
(2007) 10 MP CK 0019
In the Madhya Pradesh High Court

Commissioner of Income Tax

APPELLANT

Vs

Rathi Finlease Ltd.

RESPONDENT

Date of Decision : 11-10-2007

Acts Referred:

Income Tax Act, 1961 — Section 143, 260A, 68

Citation : (2008) 215 CTR 429

Hon'ble Judges : S.K. Kulshrestha, J; Manjusha P. Namjoshi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.K. Kulshrestha, J.—The Revenue has filed this appeal u/s 260A of the IT Act, 1961 against the order of the Tribunal dt. 17th March, 2004 in Appeal No. ITA-825/Ind/2003 for the asst. yr. 2000-01, by which the Tribunal has deleted the addition of Rs. 15,00,000 made by the AO and affirmed by the CIT(A).

2. The respondent assessee submitted its return for the year 2000-01 and indicated loss of Rs. 3,56,325. The matter was taken up in scrutiny and due notice was given to the respondent assessee to explain the receipt of Rs. 5,00,000 from M/s Flag Synthetics, Rs. 5,00,000 from Palasiya Leasing & Investment (P) Ltd. and Rs. 5,00,000 from Patni Industries Ltd. on the ground that identity, genuineness and creditworthiness of these parties were not established. The assessee produced the confirmatory letters before the AO but the AO on making deeper probe learnt that in each case the sum of Rs. 5,00,000 was deposited on the same day on which the cheque was issued in favour of the assessee towards purchase of shares. The assessee was also given adequate opportunity to prove the genuineness of the transaction.

3. Finding that the assessee had failed to discharge his burden as required u/s 68 of the IT Act, addition of a sum of Rs. 15,00,000 was made and after deducting the loss indicated in the sum of Rs. 3,56,325, assessment was made u/s 143(3) of the IT Act indicating profit of Rs. 11,43,675 as the taxable income.

4. The matter was carried in appeal by the assessee but the CIT(A) by his order dt. 24th July, 2003 in Appeal No. ITA-38/2003-04/165 dismissed the appeal by holding that there was sufficient material collected by the AO to the effect that the identity of the creditors was not established, genuineness of the transaction was doubtful and creditworthiness of these parties was not shown. In further appeal to the Tribunal, the Tribunal has allowed the appeal of the assessee by the impugned order and set aside the addition made by the AO. It is in these premises that this appeal has been filed which has been admitted on the following two substantial questions of law:

(1) Whether the Tribunal was justified in holding that additions made by the AO amounting to Rs. 15,00,000 are not sustainable on facts and in law?

(2) Whether the material brought on record was adequate to hold that the three alleged companies were existing/running so as to give genuineness of the transactions of investment of money by way of share application money to the extent of Rs. 15,00,000?

5. The learned Counsel for the Revenue has placed reliance on the decision of the Full Bench of the Delhi High Court in Commissioner of Income Tax Vs. Sophia Finance Ltd., . Their Lordships have duly observed that where an assessee company represents that it had 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. In such a situation, the ITO would be entitled to enquire whether the alleged shareholders in fact, exist or not. Similar view was expressed by the Calcutta High Court in Commissioner of Income Tax Vs. Kundan Investment Ltd., , in which it has been observed that the burden is on the assessee to prove the genuineness of the transaction and where no evidence of creditworthiness of the shareholders has been tendered, addition made by the AO is justified.

6. Learned senior Counsel for the Revenue contends that it is for the assessee under the provisions of Section 68 of the Act, to establish the genuineness of the transaction, identity of the person in whose name the amount has been credited and his creditworthiness. He has also taken us through the assessment order of the AO and the order passed in appeal by CIT(A) to buttress his argument that the transaction of the assessee was a sham transaction and not borne out from the evidence on record.

7. Shri Sanyal, per contra, appearing for the assessee, has submitted that the assessee had duly produced his books of account containing confirmatory letters from the parties in whose names credit was shown and, therefore, there was no ground to doubt the genuineness or the transaction or the parties or their creditworthiness. In view of the above questions of law and the rival submissions of the learned Counsel for the parties, the question that arises for consideration in this appeal is as to whether the assessee has been able to discharge his burden to show the genuineness of the entries made in the books of account indicating the credits received from Flag Synthetics, Palasiya Leasing &

Investment (P) Ltd. and Patni Industries Ltd.

8. Section 68 of the IT Act reads as follows:

68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory, the sum so credited may be charged to Income Tax as the income of the assessee of that previous year.

9. For the purpose of resolving the controversy between the parties, it is first necessary to refer to the relevant portion of the assessment made by the AO.

