Commissioner of Income Tax Vs Nivedan Vanijya Niyojan Ltd.

Court: Calcutta High Court

Date of Decision: March 21, 2003

Acts Referred: Income Tax Act, 1961 â€" Section 68

Citation: (2003) 130 TAXMAN 153

Hon'ble Judges: R.N. Sinha, J; D.K. Seth, J

Bench: Full Bench

Advocate: Dipak Some, for the Revenue Soumitra Pal, for the Assessee, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

D.K. Seth, J.

Two questions have since been referred to in this case, namely :

1. Whether the Ld. Tribunal was justified in law in deleting the addition of Rs. 3,93,000 as introduction of share capital?

2. Whether the Tribunal was justified in law in directing the assessing officer to charge tax at the rate of 55% instead of 65 per cent although the A

is not entitled for the same as per term and condition as per Companys law?

2. So far as the first question is concerned, it relates to addition of Rs. 3,93,000 on account of the subscription to share capital being held as

ingenuine transaction u/s 68 of the Income Tax Act, 1961. The law with regard thereto has since been crystallized. Similar question was involved in

Hindusthan Tea Trading Co. Ltd. v. CIT (IT Reference No. 20 of 1996, dated 11/12-3-2003) and CIT v. Ruby Traders & Exporters Ltd. (IT

Reference No. 78 of 1995, dated 11/12-3-2003). The principal ingredient that has to be satisfied is to establish the identity of the subscribers and

prove their creditworthiness and the genuineness of the transaction. We have gone through the order of the assessing officer at pages 9-13 of the

paper book. It appears that the assessee had failed to establish any of these three ingredients in respect of the said amount. The Commissioner

(Appeals) modified the order to Rs. 83,000 and accepted the balance simply because Income Tax file numbers of the other subscribers were

disclosed. It appears from pages 36-37 of the paper book containing the order of the Commissioner (Appeals) that these few persons who had

subscribed 8,300 shares were not Income Tax assessees. Therefore, only these were added.

3. Mr. Som had relied on a decision in Commissioner of Income Tax Vs. Korlay Trading Co. Ltd., , where it was held that furnishing of Income

Tax file number is not sufficient to discharge the burden. The proposition may be correct. But when some material is produced, it is incumbent on

the revenue to enquire into the same. In this case after the initial onus was discharged by the assessee, the Income Tax authority had made

enquiries and had communicated the result of the enquiry to the assessee and required the assessee to produce the subscribers and establish its

case. But the assessee did not do so. Therefore, we do not think that the Commissioner (Appeals) had rightly approached the case. The principle

is already laid down in the aforesaid two decisions namely Hindusthan Tea Trading Co. Ltd.s case (supra) and Ruby Traders & Exporters Ltd.s

case (supra).

4. The learned Tribunal, however, proceeded on the basis of the ratio decided in Commissioner of Income Tax Vs. Stellar Investment Ltd., .

According to the learned Tribunal, if the subscribers were not available, in that event, it can be assessed at the hands of such subscribers, not at the

hands of the assessee. But this decision was overruled by the Full Bench decision in Commissioner of Income Tax Vs. Sophia Finance Ltd., .

Therefore, the ratio decided in Stellar Investment Ltd.s case (supra) is no more a good law. Though an SLP was preferred against Stellar

Investment Ltd.s case (supra) and the SLP was dismissed- Commissioner of Income Tax Vs. Steller Investment Ltd., , yet the order of the Apex

Court while dismissing the SLP is not a ratio decided binding under article 141 of the Constitution of India, as we have held in the said decisions in

Ruby Traders & Exporters Ltd.s case (supra) and Hindusthan Tea Trading Co. Ltd.s case (supra). The learned Tribunal, therefore, proceeded on

the basis of a wrong proposition of law.

5. Therefore, we are of the view that the order passed by the assessing officer was in accordance with law and that of the Commissioner

(Appeals) cannot be sustained to the extent, which is contrary to the finding of the assessing officer. We, therefore, hereby set aside the order of

the learned Tribunal and that of the Commissioner (Appeals) and affirm the order of the assessing officer and answer the question No. 1 in favour

of the revenue in the negative.

6. With regard to the question No. 2, it appears that the assessing officer has applied 65 per cent rate of taxes since the assessee was not a

company within the meaning of section 2(18) of the Income Tax Act. But both the Commissioner (Appeals) and the learned Tribunal had applied

55 per cent as rate of taxes on the basis that the assessee was a company in which the public was interested. Mr. Som had led us through section

2(18) of the Act. We find that this company cannot be brought within the purview of clauses (a) and (aa). Nor it can be brought within the scope

of clause (ab) since it has share capital. Neither can it come under clause (ac) in the absence of any declaration. Neither it can be brought within

the scope of clause (b). Therefore, it cannot be said to be a company in which the public was interested. Therefore, both the Commissioner

(Appeals) and the learned Tribunal had erred in law in reducing the rate of taxes and reversing the order of the assessing officer.

7. We, therefore, set aside the order of the learned Tribunal and that of the Commissioner (Appeals) with regard to the reduction of the rate of

taxes to 55 per cent and affirm the order of the assessing officer fixing the rate at 65 per cent and answer the question No. 2 in the negative in

favour of the revenue.

This reference is, thus, disposed of.