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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX REFERENCE NO.392 OF 1999

The Commissioner of Income Tax
Bombay City-I, Bombay.

..Applicant

Versus

M/s. Likproof India P. Ltd.

..Respondent

.....

Mr. Suresh Kumar for the Applicant.

Mr. Atul Jasani for the Respondent.

.....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

RESERVED ON : 5TH DECEMBER, 2016
PRONOUNCED ON : 23RD DECEMBER, 2016

JUDGMENT (PER A.K. MENON,J.)

1. By this Reference, the Income Tax Appellate Tribunal (Tribunal) have referred the following question of law for our opinion:-

“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amount of Rs.1,00,000/- cannot be assessed as 'undisclosed' income of the assessee?

2. Brief facts of the case are as follows:-

The assessee company is a sister concern of one Hindustan Hotels Limited, Goa (HHL). The assessee and HHL have common Directors. HHL had undertaken a hotel project and entered into a construction contract with the assessee. In 1995 HHL abandoned the hotel project. The building which was still under construction was then sold to one Peerless Finance in April/May 1995 for a consideration of Rs.11 crores.

3. Meanwhile it transpires that the assessee was in need of finance and had planned to increase its share capital and had approached HHL to contribute. HHL paid to the assessee a sum of Rs.1 crore vide two cheques. The first cheque for Rs.50 lakhs was dated 23rd June, 1995 and the second cheque also for Rs.50 lakhs was dated 31st March, 1996. HHL had disclosed the sum of Rs.1 crore as "share application money". The assessee had also treated the aforesaid sum as share application money at the material time which became evident from a resolution recorded in the Minutes Book and which was seized during a search operation was carried out at the assessee's office premises and the residence of the Managing Director on 27th March, 1996. It however appears that in the bank pay-in-slip prepared by the assessee's staff, the narration was given as "*cheque received from them against our work at Goa*" and in respect of the second cheque the narration mentioned "*cheque received against business compensation*".

4. Subsequently on 2nd September, 1996 the company filed a return of income declaring undisclosed income amounting to Rs.2,34,000/-. During the search it was noticed from the bank slips that Rs.1 crore was received by the assessee as compensation from HHL. In the statement of the Managing Director of the assessee he contended that the amount of Rs.1 crore received from HHL *'might be on account of loan or on some other account'*. Scrutiny of the books of HHL revealed that amounts of Rs.50 lakhs each was paid on 23rd June, 1995 and 30th September, 1995 and they were described as *"amount paid to Likproof for compensation of loss of finishing work"*. The Managing Director in his statement under Section 132(4) dated 23rd September, 1996 stated as follows:-

"It is not compensation but could be a loan".

5. In yet another statement of the Managing Director recorded on 4th April, 1996 he stated that it is a *payment by HHL towards share capital*. He also admitted that he did not know whether any Board Resolution had been passed. The record reveal that 3500 shares of the assessee were allotted to HHL at the rate of Rs.2857/- per share. The assessee contended that there was no compensation received from HHL and the sum of Rs.1 crore could not be treated as compensation. The Assessing Officer did not accept the contention of the assessee and treated the sum of Rs.1 crore as compensation.

6. In appeal, the Tribunal after considering the rival contentions held that

the nature of the sum of Rs.1 crore had to be decided on the basis of entries in the books of account and the records and not on the basis of notings or narrations by the assessee's staff. The Tribunal concluded that the amount of Rs.1 crore was to be treated as share application loan.

7. We have heard Mr. Suresh Kumar, the learned counsel for the Revenue and Mr. Atul Jasani, the learned counsel appearing for the respondent. According to Mr. Suresh Kumar the Tribunal was not right in concluding that no compensation was received by the assessee. According to him the fact that the assessee was engaged for the purpose of constructing the building would mean that the assessee would have been entitled to some compensation. If the construction was to be completed the assessee's stood to gain but since the project was abandoned, the assessee was deprived from earning its profits and viewed from this aspect the likelihood assessee having received compensation was much higher. He relied upon the fact that entries in the bank's pay in slips clearly indicate why the amounts received. The fact that the assessee's bank records indicated that the amount was received as compensation could not be overlooked specially when the Managing Director's statements were vague and contradictory.

8. Mr. Jasani, on the other hand, supported the decision of the Tribunal and

contended that entries made in the bank pay-in-slips cannot be determine the nature of the payment and the treatment of the amounts in the books of the company is what was material. This statement of the Managing Director though vague, they could not be relied upon by the revenue since at one stage he clearly admitted that he did not know whether it was a compensation or loan. He also admitted that he was unaware whether there was a board resolution passed in respect of the issuance of capital.

9. In our view the statements recorded of the Managing Director of the company are not reliable. We find that the consideration by the Tribunal of the records was appropriate. The conclusion drawn by the Assessing Officer that the amount received was compensation and amount which was undisclosed income of the assessee cannot be sustained since the treatment of the receipts in the books of account of the company should prevail being maintained in the usual course of business. There is nothing on record to establish the contrary and beyond reasonable doubt. Equally there is nothing on record to establish that the entries made in the books of account cannot be relied upon. It is pertinent to mention that the Revenue had not brought on record any material indicating that the amount received by the assessee was by way of compensation. On the other hand, the employees of the assessee were cross examined in respect of the entries made in the pay-in-slips and this cross

examination had revealed that narrations in the pay-in-slips accompanying the two cheques of Rs.50 lakhs each were made by them on their own without any directions or instructions from the assessee. Considering the overall picture we are of the view that the order of the Tribunal cannot be faulted. However, we are in agreement with the view taken by the Tribunal to the effect that the entry made in the pay-in-slips cannot prevail over the entry in the books of account since the books of account would reflect the appropriate record wherein treatment of receipts would be found. In the circumstances, we have no hesitation coming to our conclusion and as a result we find that the Tribunal was justified in holding that the amount of Rs.1 crore cannot be assessed as undisclosed income. In the result, the question referred to us for our opinion is answered in the affirmative i.e. in favour of the assessee and against the Revenue.

12. Reference is accordingly disposed of. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)

Wadhwa