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

Date of decision : 09.02.2018

+ ITA 151/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7 Appellant
Through Mr. Sanjay Kumar, Adv.
versus

M/S RATHI ISPAT PVT. LTD. Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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The Revenue's appeal seeks deletion of the sum of Rs.1,78,51,005/- brought to tax added by the Assessing Officer.

2. The assessee had reported receipt of the said sum of Rs.1,78,51,005/- as share premium and call in arrears. These amounts pertain to offering in the public issue made by the assessee in 1994-95. The offer was made to both existing shareholders and the general public. The call arrears were reflected in the assessee's books for several years and in the assessment year – AY 2005-06, the books reflected that the arrears were paid off. The Assessing Officer considered this feature to be unusual and queried the assessee with respect to the identity of the shareholders and the genuineness of the

investments made. The assessee provided the particulars it could and stated that its books had been assessed by the Central Excise Authorities and also that its plant and offices were plagued by strikes. The Assessing Officer conducted a survey under Section 133(6) and on the basis of the report received, brought to tax the amount under Section 68. Both the CIT and the ITAT were of the opinion that though the features of the case were unusual and the call arrears were liquidated after 10 years, equally the assessee was a public limited company and could not be expected to keep track of its individual shareholders and their details. Their orders also disclosed that the assessee had 50,000 shareholders and that the difficulties it expressed, during the course of assessment and appellate proceedings were genuine. The ITAT returned the following finding:-

“4.3 Having gone through the orders of the authorities below, in view of above submissions, material available on record and the decisions relied upon, we find that the Assessing Officer had made the addition in question on the basis that the assessee had failed to explain the mode of receipts of money received as share premium and calls in arrears. It has failed to furnish the address of all such persons, claimed to be share holders, despite sufficient time and several opportunities provided. He noted that these receipts are stated to be relating to issue of 'zero' interest debentures of Rs.150/- each for cash at par fully convertible into 5 equity shares after 3 months brought by the company in June, 1994. The forfeiture clause of the issue provided for liability of interest on the amount unpaid on allotment till the date of actual payment and also of forfeiture of such debentures. The Assessing Officer found it unusual that total amount of Rs. 1,78,51,005/- stood outstanding for almost 10 years

and suddenly, the emoluments gets paid up. The Assessing Officer held that the assessee failed to discharge the primary onus of furnishing full details of the receipts and names and addresses of the payers. He noted that the results of enquiry made by way of test check was confronted to the assessee company. The assessee failed to prove the genuineness of the received transactions and accordingly he added Rs.1,78,51,005/- as cash credit under section 68 of the Act in the income of the assessee.

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4.6 Certain material facts recorded by the Id. CIT (Appeals) while deciding the issue, have not been disputed by the Revenue before us. These facts are that the assessee is a public limited company, having more than 50,000 share holders and its shares were quoted at Bombay and Delhi Stock Exchanges. Its trading results have been accepted year after year. Thus there was no reason to suspect that the assessee was having funds outside the account books. There was also no reason to doubt that its Directors would deposit their own money, nor was there any evidence on record in the names of share holders distantly related to any of the Directors. It has also not been disputed that the share holders had paid calls in arrears / share premium in the earlier years and accepted. Under these circumstances, we are of the view that the Id. CIT (Appeals) was justified in deleting the addition in question. In this regard the Id. CIT (Appeals) has followed several decisions cited before it including decision of Hon'ble jurisdictional High Court of Delhi in the case of Divine Leasing & Finance Ltd. (2007) 207 CTR 38 holding that in the case of public issue, the company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The first appellate order on the

issue being reasoned one is thus upheld. The Ground No. 3 is accordingly rejected.”

3. This Court is of the opinion that while initially the addition based upon the Assessing Officer’s assessment of the facts were premised upon the unusual feature of liquidation of the arrears after a substantial period, the fact equally remains that the assessee was placed under certain difficulties and therefore, unable to explain these transactions. Moreover, the assessee is a company with large shareholding.

4. In these circumstances, the findings of fact concurrently made by the Appellate Authorities therefore, do not call for interference. Appeal is therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 09, 2018

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