
(2010) 05 DEL CK 0061
In the Delhi High Court
Case No : ITA 586 of 2010

Commissioner of Income Tax

APPELLANT

Vs

Victor Electodes Ltd.

RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Income Tax Act, 1961 — Section 143(3), 148, 68

Citation : (2010) 05 DEL CK 0061

Hon'ble Judges : V.K. Jain, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, for the Appellant; Salil Aggarwal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jain, J.—This appeal is directed against the order of Income Tax Appellate Tribunal, whereby the appeal filed by the Revenue, being ITA No. 2173/Del/2008 against the order of the Commissioner of Income Tax (Appeals) in respect of the Assessment Year 2002-03 was dismissed.

2. The Assessee company filed return of income tax declaring total income of Rs. 8,67,334/- for the Assessment Year 2002-03. The assessment, initially framed u/s 143(3) of Income Tax Act (hereinafter referred to as "the Act"), was re-opened by issuing notice u/s 148 of the Act. During the course of assessment, it was noticed by the Assessing Officer that the assessee had received Share Application Money, amounting to Rs. 27 lakhs from four private limited companies. On being called upon to prove the genuineness of the receipts, the assessee furnished documents such as Share Application Money, copies of resolution by the Board of Directors of the applicant companies, as well as the bank statements, Memorandums & Articles of Association and Income Tax Return of these companies. The applicant could not produce the parties before the Assessing Officer. He accordingly added the Share Application Money as unexplained cash credit u/s 68 of the Act.

3. The Commissioner of Income Tax (Appeals), however, was of the view that since all the applicants were assessed to income tax and the investments made by them was reflected in their respective balance sheets, the genuineness of the payment made by them to the assessee company had prima facie been proved. He noted that the Assessing Officer did not make any enquiry from the concerned parties nor did he examine their assessment record. He, therefore, deleted the addition made by the Assessing Officer.

4. The Income Tax Appellate Tribunal was of the view that the assessee had discharged the onus that was placed upon it and as non-production of the parties could not be a ground for making the addition, when the assessee had produced corroborative evidence in support of its claim.

5. The issue involved in this appeal came up for consideration before this Court in Commissioner of Income Tax Vs. Divine Leasing and Finance Ltd., After reviewing the case law on the subject, this Court was of the view that in the context of Section 68 of the Income Tax Act, the assessee has to prima facie establish (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; and (3) the creditworthiness or financial strength of the creditor/subscriber. It was observed that (a) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the shareholders register, share application forms, share transfer register, etc., it would constitute acceptable proof or acceptable explanation by the assessee; (b) the Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (c) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the assessee nor should the Assessing Officer take such repudiation at face value and construe it, without anything more, against the assessee and the Assessing Officer is duty-bound to investigate the creditworthiness of the creditor/subscriber the genuineness of the transaction and the veracity of the repudiation.

6. The SLP filed by the Revenue against the above-referred decision of this Court was dismissed by the Supreme Court vide its decision reported vide 2008 (216) CTR 195 which inter alia reads as under:

Can the amount of share money be regarded as undisclosed income u/s 68 of IT Act, 1961? We find no in SLP for the simple reason that if the share application money is received by the assessee-company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law. Hence, no infirmity is found with the impugned judgment.

7. It has not been disputed before us that the share application money was received by the assessee company by way of account payee cheques, through normal banking channels. It is not the case of the Revenue that the payment of

Share Application Money was not made from the bank account of the applicant companies. Admittedly, copies of application for allotment of share were also provided to the Assessing Officer. It is not the case of the Revenue that the share applications were not signed on behalf of the applicant companies and were forged documents. It is also not the case of the Revenue that the shares were not actually allotted to the companies.

8. The assessee filed copies of resolution passed by the Board of Directors of applicant companies, besides their bank statements and Income Tax Returns. The addresses of the applicant companies are recorded in these documents. It is not the case of the Revenue that the copies of Board Resolutions, Income Tax Returns and Bank Statements were not genuine documents. The Assessing Officer did not make any verification in this regard either from the internal record of the Department or from the concerned banks. If he so wanted, he could have called for the Income Tax Returns of the share applicants to ascertain whether the investment made in the assessee company was reflected in their Balance Sheets or not. Nothing prevented the Assessing Officer from summoning the record of the banks on which cheques issued by the applicant companies were drawn. No such course was, however, adopted by him.

9. There was no legal obligation on the assessee to produce some Director or other representative of the applicant companies before the Assessing Officer. Therefore, failure of assessee to produce them could not, by itself, have justified the additions made by the Assessing Officer, when the assessee had furnished documents, on the basis of which, the Assessing Officer, if he so wanted, could have summoned them for verification. No attempt was made by the Assessing Officer to summon the Directors of the applicant companies. The addresses of these companies must be available on the share applications, Memorandum and Articles of Association and their Income Tax Returns. If the Assessing Officer had any doubt about identity of the share applicants, he could have summoned the Directors of the applicant companies. No such attempt was, however, made by him. Therefore, the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, in our view were justified in holding that the identity of share applicants and the genuineness of the transactions had been established by the assessee.

For the reasons given in the preceding paragraphs, no substantial question of law arises for our consideration.

The appeal is dismissed.