ORDER SHEET

ITA 149 OF 2007

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction (Income Tax)

ORIGINAL SIDE

RICK LUNSFORD TRADE & INVESTMENT LIMITED

Versus

COMMISSIONER OF INCOME TAX, KOLKATA - I

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE ASHA ARORA

Date : 17th June, 2016.

For Appellant/Petitioner : Mr.J.P.Khaitan, Sr.Advocate

Mr.P.Jhunjhunwala,Advocate

Mr.S.Das,Advocate

For Revenue/Respondent : Mrs.Anwara Quereshi,Advocate

The Court : The appeal is directed against the judgement and order dated 6th September, 2006 passed by the learned Income Tax Appellate Tribunal, "B" Bench , Kolkata in ITA No.2421/Kol/2005 pertaining to the assessment year 1983-84 by which the learned Tribunal dismissed an appeal preferred by the assessee. The assessee has come up in appeal. The question formulated at the time of admission of the appeal on 6th June, 2007 reads as follows :

"(a) Whether and in any event, the Tribunal was justified in law in upholding the addition of share capital to the extent of Rs.8,77,500/- under section 68 of the Income Tax Act, 1961 on the basis of incomplete investigation made by the Assessing Officer and its purported findings in that behalf are arbitrary, unreasonable and perverse ? "

The facts and circumstances of the case, briefly stated, are as follows :

The assessment for the relevant year was completed on 31st March, 1986 under section 144, that is to say, best judgement assessment was made at a total income of Rs.27,05,365/-It appears that the assessee had filed returns in various districts and a point of jurisdiction was raised before the CIT (Appeals) and various orders of assessments were produced. Out of which, one of them transpired to be a forged one. Be that as it may, the CIT (Appeal) by his order dated 22nd December, 1992 restricted addition to a sum of Rs.6,22,500/- being 25% of the paid up share capital of the assessee. The revenue preferred an appeal against that order alleging that the CIT (A) had erred in deleting addition of a sum of Rs.18,67,000/-. The learned Tribunal by its judgement and order dated 28th February, 2000 restored the matter to the file of the assessing officer for the purpose of making reassessment after giving proper opportunity to the assessee to prove its case. The assessee did not produce its books of accounts nor did it produce bank accounts for the relevant period. It also failed to produce shareholders register. Instead a list of shareholders was produced. The assessing officer issued notices to fifty-six shareholders. Forty-eight of them did not turn up. Eight shareholders responded by saying that they had never subscribed to the share capital of the assessee. They added that even the parenthood of some of the shareholders was wrongly described. In one case a brother of one of the applicant was shown as the father of the applicant. The balance i.e. nearly forty-eight notices came back with the endorsement 'not known'. All the drawbacks were brought to the notice of the assessee by the assessing officer. The assessee replied by its letter dated 22.03.2002, contents whereof according to the assessing officer was as follows;-

> *"…that this is not practicable and feasible for the assessee company to search, identify and produce the shareholders because the matter of 15 to 17 years back. He did not challenge facts of the case and draw backs informed to them. He argued that in view of decision of Hon'ble Delhi High Court in the case of CIT Vs.Steller Investment Ltd. 192 ITR 287 (Delhi) which held that, even if it be assumed the subscriber to the increased share capital were not genuine, under no circumstances could the amount at share capital be regarded as undisclosed income of the company. He further submitted that the Hon'ble Supreme Court has confirmed the said decision of Delhi High Court. Mr. Bhutra, submitted in view of Hon'ble Supreme Court's decision, share capital of Rs.2490,000/- introduced during the previous year relevant to the assessment year 1983-84 could not and*

should not be added back as income from undisclosed sources u/s. 68 of the Act."

The assessing officer in the circumstances was of the opinion *" that the assessee company has introduced own money to the tune of Rs.24,90,000/- in the guise of share capital".*

He, therefore, added a further sum of Rs.18,67,500/-.

An appeal preferred by the assessee was dismissed by the CIT (A) by his judgement and order dated 22.01.2003. In a further appeal by the assessee the learned Income Tax Appellate Tribunal (A) Bench Kolkata in ITA 858 (Kol) of 2003 once again remitted the matter to the CIT (A) with the following direction;-

"He is directed to consider all the evidence furnished by the assessee in support of its claim and decide the issue on merit considering the criteria about identity, creditworthiness, etc. of the share applicants. The assessee is also free to adduce whatever evidence it feels necessary and the C.I.T.(A) shall give due opportunity of being heard to the assessee to explain its share. The assessee also shall cooperate with the C.I.T. (A) accordingly. With these directions the matter regarding addition of Rs.18,67,500/- is restored back to the file of the C.I.T. (A)."

