

CIT Vs Independent Media Pvt. Ltd.

Court: Delhi High Court

Date of Decision: July 20, 2012

Acts Referred: Income Tax Act, 1961 "Section 143(1)(a), 148, 260A, 68

Citation: (2012) 210 TAXMAN 14

Hon'ble Judges: S. Ravindra Bhat, J; R.V. Easwar, J

Bench: Division Bench

Advocate: N.P. Sahni, for the Appellant; M.P. Rastogi, for the Respondent

Judgement

R.V. Easwar, J.

This is an appeal by the Revenue filed before this Court u/s 260A of the Income Tax Act, 1961 ("Act" for short). It is

directed against the order of the Income Tax Appellate Tribunal ("Tribunal" for short) dated 11.03.2010 passed in ITA No. 470/Del/2009. The

following substantial question of law is framed: -

Whether the Tribunal is right in law in remitting the issue relating to the addition of Rs. 2,20,00,000/- made on account of unexplained share

application money to the Assessing Officer with directions to verify the source of money of the shareholders and make additions in the hands of

persons who provided the monies?

2. The assessee is a private limited company. It is engaged in the business of production of TV Programmes. The original assessment was

completed on 23.02.2005 in respect of the return filed on 01.11.2004 for the assessment year 2004-05. Subsequently notice reopening the

assessment was issued u/s 148 of the Act. The assessment was reopened on the ground that there was information received from Investigation

Wing, New Delhi of the income tax department that the assessee was involved in giving and taking accommodation entries for commission. In the

course of the reassessment proceedings it was noticed by the Assessing Officer that the assessee received share capital to the extent of Rs.

2,20,00,000/-. On the basis of the information received by him from the Investigation Wing, he called upon the assessee to prove the genuineness

of the share subscription as also the creditworthiness and identity of the persons who subscribed for the shares. The assessee was also requested

to furnish confirmation and explain how the money received as share subscription was utilised.

3. In response the assessee submitted the copies of the share application forms and the balance sheet of the companies which applied for the

shares. No confirmation or evidence to establish the genuineness of the transaction or creditworthiness of the share applicants was filed. It was also

noticed by the Assessing Officer that the persons who allegedly subscribed to the shares of the assessee company had given statements before the

Investigation Wing that they were entry providers giving accommodation entries after receiving cash and after charging their commission. On this

basis and taking note of the lukewarm response of the assessee to the notices calling upon it to furnish necessary proof in support of share

application monies, the Assessing Officer issued a show-cause notice to the assessee in which he informed the assessee as follows: -

The inquiries were conducted by the Investigation Wing of the Department wherein it was found that some persons are involved in giving and

taking bogus entries. They are persons of no means but providing accommodation entries which represent the unsecured money of the persons

taking entries. The persons providing such entries have admitted during the course of investigation that you are one of the beneficiaries and have

been provided the entries to the extent of Rs. 2,20,00,000/-. You are, therefore, provided an opportunity to show cause why the entries taken by

you to the extent of Rs. 2,20,00,000/- and the commission paid on such accommodation entries should not be treated as your income from

undisclosed sources of income.

4. In response to the show-cause notice it would appear that the assessee furnished the PAN number of the companies, share application forms,

board resolutions, copy of bank statement, pay orders, confirmation from subscribers, their income tax returns, copies of their balance sheets, etc.

and contended that the share application monies were genuine.

5. The Assessing Officer examined the papers filed by the assessee and disputed the assessee's claim that the confirmations from the subscribers

were filed. He moreover held that the documents adduced by the assessee did not prove the identity and creditworthiness of the subscribers or the

genuineness of the transactions. He also noticed that the share application monies were received through banker's cheques which were issued

immediately after credits in the accounts of the subscriber-companies and that before and after the issue of cheques there was hardly any balance

in the bank accounts. Ultimately the Assessing Officer held as follows: -

12. Moreover, the arguments put forth by the assessee are not acceptable because it has been admitted by the person involved in giving entries,

during the course of statement by Investigation Wing, that the assessee has accepted the adjustment entries from the persons who are involved in

providing entries to a number of persons wherein cash is taken and cheque or draft is given by floating different companies. The assessee has

received such entries from the said person. The assessee has merely received adjustment entries.

