

\$~1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

ITA 377/2016

PRINCIPAL COMMISSIONER OF INCOME-TAX (CENTRA1)-I

..... Appellant

Through: Mr. Dileep Shivpuri, Sr. Standing Counsel
with Mr. Sanjay Kumar, Jr. Standing Counsel and Mr.
Vikrant A. Maheshwari, Advocate.

versus

M/S GOODVIEW TRADING PVT. LTD.

..... Respondent

Through: Mr. Ved Jain with Mr. Pranjal Srivastava,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

21.11.2016

%

1. The revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) which had concurred with and affirmed the appellate Commissioner's order directing the cancellation of an amount of ₹25,00,96,500/-. It is urged that having regard to the law laid down in relation to Section 68 of the Income Tax Act, 1961, the concurrent findings of the CIT (A) and ITAT are unsustainable.

2. The assessee which engages itself in investment business with capital markets received notice under Section 153C pursuant to search initiated on Jakson Group and Associates on 10.02.2010. The assessee filed its returns declaring income during the block period pursuant to which notices under Section 143 (2) and 142 (1) together with a detailed questionnaire were issued. The assessee complied with the requisite

information. Parallely, a survey under Section 133 (6) was apparently carried out by the revenue on the date of search. Based upon these materials and the responses received from the assessee during the proceedings, the AO added the amount under Section 68 determining that the genuineness of the identity of the share applicants, genuineness of the transactions and the investors' credit worthiness had not been established in accordance with the authority in *CIT v. Lovely Exports*, (2008) 216 CTR 195 (SC).

3. The assessee's appeal to the Commissioner succeeded. The Commissioner noticed that the details of the share applicants such as their income tax returns as well as the net worth were available on the file of the assessment record. Based upon analysis and the submissions, the CIT (A) concluded that the share applicants had sufficient net worth and finances to invest in the assessee's offerings with the premium of ₹23 crores. The CIT (A) recorded *inter alia* as follows: -

"I have considered the assessment order and submissions of the appellant. It is settled law that the onus of proving a claim is initially on the assessee but this is a shifting burden and once an assessee discharge its primary onus, the burden shifts on the revenue. In the present case the appellant had duly discharged its onus by submitting necessary evidence available to establish the bona fide of the transactions. Thereafter, the onus shifted on the revenue to prove that the claim of the appellant was factually incorrect. Simply by pointing out that the claim of the appellant was factually incorrect. Simply by pointing out that the applicant companies did not have sufficient income or that the bank accounts indicated credits and debits in rapid succession leaving little balance does not discharge the burden cast upon the revenue to take an adverse view in the matter. Further, if there was statement of a person or any other material indicating tax evasion by the appellant, or persons in control of its management, the material relied upon should have been made available to the appellant in its entirety. From the records, it appears that this was not done. It has been held by the Hon'ble Apex Court that taxing authorities exercise

quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from the assessee should remain unrecovered, they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. It is impossible to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they should be deemed to have exercised it in a proper and judicious manner {CIT v. Simon Carves Ltd. [1976] 105 ITR 212 (SC)}. In my considered opinion, this is not the case where addition should have been made u/s 153C, but u/s 147/143 (3) after making proper enquires. In the present facts of the case, the addition is not legally sustainable and is deleted. Appellant gets relief of Rs.25,00,96,500/-.”

4. The ITAT concurred with this view.
5. The revenue urges that the CIT (A) and the ITAT both grievously erred in cancelling the additions made. It is submitted that the genuineness of the transactions and the credit worthiness is suspect in the circumstances of the case. Learned counsel relied upon a tabular chart prepared by the AO to submit that most of the share applicants had paid little or no income tax and that analysis of the bank statements furnished by such investors revealed that the amounts were deposited in cash and also routed through different entities. It was submitted that whereas the identity of the investors was no doubt established, neither the genuineness nor credit worthiness could be said to have been satisfied to pass the test of *bona fide* transactions. It is submitted that in these circumstances, the CIT (A)'s decision - as endorsed by the ITAT - is required to be set aside in this appeal.
6. This Court has considered the materials on record.
7. As against the AO's tabular appreciation of the facts, the CIT (A) also framed another chart which interestingly reveals the net worth of the

companies that had invested in the course of the share offerings, of the applicant. The chart extracted in paragraph 4.2 of the CIT (A)'s order is reproduced below: -

