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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: April 16, 2015

+ ITA 467/2014

COMMISSIONER OF INCOME TAX (CENTRAL)-III Appellant
Through: Ms.Suruchi Aggarwal, Adv.

versus

ANSHIKA CONSULTANTS PVT. LTD. Respondent

+ ITA 470/2014
FLEX INTERNATIONAL PVT. LTD. Respondent

+ ITA 484/2014
ANANT OVERSEAS PVT. LTD. Respondent

+ ITA 518/2014
APOORVA EXTRUSION PVT. LTD. Respondent

+ ITA 523/2014
ANSHIKA INVESTMENT PVT. LTD. Respondent

+ ITA 524/2014
A.R. LEASING PVT. LTD. Respondent

Through: Mr.M.P.Rastogi and Mr. K.N.Ahuja,
Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT

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1. The Revenue urges that the whole order dated 31.12.2013 of the Income Tax Appellate Tribunal (ITAT) rejecting its appeal is erroneous. The

Assessing Officer (AO) had added back a sum of ₹12,78,60,000/- under Section 68 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”). This was set aside concurrently by the CIT (Appeals) and the ITAT.

2. During the relevant Assessment Year (AY) 2006-07, the assessee had issued shares at a premium ranging from ₹24000-39000 to applicants which were companies. In the course of assessment proceedings, the AO had sought, details in particular of such share applicants. The assessee had provided the various details of such share applicants i.e. (Star Pleat Vincon Pvt. Ltd., Shree Mahavir Management Services Pvt. Ltd., Bhuwania Brothers Pvt. Ltd. and Manush Marketing Pvt. Ltd.), such as the bank account statements, the Memorandum and Articles of Association, income tax return, balance sheet, PAN details etc. The AO considered the submissions and the materials on record. He also took note of the fact that the notices sent under Section 133(6) to the share applicants were returned unserved. After his analysis of the material placed on the record, the AO added back the sum of ₹12,78,60,000/-. Before the CIT (Appeals) – to whom the assessee preferred an appeal, it was contended that all necessary documents to establish the identity of the share applicants, their creditworthiness and genuineness of the transaction had been placed on record. In these circumstances, the AO could not have on the basis of suspicion fuelled by the higher premium claimed by the assessee and the lack of response of the notices issued, added back the amounts to the assessee’s income. The rival contentions were noticed in detail by the CIT (Appeals), who in his elaborate discussion of the materials on record, held as follows:

“5. I have carefully considered the facts of the case, submissions made by the counsel of the appellant and the remand report

submitted by the Assessing Officer. The Assessing Officer has held that the appellant has introduced share capital of Rs.12,78,60,000/- and noted that there are common peculiarities in the facts and circumstances regarding the issue of the share capital and treated the same as a sham transaction. The share capital amounting to Rs.12,78,60,000/- was assessed as income of the appellant u/s 68 'of the Act.' ”

3. After noticing the relevant case law on Section 68 of the Act, the CIT(Appeals) concluded as follows:

“9. In the light of aforesaid judicial precedents, it is held that the appellant had received share capital from 3 companies who are regularly assessed to tax, the companies have submitted the copies of the share application forms, the minutes of the Board's resolution authorizing the companies to make the application for shares, copy of certificate of incorporation, copy of PAN etc. The AO had relied on the inquiry of the Inspector that the concerned companies were not found existing on the given addresses. On the other hand, the crucial fact is missed that these companies are regularly doing the business and file their tax returns on regular basis. The taxes are paid by them on the income so earned by them. The Principal Officers from the companies attended before the ADIT, Investigation in Kolkata and submitted that the investment in the appellant company has been made from the realisation of sale of earlier investments held by the companies. In the light of observations of the Hon'ble Supreme Court in the case of CIT Vs. Lovely Exports (P) Ltd. reported in 216 CTR 295, the onus on the appellant has been duly discharged. Further, the search had been conducted at the premises of the appellant u/s 132 of the Act and no incriminating documents or other assets were found or seized to indicate that the appellant had in fact routed its own money through these companies. The peculiar facts of the case may

have caused suspicion in the mind of the A.O. but despite having conducted the search on the premises of the appellant, no evidence or other material could be gathered to hold that the appellant had routed its own money. In view of the totality of facts and circumstances and judicial precedents as discussed, the addition of Rs.12,78,60,000/- made by the A.O. is deleted.”

4. The ITAT by the impugned order affirmed the findings of the CIT (Appeals). Importantly, the ITAT also took note of an investigation report dated 17.12.2007 made available to the revenue authorities by the investigation wing of the Kolkata Income Tax Department. The report specifically looked into the allegations to determine whether the share applicants/investors companies were genuine. The relevant part of the said investigation report dated 17.12.2007 is extracted below:

“From the documents submitted by the above mentioned Kolkata based parties. It transpires that M/s. Bhuwania Brothers Pvt. Ltd. and M/s. Shri Mahabir Management & Services Pvt. Ltd. created the source of investment out of sale of stock-in-trade as on 31.03,2005, sale of investment, receipts from sundry debtors etc. whereas M/s. Star Pleat Vincom Pvt. Ltd. and M/s. Manush Marketing Pvt. Ltd. did so with the amount received from loan debtors outstanding as on 31.3.2005.

