

IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 30.11.2015

+ **ITA 86/2013**

COMMISSIONER OF INCOME TAX DELHI-V Appellant

versus

PROVESTMENT SECURITIES PVT. LTD. Respondent

Advocates who appeared in this case:

For the Appellant : Ms Suruchi Aggarwal, Senior Standing Counsel
with Ms Lakshmi Gurung, Junior Standing
Counsel.

For the Respondent : Mr S. Krishnan.

CORAM:

DR. JUSTICE S.MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter 'the Act') calling into question an order dated 13th July, 2012 passed by the Income Tax Appellate Tribunal (hereafter 'the Tribunal') in ITA No. 2485/Del/2010. The said appeal was filed by the Assessee challenging an order dated 31st March, 2010 passed by the Commissioner Income Tax (Appeals) [hereafter 'CIT(A)'] in Appeal no. 153/CIT(A) (xvii)/ Del/ 08-09 whereby the appeal filed by the

Assessee against the assessment order dated 15th December, 2008 passed by the Assessing Officer (hereafter ‘the AO’) for the assessment year 2006-07, was rejected.

2. The principal controversy in the present case involves a Lamborghini Car bearing registration no. PB-09G-0052, which had been exclusively used by one Mr Sameer Thapar who is a major shareholder of the Assessee Company in his capacity as a Karta of Sameer Thapar & Sons (HUF). Whilst the Assessee Company has paid the import duty, penalty and fine for the aforesaid motor vehicle and has also capitalized the said asset in its books in a later year, the Assessee has claimed that it has not paid any consideration towards the cost of the car. Neither the AO nor the CIT(A) accepted the explanations offered by the Assessee for being in possession of the vehicle and, in effect, concluded that the Assessee was *de facto* owner of the vehicle in question. Accordingly, the value of the vehicle was sought to be taxed as unexplained investment under Section 69 of the Act. The Tribunal, however, accepted the contention of the Assessee and held that the Assessee was not the owner of the vehicle in question within the scope of “ownership” as defined under Section 2(30) of the Motor Vehicles Act, 1988; the Assessee was not registered as a owner with the concerned

authorities under the said Act. The Tribunal held that there was no material which indicated that the Assessee had paid for the car or that the purchase transaction was a *benami* transaction. The Tribunal, thus, allowed the Assessee's appeal, which is impugned by the Revenue.

3. By an order dated 2nd July, 2013 this Court framed the following questions of law:-

“1. Whether the Income Tax Appellate Tribunal has rightly interpreted Section 69 of the Income Tax Act, 1961 and was right in deleting the addition of Rs.1,37,07,306/ made by the assessing officer on account of undisclosed investment in Lamorghini Car?

2. Whether the order of the Income Tax Appellate Tribunal is not perverse in the facts and circumstances of the case?”

4. The relevant facts necessary to address the aforesaid controversy are briefly stated as under:-

4.1 The Assessee is a promoter of a public company – JCT Ltd. (hereafter referred as ‘JCT’) which belongs to the Thapar Group. Mr Sameer Thapar is the Vice-chairman-cum-Managing Director of JCT Ltd. He is also the Karta of Sameer Thapar & Sons (HUF), which is stated to own 99% of the shareholding of the Assessee. The Department of Revenue

Intelligence (Customs Department) (hereafter referred as 'DRI) conducted search and seizure operations on the premises of one Mr Sanjay Bhandari in the month of September 2005, in connection with the import of motor vehicles under the EPCG Scheme at a concessional rate of duty.

4.2 Pursuant to the search, notices were issued by the DRI for production of the vehicle in question, which was in possession of Mr Sameer Thapar. The vehicle in question was produced before the DRI on 10th September, 2005 and was seized by the DRI on that date for alleged violation of duty payment.

