



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No.566/2009

COMMISSIONER OF INCOME TAX
August 20, 2009
...Appellant

Through: Ms. P.L.Bansal , Mr. Paras
Chaudhary and Ms. Anshul Sharma,
Advocates

VERSUS

RAINEE SINGHRespondent

Through: Mr. Rakesh Gupta and Ms. Aarti
Saini, Advocates

CORAM:

HON'BLE MR. JUSTICE A. K. SIKRI

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

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A.K. SIKRI, J(Oral)

CM No. 5809/2009 (Exemption)in I.T.A.No. 566/2009

Exemption sought is granted subject to all just exceptions.



Application is disposed of.

I.T.A.No. 566/2009

1 A notice under Section 147 of the Income Tax Act was issued to the assessee herein on 4.3.2005 seeking to reopen the assessment. In the said notice, the following reasons were given by the A.O.

“The Sahara Group had made certain land deals in Gurgaon wherein certain plots of agricultural land were purchased in the name of certain employees of various Sahara Companies. It was found that two Sahara companies had advanced loan aggregating to Rs.31.93 cr. From F.Y. 1997-98 to F.Y. 1999-2000 to the employees of the Sahara Group for the purchase of 233 plots of agricultural land at Chauma Village at Tehsil Gurgaon. The amount of loan sanctioned to the employees against the equitable mortgages of lands were deposited in their bank accounts and therefore, the payments were made to the sellers through Mrs. Raineer Singh, Proprietor Raineer's Creation, New Delhi. However, the arrangements were so made that while the payments to the sellers aggregated to Rs.24.55 crs. Mrs. Raineer Singh paid Rs.6.30 crs out of the payments received from the employees, to a loss making company M/s Rathi Ispat Ltd. The company M/s Rathi Ispat Ltd. has not furnished any evidence of having rendered of any kind of services rendered in relation to the land deals. Further, Mrs. Raineer Singh has also only shown a surplus of just Rs.1.07 crs. Out of the land transactions. It is thus apparent that Mrs. Raineer Singh has diverted her income amounting to Rs.6.30 crores by way of showing the bogus payment of Rs.6.30 crores to M/s Rathi Ispat Ltd which is a loss making company. Presumably, the sum of Rs.6.30 crores might have been taken back in cash from M/s Rathi Ispat Ltd. by Mrs. Raineer Singh,



Proprietor M/s Rainee Creationg.”

2 It is clear from the aforesaid order that the A.O. proceeded on the following two assumptions.

(1) The assessee herein had diverted her income amounting to Rs.6.30 crores by way of showing the bogus payment of that amount to M/s Rathi Ispat Ltd. which was a loss making company.

(2) The presumption was drawn that M/s Rathi Ispat Ltd would have returned back that amount to the assessee in cash.

3 In appeal filed by the assessee against that order, the assessee pointed out that the aforesaid payment made by the assessee to M/s Rathi Ispat Ltd. was not a bogus payment and it was against the services rendered by M/s Rathi Ispat Ltd. The CIT(A), after considering the matter in detail, allowed the said appeal and quashed the assessment proceedings *inter alia* on the following grounds.

(a) A finding of fact was recorded that M/s Rathi Ispat Ltd. was not a loss making company and in fact in all three years it had earned profits. Profits earned before payment of tax were as under:-

Assessment year 1997-1998	-	Rs.1,00,30,467/-
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Assessment year 1998-1999	-	Rs.1,19,49,220/-
Assessment year 1999-2000	-	Rs.1,32,84,376/-

(b) M/s Rathi Ispat Ltd. had also paid tax on the aforesaid income which included the income received from the assessee herein in the form of against the services rendered to the assessee. From this, the CIT(A) recorded that when the income was taxed at the hands of M/s Rathi Ispat Ltd, it clearly points to the genuineness of the transaction which had even been accepted by the department.

(c) Finding of fact is also recorded that M/s Rathi Ispat Ltd. had actually rendered services to the appellant. In arriving at this conclusion, the CIT(A) took into consideration various documents, submitted before it and the discussion in this behalf is reproduced in the following manner.

