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

\+ W.P.(C) 2950/2020

JINDAL FITTINGS LIMITED ..... Petitioner

Through: Mr. Manoj K.Singh with Mr. Vijay K. Singh, Ms. Daizy Chawla and Ms. Kanishka Prasad, Advocates

versus

UNION OF INDIA & ORS. ..... Respondent

Through: Mr. Asheesh Jain, CGSC for R-1. Mr. Zoheb Hossain, Standing Counsel for R-2 to 4.

% Date of Decision: 08th April, 2020

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

MANMOHAN, J: (Oral)

CM No. 10249/2020

Allowed, subject to just exceptions.

W.P.(C) 2950/2020 & CM No. 10248/2020

1. The present petition under Article 226 of the Constitution of India has been listed before this Bench by the Registry in view of the urgency expressed therein.

2. The writ petition has been heard by way of video conferencing.

3. It is pertinent to mention that the present writ petition has been filed

seeking quashing of the order dated 12th March, 2020 passed by Principal Commissioner of Income Tax-5 (Respondent No.2) and order dated 28th February, 2020 passed by Deputy Commissioner of Income Tax (Respondent No.4) and to further direct him to forebear from taking any coercive steps/actions against the petitioner for recovery of tax and also for removing lien marks on the bank accounts of the petitioner.

4. Mr. Manoj Singh, learned counsel for the petitioner states that the respondents had failed to appreciate that the assessment order dated 29th December, 2019 had been made on a 'high pitched basis' and therefore, the recovery and collection of tax had to be held in abeyance till the disposal of the appeal against the assessment order dated 29th December, 2019 pending before the respondent No.3. He contends that the respondents No.2 and 4 erroneously assumed that the pre-deposit of twenty per cent of the outstanding amount was mandatorily required in view of the instructions and office memorandum issued by CBDT dated 02nd December, 1993, modified by office memorandum (OM) dated 29th February, 2016 and 31st July, 2017. He submits that the CBDT instructions, guidelines and office memorandum cannot substitute or override the basic tenets to be followed in the consideration and disposal of stay applications. He states that the existence of a prima facie case for which illustrations have been provided in the circulars themselves, the financial stringency faced by an assessee and the balance of convenience in the matter constitute trinity and are indispensable consideration for adjudicating stay applications.

5. Learned counsel for petitioner points out that the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax vs. LG Electronics (India) Pvt. Ltd., (Civil Appeal No.6850/2018)*** has clarified that it is open

for the authority to grant relief to deposit lesser amount than twenty per cent on the facts of individual cases.

6. Per contra, learned standing counsel for the respondents No. 2 to 4 contends that the impugned order passed by respondent No. 2 is an exhaustive order and it is not exclusively based on circulars/instructions. Learned standing counsel for respondents No. 2 to 4 has extensively referred to the Assessing Officer's order which has been quoted at length by respondent No. 2 in the impugned order.

7. Having heard learned counsel for the parties, this Court is of the view that the present case involves the interpretation of Section 68 of the Income Tax Act. The said Section 68 is reproduced hereinbelow:-

> ***"Cash credits.***
>
> ***68.*** *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:*
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> ***Provided*** *that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—*
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> *(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
>
> *(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

__Provided further__ that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB)of section 10."

8. The use of the words "any sum found credited in the books" in Section 68 of the Act indicates that the Section is widely worded, and includes investments made or unsecured loans received. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction and creditworthiness of the investors/loan depositors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the assessing officer:-

- Proof of identity of the creditors/lenders;
- Capacity of creditors to advance loan; and
- Genuineness of transaction

9. Recently, the Supreme Court in ***Principal Commissioner of Income Tax (Central-1) vs. NRA Iron and Steel Private Ltd., (2019) 15 SCC 529*** has held as under:-

"13. The principles which emerge where sums of money are credited as share capital/premium are:
13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and creditworthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.
13.2. The assessing officer is duty-bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.
13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack creditworthiness, then the genuineness of the transaction would not be established. In

such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act."

