(2020) 04 DEL CK 0019

In the Delhi High Court

Case No : Civil Writ Petition No. 2952 Of 2020

Jitf Urban Infrastructure Services Limited APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 08-04-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Income Tax Act, 1961 — Section 68

Citation : (2020) 04 DEL CK 0019

Hon'ble Judges : Manmohan, J;Sanjeev Narula, J

Bench : Division Bench

Advocate : Manoj K.Singh, Vijay K. Singh, Daizy Chawla, Kanishka Prasad, Asheesh Jain, Zoheb Hossain

Final Decision : Dismissed

Judgement

,,

Manmohan, J",,

CM No. 10253/2020,,

Allowed, subject to just exceptions.",,

W.P.(C) 2952/2020 & CM No. 10252/2020,,

1. The present petition under Article 226 of the Constitution of India has been listed before this Bench by the Registry in view of the urgency,,

expressed therein.,,

2. The writ petition has been heard by way of video conferencing.,,

3. It is pertinent to mention that the present writ petition has been filed seeking quashing of the order dated 11th March, 2020 passed by Principal",,

Commissioner of Income Tax-5 (Respondent No.2) and order dated 28th

February, 2020 passed by Deputy Commissioner of Income Tax",,

(Respondent No.4) and to further direct him to forebear from taking any coercive steps/actions against the petitioner for recovery of tax and also for,,

removing lien marks on the bank accounts of the petitioner.,,

4. Mr. Manoj Singh, learned counsel for the petitioner states that the respondents had failed to appreciate that the assessment order dated 29th",,

December, 2019 had been made on a â??high pitched basisâ?? and therefore, the recovery and collection of tax had to be held in abeyance till the",,

disposal of the appeal against the assessment order dated 29th December, 2019 pending before the respondent No.3. He contends that the",,

respondents No.2 and 4 erroneously assumed that the pre-deposit of twenty per cent of the outstanding amount was mandatorily required in view of,,

the instructions and office memorandum issued by CBDT dated 02nd December, 1993, modified by office memorandum (OM) dated 29th February,",,

2016 and 31st July, 2017. He submits that the CBDT instructions, guidelines and office memorandum cannot substitute or override the basic tenets to",,

be followed in the consideration and disposal of stay applications. He states that the existence of a prima facie case for which illustrations have been,,

provided in the circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute trinity and",,

are indispensable consideration for adjudicating stay applications.,,

5. Learned counsel for petitioner points out that the Honâ??ble Supreme Court in Principal Commissioner of Income Tax vs. LG Electronics (India),,

Pvt. Ltd., (Civil Appeal No.6850/2018) has clarified that it is open for the authority to grant relief to deposit lesser amount than twenty per cent on the",,

facts of individual cases.,,

6. Per contra, learned standing counsel for the respondents No. 2 to 4 contends that the impugned order passed by respondent No. 2 is an exhaustive",,

order and it is not exclusively based on circulars/instructions. Learned standing counsel for respondents No. 2 to 4 has extensively referred to the,,

Assessing Officerâ??s order which has been quoted at length by respondent No. 2 in the impugned order.,,

7. Having heard learned counsel for the parties, this Court is of the view that the present case involves the interpretation of Section 68 of the Income",,

Tax Act. The said Section 68 is reproduced hereinbelow:-,, â??Cash credits.,,

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 Assessing Officer, satisfactory, the sum",,

so credited may be charged to income-tax as the income of the assessee of that previous year:,,

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so",,

credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation",,

offered by such assessee-company shall be deemed to be not satisfactory, unlessâ?"",,

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the",,

nature and source of such sum so credited; and,,

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:,,

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded,",,

is a venture capital fund or a venture capital company as referred to in clause (23FB)of section 10.â??,,

