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

Decided on : 20.01.2015

+ **ITA 17/2015, C.M. APPL.159-160/2015**

ALL GROW & INVESTMENT P. LTD. Appellant

Through : Sh. Shashwat Bajpai, Advocate.

versus

COMMISSIONER OF INCOME TAX Respondent

Through : Sh. Kamal Sawhney, Sr. Standing
Counsel with Sh. Sanjay Kumar, Jr. Standing
Counsel and Sh. Vipul Dubey, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIBHU BAKHRU

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. Issue notice. Sh. Kamal Sawhney, Sr. Standing Counsel accepts notice. With consent, the matter was heard on merits. In this appeal under Article 260A of the Income Tax Act by the assessee, the substantial question of law sought to be urged is with respect to the addition of ₹8.75 lakhs made by the Assessing Officer (AO) – which had been upset by the CIT (Appeals) but directed to be restored by the Income Tax Appellate Tribunal (ITAT).

2. The brief facts for deciding the question are that the assessee is a Non Banking Financial Company (NBFC) which had obtained a license from the Reserve Bank of India for the said business activity. The AO, in his order,

had added back the sum of ₹8.75 lakhs for the Assessment Year (AY) 1999-2000. The assessee had advanced ₹1.4 crores to M/s. Escorts Limited as an inter-corporate deposit and reported interest income for the previous year. For AY 1999-2000, however, its books and returns indicated that the entire amount had been received back in August 1998. No interest was paid from 01.04.1998 to August 1998. The assessee used to maintain mercantile system of accounting. The AO was dissatisfied with its explanation that its borrower refused to pay any proportionate interest on the plea that the entire deposits had been recalled mid year. Before the CIT (Appeals), the assessee sought to adduce additional evidence under Rule 46A of the Income Tax Rules in the form of a letter written by M/s. Escorts on 25.08.1998. The assessee had also relied on an auditor's note, indicating that steps to recover the amount had been made by the company.

3. The CIT(Appeals) accepted the assessee's explanation and directed dilution of the said amount of ₹8.75 lakhs. The CIT (Appeal)'s reasoning is as follows:

“13. It is undisputed that a loan of Rs. 1.40 crore was given to M/s. Escorts Ltd. It is also not in dispute that till 31/3/1998, M/s. Escorts had paid interest on the said loan to the assessee. However, no interest was paid by M/s Escorts Ltd. from 1/4/1998 to the date of return of the loan in August, 1998. The Id. AO has charged notional interest @ 15% to make an addition of Rs. 8,75,000/-. To my mind, the position taken by the Id. AO is incorrect. There is no evidence on record which would suggest that income had indeed been accrued or arisen to the assessee. In ACIT v. Shoorji Vallabhadas & Co. (1992) 46 ITR 144 (SC) the Apex Court had dealt with the concept of income and has held that Income-tax is a levy on income. No doubt, the IT Act takes

into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstance that it remains the income of the recipient of income, even though an entry to that effect might, in certain circumstances, have been made in the books of accounts.

14. *In the impugned order as well as the remand report, there is not even a shred of evidence which would suggest that income had arisen or accrued to the assessee during the F.Y. on which income tax could be levied. An affidavit from the Director of the firm had also been filed. Importantly, the confirmation from M/s Escorts Ltd. dated 25/8/1998 also suggests likewise. It states as under:*

" Dated: 25th August - 1998
The Director
All Grow Finance & Investment Private Limited
B-105, Greater Kailash Part-1
New Delhi: 110048.

Sub: Repayment of your Loan of Rs. 1.40 Crores.

Sir,

With reference to the captioned subject, as requested by your goodself we are herewith attaching our cheque No. 915778 drawn on HDFC Bank Ltd. New Delhi of Rs.1,40,00,000/- (Rupees One crore forty lac only) towards full satisfaction of Inter Corporate Deposit given by you to our company.

Further, as regards to the payment of up to date interest as per the discussion held with you, we can not pay the same

because your company has demanded the entire loan in lumpsum before the end of the financial year whereas you were under an obligation not to demand the payment before 31.03.1999. Therefore, we are unable to accede to your demand of interest.

Thanking you,

For ESCORTS LIMITED

Sd/-

Authorised signatory”

4. The ITAT in its impugned order faulted the CIT(Appeals) in having permitted additional evidence and was of the opinion that the explanation furnished by the assessee as to the absence of interest for the proportionate period in A.Y. 1999-2000 was unconvincing, regarding directing addition of amount.

5. We have considered the submissions of the parties. The CIT(Appeals) took into account not only the additional evidence (especially the letter which was doubted by the ITAT) but also the fact that the AO did not make any enquiry. Significantly, there was a remand directed by the CIT (Appeals) in the course of which apparently, the AO made no attempt to hold further enquiries. In the absence of any concrete material, and having regard to the circumstances that the assessee in fact maintained the mercantile system of account, the failure of the AO to exert himself and requisition the books of account and other material from the M/s. Escorts Ltd. if he felt that in fact such amounts were payable contractually or otherwise, in our opinion, could not have resulted in the addition which was ultimately directed. Having regard to these circumstances, this Court is of

the opinion that the assessee, on the basis of the materials on record, was entitled to succeed on this question and the ITAT wrongly interfered with the CIT (Appeals)'s determination. Accordingly, the impugned order is set aside. The appeal is consequently allowed along with the pending applications.

S. RAVINDRA BHAT
(JUDGE)

VIBHU BAKHRU
(JUDGE)

JANUARY 20, 2015

