
(2013) 01 DEL CK 0144
In the Delhi High Court
Case No : ITA 597 of 2012

CIT

APPELLANT

Vs

Gangeshwari Metal Pvt. Ltd.

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 2 AD 378 : (2014) 264 CTR 277 : (2014) 361 ITR 10 : (2013) 214 TAXMAN 423

Hon'ble Judges : R.V. Easwar, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, Standing Counsel with Mr. Puneet Gupta, for the Appellant; O.P. Sapra with Mr. Sandeep Sapra, for the Respondent

Judgement

Badar Durrez Ahmed, J.—In this appeal the following question of law has been framed for our consideration by virtue of the order dated 16.10.2011:-

Whether the Tribunal by the impugned order dated 19.12.2011 fell into error in upholding the order of the appellate commissioner which directed deletion of Rs. 55,50,000/- added on account of unexplained share application, added by the Assessing Officer in the case of the assessee u/s 68 of the Act?

The learned counsel for the revenue/appellant submitted that the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal were both wrong in deleting the addition of Rs. 55.5 lakhs on account of unexplained share application money u/s 68 of the Income Tax Act, 1961 (hereinafter referred to as "the said Act").

2. The present case pertains to the assessment year 2004-05. The assessment proceedings were completed by the assessing officer on 16.12.2009. The assessment order indicates that initially the respondent was asked to explain as to why an amount of Rs. 1,11,50,000/- should not be added to the respondents income. It was explained by the assessee that there was several entries which had been taken into account twice over and by removing the duplicate entries

the amount received as share application money by the respondent/assessee was only Rs. 55,50,000/- and not Rs. 1,11,50,000/-. In response to the query with regard to the said sum of Rs. 55.5 lakhs, the respondent/assessee had furnished various documents in support of the share application money received by it. Those documents included: -

- (i) Complete names and addresses of the share applicants and PAN/GIR details.
- (ii) Confirmatory letters of the share applicants.
- (iii) Copies of Bank statements of the share applicants.
- (iv) Copies of bank a/c of the appellant.
- (v) Certificate of incorporation of the share applicants.
- (vi) Memorandum of Association of the share applicants.
- (vii) Copies of the share application forms.

3. However, despite the respondent/assessee furnishing the above information/documents, the assessing officer found the explanation to be unacceptable and held that the sum of Rs. 55.5 lakhs was unexplained in the hands of the assessee and thereby made an addition to the assessee's income.

4. Being aggrieved by the assessment order, the respondent/assessee preferred an appeal before the Commissioner Income Tax (Appeals) who held in favour of the respondent/assessee by virtue of his order dated 31.03.2011. The CIT (Appeals) held that the documents/details submitted by the respondent/assessee indicated that the identity of the share applicants stood established beyond any doubt. Particularly so, because each of the share applicants was an income tax assessee. The CIT (Appeals) held as under:-

The genuineness of the transactions are established as the transactions are routed through banking channels. It is seen that the share application money was received through a/c payee cheques, detail of which had been filed by the appellant by filing the copy of the bank a/c of the share applicants. Thus where the return of income is filed by the creditors of the assessee and is accepted by the Department, and the payments are through a/c payee cheques the genuineness of the transaction can not be doubted.

5. The CIT (Appeals) also held as under:-

After considering the totality of all the facts and circumstances and the latest judicial pronouncements made by the jurisdictional Delhi High Court and Hon'ble Supreme Court, it can be concluded that the appellant company has undoubtedly proved and established the identity of the share applicant. Once the identity of this share applicant is proved, no addition can be made in the hand of the appellant company even if the share applicants have been found persons of no means until and unless otherwise it is proved by the revenue. The revenue could not prove that the money received by the appellant in the form of share

application has come from its own sources. No evidences regarding this have been brought on record by the AO.

6. The CIT (Appeals) had also placed reliance on the Supreme Court decision in Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., . The Supreme Court was considering the question as to whether share money should be regarded as undisclosed income u/s 68 of the said Act. The Supreme Court while dismissing the SLP observed that if share money is received from alleged bogus shareholders whose names are given it is open to the assessing officer to reopen their individual assessments in accordance with law. The CIT ultimately held as under:-

Relying on the various documents placed on record and the principle laid down by the Hon"ble Supreme Court in the case of M/s. Lovely Export Pvt. Ltd. which is directly on the issue of share capital and in view of the decisions cited above the addition on account of share capital cannot be sustained. The AO has nowhere proved that documents in support of the identity of the party have not been placed on record or they were forged documents. The AO also has not brought any evidence on record regarding the facts that the share applicants were not creditworthy or genuine, despite the fact that their PAN and confirmatory affidavit and the details of the AO where the share applicants were assessed were submitted by the appellant alongwith copy of bank accounts of the share applicants. In view of the findings above and the judicial precedents on the subject that once the identity of the share applicants were proved by the appellant, which in the instant case has not been controverted by the AO, the addition of Rs. 55,50,000/- made by the AO on account of unexplained share application money is deleted. However, the AO is free to take appropriate action as may be permissible under the law in the cases of various share holders alleged to be entry providers.

7. Being aggrieved by the decision of the CIT (Appeals), the revenue preferred an appeal before the Income Tax Appellate Tribunal which has been dismissed by virtue of the impugned order dated 19.12.2011 in ITA No. 2886/Del/2011. After referring to the order passed by the CIT (Appeals) in detail, the Tribunal held as under:-

12. In the course of hearing of this appeal, the Id. Departmental Representative has not been able to point out any material to rebut the findings recorded by the Id. CIT(A) in the light of the various documents and evidences furnished by the assessee before the AO as well as before the Id. CIT (A). The Id. DR has merely relied upon the AO's order to contend that since there was an information from the Investigation Wing that all the share applicants were engaged in providing accommodation entries, the AO was justified in treating the credit entries as unexplained liable to be taxed in the hands of the assessee. However, neither the AO nor the Id. DR before us has been able to prove and establish that the various documents and evidences filed by the assessee are in any manner false and fabricated, and assessee has not been able to discharge its initiation onus.

