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

% Date of Decision: 11th July, 2018

+ **ITA 723/2018 & CM No.26947/2018**

SEEMA JAIN Appellant
Through: Mr. P. Roy Chaudhuri, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE- 59(1),
NEW DELHI Respondent
Through: Mr. Raghvendra Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This appeal by Seema Jain under Section 260-A of the Income Tax, 1961 (Act), arises from order dated 17th May, 2018 passed by the Income Tax Appellate Tribunal ('Tribunal') in ITA No.6709/Del/2017 and relates to Assessment Year ('AY') 2014-2015.

2. Tribunal in the impugned order has affirmed addition of Rs. 1,00,00,000/- made by the Assessing Officer ('AO'), which was also upheld in the first appeal by the Commissioner of Income Tax(Appeals) ('CIT(A)').

3. Findings' being primarily factual, learned counsel has challenged them as perverse. In particular, it was submitted that the

Tribunal has overlooked the most vital and important fact that the appellant had repaid loan of Rs. 1,00,00,000/- to M/s. Pediment Tie-up Pvt. Ltd. ('PTPL'), prior to initiation of the assessment proceedings. Further, the loan was taken and repaid through banking channels and receipt and repayment of loan was established. AO of M/s PTPL has accepted the loan transaction as no corresponding addition was made in the hands of M/s PTPL.

4. Appellant, an individual, for the assessment year 2014-15 had filed return declaring income of Rs.71,91,070/- from salary, income from house property and income from other sources.

5. Appellant as per books of accounts, had taken loan of Rs.1,00,00,000/- from M/s PTPL on 27th September, 2013. The appellant, as per books of account had repaid this loan to M/s PTPL, without interest, after one year on 23rd September 2014.

6. Issue and dispute relates to addition of Rs.1,00,00,000/- made under Section 68 of the Act. Section 68 can be invoked by the AO to make addition when any sum is found credited in the books of the assessee for the previous year, and the assessee offers no explanation of the source thereof or the explanation offered is not satisfactory. Satisfaction as to the "source" is normally ascertained by the assessee establishing and discharging the onus as to the identity of the payer, capacity or creditworthiness of the payer and genuineness of the transaction.

7. Tribunal in the impugned order has recorded and referred to several facts, which were compelling and would establish that the loan

of Rs.1,00,00,000/- from M/s PTPL was a facade and bogus transaction. It was a pretence and subterfuge adopted to circulate unaccounted money. Argument that the stated loan of Rs. 1,00,00,000/- was refunded on 23rd September 2014 and other submissions were duly noted and examined by the Tribunal, but rejected and spurned for sound and good reasons relating to creditworthiness of the payer, genuineness of the transaction and to an extent on the dubious identity of M/s PTPL. Tribunal has held that receipt and repayment of Rs. 1,00,00,000 would not in the factual context satisfy the threefold test, for the transactions were made in belief and deceptive for the following reasons and grounds:-

- 1) M/s PTPL did not have tangible or intangible fixed assets. As per balance sheet relied by the appellant, M/s PTPL had "current assets" and total liability of Rs. 19.35 crores, consisting of share capital of Rs.48 lacs, share premium of Rs.18.45 lacs and "current liabilities" of Rs.42 lacs. (It is therefore apparent that "current assets" comprised of loans "extended" to third parties.)
- 2) For the AY 2014-15 M/s PTPL in the Income Tax Return had declared income of Rs. 10,336/-. In the succeeding AY 2015-16, M/s PTPL had meagre income of Rs. 4,660/-.
- 3) Appellant had failed to file copy of Profit and Loss Account of M/s. PTPL for the assessment 2014-15. Authorised representative of the appellant had expressed helplessness in doing the same before the Tribunal. Thus, the nature and

character of "business" activities of M/s PTPL could not be examined, verified and ascertained.

4) Given the earning/income profile of a few thousand rupees, combined with failure to produce profit and loss account for the year, issue of shares at a premium of Rs.18.45 crores against paid up capital of Rs.48 lacs had casts doubt on the creditworthiness. It was incomprehensible that a company earning a few thousand rupees would command a premium of roughly 38 times the face value. These indicate that M/s PTPL was a shell and paper company.

5) Directors of M/s PTPL had failed to appear before the AO in-spite of summons under Section 131 of the Act.

8. M/s PTPL had two directors, namely, Dipak Singh and Brij Mohan SA. Dipak Singh was a director in 16 companies and Brij Mohan SA was a director in 12 companies. (Tribunal recorded that Dipak Singh may be a director in other companies as well.) Fifteen companies were functioning from a common one room address- 2A, Ganesh Chandra Avenue Commerce House, 7th Floor, Room No.1, Kolkata, W.B- 700013.