S.No.	Name of Party	PAN NO.	Amount of investment in shares	Net worth as on 31.3.06
1	M/s Golden Suppliers Pvt. Ltd.	AADCG0724F	5,723,250.00	
2	M/s Web Tech International Ltd.	AAACW4551F	4,231,500.00	9,936,107.00
3	M/s Well Plan Corp. Management Pvt. Ltd.	AAACW2580N	570,000.00	12,551,638.00
4	M/s Triveni Tower Pvt. Ltd.	AABCT0558Q	13,494,000.00	10,079,080.00
5	M/s Allworth Commodities Pvt. Ltd.	AACCA5809Q	12,898,500.00	50,043,177.00
6	M/s Gunjan Agencies Pvt. Ltd.	AABCG2363E	2,343,750.00	5,498,065.00
7	M/s Symphony Trade Comm Pvt. Ltd.	AAECS0612B	4,161,750.00	5,112,447.00
8	M/s Texila Commerce Pvt. Ltd.	AABCT0569P	7,627,500.00	5,110,307.00
9	M/s Kajal Merchandise Pvt. Ltd.	AABCK4093R	12,591,750.00	30,019,461.00
10	M/s Majestic Deal Com Pvt. Ltd.	AABCM9098G	3,740,250.00	
11	M/s Cherry Tie Up Pvt. Ltd.	AABCC9327N	17,466,000.00	35,688,065.00
12	M/s Marino Fresh Food Industries Ltd.	AABCM2781N	281,250.00	43,599,164.00
13	M/s Dev Lok	AAACD9682L	12,36,000.00	

	Marketing Pvt. Ltd.			
14	M/s Surya Shakti Marketing Pvt. Ltd.	AAECS0505K	955,500.00	40,697,791.00
15	M/s Super Deal Sales Pvt. Ltd.	AAECS2143K	17,958,750.00	250,046,932.00
16	M/s Quicker Impex & Credit Pvt. Ltd.	AAACQ0433E	10,769,250.00	32,711,907.00
17	M/s Satyam Credit Pvt. Ltd.	AADCS6627H	6,539,250.00	9,988,429.00
18	M/s Mudrika Fiscal Services Pvt. Ltd.	AABCM7362B	16,942,500.00	150,412,130.00
19	M/s Graceful Traders Pvt. Ltd.	AABCG7432L	15,226,500.00	30,005,878.00
20	M/s Goodward Agency Pvt. Ltd.	AABCG7433M	17,329,500.00	15,042,806.00
21	M/s Vishnupriya Prop. Pvt. Ltd.	AAACV8829P	4,648,500.00	3,892,620.00
22	M/s Zenith Goods & Services Pvt. Ltd.	AAACZ0908P	14,387,250.00	20,027,787.00
23	M/s Concert Tradelink Pvt. Ltd.	AABCC9445K	14,070,000.00	99,993,410.00

8. It is quite evident from the CIT (A)'s reasoning in paragraph 4.3, that the materials clearly pointed to the share applicants' possessing substantial means to invest in the assessee's company. The AO seized certain material to say that minimal or insubstantial amounts was paid as tax by such share applicants and did not carry out a deeper analysis or rather chose to ignore it. In these circumstances, the inferences drawn by the CIT (A) are not only factual but facially accurate.

9. Having regard to these circumstances, the Court discerns no

question of law, least a substantial question, having regard to the fact that the judgment in *Lovely Exports (supra)* was cited and applied.

10. For these reasons, there is no merit in the appeal; the same is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 21, 2016

/vikas/