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

Decided on 27th March, 2015

\+ ITA 227/2015

RIDDHI PROMOTERS PVT.LTD. ..... Appellant

Through: Dr.Rakesh Gupta, Ms. Poonam Ahuja and Mr.Rohit Kumar Gupta, Advs.

versus

COMMISSIONER OF INCOME TAX-7, ... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The assessee is aggrieved by the order of Income Tax Appellate Tribunal (ITAT) dated 14.08.2014 whereby its appeal against the addition of ₹24 lakhs on account of share capital received from six applicants, was rejected.

2. The assessee is a private company incorporated on 11.03.2003. Its return for the Assessment Year (AY) was framed under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred as "the Act"). Subsequently, the Revenue sought to re-open the assessment under Sections 147 and 148 of the Act. In the reassessment proceedings, a sum of ₹24 lakhs was added since the Assessing Officer (AO) was not convinced by the explanation furnished by the assessee; he felt that the onus under Section 68 of the Act has not been discharged. The appellant has urged that the share applicants were in effect being friends and relatives of the Directors of the appellant

company and that since the entity was incorporated just a few days before the end of the financial year, it was unexpected to generate any income. The assessee's appeal was rejected by the CIT (Appeals) who recorded as follows:

> *The appellant has thus been unable to explain the identity, genuineness and creditworthiness of the persons who have allegedly made the investment. As the explanation offered by the assessee about the nature and source of the sums found credited in the books was not satisfactory there was, prima facie, evidence against the assessee, viz., the receipt of money. The burden was on the assessee to rebut the same, and, he failed to rebut it, it can therefore be held against the assessee that it was a receipt of an income nature. The appellant has failed to discharge its onus to produce legally acceptable evidence of creditworthiness of the donor. The expression "the assessee offers no explanation" means the assessee offers no proper, reasonable and acceptable explanation as regards the sums found credited in the books maintained by the assessee. In*
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> *this case the appellant has offered no creditable explanation about the amounts credited in his books, the receipt of ₹24,00,00/- therefore cannot be treated as explained. Further, it has been claimed that the appellant company came into existence only on 11.03.2003 i.e. 20 days prior to the end of the relevant financial year and therefore, there was no business activity and no unaccounted income could have been earned by the appellant. As discussed by the Assessing office in the remand report, the funds in a Pvt. Ltd. company are derived in from the relatives or near & dear ones of the Directors or key persons of such company and not from public at large. This is a private arrangement by the private limited company through its Directors/ shareholders by accepting the sum of money from friends/ relatives etc. as share application money/ share*

capital. Therefore, in the case of private limited company where funds are arranged through personal contacts of directors, giving it a color of share application money/ share capital was within the reach of the assessee company. It is beyond doubt to say that sham transaction is given color to introduce their own money as such type of transaction are purely arrangements between the two known entities."

3. The Tribunal rejected the appeal preferred against the order of the CIT (Appeals). Learned counsel for the assessee contends that given the CIT (Appeals)'s order which expressly recognized that the sum of Rs.24 lakhs in fact emanated from the directors of the share applicants, it could not be said that requirement of Section 68 of the Act is not discharged. He relied upon the decision of Supreme Court in *CIT vs. Bharat Engineering and Construction* 83 ITR 187, especially the following observations:

2. The assessee-company is an engineering construction company. It commenced business in May, 1943. In their account books, there are several cash credit entries in the first year of its business. We are concerned with only five of those cash credit entries. On June 1, 1943, there is a cash credit entry of Rs. 1,00,000. On July 6, 1943, there is a cash credit entry of Rs. 50,000. On August 30, 1943, there is a cash credit entry of Rs. 50,000. On December 2, 1943, there is a cash credit entry of Rs. 15,000 and on March 15, 1944, there is a cash credit entry of Rs. 35,000. These cash credit entries total up to Rs. 2,50,000. The Income-tax Officer called upon the assessee to explain those cash credit entries. The explanation given by the assessee was found to be false by the Income-tax Officer, the Appellate Assistant Commissioner and the Tribunal. But, all the same, the Tribunal felt that these cash credit entries could not represent the income or profits of the assessee-company as they were all made very soon after the

company commenced its activities. In our opinion, though the order of the Tribunal is not happily worded, its finding appears to be that in the very nature of things the assessee could not have earned such a huge amount as profits very soon after it commenced its activities. A construction company takes time to earn profits. It could not have earned a profit of Rs. 1,00,000 within a few days, after the commencement of its business. Hence, it is reasonable to assume that those cash credit entries are capital receipts though for one reason or other the assessee had not come out with the true story as regards the person from whom it got those amounts. It is true that in the absence of satisfactory explanation from the assessee the Income-tax Officer may assume that cash credit entries in its books represent income from undisclosed sources. But what inference should be drawn from the facts proved is a question of fact and the Tribunal's finding on that question is final.

4. Learned counsel also relied upon *CIT vs. P.K.Noorjahan* 237 ITR 570 and submitted that besides, four High Courts' decision apply the ruling in *Bharat Engineering* (supra).

5. As to the statutory requirement of Section 68 of the Income Tax Act, the Supreme Court in *Lovely Exports* 216 ITR 195 stated as follows:

"Can the amount of share money be regarded as undisclosed income under Section 68 of Income Tax Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the assessing officer, then the department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."

6. It is not sufficient that the identity of the share applicant or the

creditor should be established for the assessee to discharge the initial onus, which is upon the assessee. Under the requirement of Section 68, the assessee has to further satisfy the Revenue as to the genuineness of the transaction and the creditworthiness of the share applicant or the individual who is advancing amounts. The assessee's reliance upon the CIT (Appeals) order to contend that the sources of the funds were in essence as Directors, is in this context of no avail. The assessee has contended that it was incorporated just before the end of the financial year. However, the assessee had to necessarily show that the amount which it indicated as borrowed from the six applicants in fact belonged to them. It is not sufficient for the assessee to just raise such contentions on the basis of certain observations of the CIT (Appeals) in this regard. The creditworthiness of the share applicants had to be seen in the context of the assertion made by them or the materials presented before the AO at the relevant time. The materials on record disclosed that some information from at least two individuals indicated that the money had not been given by them. In view of the fact that concurrently the lower authorities held against the assessee and given the intensive factual nature of the evidence, no substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MARCH 27, 2015
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HIGH COURT OF DELHI
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