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

\+ ITA 911/2017 AND CM APPL. 38875-38876/2017

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-3
..... Appellant

Through Mr. Rahul Chaudhary, Sr. Standing Counsel with Mr. Sanjay Kumar, Jr. Standing Counsel.

versus

AJNARA INDIA LTD. ..... Respondent

Through Ms. Premlata Bansal, Sr. Adv. with Mr. Ram Avtar Bansal and Mr.Divyanshu Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **10.04.2018**

The following question of law was framed :

> *"Did the ITAT fall into error in holding that the addition under Section 68 of the Income Tax Act was, in the circumstances of the case, unwarranted? "*

In the income tax return for AY 2008-09, the assesee had claimed that it received ₹9.36 crores for allotment of 234000 shares in the face value of ₹10/-. The Assessing Officer conducted an enquiry into the identity, genuineness of the transactions and the creditworthiness of 17 share applicants and concluded that 04 of them were genuine and proceeded to add the contribution of the other 13 back to the assessee's income under Section 68 of the Income Tax Act (the 'Act'). This became the subject matter of the appeal to CIT(A), who after some proceedings called for a remand report. In the remand proceedings, the AO was presented with additional evidence. However, he adversely commented upon the absence of the shares applicants. After an overall appreciation of the facts, the CIT(A) directed that the amounts brought to tax under Section 68 of the Act could not be substantiated and that the additions had to be cancelled.

On the Revenue's appeal, the ITAT confirmed the order of the CIT(A). Both the CIT(A) and the ITAT were of the opinion that the assessee was not provided with sufficient opportunity to produce the 13 parties or their representatives.

During the course of hearing, learned counsel for the Revenue emphasised that the AO had even recorded in his order that the bank statements and other documents which were made available to him, showed infusion of the corresponding amounts in the bank account of the share applicants just before they actually subscribed to the shares issued by the assessee and that in these circumstances, the addition under Section 68 of the Act was warranted and justified. Learned Senior Counsel for the assessee on the other hand highlighted that even the AO noted that only 04 out of 13 share applicants were served under Section 68 during the remand proceedings and that in the first instance as well as in the remand proceedings adequate time was not given to the assessee to produce the share applicants. The general observation relied upon by the appellant/revenue, undoubtedly is a matter of record; the AO observed that the share applicants' money appears to have been infused just before the shares were subscribed. However, these general observations cannot be ascribed to each one of the share applicants and there is no attempt in the elaborate order (which tabulates the figures and even sets out other charts etc.) to show when the amounts were deposited into such accounts and to what extent were those amounts drawn. Furthermore, there was no attempt on the part of the AO to analyse the other documents such as income tax returns and materials which were available with him given that the PAN particulars were furnished by the assessee.

Learned Senior Counsel for the assessee had urged in her submissions that for other years i.e. AY 2006-07 and 2007-08, similar additions by the AO were interfered with the appellate authorities and that the only instance where the additions were sustained upto ITAT level were in respect of 05 share holders which too was remitted by an order of this Court under Section 260A.

Having regard to the discussion before the CIT(A) and the ITAT which appear to have proceeded on the basis that the opportunity granted to the assessee was inadequate, this Court is of the opinion that the CIT(A) should carry out the exercise afresh and grant sufficient chance to the assessee to produce share applicants to establish its claim that the amounts received, could not be brought to tax under Section 68 of the Act. At the same time, it is made clear that proceedings after remand should be completed within six months.

In the light of the foregoing analysis, the impugned order is hereby set aside. The parties are directed to appear before CIT(A) on 15th May, 2018.

The appeal is disposed of in the above terms. All the pending applications also stand disposed of.

Order *dasti.*

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 10, 2018
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