4.3 The vehicle in question had been imported in India by Mr Sanjay Bhandari in the name of his sole proprietorship concern. According to the Assessee, the said vehicle was purchased by Mr Sanjay Bhandari, proprietor of M/s History Logistics (a proprietorship concern of Mr Sanjay Bhandari). It is claimed that, thereafter, the said vehicle was sold to another proprietorship concern of Mr Sanjay Bhandari - M/s V.K. Tours & Travels (hereafter 'VKTT') through a High Sea Sale Agreement and Contract executed on 4th April 2005. Although the Revenue had also raised a question whether a sale between two proprietorship concerns could take place, however, the same is not material inasmuch as it is not disputed that

the vehicle in question came to be registered in the name of VKTT, which at the material time was a sole proprietorship concern of Mr Sanjay Bhandari.

4.4 On the basis of information received from the Assistant Director of Income Tax regarding the vehicle in question, a show cause notice was issued by the AO to the Assessee on 19th November, 2008 requiring the Assessee to explain the source of the investment of the vehicle in question. In response to the show cause notice, the Assessee filed a letter dated 22nd November, 2008. The Assessee explained that VKTT had approached the Assessee for taking the vehicle on lease and had handed over the possession of the vehicle for trial. While the vehicle was still on trial, the same was seized by the DRI. Subsequently, the vehicle was released to the Assessee on the payment of differential duty, execution of bond and submission of bank guarantee for fine and penalty. Since no consideration was shown to have been paid for the original cost of the vehicle, the AO was not convinced of the explanation offered as to the rights being exercised by the Assessee in respect of the vehicle in question.

4.5 Accordingly, the AO held that the Assessee's investment in purchasing the vehicle was liable to be taxed in its hands, as unexplained investment.

4.6 The Assessee preferred an appeal against the assessment order before the CIT(A).

4.7 Before the CIT(A), the Assessee sought to produce further documents and filed an application under Rule 46A for production of additional evidence, which included an invoice in favour of M/s History Logistics; copy of the letter of credit issued by the Oriental Bank of Commerce; copy of the bank advice dated 15th April, 2005 for remittance of Rs.70,89,972/-; marine insurance policies; invoice dated 31st March, 2005 for the sale of car by M/s History Logistics to VKTT; a copy of challans/invoice for payment of insurance premium of Rs.2,96,793/, custom duty for Rs.4,89,968/-, commission for Rs.42,978/- and other charges for Rs.88,945 paid by VKTT; and confirmation from Mr Sanjay Bhandari regarding the purchase of the car and payment of the aforesaid amounts. The CIT(A) called for the comments of the AO. Although the AO opposed the production of additional evidence but the CIT(A) allowed the Assessee's application and called for a remand report.

4.8 After examining the application of the Assessee, the letters submitted by Mr Sanjay Bhandari as well as the order of the Settlement Commission, the CIT(A) upheld the assessment order for addition of the value of the car under Section 69 of the Act. However, the CIT(A) enhanced the quantum of addition by Rs.2,92,694/- from Rs.1,37,07,306/- to Rs.1,40,00,000/-, which was the value computed by the Directorate of Revenue Intelligence (hereafter 'DRI').

5. In the aforesaid context, it would be expedient to examine the explanation provided by the Assessee before the CIT(A) as well as the explanation of Mr Sanjay Bhandari in his letter submitted by the Assessee before the CIT(A).

6. The relevant extracts of the letter dated 29th June, 2009 submitted by the Assessee before the CIT(A), which contains the Assessee's explanation for being in possession of the car are quoted below:-

“(i) M/s VK Tour and Transport approached the Appellant Company for exploring the possibility of giving vehicle No. PB09G0052 on lease and possession was handed over to M/s Provostment Securities Pvt Ltd for trial of the vehicle so that the same, if found suitable, could be taken on lease by the Company.

