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ITAT 218 of 2016
GA 764 of 2018

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)

DRB EXPORTS PVT. LTD.
Versus
COMMISSIONER OF INCOME TAX, KOLKATA-II

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 7th May, 2018.

For the petitioner:
Mr. J.P.Khaitan,Sr. Advocate
Ms. Swapna Das,Advocate
Mr. Sanjoy Bhowmik,Advocate
Mr. Siddharth Das,Advocate

For the respondent:
Mr. Anil Kr. Gupta,Advocate

The Court :- No question of any significance is raised in this appeal and questions of fact conclusively dealt with by the Commissioner of Income Tax (Appeals) and by the Income Tax Appellate Tribunal have been sought to be raked up on the ground of perversity. The questions sought to be framed are as follows:

> "(a) Whether the Tribunal was justified in law in upholding the addition of share capital of Rs. 46,72,000/- in the hands of the appellant under Section 68 of the Income Tax Act, 1961 and its purported findings that the transactions were not genuine or satisfactorily explained and upholding the said addition are arbitrary, unreasonable and perverse?
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> (b) Whether the Tribunal in upholding the said addition proceeded on surmise and conjecture, ignored the relevant materials and took into consideration irrelevant and/or extraneous materials rendering its findings arbitrary, unreasonable and perverse?"

The facts have been succinctly recorded in the order of the Appellate Tribunal impugned herein passed on January 15, 2016. The appellant filed its return on October 18, 2002 declaring a total loss of Rs. 12,670/- and the assessing officer found an increase in share capital to the extent of Rs. 46,72,000/- and added the same as unexplained cash credit under Section 68 of the Income Tax Act, 1961. The Tribunal recorded that the addresses of most of the purported shareholders were identical and they could not be traced out despite notices issued under Section 131 of the Act. Two proprietorship concerns by the names of D.R.Brijmohan & Co. and D.R. Distributors, owned by one Tarun Kumar Agarwala and his wife, Madhu Devi Agarwala, were found to have made the payments to the assessee company. Tarun Kumar Agarwala is a director of the assessee company and appears to be the principal person in control thereof. Even such proprietorship concerns of the principal person in control of the assessee company and his wife did not produce their books of accounts or documents.

The appellant relies on some of the documents which had been referred to in course of the appeals before the Commissioner (Appeals) and before the Tribunal. In one of the documents, which appears at page 97 of the present appeal papers, the names of the 21 purported shareholders have been indicated and the original addresses of such applicants for shares in the assessee company are also indicated. Thirteen of the 21 persons had a common address of 20, Mango Lane, four of them had a common address of 7A, Bentinck Street and three others had a common address of P 25, Princep Street. It is difficult to miss that these addresses are in and around 7A, Bentinck Street, which is the registered office of the appellant assessee, if not at the same address. The appellant emphasises that the GIR details of the 21 applicants were indicated to the department and it was for the department to find out whether such persons existed since all but two of the 21 applicants had individual income tax files.

The appellant also relies on the replies issued by the two proprietorship concerns of the principal person in control of the appellant and his wife upon receipt of notices dated March 3, 2005 calling upon the proprietors to be present before the relevant authorities on March 7, 2005. The excuse proffered by the proprietor of D.R. Brijmohan & Co., who is also the principal person in control of the appellant, was that he was suffering from some ailment and was at Jorhat at the relevant point of time and undergoing treatment. The excuse proffered on behalf of his wife was that she was attending to her ailing husband in Jorhat.

However, there does not appear to have been any subsequent attempt, whether before the Commissioner (Appeals) or the Appellate Tribunal, to substantiate the transactions pertaining to the share application money being curiously paid by the two proprietorship concerns of the person in control of the appellant and his wife, though documents were produced of 1997 vintage to show that the loans were at one point of time obtained by the proprietorship concerns.

More importantly, it is evident from the appeal papers at page 110 onwards that identical letters emanating from the same printer were issued on identical dates by several alleged creditors of the two proprietorship concerns requiring the proprietorship concerns to repay the debts due from such concerns to the alleged creditors by depositing them by way of share application with the appellant company. On facts, the assessing officer, the Commissioner (Appeals) and the Appellate Tribunal did not believe the appellant or the documents relied upon by the appellant to indicate the genuineness of the transactions for the purpose of arriving at an appropriate answer to the query that arose under Section 68 of the Act.

There are tell-tale signs in the documents that give an impression that the applicants for shares in the assessee company may have either been telephone directory applicants or entities in whose names files may have been prepared but who may not have been in existence. As a matter of fact, none of the applicants was found to be in existence at the addresses furnished in 2001. It is the submission on behalf of the appellant that all the 21 applicants suddenly found this city inappropriate for them to live in and shifted outside.

On the basis of the facts as presented by the appellant in response to the doubt that naturally arose, there does not appear to be any perversity in the treatment of such facts by the Appellate Tribunal. Under Section 260A of the Act an appeal lies to this Court only upon this Court being satisfied that a substantial question of law is involved. As aforesaid, there is no question of any significance which has been raised, far less any substantial question of law.

The appellant has relied on a judgment of this Court reported at 263 ITR 289 *(Hindusthan Tea Trading Co. Ltd. v. CIT)* for the proposition that when, in the context of an enquiry under Section 68 of the Act, the assessee had furnished the respective balance-sheets of the applicants for shares in the assessee, the identity and creditworthiness of such applicants for shares ought to be deemed to have been established. In the present case, the balance-sheets or the accounts of the applicants for shares were not furnished by the assessee. On the contrary, the assessee purported to rely on similarly-worded affidavits apparently produced from the persons whose existence was doubted at every stage by the authorities. It is curious that 21 share applicants would write identical letters to the two proprietorship concerns of the principal person in control of the assessee and his wife on the same date and such persons would require the amounts standing to their credit in the proprietorship concern to be made over as share application money to the assessee company and all such 21 applicants would leave Calcutta within a few years of applying for such shares. The authorities below drew the appropriate conclusions from the facts as evident therefrom.

ITAT No. 218 of 2016 and GA No. 764 of 2018 are dismissed with costs assessed at Rs.75,000/-.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)

S.Chandra