

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

% **Reserved on : 21st August, 2012.**
Date of Decision : 17th September, 2012.

+ **ITA NO.526/2010**

COMMISSIONER OF INCOME TAX Appellant
Through : Ms.Rashmi Chopra, Sr. Standing Counsel
VERSUS

PRIYANKA SHIP BREAKING COMPANY PVT. LTD. Respondent
Through: Mr.Ajay Vohra with Ms.Kavita Jha and
Mr.Somnath Shukla, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

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

R.V. EASWAR, J.:

This is an appeal filed by the Commissioner of Income Tax under Section 260A of the Income Tax Act, 1961(Act for short). On 31st January, 2012 the appeal was admitted and the following substantial questions of law were framed:-

“1. Whether the Income Tax Tribunal was right in deleting the addition of Rs.28,50,000/- made in the block assessment order dated 08.05.2009 on account of peak credits in the account of M/s Madhepuri Finance Ltd, M/s Madhopuri Metal Industries Pvt. Ltd., M/s Fenil Information System Pvt. Ltd. and M/s Merchant & Co. as income from undisclosed sources ?

2. Whether the order of Tribunal is perverse? ”

2. The appeal arises out of block assessment made on the assessee, which is a private limited company, under Section 158 BD read with Section 158BC of the Act, pursuant to a search carried out under Section 132 of one Mahendra H. Shah and one Hemant C. Shah, both belonging to the Madhupuri Group of Jamnagar, Gujarat on 7th December, 1999. In the course of the search, certain documents were seized and statements were recorded. A statement from Mahendra Shah appears to have been recorded on the date of search in which he has stated that he was giving and taking loans on commission basis. It would appear that the books of the assessee company showed loans of Rs.74,29,460/- from the Madhupuri Group of companies, which was controlled by Mahendra Shah and Hemant Shah. On the basis of the statement of Mahendra Shah, a satisfaction note was recorded by the Assessing Officer who had jurisdiction over him (and Hemant Shah) and the same was communicated to the Assessing Officer having jurisdiction over the assessee. Based on the satisfaction note, proceedings were initiated against the assessee under Section 158BD and a notice was issued on 11th February, 2003.

3. In response to the notice the assessee filed bock return on 23rd April, 2003 declaring undisclosed income of Rs. Nil. In the course of the assessment proceedings the assessee contested the validity of the proceedings under Section 158 BD and also sought to contend that there was nothing in the statement of Mahendra Shah implicating the assessee

company and there was no evidence to show that the loans taken by the assessee company from the Madhupuri Group of Companies were sham or merely accommodation entries. The contention was, however, rejected by the Assessing Officer who extracted the relevant details of the loans obtained by the Assessee from the Madhupuri Group of Companies and held them to represent the undisclosed income of the assessee. However, he did not add the entire amount of the loans but calculated the peak credit by combining all the loans from the different companies belonging to the Madhupuri Group and arrived at the peak credit of Rs.28,50,000/- which was added as the undisclosed income. The assessment was completed accordingly.

4. The assessee appealed to the CIT(Appeals) and reiterated its contentions against the addition. The CIT(Appeals) obtained the comments of the Assessing Officer, vis-à-vis, the submissions of the assessee. In the letter dated 31st May, 2004 addressed to the CIT(Appeals), the Assessing Officer does not appear to have made any specific comments on the seized material or regarding the contention of the assessee that no opportunity to cross-examine Mahender Shah was given and, therefore, the addition was bad in law.

5. The CIT(Appeals) on a perusal of the assessee's submission and the comments of the Assessing Officer concluded that the validity of the proceedings initiated under Section 158BD can no longer be called in question in view of the judgment of the Gujarat High Court in the case of

Priya Blue Industries P. Ltd. Vs. JCIT, (2001) 251 ITR 615 (Guj) in which initiation of proceedings against certain assesseees under Section 158BD, based on the material gathered during the search of the Madhupuri Group of Companies, had been upheld. On merits, he recorded the following findings:-

- (1) No seized material was passed on to the Assessing Officer containing any incriminating entry pertaining to the assessee.
- (2) No opportunity to cross-examine Mahendra Shah was provided to the assessee.
- (3) Mahendra Shah has not mentioned the assessee's name in his statement. It is a general statement without specifically implicating the assessee.
- (4) No other incriminating paper was found during the search which could implicate the assessee or show that the loans taken by it were mere accommodation entries, obtained for a consideration of commission.

The CIT(Appeals) also recorded that even though the Assessing Officer was requested to make further enquiries about the directors of the Madhupuri Group of Companies as on the date of advance of the loan and establish a link between the directors of those companies and the assessee-company, the Assessing Officer was unable to provide any such information till 15th September, 2004, the last hearing date before the

CIT(Appeals). He also found that the assessee has paid interest on the loans at the normal rates and has also deducted tax at source from the same. He accordingly held as under:-

“Therefore, it is very clear that there ‘was absolutely no material in possession of the AO to arrive at the conclusion that the loans received by the appellant were in the nature of accommodation entry. The only reliance placed by the AO was on the statement of Sh. Shah which is not reliable in view of discussion in Para 5.2 above.”

