
(2005) 04 RAJ CK 0075
In the Rajasthan High Court
Case No : .I.T.A. No. 2 of 2005

Commissioner of Income Tax

APPELLANT

Vs

First Point Finance Ltd.

RESPONDENT

Date of Decision : 13-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 131, 260A, 68

Citation : (2006) 206 CTR 626 : (2006) 286 ITR 477

Hon'ble Judges : Rajesh Balia, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : K.K. Bissa, for the Appellant;

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—We have heard learned Counsel for the appellant.

2. This appeal u/s 260A of the Income Tax Act, 1961, is against the order dated May 20, 2004, passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur. The respondent-assessee is a company and the issue relates to the assessment year 1997-98. The assessee-company has filed return of income declaring Rs. 3,700 as income for the relevant assessment year. The issue now involved before us and which was before the Tribunal was relating to additions of Rs. 5,80,000 made by the assessing authority on account of unexplained share capital/share application money which was confirmed by the Commissioner of Income Tax (Appeals) u/s 68 of the Income Tax Act, 1961.

3. Rs. 70,000 were added by the Assessing Officer as unexplained share capital shown to be invested by seven investors, namely, Shri Kailash Chandra Chhabra, Smt. Seema Chhabra, Sandeep Kothari, Smt. Seema Kothari, Sanjay Shah, Smt. Sonali Shah and Smt. Heema Shah, who had contributed share capital out of money advanced by the assessee. The Assessing Officer has held that the source of investment made by the investors had not been explained by the assessee and, therefore, the same has been held to be income of the company from

undisclosed sources u/s 68 of the Income Tax Act, 1961.

4. Similarly, the Assessing Officer has added Rs. 5,10,000 received by the assessee as share application money from M/s. Jay Stocks, Mumbai, Master Setu Kothari, Shri Suresh Agarwal, M/s. Sound Point Export P. Ltd. and M/s. Rolex Point Laboratories Ltd. in varying sums, by finding that while their existence is not disputed, their investment in the company was doubted and the same was not accepted as deposit genuinely made by those persons. Thus, considering the amount of share capital received by the assessee as unexplained cash credit, Rs. 5,10,000 were added as income of the assessee from undisclosed source.

5. These additions were affirmed by the Commissioner of Income Tax (Appeals) on the very same ground.

6. The Tribunal held that Rs. 5,80,000 is a share capital, the investors are genuinely exercising powers, the shareholders had filed confirmation letters of such investment and their statements were also recorded, no addition could be made of such sum as unexplained cash credit and the additions were deleted.

7. Reliance was placed by the Department on a Full Bench decision of the Delhi High Court in Commissioner of Income Tax Vs. Sophia Finance Ltd., , wherein the court held that if the assessee has failed to discharge the initial burden to prove the creditworthiness of the said investors, additions can be made.

8. On the other hand, the assessee has relied on the decision of the Supreme Court rendered in Commissioner of Income Tax Vs. Steller Investment Ltd., .

9. The Tribunal finding that even the Delhi High Court in its Full Bench decision in Commissioner of Income Tax Vs. Sophia Finance Ltd., , held that when the assessee-company established the identity of the shareholders, there was no scope for further enquiry and also relying on the ratio laid down by the Supreme Court in Commissioner of Income Tax Vs. Steller Investment Ltd., allowed the appeal filed by the assessee and additions of Rs. 5,80,000 were deleted as not tenable. In fact, the Full Bench in Commissioner of Income Tax Vs. Sophia Finance Ltd., agreed with the principle stated by the Delhi High Court in Commissioner of Income Tax Vs. Stellar Investment Ltd., that if the existence of investors/shareholders is established, no further enquiry is needed to find their creditworthiness.

10. It is contended by learned Counsel for the appellant-Revenue that the Tribunal by taking a wrong view of the burden of proof in the matter of unexplained cash credit in the books of account in the case of the assessee, has erred in law in not sustaining the additions on account of the unexplained share capital and the share application money shown in the accounts books of the assessee.

