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HIGH COURT OF CHHATTISGARH, BILASPUR

TAXC No. 120 of 2024

- M/s. Sumit Global Pvt. Ltd. A Company Registered Under The Companies Act Having Its Registered Office At C/o Kanha Electricals & Electronics, Nanhu Nagar, Vijay Nagar, P.O. Kirodimalnagar, Raigarh (C.G.), pan- AAOCS8271J, through its Director Mr. Rakesh Jindal, Aged About 62 Years, S/o Shri Anand Swaroop Jindal, R/o 2B Building 5 Hibiscus, Sector 50, Gurugram, Haryana -122018,

---- Appellant

Versus

- The Income Tax Officer-1 Raigarh (C.G.)

---- Respondent

For Appellant : Shri Sidhdharth Dubey, Advocate

For Respondent : Ms. Naushina Afrin Ali, Advocate along with Shri Ajay Kumrani, Advocate on behalf of Shri Amit Chaudhari, Advocate

Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Smt. Justice Rajani Dubey

Judgment on Board

Per Goutam Bhaduri, J

21/06/2024

Heard.

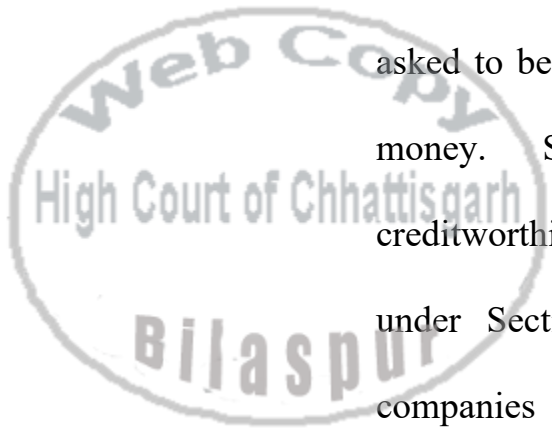
1. The instant appeal has been filed against the order dated 29/11/2023 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the ITAT'), whereby the order passed by the Commissioner of Income Tax (Appeals) adding Rs.1,87,00,000/- was upheld.
2. The brief facts of the case are that in respect of the F.Y. 2013-14 and A.Y. 2014-15, the original return was filed by the appellant-company





on 30/09/2014. Subsequently, the case was taken up in a scrutiny under Section 143 (3) of the Income Tax Act, 1961 (hereinafter referred to as the Act, 1961) and on 27/12/2016 the Assessment Officer passed an order of addition of Rs.4,13,41,500/- under Section 68 of the Act, 1961 assigning the reason that share application money was received from bogus shell companies, which actually belong to the appellant.

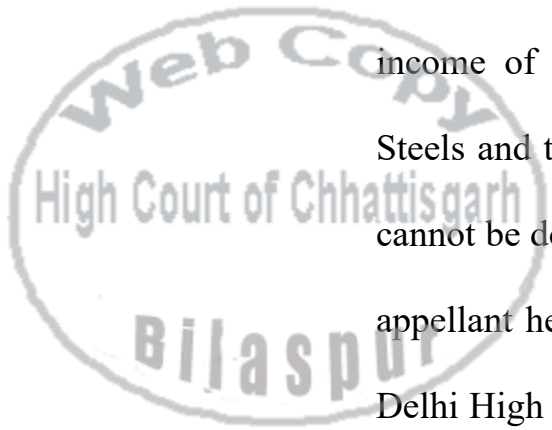
3. According to the respondent, the case of the assessee company was selected for complete scrutiny to verify the share premium received during the year under consideration whereas the company has shown low income in comparison to high loans & advances and investment in share and the investment made in unlisted equities. The details were asked to be supplied about the shareholders who actually invested the money. Subsequently, in order to verify the genuineness and creditworthiness of the shareholding companies, a notice was issued under Section 133(6) of the Act, 1961 to Kolkata based share companies namely M/s Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd at their registered address. The notices were returned unserved, consequently, the Assessment Officer deputed one Inspector to find out the identity of the companies. On a verification, it was found that the companies namely Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd do not exist. Since the credible explanation regarding the amount credited to the company was not explained, the amount of unexplained cash credit was added under Section 68 of the Act, 1961 for the A.Y. 2014-15.





4. The appellant filed an appeal before the CIT (Appeals) and the CIT (Appeals) by its order dated 23/03/2018 carved out the addition of Rs.4,13,41,500/- as it was found to be for different Assessment Year. Rs.2,26,41,500/- was found to have been received for previous assessment year and for the relevant Financial Year 2013-14: Assessment Year 2014-15. It was also found that Rs.1,87,00,000/- was received by the assessee company during the year which is subject matter of consideration in appeal. The appellant filed an appeal before the ITAT wherein the ITAT by its order dated 29/11/2013 dismissed the appeal. Hence this appeal.

