(2011) 06 GUJ CK 0050

In the Gujarat High Court

Case No : Tax Appeal No. 523 of 2004 A.Y. 1992-93

Hindustan Inks and Resins Ltd. APPELLANT

Vs

Dy. CIT RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Income Tax Act, 1961 — Section 68

Citation : (2011) 06 GUJ CK 0050

Hon'ble Judges : R.M. Chhaya, J;Harsha Devani, J

Bench : Division Bench

Advocate : R.K. Patel, for the Appellant; M.R. Bhatt with Mrs. Mauna M. Bhatt, for the Respondent

Final Decision : Allowed

Judgement

Ms. Harsha Devani, J.—In this appeal u/s 260A of the IT Act, 1961 (the Act), the assessee (original appellant) has challenged the judgment and order dt. 2-4-2004 passed by the income tax Appellate Tribunal, Ahmedabad "A" Bench, Ahmedabad (the Tribunal) in ITA No. 2248/Ahd/1998 for asst. yr. 1992-93.

2. While admitting the appeal, this court had by an order dt. 29-6-2005 formulated the following substantial question of law :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the addition of Rs. 4,30,760 on account of unexplained cash credits in the case of the assessee, a company, where the amounts are alleged to have been introduced by subscribers to the initial share application money at the time of formation of the company ?"

3. The grievance of the appellant in the present case relates to the confirmation of an addition of Rs. 4,30,760 on account of unexplained cash credits. During the course of assessment proceedings, the AO on scrutiny of the accounts found that the assessee had introduced cash in its books in the form of share capital from 12 persons. Out of these 12 persons, cash related to 7 persons have been

offered for tax under VDIS, 1997 considering the unexplained cash. In relation to other 5 persons, the AO found that the assessee company could not explain the source of money introduced in its books of account in the names of (1) Jakir G. Bilakhia, (2) Shamim G. Bilakhia, (3) Uday Vaidya, (4) Rasidha G. Bilakhia and (5) Bhavna N. Babbharolia. After detailed examination of the facts and circumstances of the case, the AO arrived at the conclusion that the creditors were not creditworthy and they were not assessed to tax; hence, the assessee has failed to explain the source of such cash. The assessee carried the matter before the CIT(A), but failed. The assessee also failed in its second appeal before the Tribunal.

4. Mr. R.K. Patel, learned advocate appearing on behalf of the appellant submitted that the controversy involved in the present case stands concluded by the decision of the Apex Court in the case of Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., , wherein the Court has held 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, but it cannot be regarded as undisclosed income of assessee company. It was submitted that in the facts of the present case, the assessee has furnished the names of the shareholders, hence, if at all, the Department could have proceeded to reopen their individual assessments and that no additions could be made in the hands of the assessee.

5. Opposing the appeal, Mr. M.R. Bhatt, learned senior advocate appearing on behalf of the respondent invited attention to the assessment order, to submit that in case of Mr. Uday Vaidya, he was not assessed to tax and no confirmation had been filed by him and that his present whereabouts and credentials were also not known to the IT Department. It was submitted that in the circumstances, the petitioner has failed to establish the identity of all the subscribers.

6. A perusal of the assessment order shows that the assessing officer has held that the creditworthiness of the cash creditors is doubtful and such creditors are either the relatives of the assessee or such other persons who were not assessed to tax in the year 1992-93. No such investments had been offered by them under VDIS, 1997. Under the circumstances, the assessing officer added a sum of Rs. 4,30,760 as unexplained cash credit u/s 68 of the Act. A perusal of the order made by the Commissioner (Appeals) indicates that the Commissioner (Appeals) has merely confirmed the order of the assessing officer by placing reliance upon a decision of the jurisdictional High Court in the case of Bomin P. Ltd. Vs. Commissioner of Income Tax, . The Tribunal, in the impugned order, has held thus :

7. We have duly considered the rival contentions. From the details of disclosure made in VDIS, 1997 available at paper-book, it reveals that Smt. Juliben Gafulbhai Bilakhia made disclosure of Rs. 48,13,948 for the assessement years

1993-94 to 1996-97. We have also gone through the statement of voluntary disclosure of income appended to this certificate and from perusal of this; it reveals that all such investments relate to assessment year 1994-95. The concerned cash creditors have not made any disclosure in VDIS 1997 regarding the investment made in the assessment year 1992-93. Therefore, the assessee had failed to explain the source of such cash as well as the creditworthiness of the depositors. We do not see any good reason to interfere with the findings of the learned Commissioner (Appeals) and, hence, this appeal is dismissed.

7. From the concurrent findings recorded by the authorities below, it is apparent that none of the parties have recorded any findings to the effect that the identity of the depositors had not been established by the assessee. The case of the respondent is that the assessee has failed to explain the source of such cash as well as creditworthiness of the depositors.

8. The Supreme Court in the case of CIT v. Lovely Exports (P) Ltd. (supra), while considering the question as to whether the amount of share money be regarded as undisclosed income u/s 68 of the IT Act, 1961, has held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the assessing officer, then the Department is free to proceed to reopen their individual assessments in accordance with law. In the case of Commissioner of Income Tax Vs. Steller Investment Ltd., , the Supreme Court agreed with the decision of the Delhi High Court in the case of Commissioner of Income Tax Vs. Stellar Investment Ltd., , wherein the court had held thus :

It is evident that even if it is 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.

9. Examining the facts of the present case in the light of the above decisions, it is apparent that the learned advocate for the appellant is justified in contending that the controversy involved in the present case stands concluded by the above referred decisions. In the present case, it is not the case of the Revenue that the subscribers are bogus. The case of the Revenue is that the source of such cash as well as creditworthiness of the depositors has not been explained. In the circumstances, in the light of the aforesaid decisions, -the Department is free to proceed to reopen the individual assessments of the depositors named by the assessee, however, under no circumstances, can the amount of share capital be regarded as the undisclosed income of the assessee. In the case of Mr. Uday Vaidya, which is sought to be distinguished by the learned counsel for the

respondent, the assessee has furnished the name and address. Moreover, it may be pertinent to note that Mr. Uday Vaidya has purchased in all 10 shares totally worth Rs. 100.

10. In view of the above discussion, the question is answered in the negative, that is, in favor of the assessee and against the Revenue. The Tribunal was not justified in confirming the addition of Rs. 4,30,760 on account of unexplained cash credits in the case of the assessee, a company, where the amounts are alleged to have been introduced by subscribers to the initial share application money at the time of formation of the company.

11. In the light of the aforesaid, the impugned order of the Tribunal dt. 2-4-2004 is hereby quashed and set aside. The appeal is, accordingly, allowed with no order as to costs.