

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.1354/Bang/2017
Assessment Year: 2013-14

ACIT Circle- 5(1)(1) Bangalore	Vs.	M/s. Reindeer Software Solutions Pvt. Ltd. No.48, 1 st Floor DVG Road Basavanagudi Bangalore-560 004 PAN NO : AAFCR0892K
APPELLANT		RESPONDENT

Appellant by	:	Shri Sunil Kumar Singh, D.R.
Respondent by	:	Shri Padam Chand Khincha, A.R.

Date of Hearing	:	08.09.2020
Date of Pronouncement	:	09.09.2020

ORDER

PER GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of revenue is directed against CIT(A) order dated 02.03.2017. The relevant assessment year is 2013-14.

The grounds raised read as follows:

- 1. The order of the CIT(A)-5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.*
- 2. Whether the CIT(A) is justified in granting relief of Rs.152,31,66,000/- in view of the concealment of material facts relevant for both disclosure as per Income-tax Act and the Accounting Standards as well as during the course of assessment proceedings.*
- 3. The Learned CIT(A) has not appreciated the infirmity brought out by A.O. in the balance sheet, audited financial statements and submissions made by assessee during scrutiny*

Page 2 of 11

proceedings. The A.O. had clearly established that the audited balance sheet was not in coherence with any of the later submission made by the assessee. In view of the above Ld. CIT(A) has not completely appreciated the facts of the case.

2. Brief facts of the case are as follows.

The assessee is a Private Limited company. During the assessment year 2013-14, assessee was engaged in the business of software development and providing service and sales of products through end to end business transaction. The assessee company conducted its business operation through a website with the domain name www.urbantouch.com and under the brand name 'Urban Touch'.

3. For the assessment year 2013-14, the return of income was filed by the assessee on 28.9.2013, declaring a loss of Rs.10,79,43,952/-. The return of income was selected for scrutiny and assessment order u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] was completed on 31.03.2016 making an addition of Rs.152,31,66,000/- as undisclosed income on sale of Urban Touch under the head 'Capital Gains'. The gist of assessment order passed u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] are as follows:

- i. The A.O. relied upon the various new reports where it was mentioned that the assessee has received an amount of USD 30 million as proceeds for sale of Urban Touch.
- ii. The A.O. contended that the income from sale of shares has not been disclosed in the return of income filed by the assessee.
- iii. The A.O. contended that the assessee wrongly claimed an amount of INR 300,000 was received on the sale of domain.

Page 3 of 11

- iv. The A.O. contended that the assessee has concealed material facts during the course of the assessment proceedings.

3.1 The relevant finding of the A.O. in making the addition of Rs.152,31,66,000/- reads as follows:

“11. As per the news reported by Economic Times (reproduced earlier), the consideration has been received in both cash as well as in stock. Though the share purchase agreements produced are unsigned, the benefit of doubt is granted to the assessee and credit for the said stock is considered as the sale consideration received by the respective shareholders. The amount received by the two shareholders, Tiger Global and Accel India as well as the other three small share holders is Rs.12,23,34,000/-.

The total consideration reported to have been received by the assessee is 30 million USD which works out to Rs.164.55 crores @ Rs.54.85 per USD. The receipt in the form of stock when reduced from this, the balance would constitute the cash component of the sale. This works out to Rs.1,52,31,66,000/-.

The assessment is considered based on the material available on records by bringing to tax of Rs.152,31,66,000/- as undisclosed income of the assessee under capital gains.”

4. Aggrieved by the assessment order passed u/s 143(3) of the Act, assessee preferred an appeal before the first appellate authority. The CIT(A) allowed the appeal and deleted the addition made by the A.O. The relevant finding of the CIT(A) reads as under:

“6. I have considered the above written submissions filed by the appellant and also gone through the assessment order passed by the Assessing Officer. The assessment in the instant case was passed based on a news article dated 26th August 2012, that the Appellant has received an amount of USD 30 million as proceeds for sale of urbantouch.com. The Company conducted its business operations through a website with the domain name of www.urbantouch.com and under the brand name 'Urban Touch'. The appellant company received funding in two rounds in the form of Compulsorily Convertible Preference Shares ('COPS') and equity shares totaling

Page 4 of 11

to INR 203,492,330 during FY 2010-11 and FY 2011-12. On August 9, 2012, the shares of the Company were transferred by its shareholders i.e., Tiger Global, Accel India, Mr. Sachin Bansal, Mr. Binny Bansal and Mr. Mukesh Bansal to Gold square Sales India Private Limited, another company incorporated in India engaged in a similar line of business.