The companies produced share certificates, a few photocopies of which are enclosed. The Directors of the Companies stated, in their depositions that the companies still hold the shares. Photocopies of the statements are enclosed.”

5. The ITAT also noted that the balance sheets of the investors showed that the share applicants were possessed of considerable means and had been existing for a long period of time prior to the transaction in question. The ITAT reasoned as follows:

10. On an analysis of these records, we are of the view that the department was able to lay its hands on the addresses of the share applicants and where the share applicants are assessed. These companies are existing from long period. They have confirmed that they have contributed to the share capital of the assessee company. The next aspect is their creditworthiness. The assessee has filed balance sheet of all the investors. It emerges out from the record that in the case of Manush Marketing Pvt Ltd., there were sundry debtors of ₹1187,50,000 as on 31.3.2005. According to the assessee, these were realized by the said investors and invested a sum of ₹129,75,000 in A.R. Leasing Pvt. Ltd. Similarly, other investments are made in the other companies. In the case of Shri Mahabir Management Services, it is demonstrated that this concern had investment of ₹ 1186,00,080 as on 31.3.2005. It had loan and advances of ₹1179,50,000 which were realized during the year and ₹ 2 crores was invested in the A.R. Leasing Pvt Ltd. In the case of Star Pleat Vincom, the sundry debtors as on 31.3.2005 are of Rs. 1120,00,000. These were realized and a sum of ₹. 3.99 crores was invested in the A.R. Leasing. Thus, the companies have sufficient balance in their balance sheets in the shape of investment as well loan and advances. These companies are existing more than 10 years. Learned DIT has also verified this aspect and did not report any particular irregularity. The next issue is about the genuineness of the transaction. The assessee has produced the details of bank account. All the share application money have been issued through banking channel. The ADIT, Calcutta has pointed out that these companies were still holding the share i.e. on December 2007. During the course of hearing, we enquired about the present status of these companies as well as position of investment. The learned counsel for the assessee has placed on record the details of shareholding pattern as on 31.3.2013, it reveals that these

companies are still keeping the shares of the respondent. Shri Mahabir Management is keeping 10,000 share and Bhuvania Brothers is holding 12,590 share in M/s Anshika Consultants Pvt Ltd. Similarly, in Anant Overseas, Bhuvania Brothers is holding 12,000 shares, Star Pleat Vincom is holding 14,700 shares. In Flex International, Shri Mahabir Management Services is holding 37210 shares. Though these details were not before the Assessing Officer and could not be because this in the shareholding pattern as on 31.3.20 13, these were referred by the assessee, in response to query and only for the purpose that these share applicant companies are not only proper entities. They are in existence.”

6. The onus cast upon the assessee under Section 68 of the Act to satisfy the department about the true identity of an investor, its creditworthiness and genuineness of a transaction was explained by the Supreme Court in *CIT Vs. Lovely Exports (P) Ltd.*, 216 CTR 295,. Whilst, the AO acted legitimately in enquiring into the matter, the inferences drawn by him were not justified at all in the circumstances of the case. Whether the assessee company charged a higher premium or not, should not have been the subject matter of the enquiry in the first instance. Instead, the issue was whether the amount invested by the share applicants were from legitimate sources. The objective of Section 68 is to avoid inclusion of amount which are suspect. Therefore, the emphasis on genuineness of all the three aspects, identity, creditworthiness and the transaction. What is disquieting in the present case is when the assessment was completed on 31.12.2007, the investigation report which was specifically called from the concerned department in Kolkata was available but not discussed by the AO. Had he cared to do so, the identity of the investors, the genuineness of the transaction and the

creditworthiness of the share applicants would have been apparent. Even otherwise, the share applicants' particulars were available with the AO in the form of balance sheets income tax returns, PAN details etc. While arriving at the conclusion that he did, the AO did not consider it worthwhile to make any further enquiry but based his order on the high nature of the premium and certain features which appeared to be suspect, to determine that the amount had been routed from the assessee's account to the share applicants' account. As held concurrently by the CIT (Appeals) and the ITAT, these conclusions were clearly baseless and false. This Court is constrained to observe that the AO utterly failed to comply with his duty considers all the materials on record, ignoring specifically the most crucial documents. We place these observations on the record and direct a copy of the judgment to be furnished to the concerned income tax authorities for appropriate action towards reflecting these observations suitably in service record of the concerned AO to avoid such instances in the future.

7. For the above reasons, this Court is of the opinion that the concurrent findings of fact, as to the true identity of the share applicants, their creditworthiness and genuineness of the transaction, are based on sound reasoning and do not call for interference. No substantial question of law arises. The appeals are dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 16, 2015

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