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

\+ **ITA 804/2016**

PR. COMMISSIONER OF INCOME TAX CENTRAL -2 NEW DELHI ..... Appellant

Through: Mr. Ashok Manchanda, Advocate.

Versus

PHONENIX DATATECH SERVICES PVT LTD. ..... Respondent

Through: Mr. Inder Paul Bansal and Mr. Vivek Bansal, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 06.01.2017

1. The learned counsel for the respondent/assessee submits that the assessee has since been amalgamated and is now known as M/s Imperia Structures Limited, the date of effect of the amalgamation order is 01.04.2012.

2. The Revenue is in appeal, under Section 260A of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'), aggrieved by a decision of the Income Tax Appellate Tribunal (ITAT). Allowing the assessee's appeal, it is urged that the ITAT's reversal of the concurrent findings of the Revenue Authorities is on a misappreciation of the facts and law.

3. Search and seizure proceedings were conducted in respect of Thapar Group and Companies and one Mr. B.K. Dhingra, one of its directors. Since Mr.Inder Mohan Thapar is the director/assessee and in respect of which

regular proceedings for Assessment Year 2009-10 were pending, an inquiry was made into its accounts, based upon the recoveries made in the course of search. So far as the assessee was concerned, a chart found in the premises of Mr. B.K. Dhingra, containing 66 names with specific amounts formed the basis of the Assessment Officer's (AO) conclusion that undisclosed amounts aggregating over ₹1.67 crores were added. The assesseee's appeal was partly successful in that the Commissioner of Income Tax (Appeals) [CIT (A)], after calling for a remand report, directed the deletion of ₹27 lakhs. It, therefore, appealed further.

4. After an appreciation of overall circumstances, including the materials presented before it, the remand report considered by the CIT (A) as well as other materials brought on the record during the course of the appellate proceedings before the CIT (A), the ITAT was of the opinion that the particulars and details of the cheques etc. reflected in the chart, which formed the sole basis for addition of ₹1.67 crores, could not be attributed to it. Tellingly, the ITAT, observed as follows:-

> "*i. Above documents are not seized from the premises of the assessee but at the premises of third party who is neither the director nor the shareholder of the company. However neither the ld. AO as well as The Ld. CIT (A) has led any evidence that though the paper shows the names of the appellant along with two other companies but these papers are found from the third party i.e. Shri B K Dhingra and how is he associated with the appellant. Ld. CIT (A) has stated that Shri B K Dhingra is a close associate of Shri I M Thapar. Merely an assertion that somebody is close to one of the director cannot become the close associate of the appellant company itself. Ld. AO has not led any evidence that Shri Dhingra looks after the affairs of the company in any manner the evidence of actual transaction of those parties and it is unaccounted income of these companies.*

ii. On 20.8.2008 search on Thapar Homes Group as well as survey on the assessee were carried out. Admittedly, during the course of search the charts as well as the counterfoils of the chequebooks were found from Shri B K Dhingra. However, during survey no evidences with respect to the projects whether in existence or not for which the statement is found, whether the counterfoils of cheques, which were relied up on whether cleared in the bank, account of the appellant were examined. Appellant has submitted that the there is no such project, assessee received no such booking and no such cheques were received in the bank account of the assessee. Revenue has not controverted this fact. As the said cheques have not at all been received by the assessee, merely because in the counterfoil of the chequebook of issuing party, name of the appellant is mentioned, it cannot result in to addition in the hands of the assessee unless it is cleared in the bank account of the appellant.

iii. During assessment the appellant was not confronted with the statement of the person from whose possession these chart and also the counterfoils of the cheques of six companies were found. In fact, there is no averment in the order that any such statement is in possession of revenue.