6.1 During the appellate proceedings the appellant submitted that neither the Appellant nor the investors have received the said amount of. USD 30 million. The amount has been reported in the news articles relied upon by the Assessing Officer without carrying out adequate due diligence and without being ratified by the Appellant or the investors. Further submitted that while news articles may provide information to the general public at large, the same cannot at any cost be relied upon for the purposes of determining the taxable income or the tax to be paid by an assessee. The appellant placed reliance on the judgement of the Hon'ble Supreme Court of India in the case of *Laxmi Raj Shetty Anr vs. State Of Tamil Nadu* [1988 AIR 1274], which held as follows:

"Judicial notice cannot be taken of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, by which an allegation of fact can be proved. The presumption of genuineness attached under s. 81 of the Evidence Act to a newspaper report cannot be treated as proof of facts reported therein. It is now well-settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible -in evidence in the absence of the maker of the statement appealing in Court and deposing to have perceived the fact reported."

The aforementioned principle has also been upheld in the following cases:

- *State Of Haryana And Others vs Ch. Bhajan Lal And Another Shri* (AIR 1993 SC 1348);
- *S.P Shenbagamoorthy vs Dr. Clienna Reddy, The Governor* (1994) 2 MLJ 23; and
- *Ratan Lal Soni vs The State Of Rajasthan And Ors.* (1994 (1) WLC 679).

Additionally the appellant company has submitted letter written to the Editor of Economic Times, and stated that the article per se did not speak about any amount being received by the Appellant and only speaks of consideration received by the shareholders. Given the same, no specific action was taken by the Appellant or any of its

Page 5 of 11

Directors at the time the news article was published. Further submitted that during the year under consideration, the appellant had sold its domain for an amount of Rs.300,000/-. The AR's arguments are revolved around the fact that based on certain news articles dated August 2012, the Assessing Officer had inferred that the Appellant had received an amount of USD 30 million as proceeds for sale of 'urbantouch.com'.

6.2 Now the question will arise as to whether the news paper articles published are relied upon as admissible evidences in the absence of any corroborative evidence or any material gathered by the Assessing Officer while concluding the assessment. It is seen from the assessment order that the Assessing Officer has brought out the facts and defects in the auditor's financials and given a finding that the AR was not able to furnish any records or documents in support of his submission nor he was not able to establish the credibility of his financials submitted before him and therefore the Assessing Officer had to consider the information reported in the public domain as more authentic. Further seen from the extract of the information given by the *EconomicTimes*, Indiatimes.com dated 28/08/2012 that Fashion and You has acquired online fashion and beauty retailer Urban Touch and Fashion and You paid USD 30 million (Rs.167. crores) in cash and stock for acquisition, said a person with direct knowledge of the transaction. However, the, Assessing Officer has neither enquired into nor ascertained from the news paper the veracity of the information given by them, He has simply relied on such news paper item stating that in view of the concealment of material facts relevant for both disclosure as per IT Act and the Accounting Standards as well as during the course of assessment proceedings the undersigned has no other but to consider the information reported in the public domain as more authentic. In view of the facts as discussed above and also the judgement rendered by the Hon'ble Supreme Court of India in the case of *Laxmi Raj Shetty and Anr vs. State Of Tamil Nadu* that it is now well-settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported, I am of the view that the action of the Assessing Officer in concluding that the appellant has received USD 30 million (Rs.167 crores) in cash based on the news report without verifying the veracity is not justified, therefore, the grounds of appeal are hereby allowed."

Page 6 of 11

5. Aggrieved by the order of the CIT(A), the revenue has filed this appeal before the Tribunal. The Ld. D.R. relied on the grounds raised. The Ld. A.R. on the other hand reiterated the submissions made before the Income tax authorities and relied on the findings of the CIT(A). The A.R. has also filed a paper book inter-alia enclosing therein, Audit Financial Statement for A.Y. 2013-14, written submission and Annexure filed before the A.O. and CIT(A), etc.

