Reportable

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

\+ **ITR No.327 of 1991**

Judgment Reserved On: 09th August, 2010.
% *Judgment Pronounced On: 21st September, 2010.*

COMMISSIONER OF INCOME TAX . . . Appellant

through : Ms. Suruchi Aggarwal, Advocate

VERSUS

RELIANCE INTERNATIONAL CORP. PVT. LTD. . . .Respondent

through: Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Advocate

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether Reporters of Local newspapers 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?

A.K. SIKRI, J.

1. For the year ended on 31.5.1980, while scrutinizing the details in respect of loans raised from various parties, the Assessing Officer (AO) found that the assessee had raised loans aggregating to ₹17,10,000 from five different parties. He, therefore, required the assessee to file the necessary evidence to prove the genuineness of the cash credits. The assessee stated that the loans were

raised by cheques and/or bank drafts, and the depositors had al subscribed towards shares of the assessee company, besides filing letters in writing from various persons. Not satisfied with the evidence produced, the AO issued summons under Section 131 of the Income Tax Act (hereinafter referred to as 'the Act') so as to ensure personal presence of the creditors and since the summons issued were returned by the postal authorities, the AO in the draft assessment order proposed addition of cash credits. In the proceedings under Section 144B of the Act, the assessee further explained that the amounts were received from Shri B.S. Patel, who owned various concerns and had also made the deposition before the Department on three occasions in this regard. However, in the absence of detailed deposition in writing before the IAC, the IAC justified the addition under Section 68 of the Act. In appeal, the various factual aspects alongwith the evidence laid from time to time were placed before the CIT (Appeals). After considering the evidence and the findings brought on record, the CIT(A) concluded that the amounts given to the assessee were confirmed by Shri B.S. Patel, who had received the amounts from M/s. Sehgal Paper Ltd. or some other party and it was clear that the funds did not belong to the assessee company. According to him, the provisions of Section 68 were not applicable. He, therefore, deleted the addition made under Section 68 together with the interest payable thereon.

2. Feeling aggrieved with this order of the CIT (A), the Departme approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') and challenged the said order. The contention of the Revenue before the Tribunal was that the assessee had not proved the identity of the creditors nor the capacity or genuineness of the transaction and addition was rightly made by the AO under Section 68 of the Act. The Tribunal considered the relevant material given in the assessee's paper book especially a chart giving the details with regard to the deposits and withdrawals made in and from various bank accounts opened in the names of various concerns by one Shri B.S. Patel, who confirmed the advances made to the assessee, who was also assessed to tax and then passed the following orders:

> "On considering of the rival submissions and evidence to which our attention was drawn, we find that the Commissioner (A) has taken the right decision and there is no justification to interfere with the appellate order. We have nothing further to add. It may be pertinent to state here that the IAC under Section 144B of the Act justified the addition under sec. 68 of the Act in the absence of copies of statements made by Shri B.S. Patel who had claimed that the loans were advanced by him to the assessee out of the payments received by him from M/s. Sehgal Papers Ltd. The Commissioner (A) has considered the depositions made by Shri B.S. Patel from time to time and has correctly appreciated the evidence required to be considered for the purpose of arriving at right conclusion. There is no material brought on record to suggest that the moneys claimed by Shri B.S. Patel belonged to assessee. Hence, assessee did discharge its burden under Section 68 of the Act."

3. On the basis of the aforesaid reasons, the Tribunal confirmed the order of the CIT (A) and thereby dismissed the appeal preferred by the Department.

4. At this stage, the Commissioner of the Income Tax moved an application under Section 256(1) of the Act seeking reference of certain questions. Hence, the following question of law has been referred for opinion of this Court:

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the assessee had discharged its burden under Section 68 of the Income Tax act, 1961 and thereby deleting the aggregate amount of ₹17,10,000 raised by way of cash credits and also deleting the amount of ₹1,04,784 disallowed on account of interest payable on those credits."

5. Ms. Suruchi Aggarwal, learned counsel appearing for the Revenue, argued that fresh evidence was adduced before the CIT(A), which was taken into consideration, but the remand report thereupon of the AO was not sought. Likewise, the statement of Mr. B.S. Patel was produced before the Tribunal, but no remand report was called for. We are of the opinion that it will not be permissible for the learned counsel to take these contentions as in the application seeking reference filed by the Commissioner of Income Tax under Section 256(1) of the Act, neither such grievance was made nor any reference was sought thereupon. Naturally, no such reference is made as well. We have to deal with the reference in the form forwarded for our opinion and therefore, the issue is as to whether the assessee had discharged its burden under Section 68 of the Act on the basis of material considered by

it. The issue is not about the admissibility of that material. On merits, submission of Ms. Aggarwal was that the approach adopted by CIT (A) as well as by the Tribunal is not in accordance with law. She has submitted that the required onus which was laid upon the assessee, in these circumstances, was not discharged by him. For the nature of onus to be discharged, she referred to the following principle laid down by the Supreme Court in the case ***Roshan Di Hatti*** Vs. ***Commissioner of Income Tax, Delhi*** reported as [**107 ITR 938]**