11. We are of the opinion that the findings reached by the Tribunal are findings of fact and are in consonance with the Bench decision of the Delhi High Court Commissioner of Income Tax Vs. Stellar Investment Ltd., affirmed by the

Supreme Court in the case of Commissioner of Income Tax Vs. Steller Investment Ltd., and also on principle accepted by another decision in Commissioner of Income Tax Vs. Sophia Finance Ltd., . The finding recorded by the Tribunal did not go beyond the purview of the findings of fact.

12. A Division Bench of this Court in Commissioner of Income Tax Vs. Shree Barkha Synthetics Ltd., of which one of us was a member, had occasion to deal with the like question relating to the credit standing in the books of account of a company on account of increased share capital and money received by it as share application money. In the like circumstances, relying on the decision of the Delhi High Court in Commissioner of Income Tax Vs. Sophia Finance Ltd., the Revenue had made additions of such amount in the income of the assessee as income from undisclosed sources. But the Tribunal did not sustain the additions.

13. This Court held after referring to the aforesaid decisions, that once the initial burden has been discharged in respect of the identity of investors, about their existence, and the confirmation from such investors has been obtained, the burden shifts to the Revenue to prove otherwise not only that the invested amount did not belong to the creditors but further it has to prove the said amount belonging to the assessee.

14. It is pertinent to notice in this connection the observations made by the Delhi High Court in Commissioner of Income Tax Vs. Stellar Investment Ltd., as to the ambit and scope of the enquiry in cases like this u/s 68 of the Income Tax Act. It has said that:

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.

15. This decision of the High Court has since been affirmed by the Supreme Court in Commissioner of Income Tax Vs. Steller Investment Ltd., showing its complete agreement with the decision.

16. In this connection, it is apposite to observe the issue before the Supreme Court in the case of Commissioner of Income Tax Vs. Sophia Finance Ltd., . In this case, the assessee's income was credited before the filing of the Revenue notices u/s 131 at the instance of the assessee who did not pursue the matter further when no efforts were made to recover from the creditors.

17. In these circumstances, the assessee could not do anything further in view of the conclusion that discharging the burden was on the creditor. That finding was

not unreasonable or perverse or based on no evidence so as to raise any question of law.

18. The decision in Sophia Finance Ltd.'s case shows that the burden of the assessee lies to the extent of making out a case that the investors exist and thereafter it is not for the assessee to further prove wherefrom they have brought money and invested with him.

19. The Delhi High Court has clearly stated in Commissioner of Income Tax Vs. Sophia Finance Ltd.,

Where, therefore, the assessee represents that it has issued shares on the receipt of share application money then the amount so received would be credited in the books of account of the company. The Income Tax Officer would be entitled to enquire, and it would indeed be his duty to do so, whether the alleged shareholders do in fact exist or not. If the shareholders exist then, possibly, no further enquiry need be made. But if the Income Tax Officer finds that the alleged shareholders do not exist then, in effect, it would mean that there is no valid issuance of share capital. Shares cannot be issued in the name of non-existing persons. The use of the words "may be charged" in Section 68 clearly indicates that the Income Tax Officer would then have the jurisdiction, if the facts so warrant, to treat such a credit to be the income of the assessee.

20. Coming to the facts of the present case, it is not denied that all the shareholders/share applicants are genuinely existing persons. It is also not denied that each of them is an Income Tax assessee and the copies of the return of their income were also placed before the Assessing Officer by the assessee which fact is also not denied.

21. In these circumstances, no material has been brought on record except inferring that the investors in the opinion of the Assessing Officer were not creditworthy to link the assessee with such investment of money made by those persons. The case squarely falls within the ratio laid down in the Commissioner of Income Tax Vs. Steller Investment Ltd., wherein it was stated as noticed above that in such cases merely because the creditors have failed to prove their source of investment, the same cannot be added in the income of the assessee but it ought to be added by finding persons who had their names. There is no presumption that the assessee is the benami owner of the investment made by the existing person.

22. In view of the aforesaid decisions, as applied by this Court in Commissioner of Income Tax Vs. Shree Barkha Synthetics Ltd., we do not find that any substantial question of law arise in this appeal.

23. The appeal is dismissed.