6. We have heard the rival submissions and perused the records. The assessee was incorporated in Bangalore as a private limited company during FY 2010-11 with a paid up share capital of INR 1,00,000/-. Subsequently, the assessee company received funding in two rounds in the form of Compulsorily Convertible Preference Shares ('CCPS') and equity shares totalling to INR 20,34,92,330/- during FY 2010-11 and FY 2011-12. Pursuant to the funding, the total investment in the Company as on April 1, 2012 was as follows:

Name of Investor	Number of shares (way of equity and CCPS)	Total investment (INR)
Tiger Global Six India II Holdings, Mauritius ('Tiger')	• 1,000 equity shares • 74,000 Series A Preference Shares • 25,000 Series B Preference Shares	14,25,84,850
Accel India Venture II (Mauritius) Limited Mauritius ('Accel')	• 1,000 Equity Shares • 36,500 Series A Preference Shares • 8,333 Series B Preference Shares	5,87,52,280
Mr. Sachin Bansal	• 800 Equity shares	7,18,400
Mr. Binny Bansal	• 800 Equity shares	7,18,400
Mr. Mukesh Bansal	• 800 Equity shares	7,18,400
Mr. Abhishek Goyal	• 100,000 Equity shares	1,00,000
	Total	20,35,92,330

7. On August 9, 2012, the shares of the assessee company were transferred by its shareholders i.e., Tiger, Accel, Mr. Sachin Bansal, Mr. Binny Bansal and Mr. Mukesh Bansal (hereinafter collectively referred to as 'angel investors') to Goldsquare Sales India Private Limited ('Goldsquare' or 'the Buyer'), another company incorporated in India engaged in a similar line of business as the assessee under the domain name www.fashionandyou.com for a total sale consideration of INR 12,23,35,205/-. The breakup of the sale consideration received by the shareholders pursuant to the transfer are as follows:

Name of seller	Number of shares sold (by way of equity and CCPS)	Sale consideration (INR)
Tiger	• 1,000 Equity shares • 74,000 series A preference Shares • 25,000 Series B Preference Shares	8,49,82,750
Accel	• 1,000 Equity Shares • 36,500 Series A Preference Shares • 8,333 Series B Preference Shares	3,50,17,255
Mr. Sachin Bansal	• 800 Equity shares	7,78,400
Mr. Binny Bansal	• 800 Equity shares	7,78,400
Mr. Mukesh Bansal	• 800 Equity shares	7,78,400
	Total	12,23,35,205

8. A copy of declaration filed regarding transfer of shares from non-resident to resident in Form FC-TRS evidencing the transfer of shares from Tiger and Accel to Goldsquare is on record (page Nos. 171 to 178 of the Paper book filed). Subsequent to the transfer of

Page 8 of 11

shares, the business of assessee was consolidated under Goldsquare. Mr. Abhishek Goyal (who was a director in Reindeer) was appointed as a CEO and also admitted to the Board of Directors in Goldsquare. During March, 2003, owing to certain issues and the fact that the assessee company was running into huge losses the Company sold off all its assets and the domain name of www.urbantouch.com operated by the assessee along with all other intellectual property/brand assets were transferred to Goldsquare vide Brand Assets Assignment Agreement dated March 14, 2013 for a total consideration of INR 3,00,000/-. A copy of the Brand Assets Assignment Agreement is enclosed at page Nos.179 to 192 of the paper book filed. As a result of the above continued losses, the management of Goldsquare decided that the stake held by it in the assessee company shall be sold to Mr. Shobhit Singhal. Accordingly, the shares of Reindeer held by Goldsquare were acquired by Mr. Shobhit Singhal for a value of INR 1,48,233/- as the net asset value of the assessee company was negative and each share was valued at Rs.1/-. The independent share valuation report of the Chartered Accountant valuing the shares of the assessee is enclosed at page Nos.193 to 195 of the paper book filed. Consequently, as on March 31, 2013, the entire share capital of the assessee company was held by Mr. Shobhit Singhal. The same was disclosed in the financial statements for the year ended March 31, 2013. A copy of the financial statements have been enclosed at page Nos.196 to 211 of the paper book filed. The aforementioned facts were furnished before the A.O. However, the same was not considered at the time of passing the assessment order. Based on certain news articles dated August, 2012, the A.O. had alleged that the assessee has received an amount of USD 30 million as proceeds for sale of urbantouch.com. The shareholders of the assessee had sold their shares in the Company in the month of August 2012 and the domain name was