(ii) *Meanwhile, when the vehicle was in possession of the Company, DRI seized the vehicle. It was subsequently informed to the Appellant Company that Vehicle No. PB09G0052 was imported by M/s VK Tour and Transport New Delhi against EPCG Licence No. 13000858 dated 25.01.2005 vide Bill of Entry 0985 dated 08-04-2005.*

(iii) *The vehicle was released by DRI provisionally on its own volition on the condition of payment of differential duty and execution of bond and bank guarantee for fine and penalty to be made by the persons from whom the same was seized. Thus, the Appellant Company was advised to make the payment and also to submit the bank guarantee after which the vehicle was given to it on superdari.*

(iv) *Accordingly, the payment of Rs.68,58,244/- towards duty was made by the company comprising bankers cheque No. 347142 dated 13.09.2005 for Rs.65,00,000/- of American Express Bank Ltd and bankers cheque No. 243559 dated. 15.09.2005 of HSBC for Rs. 3,58,244/- which were duly recorded in the books of accounts. Further an amount of Rs. 41,13,971/- was paid on 25.04.2007 vide bankers cheque No. 428331 dated 25.04.2007 as demanded by DRI.*

(v) *A show cause notice was Issued by DRI to M/s VK Tour & Transport and to the Appellant Company. The Appellant Company was advised to approach the Settlement Commission primarily due to the fact that in case its petition is accepted, it will get immunity from prosecution.*

(vi) *DRI after passing the final order on 20.12.2007, released the vehicle to the Appellant Company and encashed the Bank Guarantee of Rs.35,00,000/- given by the company towards redemption fine of Rs. 7,13,000/-, penalty of Rs.5,48,000/- and interest of Rs. 16,68,234/-.*

(vii) *The amount of Rs.68,58,2441/- was shown as duty recoverable as on 31.03.2006 since the vehicle was provisionally released to the Appellant Company, although the vehicle was in its possession but the same was to be returned*

to M/s V.K. Tour and Transport once the duty amount paid by it is refunded.

(viii) When the final duty amounting to Rs.1,09,72,215/- (inclusive of Rs.68,58,244/- which had already been paid during the year ended 31.03.2006) was subsequently paid, the entire amount comprising the duty, was paid by the Appellant Company during the year ended 31.03.2008 and capitalized under the head vehicle in the books of accounts. The balance comprising of penalty, redemption fine and interest on the differential duty amount was charged to the respective heads during the year ended March 31,2008.

(ix) The Appellant Company has on date paid on aggregate sum of Rs.1,39,01,449/- in respect of the said vehicle as per the details given below:-

<i>Date</i>	<i>Amount</i>	<i>Remarks</i>
<i>13.09.2005</i>	<i>65,00,000</i>	<i>Duty</i>
<i>15.09.2005</i>	<i>3,58,244</i>	<i>Duty</i>
<i>25.04.2007</i>	<i>41,13,971</i>	<i>Duty</i>
<i>22.01.2008</i>	<i>7,13,000</i>	<i>Redemption fine</i>
<i>22.01.2008</i>	<i>5,48,000</i>	<i>Penalty</i>
<i>22.01.2008</i>	<i>16,68,234</i>	<i>Interest</i>

As such whatever payments have been made stand duly reflected in the books and cannot be characterized as investment from the undisclosed sources. The total amount paid by the Assessee Company in respect of the said vehicle amount to Rs.1,39,01,449/- and not Rs.1,37,07,306/-."

7. Before the Assessing Officer, the Assessee contended that the vehicle was imported by VKTT against EPCG Licence No. 13000858 dated 25th January, 2005 vide Bill of Entry 0985 dated 8th April, 2005. It was stated that VKTT had approached the Assessee company for trial of the vehicle and if found suitable, to enter into a lease agreement for the vehicle. However, in the meantime, the vehicle in question was seized by DRI and was subsequently released on the condition of payment of differential duty and execution of bond and bank guarantee for fine and penalty. The Assessee had made payments towards duty and had also submitted a bond and a bank guarantee for the fine. The vehicle was released on *superdari* by the DRI and thereafter continued to be in possession of the Assessee.

8. Before the CIT(A), the Assessee repeated the above explanation. However, the Assessee produced several documents to indicate that the vehicle had been purchased by M/s History Logistics and was, thereafter, transferred to VKTT (both proprietary concerns of Sanjay Bhandari). The Assessee also produced a letter from Sanjay Bhandari which indicated that Sanjay Bhandari had agreed to transfer the vehicle to the Assessee or its nominee in consideration of the amounts paid by the Assessee to the Authorities for release of the vehicle and without any further consideration.

