- Chitra Sonawane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 156 OF 2018

The Principal Commissioner of
Income Tax-25 .. Appellant

Vs.

Aarhat Investments .. Respondent

.....

Mr. Akhileshwar Sharma i/b Ms. Mamta Omle for the appellant
Mr. Ajay R. Singh for the respondent

....

CORAM : K. R. SHRIRAM &
N.R. BORKAR, J.J.

DATED : 25th MARCH, 2022

P.C.

1. Following two questions of law are proposed in this appeal :-

> *"A Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in upholding the order of CIT(A) in deleting the addition of Rs.7,00,00,000/- and Rs.6,50,00,000/- in respect of monies received from M/s. Wall Street Capital Markets Pvt. Ltd. and M/s. Novel Finvest Pvt. Ltd. respectively made by the Assessing Officer under Section 68 of the Act?*
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> *B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in deleting the addition of Rs.5,07,68,100/- in respect of monies received from M/s. Ganesh Barter Pvt. Ltd. made under Section 68 of the Act?*

2. Assessing Officer had added these three amounts mentioned in two questions of law u/s 68 of the Act, on the basis that substantial amounts have been received by the assessee as unsecured loans and without being charged any interest. Therefore, the Assessing Officer had proceeded on assumption that this must be assessee's own money circulated through three entities mentioned in the two questions of law.

3. Facts in brief are that the assessee received a sum of Rs.7,00,00,000/- from Wall Street Capital Markets Pvt. Ltd. (for brevity "Wall Street"), a sum of Rs. 6,50,00,000/- from Novel Finvest Pvt. Ltd. (for brevity "Novel Finvest), a sum of Rs. 5,07,68,100/- from one Ganesh Barter Pvt. Ltd. (for brevity "Ganesh Barter") and a sum of Rs. 13,50,00,000/- from one Asian Finance Services. Admittedly, the amount of Rs.7,00,00,000/- received from Wall Street was repaid in the same year. Likewise, amount received from Novel Finvest was also repaid in the same year. So also in case of Asian Finance Services. In the case of Ganesh Barter, there was an amount outstanding as at close of the assessment year.

4. There seems to be no issue regarding the amount received and paid back to Asian Finance Services.

5. The Commissioner of Income Tax (Appeals) [for brevity "CIT(A)"], in so far as amount received from Wall Street and Novel Finvest, set aside the order of the Assessing Officer. The CIT(A), as regards amount from Ganesh Barter did not interfere with the order of the Assessing Officer. Both Revenue as well as the Assessee carried the matter in appeal to Income Tax Appellate

Tribunal (ITAT) and ITAT disposed both the appeals by order pronounced on 30.11.2016. The Revenue's appeal was dismissed and the assessee's appeal was allowed. The Assessing Officer had not added the amount that the assessee had received from Asian Finance Services u/s 68 of the Act and, therefore, this was never the subject matter of consideration before the Appellate Court.

6. The ITAT while upholding the finding of CIT(A) with regard to the amounts received from Wall Street and Novel Finvest, set aside the order of CIT(A) as regards Ganesh Barter. The ITAT observed the factual position as noted by CIT(A) as well as that the amounts received from Wall Street and Novel Finvest were repaid during the year itself; that there was no dispute that the transactions were through banking channels and both these parties were assessed to income tax. Even their identity was not in dispute. The ITAT rightly held that Section 68 of the Act casts the onus on the assessee to explain the nature and source of the credit appearing in the books of account. It can be discharged if the assessee is able to establish the identity and creditworthiness of the creditors and the genuineness of transaction. The ITAT also observed that the Assessing Officer had issued commissions of enquiry u/s 131(1)(d) of the Act to the Investigating Wing in response to the independent enquiries made by the Assessing Officer wherein, statements of Director of Wall Street and Novel Finvest have been recorded and nobody has disputed the transactions were in the nature of loans per-se. The CIT (A) as well as ITAT were also satisfied with the credit worthiness of these two parties.

7. As regards Ganesh Barter, there was credit balance outstanding as

on 31.03.2009. The Assessing Officer had accepted the identity of the creditor but was not satisfied with the credit worthiness of the Creditor and genuineness of the transaction. The CIT(A) on the other hand, was also satisfied with the credit worthiness of the creditor but was not satisfied with the genuineness of transaction. Hence, he had not interfered with the findings of the Assessing Officer so far as Ganesh Barter was concerned. The ITAT came to the conclusion that the implied view emanating from the order of CIT (A) that transaction is to be held as not genuine, if money is not returned when the purpose for which it was given was not achieved, would be simply based on suspicion and without properly evaluating genuineness of transactions. We agree with the conclusions of ITAT that just because in the end of the year money was yet to be repaid means the transaction itself has to be doubted is not correct particularly, when explanation rendered by the assessee has not been found to be false.

8. In our view, the ITAT has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that questions as pressed raises any substantial questions of law.

9. The appeal is devoid of merit and is dismissed with no order as to costs.

(N.R. BORKAR, J.) **(K.R. SHRIRAM, J.)**