> "Now, the law is well settled that the onus of proving the source of a sum of money found to have been received by an assessee is on him. If he disputes the liability for tax, it is for him to show either that the receipt was not income or that if it was, it was exempt from taxation under the provisions of the Act. In the absence of such proof, the Revenue is entitled to treat it as tax able income. This was laid down as far back as 1958 when this Court pointed out in ***A. Govindarajulu Mudaliar v. Commissioner of Income Tax*** [1958]34ITR807(SC) that:
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> > "There is ample authority for the position that where an assessee fails to prove satisfactorily the sources and nature of certain amount of cash received during the accounting year, the I.T.O. is entitled to draw the inference that the receipts are of an assessable nature." To put it differently, where the nature and source of a receipt, whether it be of money or of other property, cannot be satisfactorily explained by the assessee, it is open to the Revenue to hold that it is, the income of the assessee and no further burden lies on the Revenue to show that that income is from any particular source. Vide ***Commissioner of Income Tax, U.P. v. Devi Prasad Vishwanath Prasad*** [1969] 72 ITR 194 (SC)."

6. We find in the present case that the return was filed by the assessee for the assessment year in question on 26.08.1983 declaring a loss of ₹25,65,636. In this return, it had shown certain

loans raised from different parties, the particulars whereof are under:

a)	Gayatri Tech. Services	₹7,75,000
b)	S.K. Mehtotra	₹15,000
c)	S.P. Agro Products	₹5,05,000
d)	B.K. Nair	₹15,000
e)	Plastika Enterprises	₹4,00,000
		₹17,10,000

7. The order of the AO reveals that he had asked the assessee to file proof of the genuineness of these loans. The assessee had stated before the AO itself that the above loans/deposits were either by cheques or by bank draft and these depositors had also subscribed towards the shares of the assessee company. It was explained by the assessee that the aforesaid sums received from these parties have emanated from Mr. B.S. Patel, Prop. M/s. Chemoplat of New Kavi Nagar, Ghaziabad. The assessee had also explained the work of apoxy-lining of water tank in different treatment plants of M/s Sehgal Papers Ltd. was being carried on, under a contract, by Shri B.S. Patel in the name of aforesaid proprietary firm. He had submitted various bills to the said company for the work done by him for Sehgal Papers Ltd and received payment against those bills. Particulars of these payments amounting to ₹22.76 Lakhs were also furnished. The documents were also furnished in support of work done by Mr. Patel at Sehgal Paper Ltd. However, Mr. Patel was not produced.

In these circumstances, the AO opined that even if money h been received by Mr. Patel from Sehgal Papers Ltd., that could not have been utilized for making deposits by the assessee company in different names. Thus, in his view, the assessee had failed to discharge the requisite onus. The AO observed as under:

> "When a cash credit entry appears in the assessee's books of account in an accounting year, it is the assessee who is under legal obligation to explain the source of credit (Sreelekha Banerji Vs. CIT (1963) 49 ITR 112 (SC). If the assessee offers an explanation about a cash credit, the department can put to the assessee to prove the explanation and if the assessee fails to tender evidence or shirks an enquiry, then the ITO is justified in rejecting the explanation. The ITO is not required to specifically prove the source which is only known to the assessee (50 ITR 1 (SC). It is necessary for the assessee to prove the transaction resulting in a cash credit in his books of account. Such proof includes proof of the identity of the creditor. The capacity of such creditor to advance the money and lastly, the genuineness of the transaction. "

8. While this was the position at the level of AO, before the CIT(A), some additional evidence had surfaced. It so happened, in the meantime, that the action under Section 132 was taken against various concerns controlled by one Shri M.M. Sehgal. The assessee as well as Sehgal Paper Ltd. are two such concerns. During the search, Shri. M.M. Sehgal produced certain letters purported to have been written by Mr. B.S. Patel to him in which it was stated that he had done some construction work for M/s. Sehgal Paper Ltd. Thereafter, Mr. Patel submitted an affidavit on 01.08.1980 before the ADI of the Intelligence Wing explaining that the letters produced by Shri Sehgal had been written by him under pressure on 30.07.1980. However, his statement on three different occasions were recorded by the Intelligence Wing in

which he had stated that Shri Sehgal had contacted and ask him to give bogus bill in respect of the construction work for M/s. Sehgal Papers Ltd. Payments in respect of these bills were made by cheques and deposits in five names had been made by Mr. Patel out of the funds received by M/s. Sehgal Papers Ltd. Taking note of these facts, the CIT(A) allowed the appeal in the following manner:

> "I have considered the sequence of events and the arguments of the appellant. While there is no doubt that Sh. Patel had made different statements on different occasions, he is consistent about one statement i.e. that the funds in the names of various concerns came through him. As regards the sources of these funds there may be a doubt i.e. whether the funds belong to Sh. B.S. Patel or to M/s Sehgal Papers Ltd. or some other party. However, his statement does not leave any doubt in my mind that the funds did not belong to the appellant company. As such it would not be correct to invoke the provisions of Section 68 in the present case. The addition of ₹17,10,000/- thus appears to be unwarranted. The appeal on this point is, therefore, allowed."

