HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-104-2011 (O&M)
Reserved on 06.02.2023
Date of pronouncement: 16.02.2023

The Commissioner of Income Tax-I, Chandigarh ....Appellant

Vs.

M/s. V.R.M. Portfolios Pvt. Ltd. ....Respondent

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Gauri Neo Rampal, Senior Standing Counsel for the Income Tax Department.

****

Ritu Bahri, J.

CM-3632-CII-2011

Application is allowed, as prayed for.

ITA-104-2011

The revenue has come up in appeal against the order dated 30.06.2010 (Annexure A-4) whereby the Income Tax Appellate Tribunal (hererinafter referred to as 'ITAT') had dismissed the appeal filed by the revenue against the orders of CIT (Appeals) dated 16.02.2010 (Annexure A-3).

In brief, the facts are that the Assessing Officer made an addition of Rs.55 lacs u/s 68 of the Income Tax Act, 1961 (in short the Act') treating the share application money/share capital received by the assessee to the tune of Rs.55 lacs from three parties as unexplained. The assessee had received share application/capital amounting to Rs.20 lacs from M/s Merta

Finance Pvt. Ltd., Rs. 15 lacs from M/s Tejasvi Investment Pvt. Ltd. and Rs.20 lacs from M/s Volga Cresec Pvt. Ltd. During the year under consideration. The Assessing Officer relied upon the information received from the Investigation Wing that the share application monies/capital received from the above persons were mere accommodation entries whereby the assessee company had introduced its own undisclosed money in the names of the above three entities. The assessment was re- opened u/s 148 of the Act on the basis of such information. During the course of assessment proceedings, the Assessing Officer carried out verification exercise by issuance of summons u/s 131 to the aforesaid three entities. In response, none appeared on behalf of the aforesaid entities. However, the assessee furnished the details of the amounts received from three concerns. The assessee company submitted the copies of the Income Tax Returns of the said three entities, copy of the bank statement of the three companies showing flow of money to the assessee company, copies of the share application forms etc. were furnished. The Assessing Officer, however was not satisfied and noticing the failure of the assessee to produce the three persons, he inferred that the assessee company had introduced its own undisclosed money in the grab of share application money/share capital to the extent of Rs.55 lacs from the above three entities. He, therefore made an addition of Rs.55 lacs u/s 68 of the Act.

The CIT (Appeals) held that the identity of the three shareholders company stood established. The entire money was received through banking channels and in the course of assessment proceedings, bank statement of the said companies, copy of share certificates issued to the said companies, details of Directors, income tax particulars and a copy of acknowledgement of returns of income of the three companies were produced. In this backdrop, the addition made in the hands of the assessee was deleted.

The revenue went in appeal before the ITAT which has affirmed the findings given by the CIT(Appeals) that once the assessee had discharged its onus by leading sufficient evidence with regard to identities of three shareholder companies and these companies were income tax assessees, the additions could not be made in the hands of the assessee company as undisclosed income of the assessee under Section 68 of the Act.

After hearing learned counsel for the appellant, this appeal deserves to be dismissed. The ITAT has rightly dismissed the appeal of the revenue by referring to the judgment of Hon'ble Supreme Court in CIT vs. Lovely Exports (P) Ltd., 6 DTR 308 (S.C.). In this judgment, the Supreme Court has observed as under:-

> "1. Delay condoned. Can the amount of share money be regarded as undisclosed income under Section 68 of Income Tax Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee-Company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.
>
> 2. Subject to the above, Special Leave Petition is dismissed."

Learned counsel for the appellant has not been able to show any evidence which has been misread or first finding of fact given by the

ITAT dismissing in appeal is erroneous.

Appeal is dismissed being devoid of any merit.

(RITU BAHRI)
JUDGE

16.02.2023 **(MANISHA BATRA)**
Divyanshi **JUDGE**

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No