The letter also indicated that the duties had been paid by the Assessee on an understanding that the vehicle would be transferred to the Assessee on the final order being passed by the Settlement Commission.

9. It is apparent from the above that the Assessee claims that it had neither executed any agreement for hire of the vehicle nor paid any consideration for the vehicle in question; yet, the vehicle was registered at the address of the related entity and, indisputably, the Assessee/Sameer Thapar has been in physical possession of the vehicle from May 2005 (except for the few days that the vehicle was in possession of the DRI). Although the Assessee claims that the vehicle was to be leased to the Assessee, its actions are clearly not consistent with this position. If the vehicle was provided to the Assessee only for a trial purpose, there was no occasion for the Assessee to file an application or move the Settlement Commission for settlement of the duties with respect to the said vehicle or seek release of the vehicle. However, the Assessee acted in complete variance with this position; it paid the duty for release of the vehicle, obtained possession of the same on *superdari* and continued to use the vehicle. During the relevant period, Assessee showed the payment of duty as a recoverable from VKTT even though there was no agreement with

VKTT for payment of such duty at the time nor was it produced at any later stage. During the year ended 31st March, 2008, the Assessee capitalized the payments of duty under the head of 'vehicle' in its books of accounts and the penalty, redemption fine and interest were debited by the Assessee under the respective heads. Thus, the Assessee indicated the payment of penalty, redemption fine and interest as its liability in its books during the year ended 31st March, 2008 and not as amounts paid on behalf of VKTT. At this stage, (i.e. during the year 31st March, 2008) the Assessee's books reflected the Assessee to be the owner of the vehicle in question. Concededly, no agreement had been entered into by the Assessee with VKTT during the interregnum period entailing the transfer of the vehicle. On a query whether there was any change in the situation between 2005 when the vehicle was seized and 2008 for the Assessee to now hold out as an owner of the vehicle, the learned counsel for the Assessee answered in the negative. He submitted that vehicle in question had been shown as an asset under the head 'vehicle' in the year ending 2008 as the Assessee had paid the duty for the said vehicle. It is clear from the above that the payment of duties as well as the treatment accorded by the Assessee to such payments in its books militates against the Assessee's explanation that it

was only a hirer of the car in question and was not the owner. There is also no explanation as to why the Assessee had to make the payments of duty, if the Assessee did not own the asset seized.

10. At this stage, it would also be relevant to refer to the relevant portions of the order passed by the Settlement Commission, which were extracted by the CIT(A) in its order dated 31st March, 2010. The said extracts are reproduced as under:-

“18.9. Shri H.S. Wig, Sr. VP, JCT Ltd. represented Shri Sameer Thapar (With regard to two vehicles BMW X5 DL2CAC 0002 and **Lamborghini Gelardo PBO9G 0052**) during the hearing on 27.07.07.2007 and stated and also vide submission dated 30.07.2007, submitted that the co- applicant had taken the said vehicles on Hire Agreement dated 03.09.2002 from Shri Sanjay Bhandari for 3 years. DRI seized the vehicle vide Panchnama dated 10.09.2005. It was prayed that the co-applicant be granted waiver from penalty, redemption fine, interest and prosecution. He also prayed that the Bank guarantee and Provisional Duty Bond furnished by him the DRI be also released.”

“22. ...Bench notes that it is not a solitary case of import of a single vehicle by a person or a firm. A large number of vehicles have been imported over a period of time under 30 EPCG licenses. DRI's investigations have very clearly brought out that EPCG licenses were obtained by resorting to mis-declaration of premises with regard to their status vis-à-vis the activity declared to be carried out from the said premises. Investigations have also clearly brought out that vehicles were