iv. Furthermore the name of all the parties in that particular statement wherein bookings in the name of those parties have been shown, appellant has filed confirmation of those parties stating that they have not booked any such premises and also apparently no payment have been made. On these confirmation Id. AO has neither issued any summons to those parties nor examined their bank statement about the issue of those cheques and whether these cheques have been cleared or not. The assessing officer and CIT (A) have brushed aside those confirmations as meaningless. In fact, on examination of those confirmations, reality of the reason for writing counterfoils of the chequebooks in the name of appellant and two other companies would have been known to revenue. The reason why those cheques were issued but were never came in to the bank accounts of the appellant and whether they are really handed over to the *appellant company is also not known to revenue. It is an uncontroverted facts that those cheques remaining non-transacted. Contrary to that appellant has discharged its onus by producing the confirmation of those parties that they have neither booked any premises with the appellant company and therefore have not paid any sum.*

v. It is the allegation of the revenue that these companies are the bogus companies floated by one Shri B K Dhingra and they are used for capital formation activities. This fact merely remains a conjecture and surmises in absence of any evidences led by revenue against that person i.e. Shri B K Dhingra and his connection with the appellant company. Merely making an assertion that Shri B K Dhingra is entry operator or the companies are formed for capital formation remains unsubstantiated allegation unless there are any evidences such as assessment orders etc of entry operator or the assessment orders of those companies operated by him.

vi. Further assuming that those companies are the bogus companies, and then on looking at the chart we found that there are columns of 'cash'. If the amounts are the bogus amount introduced by the appellant company then we failed to understand that how the cash is also be received from those companies, whereas in general only commission is required to be paid to the entry provider and no cash is receivable from them.

viii. Further, it remains uncontroverted that there was no project in the name of the appellant in impugned assessment year as there was no permission also. The facts of the acquisition of land are submitted by the Ld. AR and also stated the status of the project, which is not controverted. It is highly unlikely that the builder who is not the line of the developer for considerable time would get such kind of bookings. All the counter foil of cheques showed dates, of March 2008.

viii. Further Ld. CIT (A) drew support from the provision of section 292C of the act. That provision applies in case the

> *documents are found from the possession of the person then the presumption arises against that person. According to us, the reliance on it is unfounded as there are no documents found from the possession of the assessee or at the premises of the assessee. It was found from Shri B K Dhingra who has no business relationship with the appellant company.*
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> *ix. Ld CIT (A) has held that details mentioned in the chart are not projections but actual transactions. This assertion of Ld. CIT (A) is also not supported by evidences because in those circumstances the' cheques issued by those companies should have been reflected in the bank statements of the appellant companies. It is unassailed that these cheques have never been credited in the bank account of the appellant company.*
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> *x. Ld CIT (A) relied on the decision of Honourable Delhi High court in case of CIT V Sonal Constructions 28 taxmann.com 127 (del) for calculations shown in the documents. In the present case as the project is nonexistent, the cheques are not credited in the bank account of the appellant, the confirmation of the parties that they have not made any bookings and have not paid any sum to the appellant company, the facts of that case are distinguishable."*

5. The learned counsel for the Revenue sought to urge that the ITAT's decision is erroneous because the AO had investigated and found that the assessees were bogus and the amounts were not found to be genuine. It was argued that the ITAT was in error in reversing the concurrent factual findings.

6. This Court is of the opinion that the ITAT is the final fact finding authority. Unless its appreciation of the circumstances and facts is manifestly perverse or contrary to the record, the High Court, in exercise of its appellate powers as the third forum of review, as it were, would be

reluctant to interfere with its orders. In the present case, the solitary basis for addition of over ₹1.67 crores was the chart recovered from the premises of Mr. B. K. Dhingra. Whatever be the facial indications, one thing is apparent i.e. that it revealed some amounts were paid by the third parties. The details of cheques and other particulars were reflected in the charts. As correctly observed by the ITAT, the evidentiary value of these charts, as far as the assessee was concerned, could not be conclusive given the fact that it was neither the searched party nor was a party receiving notice under Section 153C of the Act. Under the circumstances, the AO could have added these amounts only if he had made a searching enquiry into all the circumstances. That the amounts were reflected by way of cheques and these cheques were entered in the charts is not in dispute. If such is the case, whether those amounts were reflected in the assessee's Bank accounts or not and were encashed by some other entity was a matter of appropriate enquiries. The AO's failure to do so could not have resulted in the assessee being taxed for those amounts.

7. In view of all these circumstances, we are of the opinion that no substantial question of law arises in this case. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

JANUARY 06, 2017
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