

ITAT No. 263 of 2011

GA No. 2856 of 2011

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction (Income Tax)

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-III

Appellant

Versus

M/S. DATAWARE PRIVATE LIMITED

Respondent

For Appellant : Ms. Asha G. Gutgutia, Advocate

For Respondent:

BEFORE:

The Hon'ble JUSTICE BHATTACHARYA

The Hon'ble JUSTICE DR. SAMBUDDHA CHAKRABARTI

Date : 21st September, 2011.

The Court : This appeal is at the instance of the Revenue and is directed against order dated 13<sup>th</sup> May, 2011, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata, in ITA No.783/Kol./2010 relating to assessment year 2001-02, by which the Tribunal has dismissed the appeal preferred by the Revenue.

Being dissatisfied the Revenue has come up with the present appeal.

The facts leading to the filing of this appeal may be summed up thus.

During the previous year relevant to the assessment year under consideration the assessee company received share application money of Rs.1 Crore from M/s. Harrington Traders Pvt. Ltd. (hereinafter referred to as the creditor). During the assessment proceedings the assessee company submitted the confirmation letter of the creditor, details of the transaction, namely, its PAN etc. to the Assessing Officer during the second round of assessment proceeding. As per direction of the Tribunal below the Assessing Officer made enquiries from the creditor, who entered appearance and provided the details of their PAN, source of income, and confirmed the fact of giving the money to the Assessing Officer.

The Assessing Officer, however, instead of making enquiry from the Assessing Officer of the creditor as to whether the return submitted by the creditor has been accepted he himself arrived at the finding that the procurement of money by the creditor was not genuine and added the amount to the income of the assessee.

Being dissatisfied, the assessee preferred an appeal before the CIT(Appeal) and the said Appellate authority after taking into consideration the entire materials on record came to the conclusion that the identity of the creditor had been well

established, the creditworthiness of the creditor was also proved and he was also convinced about the genuineness of the transaction. The said Appellate authority specifically recorded that the creditor itself was a registered company who was assessed to tax and had been filing its Return regularly and the amount of Rs.1 Crore paid by such creditor was also reflected from the balance-sheet and profits and loss account of the said creditor. In such circumstances, the CIT(Appeal) was of the view that the assessment officer of the assessee in question cannot take any adverse view against the assessee on the basis of the transaction of the creditor. According to the CIT(Appeal), if the selling of share below market rate by the creditor had any implication from the income tax angle, the action had to be taken against the creditor and not against the assessee. The CIT(Appeal) thus dismissed the appeal.

Being dissatisfied the Revenue preferred an appeal before the Tribunal below and by the order impugned herein the said Tribunal has affirmed the order passed by the CIT(Appeal).

Being dissatisfied the Revenue has come up with the present appeal under Section 260A of the Income Tax Act.

After hearing the learned Advocate for the appellant and after going through the materials on record, we are of the view that no substantial question of law is involved in this appeal.

Both the Commissioner of Income Tax (Appeal) and the Tribunal below have in details considered the fact that the share application money was paid by account payee cheque, the creditor appeared before the Assessing Officer, disclosed its PAN number and also other details of the accounts but in spite of that the Assessing Officer did not enquire further from the assessing officer of the creditor but in stead, himself proceeded to consider the profit and loss account of the creditor and opined that he had some doubt about the genuineness of such account.

In our opinion, in such circumstances, the Assessing officer of the assessee cannot take the burden of assessing the profit and loss account of the creditor when admittedly the creditor himself is an income tax assessee. After getting the PAN number and getting the information that the creditor is assessed under the Act, the Assessing officer should enquire from the Assessing Officer of the creditor as to the genuineness of the transaction and whether such transaction has been accepted by the Assessing officer of the creditor but instead of adopting such course, the Assessing officer himself could not enter into the return of the creditor and brand the same as unworthy of credence.

So long it is not established that the return submitted by the creditor has been rejected by its Assessing Officer, the Assessing officer of the assessee is bound to accept the same as

genuine when the identity of the creditor and the genuineness of transaction through account payee cheque has been established.

We find that both the Commissioner of Income Tax(Appeal) and the Tribunal below followed the well-accepted principle which are required to be followed in considering the effect of Section 68 of the Act and we thus find no reason to interfere with the concurrent findings of fact recorded by both the authorities.

The appeal is thus devoid of any substance and is summarily dismissed.

In view of dismissal of the appeal, the connected application has become infructuous and the same is disposed of accordingly.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(BHATTACHARYA, J.)

(DR. SAMBUDDHA CHAKRABARTI, J.)

SN.  
Asst.Registrar(CR)

