

ORDER SHEET

ITA 831 of 2004
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

C. I. T. CENTRAL - III
Versus
CHANDELA TRADING CO. (P) LTD.

BEFORE:

The Hon'ble JUSTICE SOUMITRA PAL
The Hon'ble JUSTICE ARINDAM SINHA
Date : 30th October, 2014.

For Appellant/Petitioner : Mr.S.N.Dutta,Advocate
For Respondent/Assessee : Mr.J.P.Khaitan,Sr.Advocate
Mr.C.S.Das,Advocate
Mr.S.Das,Advocate

The Court : The Court : This appeal has been filed under section 260A of the Income Tax Act, 1961 against order dated 13TH November, 2013 passed by the learned Income Tax Appellate Tribunal, 'A' Bench, Kolkata in ITA No.235/Kol/2012 relating to assessment year 2005-06 on the following questions:

1. *Whether on the facts and in the circumstances of the case, the Learned ITAT erred on fact as well in law in deleting the addition of Rs.96,34,237/- made as undisclosed income on account of loans pertaining to five alleged creditors and interest thereon, without appreciating that the addition was sustained by the learned Commissioner of Income Tax (A) for the detailed reasons given in her order highlighting that the creditworthiness of the creditors and*

genuineness of transactions were not proved at all and even in some cases the identity of the creditors remained unestablished and for that matter, the learned ITAT's order is perverse ?

2. *Whether the order of the ITAT is sustainable inasmuch as per the rules of Stock Exchange Shares can be delivered strictly against payment and further the transaction was of Rs.49 lakhs no evidence forward before the CIT(A) showing the payment made to Sundry Creditors even after the expiry of the year, and as such the order of ITAT deleting the addition treating the same is in accordance with law is perverse ?*

On the first question, relying on the judgement in *Hindusthan Tea Trading Co. Ltd v. CIT : (2003) 263 ITR 289 (Cal)* it is submitted by Mr.S.N.Dutta, learned advocate appearing on behalf of the revenue/appellant that since the creditors could not be found and/or located and did not turn up to produce the books of accounts in spite of summons being issued under section 131 of the Act, the identity, genuineness and creditworthiness could not be satisfied by the assessee and the addition made by the assessing officer was correctly made.

Mr.J.P.Khaitan, learned Senior Advocate appearing on behalf of the respondent/assessee has submitted that as the facts would reveal, proper explanation was furnished by the assessee inasmuch as every transaction of loan was made through bank, particulars of the creditors' income tax file furnished and as such the assessee had done everything in its power to do in offering such explanation. The revenue could not contradict such explanation and sought some thing further which was not in the hands of the assessee to ensure and as such

deletion made by the Tribunal was unjustified. He relied on two judgements, one of the Hon'ble Supreme Court in the case of *CIT V. Daulat Ram Rawatmull (SC)* : 87 ITR 349 and the other of the Allahabad High Court in *CIT v. Jauharimal Goel* : (2005) 147 Taxman 448 (Allahabad) in support of his submission.

From the judgement in *Daulat Ram Rawatmull* (supra) we find the Hon'ble Supreme Court had held that a person can still be held to be the owner of a sum of money even though the explanation furnished by him regarding the source of that money is found to be not correct and from the simple fact that the explanation regarding the source of money furnished by him, in whose name the money is lying in deposit, has been found to be false, it would be a remote and far-fetched conclusion to hold that the money belongs to some other person. In the context of the present case, if no further explanation could be obtained by the revenue upon the creditors failure to present themselves in enquiry, from such simple fact of omission on part of the creditors, it would be remote and far-fetched conclusion that the creditors lack identity.

Even from the case of *Hindusthan Tea Trading Co.Ltd.*(supra) relied on by the revenue we find our Court had held the process of enquiry is such that the assessee has to offer the explanation and produce the material in support of such explanation and then it could do no further.

We are also persuaded by the reasoning given in decision of the High Court at Allahabad in *Jauharimal Goel* (supra) as appearing from paragraphs 12 to 16 thereof.

In the instant case the assessing officer had simply held as follows:

“There appeared unsecured load of Rs.1,11,34,237 (including interest) in the account of the assessee during the year. The assessee was asked to produce the loan creditors for examination but the assessee expressed inability to produce them. Hence the entire amount of Rs.1,11,34,237 is treated as income of the assessee from undisclosed Source. There appeared another credit of Rs.49,08,825 under the head Sundry Creditors. The assessee was asked to produce the Sundry Creditors for examination. But the assessee failed to do so. Hence, the amount of Rs.49,08,825 is treated as income of the assessee from undisclosed source.”

We do not find the revenue could contradict the explanation furnished by the assessee. The omission on part of the creditors to subject themselves to enquiry being initiated thereof by the revenue or non-furnishing of accounts by them would, as aforesaid, not lead to the conclusion that the creditors lacked identity without any other contradiction of facts and particulars of the transactions between them furnished by the assessee being uncontroverted.

We find the learned Tribunal had discussed seven instances of loan threadbare and while deleting the addition had held in substance with regard to each of those loan transactions, that the revenue had failed to bring any other material on record to show that the amounts advanced by the creditors was in reality and in fact, money belonging to the assessee.

So far as the second question is concerned, the Tribunal while dealing with the facts had held as under:-

“It has been brought to our notice by the learned Counsel for the assessee that copy of contract note, copy of ledger a/c. of share broker, letter from Mumbai Stock Exchange, copy of bank statement have been furnished before the authorities below and they are placed at pages 146 to 152 of the paper book. On perusal of the contract it is seen that the assessee had purchased shares of 19000 shares of Kedia Distilleries for Rs.42,32,215 and 3100 shares of Kedia Distilleries for Rs.6,76,575 vide contract No.R/RM/27/002 and R/RM/30/002 of dated 27.9.94 and 30.9.94 respectively. This amount has been credited to the account of share broker and debited to the share a/c. in the books of the assessee on 27.9.94 and 30.9.94. On perusal of the ledger account placed at page 149 of the paper book, we find that this amount has been paid by the assessee to the broker on 8.4.95 vide cheque No.453509. On verification of the bank a/c. with State Bank of India, Govt. Colony, Bandra East Branch, maintained by the assessee, it is revealed that an amount of Rs.49,08,825 has been debited to the assessee’s account being withdrawn vide Cheque No.453609 on 8.4.95. It is, therefore, clear that the payment has been made to share broker after the expiry of the accounting year, relevant to the assessment year under consideration, that is it has been paid in the month of April, 1995. There is no material on record to show that the amount had actually been paid by the assessee to the share broker the end of the current

year. The subsequent payment made in April, 1995 has not been found to be bogus or non-genuine. It is, therefore, clear that there was an outstanding liability of Rs.49,08,825 on account of amount payable against the purchase of shares. The CIT (A) as well as the AO have made the additions only on suspicion and surmises disbelieving the assessee's contention and presuming that no share broker would keep the amount outstanding for such a long time. The transaction of payment made by the assessee is fully supported by the bank statement. We, therefore, do not find any reason to sustain the addition."

We find no fault with the Tribunal in concluding as it did on such facts.

Hence, both the questions are answered against the Revenue and in favour of the assessee.

The appeal is dismissed.

Urgent certified copy of this order, if applied for, be given to the parties on priority basis.

(SOUMITRA PAL, J.)

(ARINDAM SINHA, J.)