(2008) 12 DEL CK 0057

In the Delhi High Court

Case No : WP (C) 8688 of 2008

JSRS Udyog Limited and Another — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 10-12-2008

Acts Referred:

Income Tax Act, 1961 — Section 139, 142(1), 143(3), 147, 148

Citation : (2009) 313 ITR 321 : (2009) 180 TAXMAN 477

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : C.S. Aggarwal and Prakash Kumar, for the Appellant; Sanjeev Sabharwal, for the Respondent

Judgement

Badar Durrez Ahmed, J.—By way of this writ petition, the petitioner seeks the quashing of the impugned notice dated 28.03.2008 u/s 148 of the Income Tax Act, 1961 (hereinafter referred to as ?the said Act?) as well as the order passed by the Assessing Officer on 28.11.2008 disposing of the objections to the initiation of re-assessment proceedings preferred by the petitioner/assessee.

2. We have heard the learned Counsel for the parties. The facts are that the original assessment was framed u/s 143(3) of the said Act on 05.03.2003. In the course of the assessment proceedings, the Assessing Officer had raised certain queries, inter alia, with regard to the share application money received by the assessee from Solo-Mio Marketing Pvt Ltd. In response to the queries raised by the Assessing Officer, the assessee submitted a reply dated 10.02.2003. A copy of the said reply has been placed as Annexure-4 at page 75 of the present paper book. On going through the said reply, we note that the petitioner had clearly disclosed the names and addresses of the directors of the assessee / petitioner company. The petitioner had also stated categorically that no loans had been accepted by it during the year under consideration and that there was an increase of Rs 64,75,000/- in the share capital of the company. It was also stated that all the share application money had come from companies which were duly

registered under the Companies Act, 1956 and that each one of them was legal entity. It was also stated that the applicants had confirmed their investments through duly attested affidavits. Specifically, with regard to the investment made by Solo-Mio Marketing Pvt. Ltd, the petitioner gave the following response:

2. NAME AND ADDRESS OF THE INVESTOR / SHARE HOLDER

M/S SOLO-MIO MARKETING PRIVATE LIMITED, L-132, SHASTRI NAGAR, DELHI ? 110 052.NO. OF SHARES HELD

50,000 Equity Shares of Rs. 10 each AMOUNT RECEIVED & MODE OF PAYMENT Rs.3,00,000/- Through Cheque No. 436482 dated 12.03.2001 and Rs. 2,00,000/- Through Cheque No. 436483 dated 12.03.2001 drawn on Bank of India, Parliament Street, New Delhi.

SOURCE WHEREFROM THE APPLICANT HAD RECEIVED FUNDS The applicant had received back re-payment of Loan of Rs. 3,00,000/- through Cheque No. 459673 dated 11.03.2001, Rs. 5,00,000/- through Cheque No. 459674 dated 12.03.2001, Rs. 2,00,000/- through Cheque No. 459672 dated 07.03.2001 from M/s. Flowtech Air (P) Ltd., drawn on Canara Bank, South Extn. New Delhi, Rs. 90,000/- From M/s MJM Investments through Cheque No. 444851 dated 09.03.2001 and Rs. 60,000/- from M/s. Nikki Drugs & Chemicals Pvt. Ltd., through Cheque No. 317104 dated 09.03.2001 drawn on Bank of India, Bank Street, Karil Bagh, New Delhi -110 005.

SUPPORTING EVIDENCE RELIED UPON 1.The applicant is a legal entity, a company duly incorporated under Indian Companies Act.

2. The Applicant is a regular Income Tax Assessee on P.A. No. AAACS9707P. [Thus the identity of the investor is established and known to the department.]

3. The Payment has been received through Banking Channels. [Copy of relevant extract of their Bank A/c is enclosed.]

4. The Applicant made investment after a due authority drawn from meeting of Board of Directors. (Copy of the same is enclosed.)

5. Certificate from the Debtors, who had re-paid the Loan to the Applicant / Investor is enclosed. This shows the source of credit entry in the Bank A/c of the Applicant / Investor out of which Application money was paid to the Assessee.

6. Affidavit by the Investor confirming these facts in is enclosed.

3. We also note that the petitioner had also filed the affidavit of Mr K.K. Bansal, who was the director of M/s Solo-Mio Marketing Pvt. Ltd confirming that the said company had purchased 50,000 fully paid up equity shares of Rs 10 each of the petitioner company at par during the financial year which ended on 31.03.2001 and relevant to the assessment year 2001-02. The affidavit also disclosed that the payments towards the share application money were made through two separate cheques, details of which were given in the said affidavit. The PAN

number of the investor company, i.e., Solo-Mio Marketing Pvt. Ltd was also clearly disclosed in the said affidavit. After having received this explanation and information from the assessee, the Assessing Officer framed the assessment order on 05.03.2003. In the assessment order itself, it was noted as under:

...The details and documentary evidence of share application money pending for allotment in the previous year have been filed alongwith documentary evidence from subscribers. It has been stated that funds available with the company has been advanced to various persons and the company has earned interest income of Rs. 7,44,691/- on such advances.

4. The Assessing Officer issued the notice u/s 148 of the said Act on 28.03.2008 beyond the period of four years. As such, the proviso to Section 147 would become applicable. Under the proviso itself, it is necessary that before any action is initiated, it must be pointed out that the assessee had failed to make a true and full disclosure of all the material facts. In the reasons recorded in writing for re-opening the case u/s 148 of the said Act, there is no allegation that the petitioner did not make a full and true disclosure of all the material facts. In fact, in our view, the reasons recorded are quite general and vague as would be apparent from a plain reading of the same. The reasons recorded are as under:

REASONS RECORDED IN WRITING FOR REOPENING THE CASE u/s 148

M/s JSRS Udyog Limited

A.Y. 2001-02

Information has been received from the Investigation Wing of Income Tax Department, New Delhi regarding beneficiaries and operators of accommodation entries in Delhi.

In the said information, it has been inter alia reported as under:

Entries are broadly taken for two purposes

1. To plough back unaccounted black money for the purpose of business or for personal needs such as purchase of assets etc., in the form of gifts, share application money, loans etc.

2. To inflate expenses in the trading and profit and loss account so as to reduce the real profits and thereby pay less taxes.

The specific information provided by the Investigation Wing of Income Tax Department, New Delhi is enclosed as per Annexure.

In view of the specific information received as above from Investigation Wing of Income Tax Department, New Delhi, I have sufficient reason to believe that the assessee company M/s JSRS Udyog Pvt. Limited has indulged in receiving accommodation entries and the total amount of payment received by the assessee company amounting to Rs. 8,00,000/- is bogus and represents the undisclosed income / income from other sources of the assessee company, which has not been offered to tax by the assessee in its return filed.

Accordingly, I have reason to believe that income of Rs. 8,00,000/- has escaped assessment as the assessee company has understated its returned income for the AY 2001-02 by an amount of Rs. 8,00,000/-.