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

\+ ITA 675/2019

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2

..... Appellant

Through: Mr. Gautam Jain and Mr. Manish, Advocates

Versus

M/S M.L. SINGHI & ASSOCIATES (P) LTD. ..... Respondent

Through: Counsel (appearance not given)

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **11.03.2024**

1. Having heard learned counsels for parties and upon perusal of the judgment impugned, we find that the Income Tax Appellate Tribunal ["**ITAT**"] has principally followed the decision rendered by it in ITA No. 3332/Del/2017, dated 29 December 2017 and pertaining to M/s Brahmaputra Finlease (P) Ltd. for Assessment Year 2007-2008.

2. On a perusal of the aforenoted judgment, we find the following conclusions of the ITAT and which would be of critical relevance:-

> "4.7.2 In view of above decision, we are required to examine the two conditions. The First condition is whether for the year under consideration, the assessment stood completed before the date of search or not. The second condition is that whether any incriminating material unearthed during the course of the search qua the addition made, which was not already disclosed or made known in the course of original assessment.

4.8 As regard the first condition, the Ld. counsel has already referred to page 1 05A of the paper book, which is a copy of the assessment order passed under section 143(3) of the Act on 24/11/2009. Since in the case of the assessee search was carried out on 28/09/2010, thus, it is undisputed that assessment was completed prior to the date of search.

4.9. Now regarding the second condition, the Ld.CIT(DR) has mentioned that documents impounded from the premises of Sh. ML. Aggarwal, Chartered Accountant, during the course of survey proceeding are incriminating material found during the course of search. We do not agree with the contention of the Ld. CIT (DR) that these materials like blank shares transfer forms etc could be termed as found during the course of search at the premises of the assessee. The survey proceedings carried out at the premises of the Chartered Accountants, ML Aggarwal are separate from the search proceedings carried out at the premises of the assessee. There is no concept of group of assessee in Income tax assessments. Each assessee is treated separately. If any material is found during the course of search from the premises of one assessee, it can be used against another assessee either under section 1 53C or under section 148 of the Act depending on material belonging to or pertaining to that another assessee but it cannot be termed as material found during the course of the search of another assessee for making addition under section 153A of the Act. If any material impounded during the course the survey at the premises of one assessee and found to be belonging to or related to another assessee, then action may be taken in terms of section 148 of the Act depending on the material found but that material cannot be treated as part of the search carried out at the premises of the another assessee. Further, the Assessing Officer in the impugned order has not brought on record what was incriminating in the said material impounded from the premises of Sh. ML Agrawal. In view of our discussion, we reject the above contentions of the Ld. CIT(DR) that any incriminating material qua the addition was found during the course of the search action under section 132 of the Act.

4.10 Another argument, made by the Ld. CIT(DR) in support of her claim of incriminating material was that the Item No. (i) mentioned on page 6 of the assessment order, was incriminating in nature as it contained detail of accommodation entry. For having clarity on the issue raised by the Ld. CIT(DR), we may like to reproduce the relevant part of the assessment order as under:

"Apart from, during the course of search operation in Brahmaputra Group of cases, carried out at premises A-7, Mahipalpur, New Delhi, the following incriminating documents were inter alia seized by party BA-5

i. Page No. 23 of Annexure A-6 (a diary relating to F.Y. 2009-10)- on the back side\of this page recording is made in the name of "Shri Shyam Trexim & Fincom P. Ltd." against which Rs. 50 lakhs is written.

ii. Page No. I of Annexure A-7- on this page a recording of funds mentioning debit as well as credit of Rs. 25 lakhs in the name of Murari Lai Aggarwal dated 31.05.2008 and further comments of the payment of same amount by cash to Murari Lal Aggarwal (MLA) is made

iii. The back side of the above page I of Annexure A-7 mentions that Sarat Aggarwal was paid with cash of Rs. 30 lakhs bring back equal amount in other form. The date of noting is 04.06.2008.

iv. Page I of Annexure A-I,O - it contains a hand written extract of cash book containing entry of Rs. 5lakhs in the main of ML. Aggarwal. It also shows as debit of Rs. 3 lakhs in the name of SaratAggarwal. The entries are for the date 28. 05. 2008, the date of writing of this page.

v. Page No. 4 of above Annexure A-IO contains record of 30 lakhs in the name Mr. A Singhal and ML Aggarwala dividing into Rs. 25 lakhs and 5 lakhs respectively. On this page the name of Sudarshan Casting P. Ltd. is also written.

