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IN THE HIGH COURT OF DELHI AT NEW DELHI

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DECIDED ON: 18.02.2015

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ITA 466/2014

COMMISSIONER OF INCOME TAX -DELHI-III Appellant

Through: Mr. Rohit Madan, Sr. Standing
Counsel with Mr. P. Roychoudhary, Advocate.

versus

SHOKEEN PROPERTIES PVT.LTD. Respondent

Through: Mr. Ved Jain with Mr. V.M. Chaurasia,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K. GAUBA

S.RAVINDRA BHAT, J. (OPEN COURT)

1. The Revenue was aggrieved by an order of the Income Tax Appellate Tribunal (hereafter referred to as ITAT) dated 28.01.2014 in ITA 2266/Del/2012. It urges that the confirmation of the CIT (A)'s order in the circumstances of the case was erroneous.
2. The assessee had filed its returns for Assessment Year 2008-09 and was issued notice to show cause why certain additions to its claim ought not to be made for the concerned assessment years. This pertained to two amounts - ₹20,37,05,000/- and ₹4,32,07,394/-. Both

were reflected in the bank accounts and related statements of the assessee, which was engaged in the business of purchase and sale of properties. The assessee explained that these amounts were consideration received either fully or in part and in some cases paid back during the concerned period and that everything was backed by documentary evidence. In the course of the assessment proceedings, the concerned material in the form of extracts of ledger, other books of accounts, bank account statements and confirmation by the parties concerned and the conveyance/sale deeds or copies thereof were produced. Furthermore, confirmation of the related parties who are involved in those sale and purchase transactions was also placed on the record. Nevertheless, the AO brought to tax the entire amount stating that the credits had not been properly explained. The CIT (A) on being approached accepted the assessee's plea. The CIT (A) held as follows:

“(1)Advance given last year received back in current year Rs.9,75,00,000/-.

Complete details of the parties with copies of their confirmations, copies of accounts, photocopies of the cheques and income tax assessment details were provided.

Amounts of Rs.4,77,55,000/- were given as advance and received back during the same year i.e. relevant year.

Here also complete details of the parties, confirmation copies, copies of cheques and income tax details were provided

2) An amount of Rs.1,10,00,000/- was advance received during the year which remained outstanding at the year end.

Here also complete details of the parties, confirmation copies, copies of cheques and income tax details were provided.

3) An amount of Rs.1,75,00,000/- was received as advance and was paid back during the year.

Here also complete details of the parties, confirmation copies, copies of cheques and income tax details were provided to the Ld. Assessing Officer.

4) An amount of Rs.1,75,00,000/- was received as advance and was paid back during the year.

Here also complete details of the parties, confirmation copies, copies of cheques and income tax details were provided to the Ld. Assessing officer.

5) An amount of Rs.1,07,05,000/- was received on account of sale of land. Copies of the conveyance Deeds relating to each sale were submitted.

6) Rs.27,50,000/- was the amount of cash deposited in the bank account of the assessee which was also treated as unexplained cash credit.

7) An amount of Rs. 1,65,00,000/- was deposited as advance received from parties as on 31.03.2008 and the same was reversed on the same day as the cheque was bounced. The cheques which bounced can never be credited to the party's account again and therefore cannot be treated as unexplained cash credit, which is totally unreasonable and without any logic."

In my view the AO should have given a finding in respect of each person who had given the deposit/advance/credit. To add up all without making proper inquiries is not the correct way to proceed. The appellant had given all sale deeds in r/o land sold alongwith details of payments made and identity of the persons making the payments and had explained the amount invested by each person in r/o advances received alongwith the details of the PAN No., the Ward/Circle where assessed, the copies of bank accounts, copies of cheques. The appellant had discharged its onus of proving the identity of the persons, their credit worthiness and the genuineness of the transaction.

On the other hand the AO has made no inquiry in respect of each person to show that the evidence submitted by the appellant was not correct. The AO has not made any inquiry in respect of the amounts which have been added to the income of the appellant. It was the duty of the AO to utilize the information to prove that the investment made by the persons was not genuine. Once the appellant had discharged its responsibility it was the duty of the AO to make inquiries. Nowhere has the AO stated that the documents produced by the appellant were not genuine. The AO has not brought any material on record to show that this money was the appellant own undisclosed income. The AO has taken the easy way out and added all the deposits in the appellant's bank account. Here too the AO has floundered and made an addition of only part of the deposits in one bank account i.e. ABN Amro Bank.

As decided by Delhi High Court in the case of CIT vs. Kinetic Capital Finance Ltd (2011) 14 Taxman 150 even where cash credits are proposed to be added to the income of the assessee each transaction is to be proved, verified and finding is to be arrived at individually. A bunch of transactions is to be proved, verified and

finding is to be arrived at individually. A bunch of transactions cannot be clubbed together and added back.

In case of CIT vs Gangaur Investment the Delhi High Court stated that an addition can be made u/s 68 of the appellant is not able to explain the credits. In case the Assessing Officer was not satisfied about the source of any amount received, an enquiry in those particular cases should have been made and if the same was not found genuine section 68 would have been attracted. This ground of appeal is ruled in favour of the appellant."