10. The present matter is not a case of mechanical reliance on circulars/office memorandums. It is a case where proof of identity of the loan depositors, capacity of the creditors to advance loans and genuineness of transaction is in serious dispute. Further, this Court finds that the stay application has been decided on merits and all the submissions made hereinabove by the petitioner have been considered by the statutory authorities below. The relevant portion of the order passed by the Assessing Officer and referred by respondent No. 2 in the impugned order is reproduced hereinbelow:-

"The assessee has provided details of registered addresses of the company M/s Glebe Trading Pvt. Ltd. which has changed thrice as below:

SatyagruhChavani, Lane No.21, Bunglow No.508, Jodhpur Cross Road Satellite, Ahmedabad, Gujarat	*w.e.f. 10.10.2010 (date of incorporation)*
A-1, UPSIDC Industrial Area, Nandgaon Road, KosiKalan, Mathura, Uttar Pradesh	*w.e.f. 26.12.2017 (date of order of Regional Director, RoC, UP)*
H.No.2, C-2, Staff Colony, Machinery Division 13 Km Stone, MandirHasaud, GE Road, Raipur City	*w.e.f. 29.11.2018 (date of order of Regional Director, RoC, Chhatisgarh)*

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Though the assessee has provided various registered addresses of M/s. Glebe Trading Pvt. Ltd., ***no proof of the company having actually existed at these addresses has been provided.*** *The assessee has stated that the company has filed form INC 22A along with geographical location of the registered address of the* *company and photo of the premises along with photo of director as required by the Companies Act, 2013.* ***However physical spot enquiries conducted at the registered address have revealed that the premise is actually a staff colony and is only for residential purposes of staff. No sign board/name plate/letter box was found in the name of M/s Glebe Trading Private Limited on the given address. The watchman at the premise reiterated the fact that the said premise is a staff colony of some other entity and was not aware of the name of M/s Glebe Trading Private Limited having existed there.*** *Further, no documents such as electricity/water bill, registered rent agreements etc. have been produced in the name of the company for any of its addresses.*

The Address 'A-1, UPSIDC Industrial Area, Nandgaon Road, KosiKalan, Mathura, Uttar Pradesh' is the registered address of the assessee's group company and flagship concern of the group M/s Jindal Saw Ltd. In the previous year, M/s. Jindal Saw Ltd held 36 percent of the shares of the assessee company.

Vide show cause notice mentioned above, the assessee was asked to furnish proof of whether the company had set up/commenced or made efforts to set up/commence its business for pursuing its main objects as stated above in its MOA. Further, it was asked to clarify if any income was generated in the course of the company pursuing its main objects as above from its date of incorporation till 31.03.2017. The assessee in its reply stated that the main business of this company is to carry on activity of whole sale trading, lending of money and investment in shares. It stated that this company is doing its business as per Main and Ancillary objects mentioned in its Memorandum of Association. It produced the following ancillary objects to this effect:

> *"38. To lend and advance money or property with or without security or to give credit to such persons or companies and upon such terms as may be expedient and as the company may approve and in particular to customers and persons having dealings with the company and to guarantee the performance of any contract or obligation and the payment of money of or by any such persons or*

companies and generally to provide credit facilities to customers and others provided that the company shall not carry on the business of banking as defined by the banking regulation act, 1949.

40. To invest and deal with the monies of the company in such manner as may from time to time be determined."

The assessee failed to produce any evidence of this company having ever set up/commenced or having made efforts to set up/commence its business for pursuing its main objects as stated above in its MOA. No income has been generated by this company in the course of pursuing its main objects. *"Ancillary" activities are in the nature of supporting activities to the "Main" activities of the company. They are consequential to the company pursuing its "Main objects". As per its MOA this company's main object of* ***business is whole sale trading but no proof of any trading activity having ever been carried out by it has been furnished by the assessee****. The assessee has stated that the company is registered with Trade and Taxes Department and under Goods and Service Tax, however it has failed to produce any returns filed with them to prove that any trading activity is being carried out.*

Further, as per the returns of income filed by the above entity, the total income declared by it for various assessment years is as under:-

(Table A)

Sl.No.	*AY*	*Glebe Trading Pvt. Ltd.*
1	*2011-12*	***0***
2	*2012-13*	***0***
3	*2013-14*	***0***
4	*2014-15*	***2,75,840***
5	*2015-16*	***61,09,960***
6	*2016-17*	***2,85,32,470***
7	*2017-18*	***84,74,200***

As per information available with this office, the following Jindal Saw group companies claimed to have availed unsecured loans from the above company during AY 2017-18 (as per table below):-

(Table B)