transferred to other persons by resorting to different kinds of subterfuges and were not used for the purpose for which they were imported under the respective EPCG Licenses. It is immaterial whether the ownership of the vehicles was transferred or not in a legal manner. Perhaps legal transfer of the vehicles was not possible as it could have resulted in creation of evidence that the vehicles were not used for the purpose for which they were imported. Different kinds of deceptions were adopted by the firms and the company operating through Shri Sanjay Bhandari who was their Proprietor/Director to part with the vehicles and yet take advantage of duty concession under the EPCG Scheme and also to show fulfillment of export obligation. Evidence unearthed by DRI has very clearly proved that dishonest motive of evading duty was the sole objective behind the import of these 61 vehicles. Such a motive is quite manifest despite the dissembling resorted to on the papers. Bench, on a careful consideration of the evidence and facts and circumstance of the cases, is convinced that these imports were actuated by a dishonest motive of making profit by evading payment of appropriate Custom Duty. Even the so called fulfillment of the export obligation was not achieved from the foreign exchange generated from or through the use of these vehicles. Evidence shows that remittances were made from some other source. In view of this position, Bench is of the view that the arguments of the Id. advocate in favour of grant of immunity have no substance and the main applicants can not be granted full immunity from penalty and redemption fine.

23. ...In the present case, Bench has already observed in para 22 above that it was a well-planned operation on the part of Shri Sanjay Bhandari wherein deceitful contrivances and tricks were adopted to evade payment of due customs duty, yet maintain the façade of observance at the conditions of EPCG scheme and thereby make undue profit at the cost of exchequer.

Further the duty evaded was paid as differential duty only after the DRI was able to unearth the racket and seize 55 vehicles. Therefore duties were paid belatedly and to that extent the main applicants have enjoyed financial accommodation at the cost of Government Exchequer.....”

“25 Bench finds that it is quite obvious that they were complicit in improper transfer of the vehicles in question the imports of which are tainted by evasion of customs duty. All the, vehicles were of foreign origin and were, relatively speaking, of high value. There is evidence in case of a number of vehicles that prior arrangements were made between the main applicants and the transferees and amounts were received from the persons to whom the said vehicles were claimed to have been leased out. It can not be believed that they had taken over these vehicles without checking up the import documents. As such, the Bench holds them liable to penalty.

...Similarly, co-applicant Shri Sameer Thapar is also not entitled to release of bank guarantee and provisional duty bond for the reasons of his complicity in the entering of hire agreement to circumvent the provisions of the EPCG Scheme with regard to two vehicles.”

11. The vehicle was registered on 23rd May, 2005 and it is apparent that even at the time of registration, it was known that the vehicle would be used by JCT, Sameer Thapar or any of the Thapar Group entities. The only explanation offered before the DRI for registering the car at the address of JCT is that this had been done to inspire confidence and secure the concerns of JCT. However, as per the version of the Assessee, there was no

agreement in May 2005 for lease of the vehicle and the vehicle in question was handed over only for the purposes of a trial. According to the statement made by Mr Satish Kapoor (an officer of JCT) before the DRI, the vehicle continued to be in possession of Mr Sameer Thapar from May till 10th September, 2005 when it was seized by DRI. Thus, admittedly, the vehicle continued to be in possession of Mr Sameer Thapar from the month of its registration till its seizure but no agreement for lease or hire of the vehicle had been executed. Although, it is stated that in addition to lease rentals the Assessee/JCT Ltd. was also to place a security deposit with Mr Sanjay Bhandari/VKTT, concededly, no such deposit had been placed. It was also material to note that there is also a variance in the amount of the security deposit payable to VKTT; whilst Mr Sameer Thapar, in his statement recorded u/s 108 of the Customs Act, 1962, claims that Rs.48 lacs was payable as security deposit whereas the Assessee Company in its reply dated 22nd November, 2008 to the show cause notice dated 19th November, 2008 claims that the security deposit was Rs.60 lacs.

12. The CIT(A) examined the relevant facts and rejected the explanation offered by the Assessee for being in possession of the vehicle as a hire.

13. It does appear that the Assessee's explanation of coming into possession of the vehicle only for trial purposes and continuing to be in possession of the vehicle is a subterfuge. However, the question to be addressed is whether, in the facts and circumstances of the case, the value of the vehicle could be added to the income of the Assessee under Section 69 of the Act.

14. At this stage it is necessary to refer to Section 69 of the Act, which reads as under:-

“69. Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.”

