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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 805 OF 2011

Judgment Delivered On: 24.8.2011

M/S TAX HOLDINGS PVT. LTD.

. . . APPELLANT

Through: Mr. Kanan Kapur, Advocate.

VERSUS

COMMISSIONER OF INCOME TAX

. . .RESPONDENT

Through: Mr. Deepak Chopra, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

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 (Oral)

1. This appeal impugns the order dated 31st January, 2011 passed by the Income-Tax Appellate Tribunal whereby the Tribunal has remanded the matter back to the file of the Assessing Officer for his fresh adjudication. The issue pertains to the addition made by the Assessing officer under Section 68 of the Income-Tax Act (hereinafter referred to 'the Act'). However, according to the Tribunal some more



investigation is needed which resulted in restoring the case back to Assessing Officer.

2. Brief facts under which precise issue has arisen for consideration are noted hereinafter.

The assessee is a private limited company. For the assessment year 2002-03 it had filed its return of income on 18th September 2002 showing business loss of ₹ 5,00,000/-. This return was accepted as it is. However, the Assessing Officer subsequently received certain information from the ADI (Inv.) of the Department *inter alia* stating that a survey was conducted under Section 133A of the Act at the office premises of one Sh. Sanjay Rastogi at 210, Vakil Chamber, A-115, Shakarpur, Delhi on 4th March, 2003. The said survey revealed that Mr. Rastogi and his associates were giving accommodation entries on large scale to various companies. It was noticed by the Department that this activity of giving accommodation entries or bogus entries was being carried out through bank accounts in different banks at Delhi and outside. Statement of Mr. Rastogi was also recorded on 20th April, 2003 under Section 131 of the Act wherein he had admitted the aforesaid facts. He also admitted that apart from the professional work, he was also providing certain services in connection with the



companies/concerns/entities that were not doing the real or genuine business and for that purpose, he has given his address at 210 Vakil Chamber, Vikas Marg, Delhi. Mr. Rastogi flouted certain companies which were used as conduit for providing accommodation entries or transactions, which were not real in nature. During further investigation it was found that the assessee company was also one of the beneficiaries of the bogus entries taken from one Ms/ Frenzy Products Pvt. Ltd. flouted by Shri Rastogi, from its account No. 205, Corporation Bank Laxmi Nagar, Delhi.

In other words, information was received by the department that M/s Frenzy Products from its account No. 205, Corporation Bank, Laxmi Nagar, Delhi provided accommodation entries to the assessee company. The details of the entries are as under:-

<u>Date</u>	<u>particulars of cheque</u>	<u>Amount paid</u>
31.5.2001	Cheque No. 0159426	₹ 4,00,000
6.10.2001	Cheque No. 0159446	₹ 4,50,000
	Total:	₹ 8,50,000

3. On the basis of the said information and copy of survey report received by the Assessing Officer, he issued notice dated 16th August, 2004 under Section 148 of the Act and recorded his 'Reasons to



Believe' that income to the extent of ₹ 8.50 lacs had esca assessment. Pursuant to the said notice, the assessee filed its return maintaining the original return wherein it had shown the business loss of ₹53,640/-. During the course of reassessment proceedings, it was noticed by the AO that the assessee had shown receipt of share application money amounting to ₹9,60,000/- out of which Rs, 8,50,000/- was received from Ms/ Frenzy Products Pvt, Ltd. Notice under Section 133 (6) was issued to M/s Frenzy Products Pvt. Ltd which was served through registered post fixing the hearing on 12.9.2005.

However, no compliance of this notice was made. The assessee's authorized representative was then asked vide order sheet entry dated 13.9.2005 to produce the Principal Officer of M/s Frenzy Products Pvt. Ltd. on 15.9.2005. Shri Mukesh Aggarwal, authorized representative for the assessee was present on 15.9.2005 and stated that Shri Sanjay Rastogi was not traceable at that moment. AO, therefore, treated the amount of Rs, 8,50,000 being share application money as unexplained within the meaning of Section 68 of the Act and added the same to the assessee's total income. The assessee filed appeal thereagainst which was however, dismissed by the CIT (A) confirming the said addition. In further appeal filed by the assessee before the ITAT, the assessee had not succeeded in getting the said addition deleted.



