

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

I.T.T.A.No. 137 OF 2005

Between:

M/s. Sriman Sai Securities Investment Finance Limited,
Jagtial ... Appellant

AND

The Deputy Commissioner of Income Tax,
Karimnagar ... Respondent

Date of Judgment Pronounced : 20-12-2017

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K.JAISWAL**

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may
be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the
Fair copy of the judgment? Yes/No

C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

***THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY**

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

+I.T.T.A.No. 137 OF 2005

%Dated: 20-12-2017

#M/s. Sriman Sai Securities Investment Finance Limited,

Jagtial

... Appellant

VERSUS

\$The Deputy Commissioner of Income Tax,

Karimnagar

... Respondent

!Counsel for the appellant : Sri A.V.Krishna Kaundinya

^Counsel for the respondent : Ms. K.Mamata

<GIST :

>HEAD NOTE :

?Cases referred :

1. (1991) 192 ITR 287 (Del.)
2. (2000) 242 ITR 357 (AP)
3. (2003) 263 ITR 289 (Calcutta)
4. (2017) 394 ITR 383 (Raj.)

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

I.T.T.A.No. 137 OF 2005

DATED 20TH DECEMBER, 2017

Between:

M/s. Sriman Sai Securities Investment Finance Limited,
Jagtial ... Appellant

AND

The Deputy Commissioner of Income Tax,
Karimnagar ... Respondent



Counsel for the appellant : Sri A.V.Krishna Kaundinya

Counsel for the respondent : Ms. K.Mamata

THE COURT MADE THE FOLLOWING

JUDGMENT: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The assessee, being unsuccessful before both the lower appellate *fora*, filed this appeal by raising the following substantial question of law:

"Whether on the facts and circumstances of the case the Hon'ble Income Tax Appellate Tribunal is right in sustaining the order of the CIT (Appeals) who confirmed the order of the assessing authority treating the entire share capital of the assessee/appellant as its income without conducting any enquiry in that regard."

One of the two issues decided against the assessee, in respect of which this appeal is filed, is whether the Assessing Officer (for short, 'A.O.') was correct in treating the sum of Rs.48,58,000/- as the assessee's income from undisclosed sources. The assessee has taken the stand before the A.O. that the said money was collected through share capital from 464 persons. The A.O. has given the assessee an opportunity of submitting books of accounts, vouchers and confirmation letters of the purported shareholders. Despite having been given as many as 16 opportunities, the assessee did not file any of those documents except giving a list of the purported shareholders. In such circumstances, the A.O. has computed the income treating the said amount as the income from undisclosed

sources. This decision of the A.O. was unsuccessfully challenged by the appellant before the Commissioner of Income Tax (Appeals-II), Hyderabad, as well as before the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (for short, 'the Tribunal').

2. At the hearing, Sri A.V.A.Siva Kartikeya, learned counsel for the appellant, has submitted that it is the duty and obligation of the A.O. to hold necessary inquiry before coming to a conclusion on the nature of the amount. In support of his submission, he has placed reliance on the judgment of Delhi High Court in *Commissioner of Income Tax Vs. Stellar Investment Limited*¹ and also the order dated 20-07-2000 of the Supreme Court confirming the said decision. Learned counsel has also referred to and relied on the judgment of a Division Bench of this Court in *Commissioner of Income Tax Vs. LANCO Industries Limited*².

3. Opposing the above submissions, Ms. M.Lalitha, learned counsel, representing Ms. K.Mamata, learned senior standing counsel appearing for Income Tax Department, has submitted that under Section 68 of the Income Tax Act, 1961 (for short, 'the Act'), the

¹ (1991) 192 ITR 287 (Del.)

² (2000) 242 ITR 357 (AP)

initial burden lies on the assessee to satisfy the A.O. that the amount found as cash credit is not chargeable to income tax as the income of the assessee of the previous year and that notwithstanding a number of opportunities presented to the assessee by the A.O., the former failed to avail such opportunities and produce any material whatsoever to satisfy the A.O. in that regard. She has also submitted that except furnishing the names of the persons who allegedly contributed to the share capital, not even their addressees have been furnished and no attempt whatsoever was made by the assessee to secure statements of the said persons. She has further submitted that the assessee has not filed any books of accounts or vouchers proving the receipt of money from the said 464 persons in support of his plea that the amount was collected from them towards share capital. She has relied on the judgments of Calcutta High Court in *Hindusthan Tea Trading Company Limited Vs. Commissioner of Income Tax*³ and also the Jaipur Bench of Rajasthan High Court in *Commissioner of Income Tax Vs. ARL Infratech Limited*⁴.