Page 9 of 11

sold by the assessee in March 2013. The information disseminated through the media is devoid of facts and may not be technically correct. Further, such news articles are not authored by technical/field experts so as to ensure that nuances of the transaction are reported correctly. In the instant case as well, the article printed may have been to provide information with respect to the fact that the shareholders of the assessee are selling the shares held by them. However, the same has been misunderstood by the A.O. and an adjustment to that effect has been made in the subject assessment order. It would also be pertinent to note that the copy of the article which was relied upon by the A.O. was not provided to the assessee during the course of assessment proceedings. Accordingly, the information contained in the news article was not ratified by the assessee. In this connection, we place reliance on the judgement of the Hon'ble Supreme Court of India in the case of Laxmi Raj Shetty and Anr Vs. State of Tamil Nadu (1988 AIR 1274), which held as follows:

“Judicial notice cannot be taken of the facts stated in a news item being in the nature of hearsay secondary evidences, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in s. 78(2) of the Evidence Act, by which an allegation of fact can be proved. The presumption of genuineness attached under s. 81 of the Evidence Act to a newspaper report cannot be treated as proof of facts reported therein. It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported.”

The aforementioned principle has also been upheld in the following cases:

1. State of Haryana and Others Vs. Ch. Bhajan Lal and Another Shri (AIR 1993 SC 1348)\
2. S.P. Shenbagamoorthy Vs. Dr. Chenna Reddy, The Governor (1994) 2 MLJ 23; and

3. Ratan Lal Soni Vs. The State of Rajasthan and
Ors.(1994(1) WLC 679)

Additionally a letter was written by assessee company objecting to the material published in the article which was the basis, on which the A.O. has passed the assessment order. In this letter to the Editor of Economic Times, the assessee states that the article per se did not speak about any amount being received by the assessee and only speaks of consideration received by the shareholders. Given the same, no specific action was taken by the assessee or any of its Directors at the time the news article was published.

9. Moreover, it would be unreasonable on the part of the A.O. to presume that the shareholders had received an amount USD 30 million (approximately INR 167 crores), because as mentioned earlier the investors had invested an amount close to INR 20 crores. Therefore, it is impractical for the A.O. to presume that the investors would receive an amount of INR 167 crores (i.e., a return of 735% over the principle invested). Further, the articles dated March 5, 2013 (covering the shutdown of Urban Touch) have been published just before the domain name was formally sold by the assessee to Goldsquare (Fashion and You). This therefore substantiates the fact that the business operations run by the assessee under the brand name of Urban Touch were indeed shut down by March 2013 pursuant to which the domain name was sold by the assessee in March 2013. The transaction of sale of shares by the investors is distinct and separate from the sale of shares undertaken in August, 2012. Further, to the financials of Goldsquare, downloaded from the website of the Ministry of Corporate Affairs (i.e. www.mca.gov.in) for FY 2012-13 and FY2013-14, clearly point to the fact that the Goldsquare did not have the resources to pay USD 30 million to the investors of the assessee. Copies of the financials have been enclosed at page nos.222 to 280 of the paper book whereas our attention is

Page 11 of 11

drawn to Note 36 of the financials for the FY 2012-13, wherein an amount of INR 12,21,86,967 has been accounted for by Goldsquare as an exceptional item bring loss on the sale of investments made in Reindeer. Neither the assessee nor the investors have received the said amount of USD 30 million. The amount has been reported in the news articles relied upon by the A.O. without carrying out adequate due diligence and without being ratified by the assessee or the investors.

10. In view of the aforesaid factual situation, we are of the view that the assessment in the instant case has been concluded based on a news article which does not in any case constitute adequate material on record. Accordingly, addition made by the A.O., has been rightly deleted by the CIT(A). It is ordered accordingly.

11. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 9th Sept, 2020

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bangalore,
Dated 9th Sept, 2020.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order