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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th January, 2015

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ITA 4/2015

CIT

..... Appellant

Through Mr. Balbir Singh, sr. standing counsel
with Mrs. Rubal Maini, Adv.

versus

METAPHOR EXPORTS P LTD

..... Respondent

Through None

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 aggrieved by the impugned order dated 09.05.2014 of the Income Tax Appellate Tribunal (hereinafter referred to the "ITAT") in ITA No.3014/Del./2013. It is urged that the substantial question of law sought to be urged in support of the appeal is that ITAT fell into error in directing the deletion of ₹2,85,75,905/- - which was added back under Section 68 of the Income Tax Act by the assessing officer (hereinafter referred to as "AO").

2. The assessee declared an income of ₹8,25,460/- for assessment year 2006-07. In the course of the scrutiny assessment, the AO determined that the assessee had received ₹35 lakhs towards share capital and unsecured

loans to the extent of ₹2,50,75,905/-. After considering the materials placed on the record the AO found that the explanation furnished by the assessee was unconvincing and directed addition of these amounts under Section 68. This became the subject matter of the assessee's appeal before the Commissioner (A). In the first appellate proceedings the assessee sought to introduce additional evidence under Rule 46A, which was disallowed. The CIT(Appeals) ultimately ruled against the assessee and rejected the appeal.

3. In the proceedings before the ITAT, the question of permissibility of additional evidence under Rule 46A was first considered and given the circumstances, it was held that the CIT(Appeals) fell into error in rejecting the request. The ITAT also noticed that remand report had been sought from the AO during the first appellate proceedings. It went on to analyze the findings of the CIT(Appeals) and directed that the inclusion of amounts under Section 68 should be deleted. The relevant discussion is in the following terms :

“Once assessee has produced the ledger account exhibiting from the creditors and then filed bank certificate of the creditor's bank account showing that these cheques have been cleared from their bank, then, if something else is to be required by the Assessing Officer he could straightway called from the concerned bank. Learned First Appellate Authority has emphasized that in the absence of complete bank statement, it is not possible to determine the source of funds given to the assessee company, but once creditors are filling their returns that could have been verified in their case. The observations of the Assessing Officer in the remand report on merits are worth to note, it reads as under:

"On merits, the additional evidences filed to indicate the identity of the persons, who have made the

contribution to the assessee company by way of share application or loans. They are sons of Sh. P N Khana, director and brother of Mr. Sameer Khana, the other director. Thus, money has been received from the close family members. In support of their creditworthiness (source of loan), they have enclosed their copies of the ITR and statement of affairs of the firms they own. In the affidavit they have stated the entities they own or they are partners in. The transactions are reflected in the bank statements of the assessee as having been received through banking channels.

In view of the above, it is submitted that the contents of the additional evidence filed by the assessee (as mentioned above) have been verified. The documents collected during the remand proceedings are forwarded for the kind consideration of Learned CIT(Appeals).

The report is submitted for your consideration and for onward transaction to the Learned CIT (Appeals)."

14. Learned Assessing Officer has not given any adverse comments. He observed that transactions are reflected in the bank statement of the assessee as having been received through banking channel. The assessee has filed affidavits of Shri Sandeep Khanna and Sanjay Khanna. They have disclosed their PANs with the Income-tax Department as well as the details of transaction. Thus, the material available on record which has been examined by the Assessing Officer on merit also suggests that assessee has discharged the onus put upon it. In view of the above discussion, ground No.1 is allowed and an addition of Rs. 2,85,75,905 is deleted.

4. It is evident that the ITAT went into the record and held that there was a satisfactory explanation and consequently addition under Section 68 was unwarranted. Counsel for the revenue submitted that besides furnishing affidavit of the parties – so far as the inclusion of capital to the tune of ₹35 lakhs is concerned, there was nothing on the record to warrant deletion of

the said amount. This Court notices that besides the affidavits, the particulars of the bank, the cheque numbers, the ledger account was furnished to the AO. Though this was in the course of remand proceedings, having regard to the bank accounts of the subscribers – who are concededly family members, and whose identities were ascertainable, the AO, failed to probe further. In these circumstances, this Court is of the opinion that considering the law declared in *CIT V. Lovely Exports (P) Ltd.* 216 CTR 195, the inference drawn by the AO, in the circumstances of the case to add back a sum of ₹35 lakhs under Section 68 was clearly not warranted. The question of law sought to be urged therefore does not arise.

5. The appeal being meritless is therefore, dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)

JANUARY 13, 2015

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