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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 06.01.2015

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ITA 407/2014

COMMISSIONER OF INCOME TAX –VII Appellant
Through Mr. Abhishek Singh Baghel and Mr.
Arjun Harkauli, Advs.

versus

KAMAL KISHORE HUF Respondent
Through Mr. S. Krishnan, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Revenue is in appeal claiming to be aggrieved by an order dated 9.1.2014 of the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in ITA No.1732/Del./2005. The Revenue's grievance is that the sum of Rs.57,65,419/-, which the assessee-respondent claimed as capital gains along with original acquisition of Rs.4,86,750/- aggregating to Rs.61,25,169/- was erroneously held to be a wrong addition under Section 68 of the Income Tax Act (hereinafter referred to as 'Act').
2. The facts *inter alia* are that the assessee-HUF in its return for the year 2001-02 claimed a sum of Rs.57,65,420/- capital gains in respect of sale of shares of four companies. The original cost of acquisition of these shares

was based on Rs.4,86,750/-. The assessing officer in his order dated 29.03.2004 held that the assessee's classification was unconvincing and added back Rs.61,25,169/- under Section 68 of the Act. The assessee's appeal to the Commissioner (Appeal) was rejected. The assessee's appeal to the ITAT was accepted, whereupon the Revenue approached this Court. At that stage the Revenue's contention was that adducing of additional evidence, before the ITAT was not warranted. The High Court, therefore, remitted the matter to the ITAT for reconsideration.

3. In the impugned order the ITAT took into account the materials made available to the assessing authorities during the course of the proceedings which indicated that shares of four companies i.e. M/s Nivedan Fin. Investment Lease Ltd.; Supreme Agro Product Ltd.; Everest Marketing Ltd. and Rashel Agro Tech. were acquired on various dates between January, 1997 and August, 1999. The cost of acquisition was Rs.4,86,750/-. These shares were subsequently sold on different dates i.e. 15.5.2000, 28.8.2000, 07.11.2000 to 13.11.2000, 10.2.2001, 2.3.2001 and 23.2.2001 to 24.2.2001. The shares were sold in different stock exchanges i.e MP Stock Exchange, Indore and Bombay Stock Exchange. The details of the brokers were provided by the assessee, who had apparently transacted through four different companies. Likewise, the companies whose shares were acquired were contacted. They affirmed that the assessee had acquired the shares and held for the relevant period. After consideration of these materials the Tribunal held that addition under Section 68 of the Act was not justified in the circumstances.

4. It is urged by the revenue that the ITAT fell into error in not considering that the brokers who were said to have transacted on behalf of

the assessee was not in fact examined and that the quotations available in the Guwahati Stock Exchange were not also produced before the assessing officer. We are of the opinion that in line with the judgment of the Hon'ble Supreme Court in *CIT V. Lovely Exports (P) Ltd.* (2008) 216 CTR (SC) 195, the initial onus to disclose the source of credit is upon the assessee. That judgment clearly states that once this burden is discharged in a reasonable manner, the burden of establishing that the source of the income is unaccounted or that the explanation afforded is unreasonable or not capable of investing or not lies upon assessing officer. In the present case, the assessee had clearly disclosed all relevant particulars i.e. the name and addresses of the share brokers to whom it has transacted, particulars of the company, the rates at which the shares were brought and the relevant quotations from the concerned stock exchanges etc. In these circumstances to expect the assessee to even produce the brokers physically before the assessing officer was unreasonable. After all, the assessing officer could have used his powers if he thought there was any reason to suspect the materials produced before him were dubious or otherwise unacceptable.

5. For the above reasons, this Court is of the opinion that no question of law arises for consideration. The appeal is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 06, 2015

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