10. The AO has duly observed that during the course of the proceedings, it was found from the balance sheet of the assessee company that the issue, subscribed and paid-up capital of the company had gone up by an amount of Rs. 16,90,000 from Rs. 87,95,000 last year to Rs. 14,85,000 this year. A questionnaire dt. 4th Oct., 2002 was issued calling upon the assessee to give the details of the entry in the share capital along with confirmation of the same. The assessee submitted only copies of the share application form and that too in few cases and when the assessee was requested to produce the subscribers to the share capital for examination, the case was adjourned at the request of the assessee, but despite several opportunities, neither the confirmations were given nor the subscribers were produced for examination, as requested. The AO, therefore, considered the genuineness of the sum of Rs. 5,00,000 advanced by each of the creditors viz., Flag Synthetics Ltd., Palasiya Leasing & Investment (P) Ltd. and Patni Industries Ltd. In regard to the genuineness and existence of the Flag Synthetics Ltd., the AO observed that by simply filing the confirmation letter, the assessee could not be said to have discharged the burden and the enquiries had revealed that the company was not in existence at the premises stated by the assessee nor any books of accounts, nor the directors were traceable.

11. In the case of Palasiya Leasing & Investment (P) Ltd., the entry was not accepted on the ground that merely by filing a confirmation letter the burden could not be discharged when the enquiries revealed that the company was not existent nor any books of accounts or directors were traceable. Similar was the result of the enquiry in regard to M/s Patni Industries Ltd.

12. Not only that the AO found that these creditors were non-existent the enquiries with regard to their bank accounts also brought to surface the staggering facts. It was found that in each case the sum of Rs. 5,00,000 was deposited on the very day on which the cheque was issued for purchase of the shares of the company which also made the genuineness of the transaction quite dubious.

13. Learned Counsel for the respondent, however, submits that as held by the Supreme Court in Commissioner of Income Tax Vs. Steller Investment Ltd., in such matters, no question of law arises as the findings of the Tribunal are based

on appreciation of evidence. The facts of the case in Steller Investment Ltd. (supra) were materially different from the facts of the present case. In the said case the High Court had declined to call reference from the Tribunal on the ground that increase in the subscribed capital of the company could not be a device of converting black money into white with the help of formation of an investment company. Reliance has also been placed on the decision of the Delhi High Court in Commissioner of Income Tax Vs. Antartica Investment Pvt. Ltd., . In the said case the cheques were issued at a time when there was already sufficient amount in the account of the creditor. In the present case, in order to show that investment had been made by these three companies, the device adopted was that each company deposited a sum of Rs. 5,00,000 in the account and simultaneously issued the cheque. The case in Antarctica Investment (supra), therefore, does not further the case of the respondent.

14. In the appellate order dt. 24th July, 2003, the CIT(A) has referred to the findings of the AO and observing that as soon as the confirmations were filed, enquiries were conducted and the assessee was duly confronted with the adverse findings. It was further observed that it was incumbent upon the assessee, in view of the adverse findings, to cooperate and prove the genuineness of the shareholders. The assessee however, did not throw any light on the matter despite awareness. This strengthened the views that they were merely name lenders. It was in this backdrop that the CIT(A) had maintained the addition.

15. Coming to the observations of the Tribunal, in the impugned order, the Tribunal has referred to the decision of the Delhi High Court containing observations that the CIT(A) had examined the bank account of these companies from where the cheques in question were issued and had found that numerous transactions of deposits and withdrawals were made. The companies were not found at the given addresses when AO issued the summons still addition was deleted and an observation was made that it could not be said in the circumstances that the companies were non-existent.

16. The case relied upon by the Tribunal was materially different and distinguishable from the case in hand. In the said case the CIT(A) had deleted the addition, while in the present case, the CIT(A) has maintained the addition. Without considering that the payments were made by each creditors by first depositing a sum of Rs. 5,00,000 and then issuing a cheque for the purchase of the shares and that the companies were not found to be in existence, the Tribunal has hastened to come to the conclusion that addition was not justified. In coming to this conclusion, the Tribunal has observed that since AO had himself examined the bank accounts of three subscribing companies and found that there were numerous transactions, the genuineness of the transaction could not have been assailed.

17. As observed hereinabove, Section 68 of the Companies (sic - IT) Act enjoined the assessee to offer an explanation about the nature and source of the sum found credited in his books and if the explanation was not satisfactory, the

amount can be credited and charged to Income Tax as income of the assessee. Since the assessee, though tried to explain the genuineness of the credit on the basis of letters of confirmation, it could not be explained as to how the transaction was materialised when the companies were not in existence and the amount was paid by cheque only on the date on which the amount was credited to the account of the company. It was for the assessee to discharge this burden. We, therefore, find that insofar as the question No. (2) is concerned, the assessee failed to discharge the burden with regard to the credit in its books and the existence of the creditors to indicate the genuineness of the transaction. In view of this answer to question No. (2), it is not necessary to answer the question No. (1).

18. The appeal is accordingly allowed with no order as to costs. The order of the Tribunal is set aside.