



* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.495/2003

% Judgment reserved on: 14th March, 2008

Judgment delivered on: 1st April, 2008

M/S INDUS VALLEY PROMOTERS LTD.

54, Deepak Building,

13, Nehru Place

New Delhi-110019.

..... Petitioner.

Through: Dr.Rakesh Gupta with

Ms.Poonam Ahuja, Adv.

Vs.

COMMISSIONER OF INCOME TAX

I.P.Estate

New Delhi.

..... Respondent

Through: Mr.R.D.Jolly, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

Present appeal has been filed under Section 260A of



the Income Tax Act, 1961 (for short as 'Act') by the Assessee against the order dated 29th May, 2003 passed by Income Tax Appellate Tribunal Delhi Bench 'B' (for short as 'Tribunal') in ITA No.3785/Del/01 relevant for the assessment year 1998-99.

2. The brief facts of this case are that the Assessee company filed return declaring a loss of Rs.4,93,218/- and which was processed under Section 143(1)(a) of the Act on the same figure. Subsequently, notice under Section 143(2) of the Act was issued and regular assessment proceedings under Section 143(3) of the Act were taken up. During the course of assessment proceedings, the Assessing Officer noticed an increase in the share application money account as compared to the preceding assessment year and vis-à-vis the account of Shri Sanjay Gupta who is the Director of the Assessee company, it was noticed that a sum of Rs.11.82 lacs had been received during the previous year under consideration. It was noted by the Assessing Officer that in fact no shares were allotted during the previous year under consideration and the share application money retained the same form and character



even in two subsequent years. Thus, the Assessing Officer treated this amount as unsecured amount and not as share application money. The Assessing Officer proceeded to test the credit on the touchstone of Section 68 of the Act and asked the Assessee to explain the source of the amount in question. As regard the account of Shri Sanjay Gupta with M/s Indwheels, the Assessing Officer asked the Assessee to explain the deposits in the said account as all the deposits were made in cash. As per enquiries conducted by the Assessing Officer, the address furnished by the Assessee to be the office of M/s Indwheels was not found located at the said premises. A copy of Inspector's report dated 3rd January, 2001 vis-a-vis the aforesaid facts were confronted to the Assessee but according to the Assessing Officer, no further evidence was produced by the Assessee and on the ground that the source of the deposits were not explained within the meaning of Section 68 of the Act and, thus, the Assessing Officer added a sum of Rs.11,82 lacs.



3. The Assessing Officer also made additions in respect of following amounts deposited in the Petitioner company's books:-

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|----------------------|------------|
| (1)Smt. Rima Sood | Rs. 2 lacs |
| (2)Sh.Rajiv Aggarwal | Rs. 2 lacs |
| (3)Sh.Mayank Jain | Rs. 2 lacs |

These deposits were made against the booking of flat/plot in the scheme of the Assessee company but were later cancelled by the parties.

4. Thus, the Assessing Officer had made addition of Rs. 5 lacs.

5. Being dissatisfied with the decision of the Assessing Officer, the Assessee filed an appeal before the CIT(A). However, the CIT(A) dismissed the appeal filed by the Assessee.

6. Thereafter, the Assessee challenged the order passed by the CIT(A) before the Tribunal and vide impugned order it has dismissed the appeal filed by the Assessee with regard to these additions.

7. It is contended by learned counsel for the Assessee that all the amounts credited in the account of Sanjay



Gupta in the books of the Assessee have come directly from the account of Sanjay Gupta in M/s Indwheels by cheques and Sanjay Gupta is a partner in the firm M/s Indwheels and he has explained the sources of amounts deposited in cash with Indwheels. This burden is upon the Revenue to show that the amount which was deposited in the name of Sanjay Gupta in the books of the Assessee and was withdrawn by cheques from the firm M/s Indwheels, in which Sanjay Gupta was a partner, was in fact the income of the Assessee. There is no direct nexus between the facts found and the conclusion drawn by the Tribunal.

8. Regarding addition of Rs. 5 lacs made by the Assessing Officer, it is contended by learned counsel for the Assessee that these deposits were made against booking of Flat/Plot in the scheme of the Assessee but were later on cancelled by three parties. In support of the amount deposited, Assessee produced confirmation letters and reply of Smt. Rima Sood, Sh.Rajiv Aggarwal and Sh.Mayank Jain in response to notice under Section 131 of the Act and copies of account. Thus, the Assessing Officer



was unjustified in treating these amount as unexplained cash credit.