“After execution of the MOU whenever a piece of land was registered with the effort of M/s Rathi Ispat Ltd in the name of appellant’s nominee, a letter was written by M/s Rathi Ispat Ltd. to the appellant along with the relevant invoice for making balance payment to M/s Rathi Ispat Ltd. During the course of appellate proceedings copy of all such letters and respective invoices were furnished which prove beyond doubt that it was as a result of positive involvement of M/s Rathi Ispat Ltd that different pieces of land could be got registered in the name of appellant’s nominee i.e M/s Sahara India Housing Ltd. All the payments were made by the appellant through account payee cheque and this is found properly recorded in the books of accounts of the appellant as well as in the books of accounts of M/s Rathi Ispat Ltd. It is



verifiable from the books of accounts of the appellant with reference to individual ledger account of the persons from whom the land was purchased and payment was made to them by appellant. Whenever such payment was made by the appellant to M/s Rathi Ispat Ltd it was sent through a letter. Copy of all such letters were submitted by the appellant during the appellate proceedings. Each letter indicates the date, number and amount of the pay order and the bank on which it was drawn. Likewise whenever such payment was received a receipt was issued by M/s Rathi Ispat Ltd acknowledging the payment and all these find place in the books of M/s Rathi Ispat Ltd and their bank account. It would also be pertinent to mention here that the assessment of M/s Rathi Ispat Ltd was also completed by the DCIT, Circle 15(1) New Delhi under Section 147/143(3) wherein all these transactions were examined in detail. Copy of assessment order for assessment year 2000-01 dated 10.3.2006 is placed on record. This order very specifically discuss in details that a sum of Rs.1,47,52,572/- had accrued to M/s Rathi Ispat Ltd against which they had received a sum of Rs.1,03,73,510/- from M/s Rainees Creations and all payments had been received through account payee cheque and deposited in various accounts maintained by them. It also discuss that copy of account of M/s Rainees Creations was also filed which corroborates that the payment had actually been made by the appellant. This order also speaks that all these amounts had been credited in sales and service account maintained by the assessee i.e M/s Rathi Ispat Ltd. Thus all these overwhelming evidences prove beyond doubt that not only effective services were rendered by M/s Rathi Ispat Ltd. to the appellant, the payments made to them by the appellant were genuine and cannot be termed as bogus payment as held by the Assessing Officer.”

4 The department filed appeal against this order before the I.T.A.T but unsuccessfully in as much as the said appeal has been dismissed by the



Tribunal while its order dated 25.8.2008 inter alia recorded as under:-

“6. We have carefully considered the rival submissions and perused the records. As could be noticed from the reasons recorded by the Id ACIT the reopening of assessment was based on mere suspicion and the use of the expression “presumably, the sum of Rs.6.30 crores might have been taken back in cash....” Clearly shows that the A.O. has not made any effort to satisfy himself as to whether the information received from the office of the DGIT(investigation) has some basis or not and thus it is to be held that the reassessment proceedings are initiated in a mechanical manner on vague grounds. In the light of the decision of the jurisdictional High Court (supra), as well as the decision of the Hon’ble P.& H.High Court(supra), we are of the view that the reopening of assessment, based on mere suspicion, is invalid in law and therefore unable to be quashed. As declared in the Open Court we hold that the reopening of assessment is bad in law and therefore the reassessment proceedings are hereby quashed. In view of our conclusion that the reopening is bad in law, it is not necessary for us to go into the other issues on merits, urged by the Revenue. In the result the appeals filed by the Revenue are treated as dismissed and the Cross Objections filed by the assessee are allowed for the reasons stated above.”

5 The submission of learned counsel for the appellant is that it was not open to the CIT(A) or for that matter the Income Tax Appellate Tribunal to go into the merits of this case at this stage when notice under Section 147 of the Income Tax was issued.

6 However, when we put specific query to learned counsel for the appellant as to whether the aforesaid facts particularly, the fact that M/s



Rathi Ispat Ltd. was not a loss making undertaking and it had paid the tax on the amount received from the assessee herein, it could not be disputed by the learned counsel. Thus, we find from this that the very basis for initiating proceedings under Section 147 is on wrong premise as it is neither factually correct that M/s Rathi Ispat Ltd. was a loss making company and on the other hand it also stands established that the payment was received by M/s Rathi Ispat Ltd. for the services rendered by it to the assessee which had been shown as income in its return and duly taxed by the Income Tax Department.

7 In these circumstances, we are of the opinion that no question of law much less substantial question of law arises and the appeal is an abuse of the process of law.

8 Dismissed.

A.K.SIKRI, J

VALMIKI J.MEHTA, J

August 20, 2009
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