9. Dy. Director of Income-tax (Investigation) (hereafter, 'DDIT(Investigation)'), Kolkata in his report on the business activities of M/s PTPL, had ascertained that the company was providing accommodation entries.

10. Appellant, in her statement under Section 131, could not give the exact purpose for which the loan was taken. She replied that the finances were managed by her husband and she had no idea about them. On being questioned whether she operated her bank account or had any ATM card/debit card and credit card, she had replied in negative. Therefore, the appellant had absolutely no idea of any loan taken from M/s. PTPL, one of the 24 parties appearing in her balance sheet from whom loan was taken.

11. Tribunal had noted that there was no evidence or document to show that the appellant, who was in Delhi, came in contact with M/s PTPL, a Kolkata based company for obtaining loan.

12. Loan of Rs.1,00,00,000/- was allegedly repaid after nearly one year without any interest. It was not the case of the appellant that she had personal or business relationship with M/s PTPL or its directors.

13. Though not urged before us, the assessee before the Tribunal had submitted that the AO had relied upon statement of Rajendra Bubna recorded under Section 131 of the Act by the DIT (Investigation), Kolkata to the effect that Dipak Singh was a name lender and dummy director. Rajendra Bubna would control and manage several companies which were paper and shell companies. Rajendra Bubna had described in detail how funds/ cash / money was rooted through a complex web of paper companies to finally reach the beneficiaries. M/s.PTPL did not figure in the list of dubious companies mentioned by Rajendra Bubna, albeit, Tribunal, observed that this would not make any difference as Dipak Singh was certainly

a director of PTPL and had signed the income-tax returns. Accordingly, the appellant had argued before the Tribunal that the AO should have summoned and permitted cross-examination of Rajendra Babua. AO had rejected the contention due to paucity of time. Tribunal on the said aspect observed that the matter could not be decided in favour of the assessee for this reason alone as there was enough material to implicate and hold that the appellant had obtained accommodation entry of Rs.1,00,00,000/- from M/s. PTPL. AO had carried out investigation by issuing summons to director of M/s. PTPL to appear in person, but there was non compliance and failure. AO had recorded statement of the appellant under Section 131 of the Act which was ambiguous and had corroborated and affirmed clandestine nature of the transaction. Lest there be any doubt or debate, we would quote paragraphs 27 and 28 of the order passed by the Tribunal:

"27. The matter does not stop here. Having so much material to implicate the assessee for having obtained an accommodation entry of Rs.1 crore from PTU, the AO carried out further investigation by issuing summons u/s 131 of the Act to the directors of PTU requiring their appearance in person. Unfortunately, no compliance was made. Thereafter, the Assessing Officer recorded statement of the assessee u/s 131 of the Act, whose relevant parts have been reproduced on pages 6 and 7 of the assessment order. In response to question no. 7 about the assessee having outstanding loans from around 24 parties and requiring to give: "the exact purpose for which you have taken these loans", she simply replied that the finances were managed by her husband and she had no idea of it. On a question as to whether she operated her account or had any ATM card/debit and credit card, she answered in negative. Her statement

amply shows that she had absolutely no idea about any loan taken from PTU, which is one of the 24 parties appearing in her balance sheet.

28. When a final show cause notice was issued requiring the assessee to explain as to why a sum of Rs.1 crore received from PTU be not added to the income as it was a bogus loan received from a paper company, the assessee required cross-examination of Shri Rajendra Bubna and stated that name of PTU was not appearing in the statement of Shri Rajendra Bubna. In our considered opinion, the Assessing Officer has rightly rejected the assessee's contentions on the ground that Shri Rajendra Bubna was confronted with only a sample of companies and was asked to confirm if he used these companies to provide accommodation entries, which was answered by him in positive. We have noticed above that though name of the assessee company was not appearing in the list of 16 companies given on pages 3 and 4 of the assessment order having Shri Dipak Singh as a director, but, the fact of his being a director has been proved from his signing the return of income for the year under consideration in the capacity of director. This shows that all the lists referred to in the assessment order are inclusive and the assessee cannot gain any mileage from the fact that name of PTU is not specifically depicted therein. "

14. In view of the aforesaid factual background, the Tribunal was right and justified in relying on the judgments of the Supreme Court in *CIT v. Durga Prasad More*, (1971) 82 ITR 540 (SC) and *Sumati Dayal v. CIT*, (1995) 214 ITR 801 (SC), to reject mere paper work and look at the reality behind a facade created to hoodwink and deceive. Merely because the transaction was squared in the next

financial year would not establish that the transaction was genuine and not bogus.

15. In view of the aforesaid position, we are not inclined to issue notice. Appeal is dismissed, without any order as to costs. Pending application is also dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

JULY 11, 2018/tp



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