15. It is apparent from the plain language of Section 69 of the Act that in order for any addition to be made under Section 69 of the Act, the following conditions must be met:

(a) it is established as a fact that the Assessee has made an investment;

(b) that the investment made is not recorded in the books of the Accounts, if so maintained; and

(c) the Assessee offers no explanation as to the nature and source of investment made or the explanation offered by the Assessee is, in the opinion of the AO, not satisfactory.

16. Thus, first and foremost, AO must come to a conclusion that an Assessee had, in fact, made an investment. Once an AO finds that an investment has been made, he has to examine the Assessee's explanation as to the source of that investment. It is only in cases where the Assessee is unable to explain the source of the investment made that provisions of Section 69 of the Act can be applied to tax the value of the investment made.

17. In the present case, the threshold condition of the Assessee making an investment is not satisfied. Before the CIT(A), the Assessee had produced additional evidence. This included; (i) copy of the Invoice No.73015 dated 6th April, 2005 issued by London Country Club Ltd. in favour of M/s History Logistics (Prop. Sh. Sanjay Bhandari) for purchase of car; (ii) copy of Letter of Credit No.01790002340204 issued by Oriental Bank of Commerce, New Delhi for GBP 85395; (iii) copy of Bank Advice

dated 15th April, 2005 for Rs.17,89,972/- (enclosure of Bank Charges) towards payment of the purchase of car; (iv) copy of Marine Insurance Policy No. 1000025538 dated 24th November, 2004 for Rs.23,419/-; (v) Copy of Invoice No. HL002/04-05 dated 31st March, 2005 for sale of Rs.72,05,521/- for sale of car on High Sea Sale basis by M/s History Logistics to VKTT; (vi) Copy of challans/invoice for payment of Insurance of Rs.2,96,763/-, Custom Duty of Rs.4,89,668/-, Commission Agency Charges of Rs.42,978/- and other charges of Rs. 88,945/-. The Assessee had also produced a letter from Sanjay Bhandari. The relevant extract of which reads as under:-

- “2. That the said Vehicle was purchased from London Country Club Limited 1-2 Rutland Garden, Knights bridge London vide their Invoice No 73015 dated 06/04/2005 for GBP85395.00 (Invoice copy enclosed).*
- 3. That the payment of the said invoice was made by my bankers, Oriental Bank of Commerce, Connaught Place, New Delhi vide, their Letter of Credit No: 0179000230204 dated 21/12/2004 and on 15/04/2005 and the account of History Logistics was debited for Rs. 70,77,773/-. Apart from above bank charges of Rs. 12,199/- were also paid by History Logistics, New Delhi. (Copy of L/C, payment as well as relevant Bank Statement are enclosed)*
- 4. Further a sum of Rs. 23,4797- was also paid to Reliance General Insurance Company towards Marine Insurance vide Cheque No: 108516 dated 24/11/2005.*

5. *The said vehicle was sold by History Logistics to V.K. Tours and Transport vide their Invoice No. HL002/04-05 dated 31/03/2005 for Rs.72,05,521/- vide High Sea Sale Agreement and Contract between both the parties was executed on 04/04/2005. Please note that V.K. Tour and Transport is also a proprietary concern and proprietor being the undersigned. (Copy of Invoice enclosed). The High Sea Sales Agreement was executed as the EPCG license for the B5/ 110, 2nd floor, Safdarjung Enclave, New Delhi- 110029 import of the said car could not be granted to History Logistics, but was granted to V.K. Tour and Transport instead.*
6. *All custom formalities were then completed by V.K. Tours and Transport and amount of Rs.4,89,968/- was paid to Custom authority towards Import duty. Apart from the above payment of Rs. 42,978/- was made as clearing agency charges and Rs. 88,945/- as other incidental expenses (Copy of Bill of entry as well as the bills are enclosed).*
7. *The said vehicle was imported under EPCG scheme under import License No. 1330000858 dated 25/01/2005 issued by DGFT, Jaipur, Rajasthan.*
8. *After clearing all the custom formalities the delivery of the vehicle was taken by V.K. Tours and Transport and the vehicle was registered in their name under Registration No: PB 09 G0052 on 23/05/2005 (Copy enclosed).*
9. *Undersigned approached you to take the car on lease and it was agreed that you shall pay Rs. 2lacs every month as lease rental for three years and also make a security deposit of Rs. 48lacs. Further it was also agreed that in case you decide to purchase the vehicle in the future, the security deposit of Rs.48 lacs shall be appropriated and be treated as the payment of the vehicle otherwise the security deposit shall be released on the return of the car. However before the agreement*

