IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 600/2007

COMMISSIONER OF INCOME TAX DEL ..... Appellant

Through Mr. R.D. Jolly, Adv.

versus

MOKUL FINANCE LTD. ..... Respondent

Through Dr. Rakesh Gupta with Ms. Poonam

Ahuja, Advs.

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

O R D E R

03.04.2008

The Revenue is aggrieved by an order dated passed by the Income Tax

Appellate Tribunal, Delhi Bench ??E?, New Delhi (the Tribunal) in ITA Nos.

3857/Del/2003, 3256/Del/2003 and CO No.203/Del/05 in ITA No.3857/Del/2003

relevant for the Assessment Year 1996-97.

The only issue in this appeal is whether reassessment proceedings

initiated under Sections 148/147 of the Income Tax Act, 1961 (the Act) were

valid in law.

The Assessing Officer sought to reopen the assessment proceedings and

the reasons given were as follows:-

?During the course of assessment proceedings for A.Y. 1998-99 it was noticed

that the assessee company received loans from M/s Mokul overseas Pvt. Ltd. and

M/s Mokul International Ltd. There are common Directors in these three companies who are also the shareholders. The companies, which gave loans, had accumulated profits and provisions of section 2(22)(e) were invoked.

During the A.Y. 1996-97 also the Assessee company received a loan of Rs.1,96,68,192/- from M/s Mokul Overseas Pvt. Ltd. which had accumulated profits of Rs.2,22,73,533/-. There are common Directors in these companies who are also the shareholders. I have reason to believe that deemed dividend of an amount of Rs.1,96,68,192/- has escaped assessment (done u/s 143(3).

Notice u/s 148 be issued

Additional CIT/Range 5 may kindly see?

The sum and substance of the contention of the learned counsel for the

Revenue was that the Assessee had received loans from M/s Mokul Overseas Pvt.

Ltd. and these loans were really in the nature of deemed dividend as defined

under Section 2(22)(e) of the Act.

It was pointed out by learned counsel that the Commissioner of Income Tax

(Appeals) [CIT(A)] specifically pointed out in paragraph 8 (g) of his order

that details of quantum of beneficial ownership of shares

by the share holders and as also the particulars of accumulated profit possessed

by the M/s Mokul Overseas Pvt. Ltd. had not been filed.

We find from a perusal of paragraph 13 of the order passed by the

Tribunal that the original assessment was framed under Section 143(3) of the

Act. The Assessee was required to file the list of shareholders with the

complete address as on 31st March, 1996, which it did; the Assessee also filed

confirmation dated 29th January, 1998 of M/s Mokul Overseas Pvt. Ltd. certifying its closing balance; the confirmation given by M/s Mokul Overseas Pvt. Ltd. also

mentions its Pan number and Circle where it was assessed; the books of accounts

of the Assessee were produced on more than one occasion before the Assessing

Officer; it was also mentioned that an amount of Rs.1,96,68,192/- was received

by the Assessee as an unsecured loan from M/s Mokul Overseas Pvt. Ltd.; the tax

audit report was also filed by the Assessee. The Tribunal noted that the

Departmental Representative was not able to point out anything to suggest which

material that could have a bearing on the applicability of Section 2(22)(e) of

the Act was not furnished by the Assessee.

We find from a perusal of the order passed by the Tribunal that all the

relevant material available with the Assessee in this regard was

placed before the Assessing Officer and, therefore, it cannot be said that the

Assessee had not furnished full and true particulars of its income. We do not find any reason to discard the view taken by the Tribunal that the re-assessment proceedings as well as the notice issued to the Assessee for reassessment were without any justification.

No substantial question of law arises.

Dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J

APRIL 03, 2008

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CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

O R D E R

03.04.2008

1. The Revenue is aggrieved by an order dated .... passed by the Income-tax Appellate Tribunal, Delhi

Bench 'E', New Delhi ('the Tribunal') in ITA Nos. 3857/Del/2003, 3256/Del/2003 and CO No.

203/Del/2005 in ITA No. 3857/Del/2003 relevant for the asst. yr. 1996-97.

2. The only issue in this appeal is whether reassessment proceedings initiated under s. 148/147 of the

IT Act, 1961 (the 'Act') were valid in law.

3. The AO sought to reopen the assessment proceedings and the reasons given were as follows :

"During the course of assessment proceedings for asst. yr. 1998-99 it was noticed that the assessee

company received loans from M/s Mokul Overseas (P) Ltd. and M/s Mokul International Ltd. There

are common directors in these three companies who are also the shareholders. The companies, which

gave loans, had accumulated profits and provisions of s. 2(22)(e) were invoked.

During the asst. yr. 1996-97 also the assessee company received a loan of Rs. 1,96,68,192 from M/s

Mokul Overseas (P) Ltd. which had accumulated profits of Rs. 2,22,73,533. There are common

directors in these companies who are also the shareholders. I have reason to believe that deemed

dividend of an amount of Rs. 1,96,68,192 has escaped assessment [done under s. 143(3)].

Notice under s. 148 be issued.

Addl. CIT/Range 5 may kindly see."

4. The sum and substance of the contention of the learned counsel for the Revenue was that the

assessee had received loans from M/s Mokul Overseas (P) Ltd. and these loans were really in the

nature of deemed dividend as defined under s. 2(22)(e) of the Act.

5. It was pointed out by learned counsel that the Commissioner of Income-tax (Appeals) [CIT(A)]

specifically pointed out in para 8(g) of his order that details of quantum of beneficial ownership of

shares by the shareholders and as also the particulars of accumulated profit possessed by M/s Mokul

Overseas (P) Ltd. had not been filed.

6. We find from a perusal of para 13 of the order passed by the Tribunal that the original assessment

was framed under s. 143(3) of the Act. The assessee was required to file the list of shareholders with

the complete addresses as on 31st March, 1996, which it did; the assessee also filed confirmation dt.

29th Jan., 1998 of M/s Mokul Overseas (P) Ltd. certifying its closing balance; the confirmation given

by M/s Mokul Overseas (P) Ltd. also mentions its PAN number and circle where it was assessed; the

books of accounts of the assessee were produced on more than one occasion before the AO; it was also

mentioned that an amount of Rs. 1,96,68,192 was received by the assessee as an unsecured loan from

M/s Mokul Overseas (P) Ltd.; the tax audit report was also filed by the assessee. The Tribunal noted

that the Departmental Representative was not able to point out anything to suggest which material that

could have a bearing on the applicability of s. 2(22)(e) of the Act was not furnished by the assessee.

7. We find from a perusal of the order passed by the Tribunal that all the relevant material available

with the assessee in this regard was placed before the AO and, therefore, it cannot be said that the

assessee had not furnished full and true particulars of its income. We do not find any reason to discard

the view taken by the Tribunal that the reassessment proceedings as well as the notice issued to the

assessee for reassessment were without any justification.

8. No substantial question of law arises. Dismissed.

MADAN B. LOKUR, J

V.B. GUPTA, J

APRIL 03, 2008