6. The Revenue carried the matter in appeal before the Tribunal in IT(SS)A No.403/Del of 2004. The Tribunal noticed that the only basis of the addition was the statement of Mahendra Shah. However, according to the Tribunal, he did not explain how he was connected with the concerns from which the assessee has taken the loans and there was nothing in his statement to suggest that even those concerns were engaged in providing bogus entries. The Tribunal further observed that the assessee’s name was not referred to in the statement of Mahendra Shah, which was general and which would be an unreliable material to rest the addition. In this view of the matter and after citing several authorities handed down by this Court, the Tribunal endorsed the order of the CIT(Appeals).

7. The Revenue is in appeal contending that the conclusion of the Tribunal is not based on evidence and that relevant material has been overlooked and appropriate inferences have not been drawn from the material. On the other hand, it has been argued on behalf of the assessee

that there is nothing on record to link the assessee company with the so-called accommodation entry business allegedly carried on by the Madhupuri Group of Companies, said to be controlled by Mahendra Shah and Hemant Shah.

8. We have considered the facts and the rival contentions. A copy of the statement of Mahendra Shah recorded on 7th December, 1999 in the course of the search has been placed on record. We have being taken through the statement. The Assessing Officer has placed reliance on the question Nos. 9 to 11 and 13 and the answers thereto. A perusal of these questions and answers shows the following position:- In answer to question No.10, Shah agreed that in his business he issued cheques after deducting commission to those who give cash. When he was asked whether he had “done purchase business with any ship-breaker or given any loan to them” he answered as follows:-

“A.11 I do not deal for scrap with any Ship Breaker. I have given only loan or if they give cash, I brought and given entry cheque to them for example any person need loan entry he give ₹500000/- in cash and after deducting commission issue cheque of ₹500000/-.”

In answer to question No.13, he stated as follows-

“A.13 Details of my running business in present and past are as under :

Presently my running business as a proprietor by name of M/s Madhupuri Corporation and M/s M Sagar Corporation no other

business is run except above two business firm. Previously I do business of shop product in the name of M/s Manka Shop Factory, except this, I do business in the name of M/s Mayur Scrap in Partnership. Sale of scrap in the name of M/s Madhupuri metal Industries as a proprietor business. Except this I do not do any business as a proprietary and in partnership.”

In answer to question No.14 he generally explained the modus operandi adopted in the case of accommodation entries. In answer to question No.15, he stated that his investment in the business was nominal because he would first receive the cheque or cash and only then issue the cheque, either local or outstation. According to him in the business (of accommodation entries), money is immaterial; only credit is necessary. He was then asked (question No.16) as to whether he had kept the other books for previous years and for other business. This question was asked because during the search, the authorities could find only hand written books of accounts of M/s Madhupuri Corporation, the proprietor concern of Shah and that too, only for the current year. In answer thereto, he stated that the cash book for the assessment years 1997-98 and 1998-99 were found for M/s Madhupuri Corporation and current year's cash book of M/s M.Sagar Corporation was also found. Except this, all the other papers were destroyed by him. He also stated that the ledgers and vouchers were not necessary and, therefore, he had destroyed them.

9. The above is the gist of the statement of Hemant Shah. It is seen therefrom that the assessee's name was not mentioned by him at all as beneficiary of the accommodation entry business carried by him. Question No.11, on which strong reliance was placed on behalf of the Revenue, does not help them since despite being obliquely prompted, Shah did not mention the assessee's name and merely stated that he did not deal with any ship-breaker and he had given only loan after taking cash and deducting commission. This is too general or vague an answer on the basis of which the assessee company can be condemned. Even if the Revenue can be said to have successfully established that Mahendra Shah was carrying on the business of giving accommodation entries for commission, it does not follow that the loans taken by the assessee from the various companies allegedly belonging to the Madhupuri Group of Companies were accommodation loans. From the statement it is not possible to establish any link between Mahendra Shah and the creditor companies or that he was in a position to influence those companies into carrying on the accommodation entry business. We are concerned with a block assessment made under Section 158BD read with Section 158BC. The computation of the undisclosed income of the block period has to be made on the basis of evidence found as a result of search or on the basis of other documents and such other materials or information as are available with the Assessing Officer and relatable to such evidence. This is as per Section 158BB(1). The material on the basis of which the addition in the present case is sought to be made falls short of the

requirement of the sub-section. There is nothing to link the assessee with the accommodation entry business stated to be carried on by Mahendra Shah whose statement constituted the sole basis of the addition.

10. In our view, the Tribunal has taken the right view on the basis of the evidence and that view cannot be characterised as perverse. We accordingly answer the first substantial question of law in the affirmative, in favour of the assessee and against the Revenue. The second substantial question of law is answered in the negative, in favour of the assessee and against the Revenue. The appeal of the Revenue is dismissed with no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 17, 2012
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