

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Income Tax Appeal No. 25/2024

Pr. Commissioner Of Income Tax, Udaipur

----Appellant

Versus

M/s Esspal International Pvt. Ltd., B-159, Shastri Nagar, Bhilwara
311001

----Respondent

For Appellant(s) : Mr. K.K. Bissa
For Respondent(s) : -----

**HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR
HON'BLE MR. JUSTICE KULDEEP MATHUR**

Order

03/09/2024

Per, Shree Chandrashekhar, J.

In this Income Tax Appeal, a challenge has been laid to the order dated 3rd January 2024 passed by the Income Tax Appellate Tribunal, Jodhpur Bench, Jodhpur.

2. This Income Tax Appeal has been filed under section 260-A of the Income Tax Act, 1961 and the following substantial questions of law have been framed:-

"(i) Whether on the facts and in the circumstances of the case and in law, the Id. ITAT was justified in upholding the decision of CIT (A) who had deleted the addition made by the AO on account accommodation entries after detailed examination and verification of facts and law?

(ii) Whether on the facts and in the circumstances of the case and in law, the Id. ITAT was justified upholding the decision of in ignoring the fact that all the transactions which were made by the Accommodation Entries providers to which the assessee was one of the beneficiaries were sham transactions and used as a colorable device and generation

of documentary evidence for converting unaccounted money into tax exempt income?

(iii) Whether on the facts and in the circumstances of the case and in law, the Id. ITAT was justified in dismissing the appeal of Revenue in not considering the issue on merit especially when Shri Shirish Chandrakant Shah in his statement recorded under section 132(4) of the Act dated 11.06.2013, in reply to question no.5, he had clearly stated that till 31.03.2012 he had provided one-time accommodation entries aggregating to Rs.15,00,04,53,100/- to various beneficiaries which were identified by him as Annexure to his statement?"

3. The appellant-Principal Commissioner of Income Tax has pleaded that the overall tax effect involved in this case is Rs.92,25,000/- which is below the prescribed monetary limit for filing further appeal before the High Court under section 260-A of the Income Tax Act, 1961; vide Circular No.5/2024 dated 15th March 2024. Notwithstanding that, the present Income Tax Appeal has been filed in view of para no.3.1(h) of the said Circular which provides for filing of the appeal where the case involves organized tax evasion including cases of bogus capital gain/loss through penny stocks and cases of accommodation entries.

4. The case set up by the Income Tax Department is that on 9th April 2013 a search was conducted at the residence and offices of Shirish Chandrakant Shah and also at the residences of his employees and associates and it was detected that he was engaged in providing accommodation entries of share capital, share premium, share application money, unsecured loans, long term capital gains, short term capital gains etc. in lieu of cash received by him. Accordingly, a notice under section 148 of the Income Tax Act, 1961 was issued to him on 10th November 2014 for initiating the reassessment proceedings on the ground of escapement of income to the tune of Rs.2,90,00,000/-. On

completion of the assessment under section 143(3) read with Section 147 of the Income Tax Act, 1961, the total income assessed was Rs.3,75,06,610/- by making additions on account of bogus share application money and commission for bogus accommodation entries.

5. The assessment order dated 22nd March 2016 passed under section 143(3)/147 of the Income Tax Act, 1961 was challenged by the respondent by filing Appeal No.119/2016-17 which was allowed by an order dated 15th March 2018. This appellate order was put to challenge by the Income Tax Department by filing I.T.A. No.288/Jodh/2018.

6. In the background of the aforementioned facts, Mr. K.K. Bissa, the learned standing counsel submits that the findings recorded by the Tribunal are *ex-facie* erroneous and contrary to the materials on record. The learned counsel for the appellant submits that on examination of the soft data seized and impounded in course of the search proceeding, it was detected that Shirish Chandrakant Shah had provided one-time entry of Rs.3,00,00,000/- to the assessee-company through a broker named Hiren Shah and such transaction was not genuine.

7. After having considered the materials on record, we are of the opinion that the Tribunal has rendered the findings on the basis of the materials on record. The Tribunal held as under:-

".....
.....

12. *From the record, it is evident that the appellant has furnished each and every document required for proving the identity, creditworthiness of the share applicants and genuineness of the transactions whereas the AO or the DR has not been able to brought on record any evidence to show that cash was paid by the appellant company to Shri Shirish Chandrakant Shah or any other person for*

obtaining accommodation entries from M/s Ganesh Spinners Ltd., M/s Emplis Projects Ltd., M/s Speciality papers Ltd., M/s Dhanus Technologies Ltd. And M/s Sanguine Media Ltd. in the form of share application money of 3,00,00,000/- either in the assessment proceeding or remand furnished before the CIT(A) or before us. On similar facts, the Ld. CIT (A) has rightly relied on the decision delivered by the ITAT Jodhpur vide its order dated 08.02.2018 in the case of M/s PSM Realmart Pvt. Ltd. (ITA No.321/Jodh/2017) on and the Coordinate bench of ITAT Delhi in the case of CIT vs. Nishit Fincop. P.Ltd. (ITA No.15/Del./2010) where the addition made u/s 68 has been deleted. The Id. CIT(A) further relied upon the decision of Jurisdictional ITAT in the case of PSL Realmart and decision of Supreme Court in the case of Andman Taubar Industries (Civil Appeal No.4228 order dated 02.09.2015) while deleting the addition of Rs.3,00,00,000/- made by the AO u/s 68 is hereby deleted.

