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ITXA-819-2015 (SR.14)

Tuesday, 17.4.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 819 OF 2015

Pr. Commissioner of Income

Tax-13, Mumbai

....Appellant

V/s.

Veedhata Tower Pvt.Ltd.

....Respondent

* * * * *

Mr. Arvind Pinto, Advocate for the appellant.

None present for the respondent.

CORAM :-

M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :-

17TH APRIL, 2018.

P.C. :-

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 21st January, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 21st January, 2015 is in respect of Assessment Year 2010-11.

2 The Revenue urges only the following question of law, for our consideration:

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal is correct in interpreting Section 68 to hold that the AO was not entitled to enquire into the 'source of the source' to come to a finding that a particular credit was not genuine in terms of Section 68 ?”

3. The impugned order dated 21st January, 2015 of the Tribunal allowed the respondent-assessee's appeal by deleting the addition of Rs.1.65 crores made under Section 68 of the Act.

4. The respondent-assessee had obtained a loan from M/s. Lorraine Finance Pvt. Ltd (LFPL). The Assessing Officer held that the respondent-assessee was unable to establish the genuineness of the loan transaction received in the name of LFPL nor the respondent was able to prove the credit worthiness/the real source of the fund. This led to the addition of the loan of Rs.1.65 crores as unexplained cash credit under Section 68 of the Act by order dated 20th March, 2010 for Assessment Year 2010-11.

5. In appeal, the view of the Assessing Officer was upheld by the Commissioner of Income-Tax (Appeals) in First Appeal.

6. On further appeal, the Tribunal while allowing the respondent's appeal records on facts that, it is undisputed that the loan was taken from LFPL. It is also undisputed that the Lender had confirmed giving of the loan through loan confirmations, personal appearance and also attempted to explain the source of its funds. It also records the fact that the sum of Rs.64.25 lakhs had already been returned to LFPL through account payee cheques and the balance outstanding was Rs.1 crore and 75 lakhs. Besides, it records that the source of source also stands explained by the fact that the director of the creditor had accepted his giving a loan to the respondent's lender. In face of the above fact, it is the Revenue's case that the source of source, the respondent is unable to explain. In law, the impugned order notes that, the subject assessment year is 2010-11. The requirement of explaining the source of the source of receipts came into

the statute book by amendment to Section 68 of the Act on 1st April, 2013 i.e. effective from Assessment Year 2013-14 onwards. Therefore, during the subject assessment year, there was no requirement to explain the source of the source. Be that as it may, the impugned order of the Tribunal held that the respondent-assessee had discharged the onus placed upon it under Section 68 of the Act by filing confirmation letters, the Affidavits, the full address and pan numbers of the creditors. Therefore, the Revenue had all the details available with it to proceed against the persons whose source of funds were alleged to be not genuine as held by the Apex Court in **Commissioner of Income Tax V/s. Lovely Exports (P.) Ltd. [2009] 319 ITR (St.) 5 (SC).**

7. The grievance of the appellant is that, even in the absence of the amendment to Section 68 of the Act, it is for the respondent-assessee to explain the source of the source of the funds received by an assessee. It is submitted that the respondent has not able to explain the source of the funds in the hands of M/s. LFPL and

therefore this Appeal needs to be admitted.

8. This Court in **Commissioner of Income Tax V/s. Gangadeep Infrastructure Pvt. Ltd, 394 ITR 680** has held that the proviso to Section 68 of the Act has been introduced by the Finance Act, 2012 w.e.f. 1st April, 2013 and therefore it would be effective only from Assessment Year 2013-14 onwards and not for the earlier assessment years. In the above decision, reliance was placed upon the decision of the Apex Court in *Lovely Exports* (supra) in the context of the pre-amended Section 68 of the Act. In the above case, the Apex Court while dismissing the Revenue's Appeal from the Delhi High Court had observed that, where the Revenue urges that the money has been received from bogus shareholders then it is for the Revenue to proceed against them in accordance with law. This would not entitle the Revenue to invoke Section 68 of the Act while assessing the respondent for not explaining the source of its source. In any event, the impugned order of the Tribunal has raised a finding of fact that the respondent

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had discharged the onus which is cast upon it in terms of the pre-amended Section 68 of the Act by filing the necessary confirmation letters of the creditors, their Affidavits, their full address and their pan.

9. Thus, the Tribunal has rendered a finding of fact which is not shown to be perverse. In any event, the question as proposed in law of the obligation to explain the source of the source prior to 1st April, 2013, Assessment Year 2013-14, stands concluded against the Revenue by the decision of this Court in *Gangadeep Infrastructure* (supra).

10. Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

11. Accordingly, the Appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J)

(M.S. SANKLECHA, J)