13. The share application money received by the assessee to the

extent of Rs. 2,20,00,000/- (by taking the entries only once) is treated as income of the assessee from undisclosed sources and brought to tax as

Income from other sources. Penalty u/s 271 (1)(c) of the Act is initiated on this point for concealment of income.

6. It may be noted that the Assessing Officer also added the amount of Rs. 4,40,000/- as commission paid by the assessee to obtain the

accommodation entries @ 2% of Rs. 2,20,00,000/-.

7. The assessee challenged the additions as well as the jurisdiction of the Assessing Officer to reopen the assessment in appeal before the CIT

(Appeals). The CIT (Appeals) turned down the objections against the jurisdiction to reopen the assessment. However, on merits the additions

were deleted. The findings on the basis of which the CIT (Appeals) deleted the additions are as follows: -

(a) The assessee has filed from each shareholder the share application forms, board resolutions for investment in the shares of the assessee, board

resolutions of the assessee-company approving the allotment of the shares, distinctive number of shares, copies of pay orders used for the

investment in the shares, copies of the bank statement of the subscriber-companies, their memorandum and articles of association, certificate of

incorporation issued by the Registrar of Companies, their profit and loss account and balance sheet, particulars of income tax file numbers, copies

of income tax returns filed by them and the intimations issued by the income tax department u/s 143(1)(a) of the Act, return of allotment of shares

filed with the ROC, etc.

(b) The bank accounts of the subscriber-company reveal that all of them have sufficient money with them before subscribing to the shares of the

assessee company. The credit in the accounts before the issue of the pay orders represented transfer entries from third parties and there were no

cash deposits in the accounts.

In the light of the above findings and applying the judgment of the Supreme Court in the case of CIT v. Lovely Exports Pvt. Ltd., (2008) 216 CTR

195 affirming the judgment of this Court in CIT v. Lovely Exports Pvt. Ltd., (2009) 319 ITR 5 (HC), the CIT (Appeals) deleted the addition of

Rs. 2,20,00,000/- and consequently also deleted the addition of the commission payment of Rs. 4,40,000/-. The assessee's appeal was thus

partly allowed.

8. The Revenue carried the matter in appeal before the Tribunal in ITA No. 470/Del/2009. The Tribunal by and large summarised the findings of

the CIT (Appeals) and held that since none of these findings have been controverted by the Revenue, it can be said that the assessee has

discharged its onus to prove the receipt of share application monies and therefore no addition can be made in its assessment.

9. The Tribunal, however, did not stop there. It appears to have felt disturbed by the report of the Investigation Wing which was relied upon by the

Assessing Officer. It rightly observed that the investigation report available to the Assessing Officer cannot be ignored. Having said so, the Tribunal

proceeded to observe that a duty is cast on the Assessing Officer to verify the correctness of the statements wherein certain persons have allegedly

stated that they had merely provided accommodation entries after accepting cash for commission, and that since no corroborative material was

brought on record and no opportunity was given to the assessee to cross-examine those persons with reference to their statements in which they

are alleged to have implicated the assessee, the addition can be considered only in the hands of the persons who had given the said money to these

bogus companies for making investment in the form of share capital. According to the Tribunal no such inquiry had been done by the Assessing

Officer nor any corroborative material had been brought on record. Reference was made to the judgment of this Court in Commissioner of Income

Tax Vs. Value Capital Services (P.) Ltd., wherein it was held that if the Revenue accepts the existence of the share applicants and is not able to

show that they did not have the means to make the investment, there is an additional burden upon it to show that the investment actually emanated

from the coffers of the assessee company. According to the Tribunal since there was nothing in the present case to establish that the money has

come from the coffers of the assessee-company, no addition is warranted in its assessment. Ultimately the Tribunal proceeded to hold as under: -

Thus the action of CIT (A) is upheld to the extent of deletion of addition in the hands of assessee Company. At the same time the department is to

look into the actual source from where money has come for investment by these companies. If after investigation such money is proved to be

unaccounted money, then department is to consider the addition in the hands of those persons who had provided money and which has come to

the coffers of these bogus shareholders for investment in share capital. In the instant case, the AO has not made independent enquiry with regard to

statement recorded by the Investigation Wing. wherein it was alleged that these persons were involved in providing accommodation entries. No

opportunity was provided to cross-examine such statement and the persons who have given such statement. Without bringing corroborative

material on record with regard to truthfulness of such statement and without giving opportunity to cross-examine these persons, no addition can be

made. On the facts and circumstances of the case, we restore the matter back to the file of AO to verify the source of such money having been

come to these alleged bogus shareholders and after establishing the fact of money having been come from the coffers of such persons, the addition

may be considered in the hands of such persons who had provided money to such bogus company for investing the same as share capital. We

direct accordingly.