.....

14. *That the Ld. CIT(A) on a very detailed examination was satisfied about identity, creditworthiness and genuineness of the investor companies and held that the assessee had discharged the primary onus to prove their identity, creditworthiness, and genuineness. We, therefore, concur with the finding of the Ld. CIT(A) that the AO has made an addition under section 68 of the Act without any basis. In our view, the CIT(A) has analyzed the transaction with each share holder and assigned reasons as to why share capital have to be treated as genuine and has rightly deleted the addition. There is no reason to interfere in this finding of fact particularly since nothing has been shown by the department to conclude that the finding of fact was perverse in any manner whatsoever. In view of that matter, we hold that the impugned order it did not suffer from any legal infirmity or perversity to the facts on record."*

8. In "*Pankaj Bhargava and Anr. vs. Mohinder Nath and Anr.*" AIR 1991 SC 1233, the Hon'ble Supreme Court held that if a question of law has been settled by the highest Court of the country that question, however important and difficult it may have been regarded in the past and however large may be its effect on any of the parties, would not be regarded as substantial question of law. The expression 'substantial question of law' has been

explained by the Hon'ble Supreme Court in "*Sir Chunilal V. Mehta and sons Ltd. Vs. Century Spinning and Manufacturing Co. Ltd.*" AIR 1962 SC 1314 wherein the Hon'ble Supreme Court held that the proper test for determining whether a question of law raised in the case is substantial would be to find out whether it directly and substantially affects the rights of the parties and if so whether it is either an open question or is not free from difficulty or calls for discussion of alternative views.

9. Applying the aforesaid test, we find that the question sought to be raised in this Income Tax Appeal is not even a question of law. The ground taken by the appellant that the findings recorded by the Tribunal are contrary to records seems to have been raised just for the sake of creating a ground; nothing has been shown to this Court on this point. The findings recorded by the appellate Authority and the Tribunal are in consonance with the law of evidence and the Income Tax Act, in particular. On a glance at materials on record, we find that the Assessing Officer assessed M/s Esspal International Pvt. Ltd. under section 143(3) of the Income Tax Act, 1961 only on the basis of the statement given by Shirish Chandrakant Shah; though he has recorded that the assessment order is being passed after considering the "totality of the facts and circumstances the case".

10. The Assessing Officer held as under:-

".....
.....

5. Thus, it is clear from above discussion that M/s. Esspal International Pvt. Ltd. Has received accommodation entries of ₹3.00 crores from Shri Shirish Chandrakant Shah.

6. In view of the above, it is crystal clear that the transctions made with the concerns owned or operated by Shirish Chandrakant Shah are not genuine and there

are only paper transaction took place instead of actual transactions. Although the transactions are completed through banking channel after getting commission in case. Therefore, share application money of ₹3,00,00,000/- shown by the assessee is treated as diversion of profits to evade the tax liabilities. Therefore, the amount of ₹3,00,00,000/- is added to the total income of the assessee. Penalty proceedings u/s.271(1) (c) are initiated for concealing income by furnishing inaccurate particulars of income.

Addition: ₹3,00,00,000/-

7. Shirish Chandrakan Shah in his statement has admitted that "rate of commission varying between 2.5% to 5% on the total benefits provided to the beneficiaries in form of LTCG, STCG, Sharge Application Money or unsecured loans. Therefore, on the basis of admission by Shirish Chandrakant Shah, commission of @2.50% for bogus accommodation entries of ₹3,00,00,000/- which amounts to ₹7,50,000/- is added to the total income of the assessee being undisclosed income. Penalty proceedings u/s.271(1)(c) are initiated for concealing income by furnishing inaccurate particulars of income.

Addition: ₹7,50,000/-

8. Subject to the above remarks and after considering the totality of the fact and circumstances of the case, the submissions of the assessee and the material available on the record the total income of the assessee is computed as under :-

Total income as per order u/s.143(3) dated 24.03.2014	6756612
<u>Add:</u> (1) On account of Bogus share application money as discussed in Para-6 as above	3,00,00,000
(2) On account of bogus share application money as discussed in para-7 as above	750000
Total Income ₹	37506612
Rounded off of Income u/s.288A	3,75,06,610/-

Assessed u/s.143(3) of the Income Tax Act, 1961 at total income of ₹3,57,56,610/-. Demand Notice, Challan & other forms are also hereby issued as per ITNS-150 which is forming part of this assessment order. Penalty Notice u/s.271(1)(c) of the Income Tax Act, 1961 is being issued separately for concealing income by furnishing inaccurate particulars of income."

11. Now it is a matter of record that Shirish Chandrakant Shah had retracted his statements given before the Assessing Officer. Even otherwise, an admission by the assessee cannot be said to

be a conclusive piece of evidence. The admission of the assessee in absence of any corroborative evidence to strengthen the case of the Revenue cannot be made the basis for any addition. Therefore, the substantial questions of law framed by the appellant pertained to an open issue which stands concluded by the decision of the Hon'ble Supreme Court; one such decision was rendered in "*M/s Pullangode Rubber Produce Co. Ltd. v. State of Kerala And Another*" (1973) 19 ITR 18.

12. Therefore, we hold that no substantial question of law arises between the parties and while so, the present Income Tax Appeal is not maintainable.

13. For the foregoing reasons, D.B. Income Tax Appeal No.25/2024 is dismissed.

(KULDEEP MATHUR),J

(SHREE CHANDRASHEKHAR),J