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

Decided on : 25.02.2015

\+ **ITA 443/2014**

COMMISSIONER OF INCOME TAX-VI ..... Appellant

Through : Sh. Rohit Madan, Sr. Standing Counsel and Sh. P. Roy Chaudhary, Advocate.

versus

WELLWORTH CONSTRUCTION UDYOG LTD...... Respondent

Through : Sh. Salil Aggarwal, Advocate.

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 Revenue is in appeal against the order of the Income Tax Appellate Tribunal (ITAT) dated 20.12.2013 in ITA No.4086/Del/2010 and urges that the ITAT fell into error in confirming the order of the CIT (Appeals) who had reversed the Assessing Officer's (AO) decision to disallow ₹1.65 crores under Section 68 of the Income Tax Act, 1961 (hereafter referred to as "the Act").

2. During AY 2003-04, the assessee had received ₹1.65 crores as share application money from three concerns, i.e. M/s. Richie Rich Overseas Private Limited (₹75 crores); M/s. Goyal Textiles Industries Pvt. Ltd. (₹60 lakhs) and M/s. Ankur Distributors Pvt. Ltd. (₹30 lakhs) (hereafter referred to as "the share applicants"). These three amounts were returned by the

assessee in the succeeding financial year 2004-05. It is a matter of record that the amounts were retained by the assessee for about 3-4 months. The AO disallowed the entire amount of ₹1.65 crores on the basis of his decision that the three entities, i.e. the share applicants did not have adequate resources. The AO, in the assessment order framed under Sections 143(3)/147 of the Act felt that each of the three concerns did not have the volume of business which could have reasonably enabled them to invest to the extent that they did. The AO's decision was appealed; the CIT (Appeals) considered the submissions of the parties and also took into account a remand report. In the course of the remand, it appeared that the three share applicants had transacted business and had in fact reported to the income tax. For M/s. Goyal Textiles Industries Pvt. Ltd., the total volume of purchases and sales was ₹4.7 crores and ₹3.6 crores respectively. Likewise, in respect of M/s. Ankur Distributors Pvt. Ltd., the sales were ₹3.71 crores and purchase was ₹75.18 lakhs and with respect to M/s. Richie Rich Overseas Pvt. Ltd., the CIT(A) noticed that the paid up share capital itself was ₹5 crores. The CIT(A) in this context observed as follows:

> *"The creditworthiness of the party is the most important aspect of credit transaction. The AO examined the P&L a/cs filed of the creditors. In case of M/s. Goyal Textiles Inds. Pvt. Ltd., the purchase and sales were found to be Rs.4.70 crores and Rs.3.60 crores. Similarly, in the case of M/s. Ankur Distributors (P) Ltd., there are sales of Rs.3.71 crores and purchase of Rs.75.18 lacs. So, is the case of M/s. Richie Rich Overseas (Pvt.) Ltd., where also there are substantial sale and purchase running into several crores. A perusal of expenses claimed, refute the observation of the AO that they were merely statutory expenses. The bank statement showed transfer entries in Mahan Enterprises Ltd. by way of cash deposit, and debit by issue of cheques to the concerns*

for routing the money. The AO, therefore, treated the credits as unexplained and made addition of Rs.1.65 crores.

The AO has not discussed any documentary evidences in the assessment order/Remand Report except giving the particulars of bank transactions of Mahan Enterprises Ltd. and so called intermediaries. The balance sheet of the creditors shows that they had sufficient funds. In case of M/s. Goyal Textiles Pvt. Ltd. the balance sheet shows paid up capital of Rs.5.00 crores. The funds have been given as loans & advances. In case of M/s. Ankur Distributors Pvt. Ltd. as well as in case of M/s. Richi Rich Overseas Pvt. Ltd. the paid up share capital is of Rs.5.00 crores each."

"In the instant case no evidence has been brought on record by the AO to prove that the share application money emanated from the coffers of the applicant. The AO has not made any enquiries from the concerned parties nor did he examine the assessment records of the share applicants.

Relying on the various documents placed on record and the principle laid down by the Hon'ble Supreme Court in the case of M/s. Lovely Export Pvt. Ltd. which is directly on the issue of share capital and in view of the decisions cited above the addition on account of share capital cannot be sustained. The AO has no where proved that documents in support of the identity of the parties have not been placed on record or they were forged documents. The AO also has not brought any evidence on record regarding the facts that the share applicants were not creditworthy or genuine, despite the fact that their PAN and copies of IT Return were submitted by the appellant. After considering the facts on record, judicial pronouncements of the jurisdictional High Court and Hon'ble Supreme Court, it can be concluded that the appellant has undoubtedly proved the identity of the share applicant. Once the identity of these share applicants is proved, no addition can be made in the hands of the appellant even if the share applicants have been found to be persons of no means until and unless it is otherwise proved by the revenue. The

revenue could not prove that the money received by the appellant in the form of share application money has come from its own sources."