During the course of search and post search investigation, the assessees of this group have not been able to explain the above entries satisfactorily. Though these entries are to be dealt with in relevant cases but this also proves the fact that this group is engaged in bring back their unaccounted/undisclosed income in the guise of share capital/share application money. "

4.11 We find that the Item No. (i) contains recording in the name of "Shri Shyam Trexim & Fincom Pvt. Ltd". The Assessing Officer has nowhere brought on record how the said recording on the page relates to the addition in question of share capital. The Ld. CJT(DR) also could not explain as how the said recording was related to the addition in question made in respect of alleged unexplained share capital. She only stated that said recording on the page reflected accommodation entry obtained by the 'Brahmaputra Group ' and but no documentary evidence regarding the claim that the document was incriminating qua the addition, are filed. In respect of the Items No. (ii) to (v), the Ld. counsel has submitted that additions in respect of the amounts mentioned in the document has been made in the case of another company namely "Mis Brahmaputra

Infrastructure Ltd" in assessment year· 2009-10. This fact was not controverted by Ld. CIT(DR). Thus, we find that no incriminating material qua the addition made is found during the course of search from the premises of the assessee. Accordingly, above contention of Ld. CIT(DR) are rejected. She also submitted that during the course of search; hard disks of computers and others material were also seized which contained incriminating material. The Ld. CIT(A) failed to substantiate the claim either by the impugned assessment order or through any other documentary evidence. In the assessment order, there is no mention that any incriminating material is found in hard disk etc. Thus, this contention of Ld. CIT(A) is also rejected.

4.12 The next argument of the Ld. CIT(DR) is that the statement recorded under section 132(4) of the Act of Sri Sampat Sharma is incriminating material found during the course of search. We have observed that said statement of Sh. Sampat Sharma was recorded at his residential premises during search proceeding carried out separately. In our opinion, the statement of Sh. Sampat Sharma was not recorded in search proceeding of the assessee and thus, it cannot be considered as incriminating material found during the course of the search of the assessee.

4.13 Without prejudice to our observation, we do not find any mention of any incriminating material in the statement of Sh. Sampat Sharma recorded under section 132(4) of the Act. The Ld. counsel drawn our attention to copy of the statement available on page 427 to 450 of the paper book and English translation of the same available on pages 420 to 426 of the paper book. In response to question No. 6, regarding details of the bank accounts, Sh. Sharma stated that he did not remember the bank account numbers and all the pass books of the accounts were kept in the office of Brahmaputra Infra Projects Ltd. In response to question No. 8, he explained where the books were kept. The documents referred in question No. 20 to 25 are admittedly not belonging to the assessee. The question No. 26 relates to investment by Sh. Sharma. On perusal of the entire statement of Sh. Sampat Sharma, we do not find any mention of any incriminating material qua the addition made.

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4.19 We find that in the case of Best infrastructure (India) private limited (supra), despite the admission of accommodation entry in statements under section 132(4) of the Act, the court held that the statement do not constitute as incriminating material. In the instant case, neither is there any statement of any accommodation entry operator claiming that any entry was not provided nor any director

> has admitted that assessee obtained accommodation entry. Thus, the case of the assessee is on better footing then the case of Best Infrastructure (India) (P.) Ltd (supra). In such facts and circumstances, respectfully following the decision of the Hon'ble Delhi High Court in the case of best infrastructure (India) private limited (supra), we do not have any hesitation to hold that the statement under section 132(4) of Sh. Sampat Sharma cannot be treated as incriminating material found during the course of search.
> In the result, we hold that addition of share capital in the year under consideration has been made without relying on any incriminating material found during the course of search.
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> 4.20 In view of the above finding, both the conditions as completed assessment and no incriminating material, have been satisfied in the case, thus, no addition could have been made in the instant assessment year in view of the finding of the Hon'ble Delhi High Court in the case of Kabul Chawla (supra). The grounds No.1 and 1.1 of appeal are accordingly allowed."

3. Since the aforesaid conclusions are findings of facts, namely, of there being no incriminating material, we find no infirmity in the views expressed by ITAT. No substantial question of law arises. The appeal shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 11, 2024
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