8. The use of the words â??any sum found credited in the booksâ? in Section 68 of the Act indicates that the Section is widely worded, and includes",,

investments made or unsecured loans received. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness",,

of the transaction and creditworthiness of the investors/loan depositors under Section 68 of the Act. The assessee is expected to establish to the,,

satisfaction of the assessing officer:-,,

â?¢ Proof of identity of the creditors/lenders;,,

â?¢ Capacity of creditors to advance loan; and,,

â?¢ Genuineness of transaction,,

9. Recently, the Supreme Court in Principal Commissioner of Income Tax (Central-1) vs. NRA Iron and Steel Private Ltd., (2019) 15 SCC 529 has",,

held as under:-,,

â??13. The principles which emerge where sums of money are credited as share capital/premium are:,,

13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness",,

of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge",,

the primary onus.,,

SatyagruhChavani, Lane No.21,

Bunglow No.508, Jodhpur Cross

Road Satellite, Ahmedabad

Gujarat","w.e.f. 10.10.2010 (date of

incorporation)

,",

A-1, UPSIDC Industrial Area

Nandgaon Road, KosiKalan

Mathura, Uttar Pradesh","w,.e.f. 26.12.2017 (date of order

,of Regional Director, RoC, UP)",

H.No.2, C-2, Staff Colony,

Machinery Division 13 Km Stone

MandirHasaud, GE Road,R aipur

City","w.e.f. 29.11.2018 (date of order

,of Regional Director, RoC,

Chhatisgarh)",

Sl.No.,Name of Company,"Unsecured loan received from

Glebe Trading Pvt. Ld. (in Rs.)

1,Jindal Saw Ltd.,"105,44,00,000

2,Jindal ITF Ltd.,"151,83,70,000

3,"J I T F Urban Infrastructure

Services Ltd.","196,50,00,000

4,Jindal Quality Tubular Ltd.,Na

5,Jindal Fittings Ltd.,"103,89,25,000

,Total,"557,66,95,000

-JWIL Infra Ltd.,,

-Jindal Quality Tubular Ltd.,,

M/s. JWIL Infra Ltd. and Jindal Quality Tubular Ltd. are known Jindal Saw Group companies.,,

Veni Verma (DIN 07586927), is also director in:",,

-JITF Infralogistics Ltd.,,

-Glebe Trading Pvt. Ltd.,,

-Hexa Trading Ltd.,,

M/s. JITF Infralogistics Ltd. is known Jindal Saw Group company. Thus it is seen that M/s Glebe Trading Pvt. Ltd. has common,,

directorships with various other group companies of the assessee. Its given email id in ROC record is sunil.jain@jindalsaw.com which also,,

bears the name of the group.,,

The company is not owning any assets.,,

From the above facts and discussions above and in light of the independent field enquiries carried out, it is seen that the entities M/s Glebe",,

Trading Pvt. Ltd. has been used as conduit in availing unsecured loans covered u/s 68 of the Act. The identity and creditworthiness of M/s,,

Glebe Trading Pvt. Ltd. and genuineness of the transaction of unsecured loans received from it is not established. Based on initial,,

submissions of the assessee on the issue, independent field enquiries were caused to be carried out and the findings were confronted to the",,

assessee. The assessee in response has failed to discharge its onus regarding establishing the identity and creditworthiness of the lender,,

and the genuineness of the transaction of unsecured loans in the given caseâ?¦â??,,

11. Undoubtedly, as held by the Supreme Court in LG Electronics (India) Pvt. Ltd. (supra), it is open to the statutory authorities to grant relief to",,

deposit an amount lesser than twenty per cent if the facts of the case so warrant. However, on the facts of the present case, as determined by the",,

Assessing Officer, a prima facie case is not made out and such a relief is not warranted.",,

12. Consequently, the present writ petition and application being bereft of merits are dismissed. However, respondent No. 3 is directed to decide the",,

appeal filed by the petitioner within thirty days from the date the Lockdown ends.,,

13. Needless to say, the observations made by this Court are only in the context of adjudication of the present writ petition and shall not bind the",,

appellate authority while deciding the appeal.,,

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.,,