3. The CIT(A) thereafter observed as follows:

4. The ITAT, to which the Revenue appealed, was unimpressed by the submissions made before it and accordingly rejected the contentions. In the present case, learned counsel for the Revenue highlighted that the AO had clearly noticed that there was hardly any business transacted by the share applicants which could have legitimately allowed them to invest large sums of money in the assessee's shares. It is also contended that merely because the share applicants had a large volume of turnover did not mean that they had sufficient funds to invest in the assessee's shares. Learned counsel also submitted that the CIT(A) and the ITAT fell into error in directing deletion of ₹1,18,50,000/- since the assessee could not explain these amounts withdrawn from its accounts.

5. The preceding discussion so far as the share application money of ₹1.65 crores is concerned, clearly reveals that the AO's suspicions formed the basis of including the amounts under Section 68 of the Act; whilst suspicion can be the basis for further enquiry, it can never be the ground for a conclusion. In the present instance, the AO apparently had the books and all the relevant information pertaining to the share applicants. CIT v. Lovely Exports (P) Ltd. 2008 (216) CTR (SC) 195 directs that whilst the initial onus to prove the identity of a third party, its creditworthiness and the genuineness of the transaction by some material is upon the assessee, the burden is constantly, however, onwards upon the Revenue. Once the initial

onus is discharged, the Revenue is not absolved of its duty to collect further material which should assist it in coming to the correct conclusions. In the present case, the course of proceedings indicates that the CIT(Appeals) had called for the Remand Report. That Remand Report clearly pointed to the three share applicants not only being genuine business concerns but also having substantial business activities and further having reasonably sized turnovers. In these circumstances, to establish implausibility on the part of the share applicants to have possessed the means when they applied, the AO ought to have probed further. He did not do so as is evident from the Remand Report where the AO did not offer any comments upon the materials taken into account by the CIT (Appeals). Consequently, the ITAT's order cannot be faulted.

6. So far as the second amount of ₹1,18,50,000/- is concerned, the ITAT noticed as follows:

> *"11. Replying to the above, ld. counsel of the assessee pointed out that the copies of the replies before the Assessing Officer (page no.19 to 74), copies of ledger and cash book (PB page no.75-76), copy of bank statement related to financial year (PB page no.77 to 86), copies of the submission before the Commissioner of Income Tax(A) dated 08.02.2009 (PB page no.87-92), copy of remand report of Assessing Officer dated 23.04.2010 (PB page 93-98), copy of submissions before the Commissioner of Income Tax (A) dated 26.05.2010 (PB page 99-177) and copies of last submissions before the Commissioner of Income Tax (A) (PB 178-193). The counsel of the assessee submitted that the disputed cash deposits were made out of cash withdrawals made from the same bank on earlier occasions and as per remand report, the Assessing Officer was satisfied about the source of cash deposited in the bank account of the assessee. The Commissioner of Income Tax (A), after consideration of details*

and evidence submitted by the assessee, remand report of the Assessing Officer and rejoinder and submission of the assessee, held that the conclusion of the Assessing Officer in the reassessment order appears to be unilateral and no explanation of the assessee was called in respect of alleged cash deposits. From careful perusal of the remand report available on Paper Book page No.93-98, we also observe that the Assessing Officer has not commented adversely in respect of explanation furnished by the assessee pertaining to the cash deposits found during the financial year in the bank accounts of the assessee. The Commissioner of Income Tax(A) rightly held that when the balance matches with the balance sheet and cash book, no addition u/s 68 of the Act is sustainable and the Commissioner of Income Tax (A) rightly deleted the same. Accordingly, we are unable to see any valid reason to interfere with the impugned order in this regard. In this situation, ground no.2 of the revenue is also dismissed."

7. This Court is of the opinion that since the AO did not comment adversely in respect of the assessee's explanation pertaining to the cash deposits in the bank accounts even in the remand report, the inference drawn by the CIT (A) and later the ITAT cannot be held unreasonable. No question of law arises.

8. For the above reasons, the appeal is unmerited and is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

R.K. GAUBA
(JUDGE)

FEBRUARY 25, 2015