could be executed, the DRI initiated an investigation of all firms of Shri. Sanjay Bhandari. Along with 54 vehicles, this vehicle was seized by DRI on 10/09/2005 and therefore the lease deed could not be finalized.

- 10. After the seizure of the vehicle by DRI, to take provisional release of the vehicle, you made a revenue deposit of Rs.68,58,244/- toward the differential duty/duty forgone and also furnished the bank guarantee for Rs 35 lacs favoring the Authorities.*
- 11. Vide their Show Cause Notice, the DRI on 23/08/2006 further additional payment of Rs. 41,13,971/- toward Custom Duty and the same was also paid on 26/04/2007 by you on our behalf after admission of my application with the Hon'ble Settlement Commission vide their order dated 28/12/2006.*
- 12. The above payments were made by you with an understanding that as and when the Settlement Commission would pass a final order, V.K. Tour and Transport, after fulfilling the conditions of the order, would receive a final release of the vehicle and be legally allowed to transfer the ownership of the abovementioned vehicle, the same shall be transferred to your desired name, or your nominee in as true and absolute owner for no further consideration.*
- 13. The Settlement Commission vide its order dated 20/12/2007 has allowed our application by imposing redemption fine, penalty and interest amounting to Rs. 31,38,755/- in this car, which has since been paid by you on our behalf.*
- 14. Although the Settlement Commissioner has passed the order on 20/12/2007, still the vehicle could not be transferred to you due to differences between me and DRI on calculation of interest for the waiver period provide, along with non-consideration of some valid notifications in the final order, I have challenged the*

Final Order after depositing over Rs. 5.24Crores before the Bombay High Court, the case is awaiting final disposal. The DRI has also challenged the immunity granted to me and my co-applicants by the Settlement Commission, before the Hon'ble Delhi High Court, the proceeding are awaiting final disposal. The car cannot be transferred pending these litigations.”

18. It is apparent from the above that the Assessee had produced sufficient material to establish that the vehicle had been imported by the Sanjay Bhandari (in the name of VKTT) and evidence was also produced to show payment of the cost of the vehicle. The AO on the other hand, has discovered no evidence or material on the basis of which it could be concluded that the cost of the vehicle and the initial duty had not been paid by Sanjay Bhandari. The assertion that the Letter of Credit had been issued by Oriental Bank of Commerce on 21st December, 2004 and subsequently, the Bank Account of M/s History Logistics had been debited by a sum of Rs.70,77,773/- towards cost of the vehicle has not been contested by the AO or the CIT(A). Neither the AO nor the CIT(A) has any material to dispute these assertions.

19. In the circumstance, we are inclined to agree with the Tribunal that the question whether an investment had been made or not is a matter of fact and the same cannot be presumed. In the present case, it is probable that

either the Assessee or any other person related to the Assessee, would have paid for acquiring the vehicle in question. An investigation into the sources of the funds of Sanjay Bhandari/VKTT may perhaps have established a link between the funds used for the purchase of the vehicle and JCT/Sameer Thapar/the Assessee. However, no such link has been established. In absence of any material to show that the consideration for the vehicle had not been paid by Sanjay Bhandari/M/s History Logistics, it is not possible to conclude that the Assessee had made an investment in purchase of the vehicle in question.

20. In the facts and circumstances, we are unable to hold that the decision of the Tribunal is perverse. The questions of law framed are answered in affirmative and in favour of the Assessee and against the Revenue.

21. The Appeal is, accordingly, dismissed. Parties are left to bear their own costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

NOVEMBER 30, 2015
RK