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ORDER SHEET
ITAT No. 329 of 2016
GA No. 2631 of 2016
WITH
GA No. 1308 of 2018

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

J. J. DEVELOPMENT PVT. LTD.

Versus

COMMISSIONER OF INCOME TAX, KOLKATA-IV

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE
AND
The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 27th June, 2018.

Appearance:

Mr. Ram Chandra Prabesh, Adv.
Mr. Prabir Banerjee, Adv.
Mr. Shiv Ch. Prasad, Adv.
... for the Petitioner.

Mr. V. Kundalia, Adv.
... for the Respondent.

The Court : In view of the good ground shown, the default on the part of the appellant to be represented on May, 10, 2018 when the appeal and the application were dismissed for default is condoned. The appeal is readmitted. The application is restored to the file.

The restoration application, GA 1308 of 2018, is allowed.

A completely bogus claim has been carried in this appeal. The assessee was probably buoyed by the success in obtaining an order of December, 27, 2007 for the Assessing Officer to decide afresh on the genuineness of the share applicants pertaining to a total investment of Rs.18,02,000/- in the assessee.

Such investment was confined to two entities: Saroj Kumar Jhunjhunwala (HUF) to the extent of Rs.10 lakh and Ramsay International Limited to the extent of Rs.8.02 lakh.

In the order impugned dated April, 13, 2016, the Appellate Tribunal has found that the Assessing Officer had given due effect to the Appellate Tribunal's previous order of December, 27, 2007. On facts, the Appellate Tribunal noticed that the assessee was afforded several opportunities by the Assessing Officer to furnish an appropriate explanation about the nature and source of the money as received from the two entities on account of share application and that after much procrastination the assessee was represented before the Assessing Officer.

It is also evident that the Assessing Officer issued summons under Section 131 of the Income Tax Act, 1961 on both the HUF and the investing company, whereupon no authorized representative of such alleged share applicants turned up before the Assessing Officer. However, certain documents materialized, possibly presented by the asseessee, which the Assessing Officer

found difficult to accept since no one had certified such documents to be correct or took responsibility therefor. Even with this caveat, the Assessing Officer went into the contents of the documents and found that such documents did not evidence the investment of the sum of Rs.10 lakh by the HUF in the assessee or the investment of Rs.8.02 lakh by Ramsay International Limited in the assessee.

Section 68 of the Act mandates that where any sum is found credited in the books of an assessee "and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory" the amount credited may be charged to income tax as the income of the assessee. Thus, the assessee has to be afforded an opportunity to offer an explanation in respect of any cash credit shown in its books regarding which the Assessing Officer may harbour any doubts. Upon the assessee furnishing the explanation, it is incumbent on the Assessing Officer to undertake an exercise to ascertain the veracity thereof. It is precisely such exercise that was required of the Assessing Officer in this case by the Appellate Tribunal's order of December, 27, 2007.

Apart from the fact that the two alleged share applicants did not show up before the Assessing Officer and the documents pertaining to the share applicants as may have been produced by the assessee did not demonstrate that such alleged applicants had invested in the share capital of the assessee, in the case of the HUF when some additional documents or information were sought, the stock excuse was that the relevant person was "out of station". The Assessing Officer took such specious excuse to imply that the relevant alleged

share applicant did not wish to further participate in the exercise as "out of station" was a stock excuse used by assessees or persons seeking to delay any proceedings or the like.

As to company Ramsay International Limited, the Assessing Officer made inquiries and discovered that its registered office was in a residential complex or building. Further inquiries with the persons in the neighborhood or the locality revealed that they were unaware of the existence of such company at the given address.

The appellant-assessee has referred to a judgment of this Court reported at 114 ITR 689 for the proposition that upon the identity of the person who has put in the money being established by the assessee, the onus is on the Revenue to discredit the explanation offered in terms of Section 68 of the Act. In the present case, there was no plausible explanation that was furnished by the assessee. At any rate, the identities of the alleged share applicants could not be established and the documents of the alleged share applicants carried by the assessee before the Assessing Officer did not reveal the investments that the assessee claimed such alleged applicants had made in the assessee.

In the light of such findings of the Assessing Officer which withstood scrutiny before final fact-finding body that is the Appellate Tribunal, it scarcely lies in the mouth of the assessee to question the propriety of the Assessing Officer having found the explanation furnished by the assessee to be unsatisfactory.

For the reasons aforesaid, particularly since the Assessing Officer found on facts that there was no plausible explanation justifying the cash credits and the Appellate Tribunal accepted the same, no substantial question of law is raised in this matter and ITAT 329 of 2016 and GA 2631 of 2016 are dismissed.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)

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