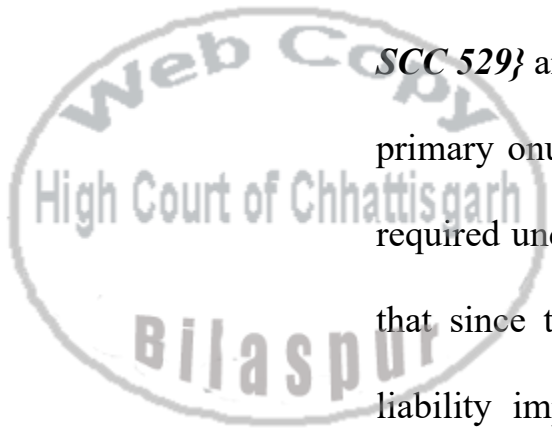
5. Learned counsel for the appellant would submit that admittedly the income of Rs.1,87,00,000/- was added to the income of one Rashi Steels and the Rashi Steels having been subjected to assessment, there cannot be double taxation towards the M/s Sumit Global Pvt Ltd i.e. the appellant herein. He placed his reliance on the ratio laid down by the Delhi High Court in the matter of **PRO Commissioner of Income Tax Vs. Vijay Conductors India Pvt Ltd, and other connected matters {2015 (9) TMI 1519-Delhi High Court}** to submit that the assessee and Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd, if were found to be conduit entities/non-existing and if ultimate beneficiary was Rashi Steels, the appellant cannot be subjected to assessment and it cannot be added to the income of the appellant. He would further submit that Section 68 of the Act, 1961 uses the word “may” and if it has been found that Rashi Steels is the ultimate beneficiary and the present appellant along with Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd are continued





companies then there is no mandate to impose the tax liability as the Rashi Steels is already under assessment to tax.

6. Per contra, learned counsel for the respondent opposes the submission advanced by learned counsel for the appellant. She would submit that since the appellant was part and parcel of the financial transaction and when the enquiry was opened, the amount received as a share capital from the companies which were found to be non-existing, the present appellant having filed the return they are also part and parcel as a beneficiary. She placed her reliance in the law laid down by the Supreme Court in the matter of *Principal Commissioner of Income Tax (Central-1) Vs. NRA Iron and Steel Private Limited* {(2019) 15 SCC 529} and would submit that the assessee has failed to discharge the primary onus to establish the genuineness of the transaction, which is required under Section 68 of the Act, 1961. She would further submit that since the said burden has not been discharged, as such the tax liability imposed on the present appellant is justified. She would further submit that no question of law arises for consideration in this case, consequently, the appeal sans merit is liable to be dismissed.
7. We have heard learned counsel for the parties and perused the documents.
8. In order to find out whether the question of law arises for consideration, we went through the orders passed by the ITAT and CIT. The original assessment order was dated 27/12/2016 wherein the income of the company was assessed at Rs.4,13,41,500/- and accordingly the demand notice of Rs.1,78,39,640/- was raised. Pursuant to the scrutiny, the





assessee company was directed to furnish the details of the share holders and prove their creditworthiness, meaning thereby who has invested the amount in the share and nature of source i.e. wherefrom the investors got the money. The order was under challenge before the CIT(A). CIT(A) by its order dated 23/03/2018 deleted the addition of 2,26,41,500/- out of 4,13,41,500/- which was received by the assessee company prior to assessment year 2014 thereby addition of Rs.1,87,00,000/- was done. The company came out with a defence that Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd have respectively contributed to the share of Rs.1,00,00,000/-; 1,00,000/-; and 86,00,000/-, however, when the notices were issued to the said companies, which was found to be non-existent followed by the fact that the Inspector when was sent to enquire about identity & existence of the company, he too came out with a report itself that the companies do not exist. When the notice which was issued under Section 133 (6) of the Act, 1961, the requirement of Section 68 of the Act, 1961 was to be satisfied.

9. For the sake of brevity Sections 133(6) & Section 68 of the Act, 1961 are reproduced hereinbelow:-

133. Power to call for information.-

xxx xxx xxx
xxx xxx xxx
xxx xxx xxx

(6) require any person, including a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals)], giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy



Commissioner (Appeals), the Joint Commissioner or the the Commissioner (Appeals)], will be useful for, or relevant to, any [inquiry or] proceeding under this Act:

Provided that the powers referred to in clause (6), may also be exercised by the [Principal Director General or Director General], the [Principal Chief Commissioner or Chief Commissioner], the [Principal Director or Director] [or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director]:

[**Provided further** that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income tax authority below the rank of [Principal Director or Director] or [Principal Commissioner or Commissioner], [other than the Joint Director or Deputy Director or Assistant Director,] without the prior approval of the Principal Director or Director or, as the case may be, the [Principal Commissioner or Commissioner] :

[Provided also that for the purposes of an agreement referred to in Section 90 or Section 90-A, an income tax authority notified under sub-section (2) of Section 131 may exercise all the powers conferred under this section, notwithstanding that no proceedings are pending before it or any other income tax authority.]