Sl.No.	*Name of Company*	*Unsecured loan received from Glebe Trading Pvt. Ld. (in Rs.)*
1	*Jindal Saw Ltd.*	*105,44,00,000*
2	*Jindal ITF Ltd.*	*151,83,70,000*
3	*JITF Urban Infrastructure Services Ltd.*	*196,50,00,000*
4	*Jindal Quality Tubular Ltd.*	*NA*
5	*Jindal Fittings Ltd.*	*103,89,25,000*
	Total	***557,66,95,000***

From the above tables it is seen that in the AY 2017-18, M/s Glebe Trading Pvt. Ltd. had declared total income of Rs.84,74,200/-. It had declared Nil income for the AYs 2011-12, 2012-13 and 2013-14, being the first three years since its incorporation. The highest income returned by the company from the initial assessment year of its existence to AY 2017-18 was Rs.2,85,32,470/-, declared in AY 2016-17. ***However, during AY 2017-18, it had furnished huge amount of unsecured loans of Rs.557,66,95,000/- to five Jindal Saw group companies****.*

As per RoC Data, the authorized share capital and Paid up share capital of M/s Glebe Trading Pvt. Ltd. are as under:

Authorized share capital	*Rs.15,10,00,000*
Paid up share capital	*Rs.6,99,00,000*

The Company has a paid up share capital of Rs.6,99,00,000/-. It is thus seen that the company has no sufficient internal resources to provide such huge quantum of unsecured loans to Jindal Saw group concerns.

The assessee was further asked to provide the number of employees working in the company from the date of incorporation till 31.03.2017 along with their Name, PAN, Address, Proof of employment such as salary slips, form 16 etc. was also sought. In *reply the assessee stated that the company has two directors and one employee but provided no proof of payment of any salary to any of them.*

The directors of the company M/s Glebe Trading Pvt. Ltd. as under:

DIN	*Name*
Narendra Mantri	*02626772*
Veni Verma	*07586927*

It is seen that the above directors are also directors in the following companies

Narendra Mantri (DIN 02626772), is also director in:

-Quality Iron and Steel Ltd.

-Groovy Trading Pvt. Ltd.

-Glebe Trading Pvt. Ltd.

-JWIL Infra Ltd.

-Jindal Quality Tubular Ltd.

M/s. JWIL Infra Ltd. and Jindal Quality Tubular Ltd. are known Jindal Saw Group companies.

Veni Verma (DIN 07586927), is also director in:

-JITF Infralogistics Ltd.

-Glebe Trading Pvt. Ltd.

-Hexa Trading Ltd.

M/s. JITF Infralogistics Ltd. is known Jindal Saw Group company.

Thus it is seen that M/s Glebe Trading Pvt. Ltd. ***has common directorships*** *with various other group companies of the assessee. Its given email id in ROC record is sunil.jain@jindalsaw.com which also bears the name of the group.*

The company is not owning any assets.

From the above facts and discussions above and in light of the independent field enquiries carried out, it is seen that the entities M/s Glebe Trading Pvt. Ltd. has been used as conduit in availing unsecured loans covered u/s 68 of the Act. The identity and *creditworthiness of M/s Glebe Trading Pvt. Ltd. and genuineness of the transaction of unsecured loans received from it is not established. Based on initial submissions of the assessee on the issue, independent field enquiries were caused to be carried out and the findings were confronted to the assessee. The assessee in response has failed to discharge its onus regarding establishing the identity and creditworthiness of the lender and the genuineness of the transaction of unsecured loans in the given case…"*

11. Undoubtedly, as held by the Supreme Court in ***LG Electronics (India) Pvt. Ltd.*** (supra), it is open to the statutory authorities to grant relief to deposit an amount lesser than twenty per cent if the facts of the case so warrant. However, on the facts of the present case, as determined by the Assessing Officer, a prima facie case is not made out and such a relief is not warranted.

12. Consequently, the present writ petition and application being bereft of merits are dismissed. However, respondent No. 3 is directed to decide the appeal filed by the petitioner within thirty days from the date the Lockdown ends.

13. Needless to say, the observations made by this Court are only in the context of adjudication of the present writ petition and shall not bind the appellate authority while deciding the appeal.

14. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through email.

MANMOHAN, J

SANJEEV NARULA, J

APRIL 08, 2020
rn/js/sb