referable to the share application cannot be attributed to it; and cannot

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be assessed in its hands.

7. Thus, answer to the question as formulated necessarily follows in the affirmative i.e., against the Revenue and in favour of the respondent-assessee. The CIT(A) has not committed any error of law in deleting the addition made u/s 68 of the Act in the sum of Rs. 58.40 lakhs; and the Tribunal was justified in upholding the order as passed by the CIT(A). Consequently, the appeal fails and is, therefore, dismissed.

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