10. The Revenue is aggrieved by the aforesaid order of the Tribunal and has filed the present appeal. We are unable to uphold the view of the

Tribunal that it is incumbent upon the Assessing Officer, on the facts and circumstances of the case, to establish with the help of material on record

that the share monies had come or emanated from the assessee's coffers. Section 68 of the Act casts no such burden upon the Assessing Officer.

This aspect has been considered more than 50 years back by the Supreme Court in the case of A. Govindarajulu Mudaliar Vs. Commissioner of

Income Tax, Hyderabad, where precisely the same argument was advanced before the Supreme Court on behalf assessee. The argument was

rejected by the Court. Venkatarama Iyer, J. speaking for the Court observed as under (page 810 of the report): -

Now the contention of the appellant is that assuming that he had failed to establish the case put forward by him, it does not follow as a matter of

law that the amounts in question were income received or accrued during the previous year, that it was the duty of the Department to adduce

evidence to show from what source the income was derived and why it should be treated as concealed income. In the absence of such evidence, it

is argued, the finding is erroneous. We are unable to agree. Whether a receipt is to be treated as income or not, must depend very largely on the

facts and circumstances of each case. In the present case the receipts are shown in the account books of a firm of which the appellant and

Govindaswamy Mudaliar were partners. When he was called upon to give explanation he put forward two explanations, one being a gift of Rs.

80,000/- and the other being receipt of Rs. 42,000/- from business of which he claimed to be the real owner. When both these explanations were

rejected, as they have been it was clearly upon to the income tax Officer to hold that the income must be concealed income. There is ample

authority for the position that where an assessee fails to prove satisfactorily the source and nature of certain amount of cash received during the

accounting year, the income tax Officer is entitled to draw the inference that the receipt are of an assessable nature. The conclusion to which the

Appellate Tribunal came appears to us to be amply warranted by the facts of the case. There is no ground for interfering with that finding, and

these appeals are accordingly dismissed with costs.

A similar view was taken by the Supreme Court in Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad,

11. In the light of the aforesaid exposition of the legal position the view taken by the Tribunal cannot be upheld. The Tribunal, however, may be

justified in directing the Assessing Officer to afford an opportunity to the assessee of cross-examining the persons who had allegedly given

statements before the Investigation Wing implicating the assessee in the modus operandi adopted by them, namely, giving of accommodation

entries for commission. The Assessing Officer had in his show-cause notice referred to these statements and the fact that the assessee had been

named therein as one of the beneficiaries to whom entries to the extent of Rs. 2,20,00,000/- have been provided for commission. The assessee

appears to have sought cross-examination of those persons but that opportunity was not given by the Assessing Officer as found by the Tribunal, a

position not disputed before us on behalf of the Revenue. However, in the fresh round of proceedings it will be open to the Assessing Officer to

make the addition in the hands of the assessee-company in case it appears to him, after complying with the directions of the Tribunal, that the

explanation adduced by the assessee with regard to the identity and creditworthiness of the subscriber-companies and the genuineness of the

transactions is not acceptable for valid reasons which must be clearly spelt out. He will not, however, be under any duty to further show or

establish that the monies emanated from the coffers of the assessee company. To place such a burden on him, an impossible one at that, would be

quite contrary to the judgments of the Supreme Court cited above. We may only state that the Assessing Officer shall act in accordance with law.

The directions of the Tribunal, quoted above are modified to this extent.

12. In the result the substantial question of law is answered in the negative, in favour of the Revenue and against the assessee. The matter will,

however, stand remitted to the Assessing Officer with our modified directions, for fresh consideration. The appeal is accordingly disposed of with

no order as to costs.