

* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.551/2007

% Judgment reserved on: 31st March, 2008

Judgment delivered on: 7th April, 2008

THE COMMISSIONER OF INCOME TAX-V
CENTRAL REVENUE BUILDING
NEW DELHI

.....Appellant.

Through: Mr. Sanjeev Sabharwal, Adv.

Vs.

REAL TIME MARKETING P. LTD.
Z-45/3, OKHLA INDL. AREA,
PHASE-II
NEW DELHI

..... Respondent

Through: None.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

V.B.Gupta, J.

The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (for short as 'Act') against order dated 15th September, 2006 passed by the Income Tax Appellate Tribunal (herein after referred as 'Tribunal') Delhi Bench 'A' in ITA No.2574 (Del)/2004 relevant for the assessment year 2001-02. The Tribunal in its order held that there is absolutely no material to link the Assessee with the sum of Rs.29,97,000/- deposited in cash in the bank account of M/s. FBSL.

2. The facts of this case are that the Assessee is a Private Limited company. During the previous year, it had taken an unsecured loan of Rs. 25 lacs from M/s. Aishwaray Capital Lease Finance Pvt. Ltd. (herein after referred to as ACL). The Assessing Officer asked the Assessee to file a copy of income tax return along with the audited profit and loss account and the balance sheet with annexures and copy of bank statement for the period ending 31st March, 2001 of M/s. ACL. The

Assessee furnished the same accordingly. On perusal of the bank statement of M/s. ACL, the Assessing Officer noticed that the funds were transferred through internal transfer on 28th March, 2001 to M/s. ACL and then in the same manner in the bank account of the Assessee company. The Assessing Officer called for information from the bank under section 133(6) of the Act to locate the true nature of these internal transfer transactions and the exact source of funds. It was revealed on the information furnished by the bank;

(a) that on 28th March, 2001 cash of Rs.22,97,000/- was deposited in account no.4142 pertaining to M/s. Fair Business Security and Leasing Pvt. Ltd. (herein after referred to as FBSL)

(b) from this account no.4142 a sum of Rs.25 lacs was transferred to account no.4016, which stood in the name of M/s. Breeze Trade Links Pvt. Ltd. (herein after referred to as BTL) on the same day

(c) on the same day, Rs.25 lacs were transferred from account no.4016 to M/s. ACL, having account no.4144 and

(d) on same day, i.e. 28th March, 2001, Rs.25 lacs were transferred from account no.4144 from M/s. ACL to the Assessee.

3. The Assessing Officer also noticed that all the three companies referred to above had the same address, i.e. B-258, Naraina Industrial Area, Phase-I, New Delhi. Further, no interest was charged by any of these transferees. The Assessing Officer was thus of the view that the entire transaction was a sham transaction and asked the Assessee to show cause as to why cash deposit of Rs.22,97,000/- made into the account of M/s. FBSL be not added as the taxable income of the Assessee for the year under consideration. The Assessee submitted his reply and filed confirmation from M/s. ACL. The Assessee also submitted that the cash deposited by M/s. FBSL was

not its money and that it was from the books of the said company.

4. The Assessing Officer however, held that it was the Assessee's money of Rs.22,97,000/- which was deposited in cash into the account of M/s. FBSL and the same was routed through different accounts and received as unsecured loan by the Assessee company and thus made an addition of Rs.25 lacs as unexplained cash credit under Section 68 of the Act.

5. On appeal filed by the Assessee, the Commissioner of Income Tax (Appeals) (for short as 'CIT[A]') held that the Assessee had discharged its burden of proving the identity, capacity and genuineness of the transaction and in the circumstances the addition made by the Assessing Officer was not justified. It was also observed by the CIT(A) that the Assessing Officer had not chosen to issue summons to M/s. FBSL, M/s. ACL or M/s. BTL before coming to the conclusion that all the

transactions were from and out of the money provided by the Assessee.

6. Being aggrieved by the order of CIT(A), the Revenue preferred an appeal before the Tribunal and vide impugned order the Tribunal dismissed the appeal of the Assessee.

7. It has been contended by learned counsel for the Revenue that the Assessee has used circular route to receive the loan in its account and the same is merely a device being used to evade tax and as such, loan is taxable under Section 68 of the Act.

8. There is a finding of fact given by the two authorities namely CIT(A) and the Tribunal to the effect that:-

“The confirmation of M/s. ACL has been filed by the Assessee. The said company was assessed to tax. The source of ACL had been explained as out of transfer of funds from the accounts of M/s. BTL. Thus, the Assessee discharged its burden of proving identity, capacity and genuineness of the transaction. The Assessing Officer has not brought any

material to show that the funds to ACL were provided by the Assessee. Under the circumstances, it cannot be said that the cash credit in question has remained unexplained. There is absolutely no material to link the Assessee with the sum of Rs.22,97,000/- deposited in cash in the bank account of M/s. FBSL.”

9. In view of the concurrent findings of the fact given by the two authorities that there is no material to link the Assessee with a sum of Rs.22,97,000/- deposited in cash in the bank account of M/s. FBSL, as such, no case is made out for making addition under Section 68 of the Act, since there was no material with the Assessing Officer to come to the conclusion regarding any genuineness or fictitious identity of the entries or non capacity of the lender.

10. Under these circumstances, we do not find any infirmity or perversity in the order passed by the Tribunal and in our opinion no substantial question of law arises in this case. With the result, the present

appeal is not maintainable and the same is hereby dismissed.

**V. B. GUPTA
(JUDGE)**

**MADAN B. LOKUR
(JUDGE)**

**April 07, 2008
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