3. So far as the sum of ₹4,32,07,394/- is concerned, apparently, the assessee had stated that the amount stood against one Taral Vincom Pvt. Ltd. which was paid back subsequently. During the assessment, notice under Section 133 (6) was issued to verify this claim from the concerned party. The notice could not, however, be served. In these circumstances, the assessee was asked to produce the party. The assessee instead furnished copies of the ITR and balance sheets of the said company. The CIT (A) after noting all the materials took note of the facts that the ITR and balance sheets of the said company was on the record which reflected the said amount of ₹4,32,07,394/-. In these circumstances, the said appellate Commissioner concluded as follows:

"I have perused all the documents. The AO has added the amount in respect of sundry creditors amounting to Rs.4,32,07,394/- stating that the amount was the appellant's own unaccounted money. The amount however as submitted by the appellant represents amount due to M/s Taral Vincom Pvt. Ltd. for the work done for the appellant in the normal course of business. This was

a person to whom the appellant owed money and who was paid by the appellant in the next year.

The appellant has submitted all details in respect of the amount of Rs.43,26,361/-. The amount was in respect of Taral Vincom Pvt. Ltd. a company which is having a genuine PAN No. and is assessed in Kolkata. The ITR/balance sheet were all on record and the amount in question was reflected in the accounts of the company. The identity of the company was proved, the creditworthiness was proved and the genuineness of the transaction were proved by the appellant. The addition of Rs.4,32,07,394/- is therefore deleted. This ground of appeal is ruled in favour of the appellant .

The rationale of the judgment in the case of Lovely Exports is applied here. Although this is not a case of shareholders but the same logic can be applied in this case as the addition has been made u/s 68.

Before concluding I would like to state that the concerned AO is directed to forward the details of all persons who have invested in the land with M/s Shokeen Properties Pvt. Ltd. to their respective AOs. The concerned AOs may examine the investment of the investors made. If on the basis of details may be gathered by AOs, the AO of M/s Shokeen Properties Pvt. Ltd. gets information that the amounts represents the income of the appellant in terms of the provision of the Act the AO may initiate action under section 148 for the relevant assessment year in the case of the appellant on the basis of such information.”

4. The Revenue argues that the order of the CIT (A) and the ITAT acknowledges that certain transactions or entries require a more intensive scrutiny which is the reason why liberty has been given to

issue notice under Section 147/148. It was urged that the explanation afforded during the assessment proceedings with respect to the entries in question, was not satisfactory and in the given circumstances of the case, the AO acted correctly in adding back the amounts.

5. Learned counsel for the respondent/assessee, on the other hand, argues that since all the relevant materials in the form of confirmation with respect to each transaction pertaining to the assessee's business activities as well as the sale/purchase deeds was disclosed and given the fact that the amounts were reflected in the bank accounts, there was no question of dubious credit entries. Relying upon the decision of the Supreme Court in *Commissioner of Income Tax v. Lovely Exports*, 216 CTR 195, it was submitted that the identity and genuineness of the transaction and the creditworthiness of the concerned parties had been established and that in these circumstances, the AO could not have included these amounts which was received in the course of the business under Section 68.

6. This Court noticed that the ITAT in turn conducted scrutiny of all the materials which had been placed before the AO and the CIT (A) and observed as follows: -

“7. We have heard the rival contentions and perused the material available on the record. Assessee has filed sufficient evidence which are detailed above and claims to have discharged its primary onus in terms of sec 68. AO has rejected the explanation on the ground that original documents have not been filed. In our view Id. CIT (A) has rightly held that in income tax proceedings attested photocopies duly signed are admissible as evidence in income tax proceedings. It is more so as technical rules of evidence are not applicable to income tax proceedings and third parties cannot be expected to hand over

their original documents. In our view the assessee has been able to demonstrate that due to name change of Taral Vincom to Link Point Infrastructure Pvt. Ltd w.e.f. 6.5.2009, the notice u/s 133(6) remained unserved. Besides one day time given for physical production of party was too short. AO has to ascertain the facts and discharge of primary onus on the basis of material available on record after giving adequate opportunity of hearing. He cannot brush aside the entire evidence on the pretext that party is not physically produced more so when it is apparent that it was physically impossible for assessee to ensure production of Kolkata party in one day's short time. Apropos other sundry creditors also we are of the view that assessee discharge its primary onus in terms of sec. 68 which is attempted to be rebutted by AO on assumptions and sweeping observations. They are all parts of books of accounts which are accepted by AO without raising iota of doubt. The due confirmation, explanation of entries and source thereof emanating from books of accounts is duly explained by the assessee. In the entirety of facts and circumstances and keeping in view the guideline laid by Hon'ble Delhi High Court in various judgments including Dwarkadhish Investments; Gangeshwari Metals; and Oasis Hospitalities (supra) it is held that assessee has discharged its onus in terms of Sec 68. In view thereof we find no infirmity in the order of ld. CIT (A) in deleting the additions in respect of revenues second ground. The order of CIT (A) is upheld."

7. The AO appears to have given a short shrift to the obligation placed upon him once the identity of the party and the genuineness of the transaction was disclosed by the assessee. *Lovely Exports (supra)* guides the authorities for the proper conduct of proceedings or adding amounts under Section 68. The initial onus to show the genuineness and identity of transaction and the credit worthiness of the party is no doubt upon the assessee. Once that is done in the form of *prima facie* credible material, the AO has to then exert himself/herself to quote

relevant material to disprove that onus and discharge the burden placed upon the Revenue. In this case, this procedure was clearly not adopted in respect of the sum of ₹20,37,05,000/-. As far as the amount of ₹4,32,07,394/- is concerned, it reflected a solitary transaction which too was done in the course of the banking channels. The ITR and the concerned balance sheets etc. of the said company were placed on record and considered by the CIT (A) - though not by the AO. The amounts were reflected in the balance sheets. In these circumstances, the finding of fact arrived at by the CIT (A) and the ITAT cannot be considered unreasonable. No substantial question of law arises. The appeal is consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 18, 2015

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