Therefore, in the light of the detailed discussions made by the CIT(A) in his order and for the reasons given by him, we are in full agreement with him in deleting the addition of Rs. 55,50,000/- made by the AO after giving a finding by him that the AO has nowhere been able to prove that the document in support of the identity of the parties have not been placed on record or otherwise there were forged documents, and further the AO has also not brought any evidence on record regarding the facts that the share applicants were not creditworthy or genuine despite the fact that their PAN and confirmatory affidavits and the details of the AO, where the share applicants were assessed were submitted by the assessee along with copy of bank accounts of the share applicants. In this view of the matter, we, therefore, upheld the order of Id. CIT(A) and reject this ground raised by the revenue.

8. Mr. Sabharwal, appearing on behalf of the revenue/appellant sought to place reliance on a Division Bench decision of this Court in Commissioner of Income Tax Vs. Nova Promoters and Finlease (P) Ltd., . However, on going through the said decision in Nova Promoters and Finlease (P) Ltd. (supra) we find that the facts are clearly distinguishable. In fact, in Nova Promoters and Finlease (P) Ltd. (supra) itself this Court has observed, in the context of Lovely Exports (P) Ltd. (supra), as under:-

The ratio of a decision is to be understood and appreciated in the background of the facts of that case. So understood, it will be seen that where the complete particulars of the share applicants such as their names and addresses, income tax file numbers, their creditworthiness, share application forms and share holders" register, share transfer register etc. are furnished to the Assessing Officer and the Assessing Officer has not conducted any enquiry into the same or has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made in the hands of the company under sec. 68 and the remedy open to the revenue is to go after the share applicants in accordance with law. We are afraid that we cannot apply the ratio to a case, such as the present one, where the Assessing Officer is in possession of material that discredits and impeaches the particulars furnished by the assessee and also establishes the link between self-confessed "accommodation entry providers", whose business it is to help assesseees bring into their books of account their unaccounted monies through the medium of share subscription, and the assessee. The ratio is inapplicable to a case, again such as the present one, where the involvement of the assessee in such modus operandi is clearly indicated by valid material made available to the Assessing Officer as a result of investigations carried out by the revenue authorities into the activities of such "entry providers". The existence with the Assessing Officer of material showing that the share subscriptions were collected as part of a premeditated plan - a smokescreen-conceived and executed with the connivance or involvement of the assessee excludes the applicability of the ratio. In our understanding, the ratio is attracted to a case where it is a simple question of whether the assessee has discharged the burden placed upon him under sec. 68

to prove and establish the identity and creditworthiness of the share applicant and the genuineness of the transaction. In such a case, the Assessing Officer cannot sit back with folded hands till the assessee exhausts all the evidence or material in his possession and then come forward to merely reject the same, without carrying out any verification or enquiry into the material placed before him. The case before us does not fall under this category and it would be a travesty of truth and justice to express a view to the contrary.

(underlining added)

9. As can be seen from the above extract, two types of cases have been indicated. One in which the assessing officer carries out the exercise which is required in law and the other in which the assessing officer "sits back with folded hands" till the assessee exhausts all the evidence or material in his possession and then comes forward to merely reject the same on the presumptions. The present case falls in the latter category. Here the assessing officer, after noting the facts, merely rejected the same. This would be apparent from the observations of the assessing officer in the assessment order to the following effect:-

Investigation made by the Investigation Wing of the Department clearly showed that this was nothing but a sham transaction of accommodation entry. The assessee was asked to explain as to why the said amount of Rs. 1,11,50,000/- may not be added to its income. In response, the assessee has submitted that there is no such credit in the books of the assessee. Rather, the assessee company has received the share application money for allotment of its share. It was stated that the actual amount received was Rs. 55,50,000/- and not Rs. 1,11,50,000/- as mentioned in the notice. The assessee has furnished details of such receipts and the contention of the assessee in respect of the amount is found correct. As such the unexplained amount is to be taken at Rs. 55,50,000/-. The assessee has further tried to explain the source of this amount of Rs. 55,50,000/- by furnishing copies of share application money, balance sheet, etc. of the parties mentioned above and asserted that the question of addition in the income of the assessee does not arise. This explanation of the assessee has been duly considered and found not acceptable. This entry remains unexplained in the hands of the assessee as has been arrived by the Investigation wing of the Department. As such entries of Rs. 55,50,000/- received by the assessee are treated as an unexplained cash credit in the hands of the assessee and added to its income. Since I am satisfied that the assessee has furnished inaccurate particulars of its income, penalty proceedings u/s 271(1)(c) are being initiated separately.

10. The facts of Nova Promoters and Finlease (P) Ltd. (supra) fall in the former category and that is why this Court decided in favour of the revenue in that case. However, the facts of the present case are clearly distinguishable and fall in the second category and are more in line with facts of Lovely Exports (P) Ltd. (supra). There was a clear lack of inquiry on the part of the assessing officer

once the assessee had furnished all the material which we have already referred to above. In such an eventuality no addition can be made u/s 68 of the Act. Consequently, the question is answered in the negative. The decision of the Tribunal is correct in law. The appeal is dismissed.