The CIT (A) in his turn by an order dated 21.09.2005 arrived at the following conclusion; -

"In view of above discussion of facts and material positions, I decline to agree in toto the contention of the appellant company that since the issue of equity shares was made to public at large with the approval of the

appropriate authority and as listed by Calcutta Stock Exchange and also since the application and allotment money was directly deposited by the subscribers with the bankers and the whole share transaction money has to be treated as genuine. I am, therefore, of the view that it would be fair and just to accept the claim of the appellant company to the extent of the share allotment and the payment receipt although the shares were claimed to have been issued through public at large and subscribed. I am also of the opinion that only the aggregating amount of Rs.9,90,000/- can be treated as explained share application money received by the appellant company and to that extent the addition stands deleted and the balance amount of addition also consequently stands confirmed."

This order of the CIT(A) was unsuccessfully challenged by the assessee before the Tribunal. The learned Tribunal by the impugned judgement dated 6.9.2006 dismissed the appeal. The present appeal is against the aforesaid order.

The question of law as already indicated, is whether the order of the learned Tribunal is perverse. In spite of giving umpteen opportunities the assessee was unable to prove that the sum of Rs.24,90,000/- was received by the assessee on account of share application. Admittedly, the aforesaid sum was found credited in the books of the assessee maintained for the relevant previous year pertaining to the assessment year1983-84. The CIT (A) after giving fullest opportunity to the assessee was of the opinion that an aggregate sum of Rs.9,90,000/- can be treated as explained. So, the balance was not explained by the assessee. This view of the CIT (A) was upheld by the learned Tribunal. Whether the assessee has been able to explain is essentially a question of fact. The assessing officer was of the opinion that the assessee was not able to explain any part of the sum of Rs.24,90,000/-. But the CIT (A) and the learned Tribunal were of the opinion that it could be said that he had been able to explain up to Rs.9,90,000/-. It is not the case of the assessee that any piece of evidence adduced by the assessee was ignored either by the assessing officer or by the CIT(A) or by the learned Tribunal. It is only on the basis of the evidence adduced by the assessee that the view was taken by the CIT (A) that it could be said that the assessee had succeeded in explaining an aggregate sum of Rs.9,90,000/-. The learned Tribunal concurred with the finding of the CIT (A). Therefore, the question of the view taken by the learned Tribunal being perverse or arbitrary does not arise. Mr. Khaitan, learned Senior Advocate relied upon a judgement of this Court in the case of (*Hindusthan Tea Trading Co. Ltd. v.Commissioner of Income-Tax)* reported in (2003)263 ITR 289(Cal). This judgement has no manner of application to the facts and circumstances of this case. What had happened in that case was that the assessing officer had issued notices to thirty-seven subscribers of shares on a test basis. Out of the thirty-seven persons ten persons appeared and produced satisfactory evidence regarding the genuineness of the application and the source of the fund. In the case before us summons were issued to fifty-six persons. Forth-eight or nearly forty-eight summons came back with the endorsement ‘not known’ and the balance eight persons who appeared submitted that they never made the investment, alleged to have been made by the assessee by these eight persons. Therefore, the judgement in the case of Hindusthan Tea Trading Co. Ltd. (supra) is on a different set of facts and has no manner of application to the facts and circumstances before us. No other submission was advanced. We are as such of the opinion that the appeal is altogether unmeritorious. The question formulated is answered as follows;-

The Tribunal was justified in upholding the addition on account of alleged share capital to the extent of Rs.8,77,500/- under Section 68. A sum of Rs.6,62,000/- had earlier been admitted by the assessee during a disclosure as submitted by Mr. Khaitan. The share capital to the extent of Rs, 9,90,000/- was accepted both by the CIT(A) and the Tribunal. We are also of the opinion that the judgement of the learned Tribunal is neither perverse nor arbitrary nor unreasonable. The question is thus answered.

The appeal is thus dismissed.

Parties shall, however, bear their own cost.

(GIRISH CHANDRA GUPTA, J.)

(ASHA ARORA, J.)

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