³ (2003) 263 ITR 289 (Calcutta)

⁴ (2017) 394 ITR 383 (Raj.)

4. We have carefully considered the respective submissions of learned counsel for both parties and perused the record.

5. Section 68 of the Act, as it stood before provisos were added, reads as follows:

"Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year."

It is evident from the said provision, where assessee offers no explanation about the nature and source of the cash credit or the explanation offered by him is not, in the opinion of the A.O., satisfactory, such cash credit is liable to be charged to income tax as the income of the assessee of the previous year. As concurrently found by all the *fora* below including the A.O., a number of opportunities were given to the assessee to substantiate its stand that the amount was collected towards allotment of shares to third parties. Except submitting a list of the persons from whom share capital was allegedly collected, no other material, such as books of accounts, vouchers, receipts or bank statements *etc.*, was produced. A perusal of the list during hearing shows that except in a very few

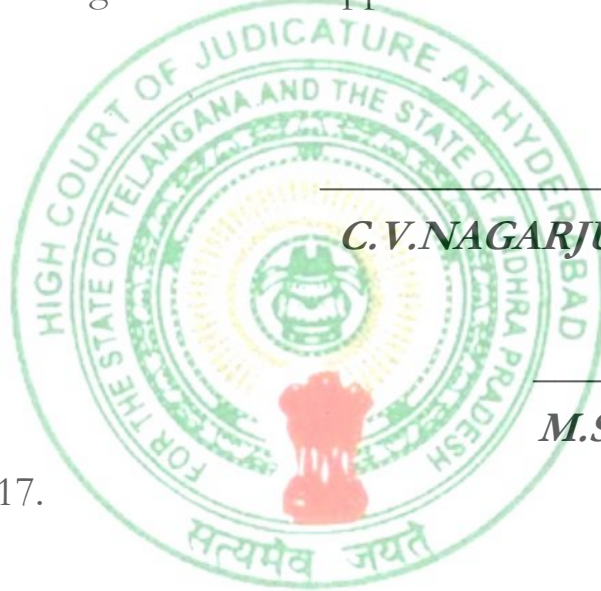
cases, even door numbers of the persons shown in the list have not been furnished. In ***Hindusthan Tea Trading Company Limited*** (3rd *supra*), the High Court of Calcutta held that the extent of the power of the A.O. while considering the material produced by the assessee is very wide and that the A.O. is empowered to lift the corporate veil and examine the real nature of the transaction and in the process, it may exercise its power of examining the material and it may require the assessee to produce further material if so required. The Court further held that the process of enquiry is such that the assessee has to offer the explanation and produce the material in support of such explanation and that only in such case, the onus shifts to the Revenue to scrutinize the material and form an opinion on the basis thereof. No doubt, the High Court of Delhi in ***Stellar Investment Limited*** (1st *supra*) observed that even assuming that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. We find from this order that no reference to Section 68 of the Act or discussion thereon has been undertaken. Though the Supreme Court has dismissed the civil appeal filed against the said order, no ratio as

such has been laid down therein. In ***LANCO Industries Limited*** (2nd *supra*), a Division Bench of this Court held that if the ostensible shareholders failed to explain the means of investment, that should have been treated as unexplained income in their hands and in order to add it to the income of the assessee, there must be a further finding that in fact the shareholders were mere name-lenders and the money allegedly invested by them really belonged to the directors of the assessee company. The Court further held that in the absence of a finding that the persons to whom the share certificates were issued on receipt of consideration as per the book entries were in fact dummies or stooges of the directors of the assessee company, the same cannot be treated as unaccounted income of the assessee. In that case, the assessee produced relevant material such as confirmation letters from the shareholders and all other relevant material and the A.O. termed the material as stereotyped without rendering a finding that the shareholders were mere name-lenders.

6. In the light of the provisions of Section 68 of the Act and the legal position referred to above, we are of the opinion that the assessee has failed to discharge its initial burden to prove that the money of Rs.48,58,000/- was collected through share capital.

Therefore, the A.O. is wholly justified in rejecting the stand of the assessee and treating the sum of Rs.48,58,000/- as the income from undisclosed sources and accordingly charging the same to tax. Both the lower appellate *fora* and in our view rightly confirmed the order of the A.O.

7. For the aforementioned reasons, the question of law framed by the assessee is held against it. The appeal is accordingly dismissed.



C.V.NAGARJUNA REDDY, J.

M.S.K.JAISWAL, J.

Date: 20-12-2017.

Note:

L.R. Copies to be marked.

B/O

JSK