9. The Tribunal in its brief order observed that since the identity of the creditors, especially, Mr. Patel had been proved, who was assessed to tax regularly, the assessee had successfully discharged the onus.

10. It is clear from the aforesaid approach of the CIT (A) as well as Tribunal that the fact which they took into consideration was that insofar as the assessee is concerned, the funds did not belong to it. Therefore, the provisions of Section 68 of the Act could not be invoked. It is difficult to accept this approach of these two Authorities.

11. Learned counsel for the Revenue appears to be correct when she argued that the CIT (A) or the Tribunal did not keep in mind the parameters required for discharge of such an onus. We have already indicated the reasons which persuaded the AO to make additions. It may be reiterated that five persons from whom the loans are allegedly raised, nowhere come into the picture. What is sought to be projected is that Mr. Patel did some work for M/s. Sehgal Papers Ltd and he received some payment therefrom, which was deposited in the accounts of those five persons and those five persons gave that money to the assessee by way of loans/deposits. Mr. Patel was neither produced before the AO nor before the CIT (A). It is the statements recorded by the Intelligence Wing under Section 132 of the Act, which has got favour from the CIT (A). However, these statements are contrary. There is a blame game between Shri M.M. Sehgal on the one hand and Mr. Patel on the other hand. The question as to whether Mr. Patel did work for M/s. Sehgal Papers Ltd. or not would not be relevant here. Whether bogus bills were raised and payments in cheques received against them by Mr. Patel or whether these payments were received for doing actual work again would not be sufficient to discharge the onus. Insofar the assessee is concerned, it has received the loans/deposits neither from Mr. M.M. Sehgal nor from M/s. Sehgal Papers Ltd nor from Mr. Patel. The loans/deposits are shown to have been received from five different persons. Those persons are not produced and their

identity is not established. A mere attempt to show that from t withdrawals of amount from M/s. Sehgal Papers Ltd., moneys were invested in the assessee-company in different names would not serve the purpose.

12. When the fact remains that those five persons have not come forward to say that they had deposited the money or advanced loans to the assessee and even Mr. Patel or M/s. Sehgal Papers Ltd. has not stated that it belonged to them, which was advanced to the assessee under assumed names, it is hard to understand as to how the CIT (A) or the Tribunal could presume that the funds did not belong to the assessee company, but it belonged to either Mr. Patel or M/s. Sehgal Papers Ltd. or some other party. The assessee has clearly failed to discharge its onus by linking its inability to link the amounts with the ultimate deposits/loans.

13. We may point out here that Mr. C.S. Aggarwal, learned Senior Counsel appearing for the assessee, had highlighted the observations of the CIT (A) and the Tribunal in support of his plea that their approach was correct. We are unable to agree. He had also argued that these were only concurrent findings of fact and no legal issue arises. In view of our aforesaid observations, we are unable to agree with this contention also. Therefore, various judgments cited by the learned Senior counsel that it was only a question of evaluation of evidence and findings recorded on that basis and no question of law arises would not be of any help to

him. Establishing the identity of Mr. Patel would not be sufficie in these circumstances, which was the main thrust of the argument of Mr. Aggarwal.

14. We are of the opinion that there is no evidence worthy enough on the basis of which the assessee could claim that it has satisfactorily proved the source of the said entries or the nature of cash received. One also cannot lose sight of the fact that Mr. M.M. Sehgal not only controlled M/s. Sehgal Papers Ltd., but also the assessee company. That is what is recorded by the CIT (A) itself. In such circumstances, money purportedly coming from M/s. Sehgal Papers Ltd. and getting invested in the appellant's company under assumed named reveals much. The CIT (A) or the Tribunal did not even notice this important aspect from which inference can clearly be drawn that the moneys shown as deposits/loans in five different names, in fact, belonged to the assessee and the assessee has not been able to discharge the onus that it belonged to some third party.

15. We, thus, answer the question in negative, i.e., in favour of the Revenue and against the assessee.

(A.K. SIKRI)
JUDGE

(REVA KHETRAPAL)
JUDGE

2010:DHC:4689-DB

SEPTEMBER 21, 2010.

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