9. No shares were allotted to Sh. Sanjay Gupta during the year in question and for the subsequent two assessment years and since the shares were allotted after enquiry done by the Assessing Officer, therefore, the amount of Rs. 11, 82,000/- will be treated as unsecured loan. The perusal of the assessment order shows that the return of Sh. Sanjay Gupta for the assessment year 1996-97 was filed as late as 31-3-98 and this does not prove his financial capacity to deposit the huge amount of Rs.11, 82,000/-. While no return is available up to assessment year 1997-98 and the return for the assessment year 1998-99 has been filed only when the enquiry started with regard to the deposit in the petitioner company. Therefore, Sh. Sanjay Gupta was not an Assessee on record at the relevant time.

10. M/s Indwheels firm was not located at the given address as is evident from the inspector's report dated 13-7-01. Only copy of account of M/s. Indwheels is not



sufficient to explain the source and credit worthiness of Sh. Sanjay Gupta.

11. The main plank of the Assessee arguments is that the source of the source cannot be examined. In the present case, the Revenue has seen through the ploy of the Assessee whereby substantial amount have been deposited in cash purportedly in the books of M/s Indwheels stated to be a partnership firm and from where the amounts have been withdrawn and credited to the account of Sh. Sanjay Gupta in the books of the Assessee company. It is the case of the Revenue that the same cash deposits could have been made in the books of the Assessee company and the method of choosing the circuitous path is only an attempt to circumvent the provisions of Section 68 of Act.

12. The amount was deposited in cash and in spite of enquiry, the source of the deposit was not explained. The creditworthiness of the said payment is not clear from the income shown by them. Therefore, the addition should be confirmed. Since the Assessee was a Director in the Assessee company having a regular account, what was the reasoning to first deposit the cash in M/s Indwheels and



thereafter transfer the funds to the Assessee company, when the initial deposit could have been made in the books of the Assessee company itself.

13. Thus, we do not find any infirmity in the reasoning given by the Tribunal in upholding the action of tax authorities in bringing to tax the sum of Rs.11,82,000/-.

14. Regarding the second issue, Ms.Rima Sood did not come before the Assessing Officer in response to the summons, therefore, he was not able to go into the question of her capacity with regard to the loan of Rs. 1 lac and inspector did not find her at the address given by the Assessee and the Assessee failed to produce her for verification of the source of deposit and as such the addition should be confirmed.

15. With regard to Rajiv Agarwal, the Inspector's report dated 30th July, 2001 has made it clear that Sh. Rajiv Aggarwal on being contacted was unable to produce the bank pass book and avoided to produce the same.

16. In the case of Mr.Mayank Jain there are categorical findings of the tax authorities that at one point of time he was working with Sh.Rajiv Agarwal but later on took up



employment in a co-operative bank at Meerut and in spite of having a bank account, Sh.Mayank Jain chose to deposit the sum of Rs.2 lacs in cash.

17. In the present case, the above transactions have been done in cash even though the said creditors had bank account and on some occasions they have received back payment through their bank accounts. Further, the advances towards booking of flat/plot (whereas no flat/plot were allotted) were returned later on, the amounts are clearly in the nature of the cash credits, which have been shown to be towards booking of flats.

18. The only evidence given by the Assessee is with regard to the names of the creditors is their confirmations stating that they have paid the said amount to the Assessee in cash and also the details of the return filed by the said creditors for the relevant assessment year. Further, in some cases the return has been filed after the assessment of the Assessee came in scrutiny only in order to explain the transaction. Thus, the Assessee has filed the returns of the so-called creditors only to create the legal situation where the creditors can be described as an Assessee.



19. It is well settled that the Assessee must discharge the burden of proving the identity of the creditors and also to give the source of the deposits. In other words, the credit worthiness of the depositors must be established to the satisfaction of the Assessing Officer. Where there is an unexplained cash credit, it is open to the Assessing Officer to hold that it is income of the Assessee and no further burden lies on the Assessing Officer to show that income in question comes from any particular source.

20. Thus, the facts of this case clearly show that the Assessee has not been able to prove the credit worthiness of the said creditors with respect to the cash credits in question. All the persons involved did not respond to the summons. The Assessee received all the payments in cash even though the most of the persons have bank accounts but they did not enter into the said transaction through their bank accounts. However, the overall situation as discussed above clearly shows that the same has been done to hood wink to tax authorities and to evade the tax. Therefore, in view of the overall facts, it can be said that the finding of the Tribunal are based on relevant material



and are not perverse and thus, no substantial question of law arises in this case.

21. Accordingly, the appeal of the Assessee is, hereby dismissed.

V. B. GUPTA, J.

April 01, 2008
Bisht

MADAN B. LOKUR, J.