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

\+ ITA 338/2019

PR. COMMISSIONER OF INCOME TAX – 8 .....Appellant
Through: Mr. Indruj Singh Rai, SSC with Mr. Sanjeev Menon, JSC

versus

M/S SUNSKRITI TRADEX PVT. LTD. .....Respondent
Through: Mr. Gagan Kumar & Ms. Puja Jakhar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% **10.07.2024**

1. The Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 23 July 2018 and proposes the following question of law for our consideration:

> “A. Whether the Tribunal was justified in deleting the addition on account of unexplained share capital when the onus cast upon the Assessee u/s 68 of the Act to prove the identity, creditworthiness and genuineness of the transactions was not discharged?”

2. The principal contention of the appellants appears to have been that notwithstanding the amount in question ultimately having been taxed in the hands of Rock Land Hospital [“**RLH**”], the same would not detract from an independent liability being fastened upon the respondent/assessee here. It becomes pertinent to note that it appears to have been the undisputed position on facts that it was RLH which had placed funds in the hands of its sister concerns and which was then routed back as investments made in the parent entity. The Tribunal while dealing with this aspect has observed as follows:

> “**15.** We have heard both the parties and perused all the records.

Ground No. 1 and 5 are general in nature in both the appeals hence dismissed. As regards to Ground No. 2 to 4, the same are relating to the protective addition made in the hands of the assessee. The amount received was received on behalf of M/s Rock Land Group and has been invested in shares of Rock Land Hospital and in fact the entity M/s Rock Land Hospital (RLH) is the ultimate beneficiary of this amount. This fact was admitted by the Assessing Officer in the Assessment Order itself, therefore, he made protective additions. The issue to prove identity, genuineness of the transaction as well as creditworthiness does not arise in the present case as both the assessees established that t he amount was that of M/s Rock Land Hospital which was admitted by the said group in their assessment proceedings on which on which substantive addition was made and taxes has been paid as per the submission of the Ld. AR during the course of hearing. But the CIT(A) held that additions were wrongly made on protective basis and converted the entire addition on substantive basis. The factual aspect that the ultimate beneficiary was M/s Rock Land Hospital was never doubted by the CIT(A) as well. Thus, the CIT(A) erred in making this addition on substantive basis. Besides this, the Assessing Officer has also admitted that the ultimate beneficiary was M/s Rock Land Hospital and from the perusal of the Assessment Order in case of Rock Land Hospital, these facts are substantiated by the Ld. AR. During the course of Assessment Proceedings, the Assessing Officer has not taken the cognizance that M/s Rock Land Hospital was already scrutinized for the said additions and admitted that the entire amount was that of Rock Land Hospital Group only. Therefore, Assessing Officer as well as the CIT(A) was not correct in making the additions on protective/ substantive basis. Nothing has been found in search of Rock Land on the basis of which it can be said that Rock Land has paid anything out of books to these companies, which had arranged share application money to the group. As regards the issue of difference in the amount received and transferred to Rock Land Hospital group, in the case of Sukumar the difference is Rs. 3,50,080/- and in the case of Sanskriti, the difference is Rs. 2,50,638/-. From the records it can be seen that these amounts were incurred by assessee on maintaining the corporate entity of the companies. The Assessing Officer has not brought on record to establish that these are not incurred for the purpose of business. It is pertinent to note that while passing Assessment orders in cases of Purnendu Traders and Ashwin Pharmaceuticals, there is no addition of this nature made while framing assessment under section 143(3) of the Act. Thus, the Revenue cannot take different stand in respect of these two assessee. Therefore CIT(A) as well as Assessing Officer was not correct in making substantive/ protective additions in the hands of the assessees' herein. Since the ld. AR/assessee admitted that there is difference in the amount received and transferred to Rock Land Hospital group of Rs. 3,50,080/- in case of Sukumar and Rs. 2,50,638/- in case of Sanskriti, the same needs to be verified by the Assessing Officer. Therefore, we direct the Assessing Officer to verify this difference as per the findings given hereinabove. The issue is remanded back to the file of the Assessing Officer. Needless to say the assessee be given opportunity of hearing by following principles of natural justice. Ground Nos. 2 to 4 in both the appeals are partly allowed."

3. Undisputedly, while assessing RLH, the Department had accepted its stand that the entire monies for the purposes of investment in it had been routed by RLH through its constituent entities including the assessee. It was in the aforesaid backdrop that the monies were ultimately surrendered to tax.

4. We take note of the position of law in this respect which has come to be enunciated by our Court in **Pr. Commissioner of Income Tax vs Surya Agrotech Infrastructure Limited** [2023 SCC OnLine Del 5530] and where it was held that investments cannot be taxed twice over once source has come to be identified. We take note of the following passages as they appear in this decision:

> "**23.** To recapitulate, in the present case, the material on record reflects that the Assessing Officer throughout the proceedings placed heavy reliance on the statement of Shri Shekhar Aggarwal to the effect that the undisclosed income of Priya Gold Group of Companies was routed in the form of share capital of the respondents/assessee companies by way of accommodation entries from Kolkata based entry provider companies and such share capital is liable to be taxed as income in the hands of the respondents/assessee companies. At the same time, it is also not in dispute that Surya Food & Agro Limited, the flagship company of the group has already offered the said undisclosed income to the tune of Rs. 49,12,00,000/- to tax before the Settlement Commission, which income was enhanced by the Commission to Rs. 55,77,00,000/- and the final order of the Settlement Commission having not been challenged by either side has attained finality. It is also not in dispute that before the Settlement Commission the flagship company specifically declared that the undisclosed income which was offered before the Settlement Commission had been applied by way of share capital to the group entities, namely the present respondents/assessees. Further, before

the Settlement Commission, the flagship company also explicitly stated that there is no other undisclosed asset found or application of funds by the group, which statement remains unchallenged till this stage.

24. In view of aforesaid, the irresistible conclusion is that since the undisclosed income which is subject matter of the present dispute had already been taxed in the hands of the flagship company Surya Food & Agro Ltd., it cannot be again subjected to tax in the hands of the respondents/assessee companies in the form of application of the said income as their share capital. Accordingly, the question as framed above is answered against the appellant/revenue and in favour of the respondent/assessee.

25. The above captioned appeals are disposed of in the aforementioned terms."

5. In view of the aforesaid, we find that no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 10, 2024/kk