

(2013) 12 CAL CK 0029**Calcutta High Court****Case No:** Income Tax Appeal No. 52 of 2001

Commissioner of Income Tax

APPELLANT

Vs

M/s. Nishan Indo Commerce Ltd.

RESPONDENT

Date of Decision: Dec. 2, 2013**Citation:** (2014) 1 CALLT 571**Hon'ble Judges:** Indira Banerjee, J; Anindita Roy Saraswati, J**Bench:** Division Bench**Judgement**

Indira Banerjee, J.

This appeal, u/s 260A of the Income Tax Act. is directed against a judgment and/or order of the Income Tax Appellate Tribunal, "C Bench, Calcutta dismissing the departmental appeal against an order of Commissioner of Tax (A) dated 3rd June, 1994, deleting addition of Rs. 52,03,500/- allegedly on account of unexplained cash credit in respect of the Assessment Year 1991-92. The assessee, a public limited company, incorporated under the Companies Act, 1956, carries on business inter alia of investment and financing.

2. The authorized share capital of the assessee company is Rs. 1,10,00,000/- divided into 11,00,000 equity shares of Rs. 10/- each. During the relevant Assessment Year, i.e. 1991-92 the assessee company issued 6,12,000 equity shares of Rs. 10/- each for cash at par by issue of prospectus for total issue amount of Rs. 61,20,000/-. However, as on 31st March, 1991, allotment money of Rs. 9,16,500/- was in arrears and accordingly the paid up share capital of the company was increased by Rs. 52,03,500/- in the Assessment Year 1991-92. In the previous Assessment Year i.e. 1990-91 also the assessee company had increased its share capital by issuing shares amounting to Rs. 40,80,000/-.

3. During the assessment the assessee company filed details of 2,155 shareholders along with their addressees, number of shares allotted etc. The Assessing Officer caused enquiries by test check to be conducted, and on the basis of the report of the Income Tax Inspector dated 30th March, 1994, held that the investment by the

shareholders of the assessee company was not genuine and the claim of the assessee to allot the shares to the public was false.

4. The Assessing Officer was of the view that the increase in share capital by Rs. 52,03,500/- was nothing but the introduction of the assessee's own undisclosed funds/income into the books of accounts of the assessee company. The Assessing Officer accordingly treated the investment as unexplained credit u/s 68 of the Income Tax Act and added the same to the income of the assessee.

5. Being aggrieved, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) being the First Appellate Authority and contended that the Assessing Officer had no material to show that the share capital was the income of the assessee company and as such the addition made by the Assessing Officer u/s 68 of the Act was wrong.

6. The learned Commissioner of Income Tax (Appeals) after hearing the department and the Assessee Company deleted the addition of Rs. 52,03,500/- to the income of the assessee company during the Assessment Year in question. The learned Commissioner of Income Tax Appeals found that there were as many as 2155 allottees, whose names, addresses and respective shares allocation had been disclosed,

7. The Commissioner of Income Tax Appeals, further found that the Assessee Company received the applications through bankers to the issue, who had been appointed under the guidelines of the Stock Exchange and the Assessee Company had been allotted shares on the basis of allotment approved by the Stock Exchange. The Assessee Company had duly filed the return of allotment with the Registrar of Companies, giving complete particulars of the allottees.

8. The Commissioner of Income Tax (Appeals) found that inquires had confirmed the existence of most of the shareholders at the addresses intimated to the Assessing Officer, but the Assessing Officer took the view that their investment in the Assessee Company was not genuine, on the basis of some extraneous reasons. The Commissioner of Income Tax (Appeals) took note of the observation of the Assessing Officer that enquiry conducted by the Income Tax Inspector had revealed that nine persons making applications for 900 shares were not available at the given address and rightly concluded that the total share capital issued by the Assessee Company could not be added as unexplained cash credit u/s 68 of the Income Tax Act. Moreover, if the nature and source of investment by any shareholder, in shares of the Assessee Company remained unexplained, liability could not be foisted on the company. The concerned shareholders would have to explain the source of their fund.

9. The learned Commissioner on considering the submissions of the respective parties and considering the materials, found that the Assessing Officer had applied the provisions of section 68 of the Income Tax Act arbitrarily and illegally and in any

case without giving the assessee adequate opportunity of representation and/or hearing.

10. Learned Tribunal agreed with the factual findings of the learned Commissioner and accordingly the learned Tribunal dismissed the appeal of the revenue and affirmed the decision of the learned Commissioner.

11. Mr. Dutta appearing on behalf of the petitioners cited judgment of the Division Bench of this Court in Commissioner of Income Tax Vs. Ruby Traders and Exporters Ltd., where a Division Bench of this Court held that when section 68 is resorted to, it is incumbent on the assessee company to prove and establish the identity of the subscribers, their credit worthiness and the genuineness of the transaction.

12. The aforesaid judgment was rendered in the context of the factual background of the aforesaid case where, despite several opportunities being given to the assessee, nothing was disclosed about the identity of the shareholders. In the instant case, the assessee disclosed the identity and address and particulars of share allocation of the shareholders. It was also found on the facts that all the shareholders were in existence. Only nine shareholders subscribing to about 900 shares out of 6,12,000 shares were not found available at their addresses, and that too, in course of assessment proceedings in the year 1994, i.e., almost 3 years after the allotment.

13. By an order dated 2nd May, 2001, this Court admitted the appeal on three questions which essentially centre around the question of whether the Appellate Commissioner erred in law in deleting the addition of Rs. 52,03,500/- to the income of the assessee as made by the Assessing Officer. We are of the view that there is no question of law involved in this appeal far less any substantial question of law.

14. The learned Tribunal has concurred with the learned Commissioner on facts and found that there were materials to show that the assessee had disclosed the particulars of the shareholders. The factual findings cannot be interfered with, in appeal. We are of the view that once the identity and other relevant particulars of shareholders are disclosed, it is for those shareholders to explain the source of their funds and not for the assessee company to show wherewithal these shareholders obtained funds. We find no grounds to interfere with the order of the learned Tribunal under appeal. Thus, the appeal is dismissed.

Let photostat certified copy of this judgment and/or order, if applied for, be supplied to the learned advocates appearing for the parties expeditiously subject to compliance of requisite formalities.

Anindita Roy Saraswati, J.

I agree.