However, at the same time the Tribunal has taken the view that ma is to be enquired afresh and remitted the case back to the Assessing officer for fresh adjudication. The ITAT has found that admittedly the assessee has shown the receipt of ₹ 8.50 lacs on account of share application money allegedly received from M/s Frenzy Products Pvt. Ltd. in its books of accounts. The assessee had, however, submitted that it had given back ₹ 5 lacs vide three account payee cheques dated 1.3.2004, 6.3.2004 and 11.3.2004 in the sum of ₹ 1.5 lacs, ₹ 1.5 lacs and ₹ 2 lacs respectively. The ITAT, however, observed that though the amount of ₹ 8.5 lacs was received on 30.5.2001 (₹ 4 lacs on 31.5.2001 and ₹ 4.5 lacs on 6.10.2001) which was admittedly received as share application money, repayment of ₹ 5 lacs was made after a gap of more than two years. In other words, it is the assessee's case that share to the extent of ₹ 5 lacs were not allotted to the share applicant but the money was refunded. In the course of hearing of this appeal, the assessee was asked to point out the necessary evidences such as share application submitted by share applicant, and the letter of allotment as well as the letter for refunding the share application money. The ITAT found that the assessee has not filed any document or evidence such as share application submitted by the share applicant and the letter of allotment and refund of share



application money. The assessee had also not produced the det about the share register or the share certificate numbers and distinctive numbers of the share allegedly allotted by the assessee company to the share applicant in question. In other words, whether the amount of ₹ 8.50 lacs was received by the assessee towards share application money had not been proved and established by the assessee by way of producing and furnishing the necessary evidence such as share application submitted by the applicant, letter of allotment, letter of refund of money and share register alongwith certificate numbers and distinctive numbers allotted by the assessee to M/s Frenzy Products.

4. On this basis, the ITAT recorded that initial onus was on the assessee to prove these facts which it had not discharged. The

Tribunal, in this behalf, stated as under:-

“It was the assessee’s argument at the time of hearing that present case is to be decided in the light of proposition laid down by the Hon’ble Delhi High Court in the case of Divine Leasing & Finance Ltd. (supra).”

5. After giving the aforesaid findings, the Tribunal could have dismissed the appeal affirming the appeal of the CIT(A). However, the Tribunal still chose to give another opportunity to the assessee



thinking that sufficient opportunity to discharge prima facie bur
was not provided to the assessee. It, thus held as under:-

“We are, therefore of the considered view that if one more opportunity is given to the assessee to prima-facie prove his case by submitting the various details in the manner as laid down by the Hon’ble Delhi High Court in the case of Divine Leasing & Finance Ltd., it would meet the ends of justice. We, therefore, restore the matter back to the file of the AO for fresh adjudication, after providing reasonable opportunity to the assessee to produce share application form in original, shareholder register, share transfer register, share allotment register and refund of share application money alongwith PAN/GIR number of the alleged share applicant M/s Frenzy Products and their IT records and other details as so laid down in the decision of Divine Leasing & Finance Ltd. and Lovely Exports (supra). The assessee shall also explain that how the share application money received on 31.5.2001 and 6.10.2001 has been retained for such a long time without there being allotment and under what provision the share application money of ₹ 5 lakhs was allegedly refunded in the month of March, 2004. The assessee shall also produce the board of directors’ meeting register to explain as to how and in what manner the shares to the extent of ₹ 3,50,000/- were allegedly allotted to M/s Frenzy Products and the balance sum of ₹ 5 lakhs was refunded. All these aspects of the matter have to be explained by the assessee in order to discharge its initial burden to prove that the assessee has received share application money from M/s Frenzy Products. The assessee is hereby directed to discharge its initial burden in the manner as laid down by the Hon’ble Delhi High Court in the case of Divine Leasing & Finance Ltd. and Lovely Exports p. Ltd. (supra) and as indicated above.



In case during the course of fresh assessment proceedings, if the assessee is able to discharge its initial burden, the department shall be free to rebut the assessee's case after providing opportunity to cross examine Shri Sanjay Rastogi before using his statement recorded by the Investigation Wing, and shall allow the assessee an opportunity to rebut all the material and information that have been collected by the department and used against the assessee before rejecting the assessee's case."

6. On reading the order and hearing the counsel for the parties, we are of the opinion that the Tribunal has shown benevolence to the assessee by giving another opportunity. There is no reason for the assessee to nurture grudge against such an order.

7. No substantial question of law arises. This appeal is accordingly dismissed.


(A.K. SIKRI)
JUDGE


(M.L. MEHTA)
JUDGE

AUGUST 24, 2011.

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