68. Cash Credits.- Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year.

[Provided that] where the assessee is a company, (not being a company in which the public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

[Provided further] that nothing contained in the [first proviso] shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23-FB) of Section 10.



10. The Supreme Court in the matter of *Principal Commissioner of Income Tax (Central-1) Vs. NRA Iron and Steel Private Limited* {(2019) 15 SCC 529} has laid down the parameters and the issues which arises for determination whether the respondent assessee has discharged the primary onus to establish the genuineness of the transaction required under Section 68 of the Act, 1961. It primarily laid down that the initial onus is on the assessee to establish proof of identity of the creditors; capacity of creditors to advance money; and genuineness of transaction. The Court at para 9.3 & 9.5 has reiterated the principle laid down by the Court, which are reproduced hereinbelow:-

9.3. As per settled law, the initial onus is on the assessee to establish by cogent evidence the genuineness of the transaction, and creditworthiness of the investors under Section 68 of the Act. The assessee is expected to establish to the satisfaction of the assessing officer [*CIT v. Precision Finance (P) Ltd.*, 1993 SCC OnLine Cal 384 : (1994) 208 ITR 465] :

- Proof of identity of the creditors;
- Capacity of creditors to advance money; and
- Genuineness of transaction

This Court in the landmark case of *Kale Khan Mohd. Hanif v. CIT* [*Kale Khan Mohd. Hanif v. CIT*, (1963) 50 ITR 1] and, *Roshan Di Hatti v. CIT* [*Roshan Di Hatti v. CIT*, (1977) 2 SCC 378 : 1977 SCC (Tax) 292 : (1977) 107 ITR 938] laid down that the onus of proving the source of a sum of money found to have been received by an assessee, is on the assessee. Once the assessee has submitted the documents relating to identity, genuineness of the transaction, and creditworthiness, then the AO must conduct an inquiry, and call for more details before invoking Section 68. If the assessee is not able to provide a satisfactory explanation of the nature and source, of the investments made, it is open to the Revenue to hold that it is the income of the assessee, and there would be no further burden on the Revenue to show that the income is from any particular source.





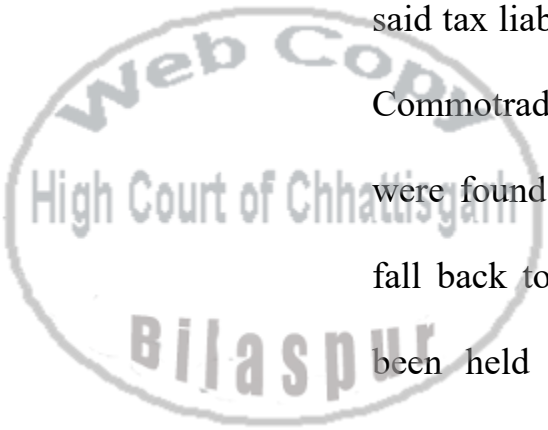
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9.5. The Delhi High Court in *CIT v. Oasis Hospitalities (P) Ltd.* [*CIT v. Oasis Hospitalities (P) Ltd.*, 2011 SCC OnLine Del 506 : (2011) 333 ITR 119] , held that: (SCC OnLine Del para 43)

“43. ... the initial onus is upon the assessee to establish three things necessary to obviate the mischief of Section 68 of the Act. These are: (i) identity of the investors; (ii) their creditworthiness/investments; and (iii) genuineness of the transaction. Only when these three ingredients are established prima facie, the department is required to undertake further exercise....”

11. The submission of the appellant that since the original beneficiary was held to be Rashi Steel, the present appellant cannot be assessed for the said tax liability do not impress us. If the notices were issued to Eagle Commotrade Pvt. Ltd. and M/s Krishnakali Distributors Pvt Ltd, they were found to be fake/non-existent, the appellant company could not fall back to say that Rashi Steels was the original beneficiary as has been held that the practice of conversion of unaccounted money through the cloak of share capital/premium must be subjected to careful scrutiny.
12. The initial enquiry which came to fore revealed that on close scrutiny the investment which was made by the said two companies their proof of identity of creditors and the capacity of creditors to advance money and genuineness of transaction fell apart when the company was found to be non-existent. Consequently, in our view the Supreme Court in the above judgment has held thus in para 16:-

16. The practice of conversion of unaccounted money through the cloak of





share capital/premium must be subjected to careful scrutiny. This would be particularly so in the case of private placement of shares, where a higher onus is required to be placed on the assessee since the information is within the personal knowledge of the assessee. The assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the AO, failure of which, would justify addition of the said amount to the income of the assessee.

13. It is the first barrier, therefore, the onus of Section 68 of the Act, 1961 is to be discharged by the assessee and having failed to do so. Accordingly, no question of law appears to be arises for consideration.

14. In the result, the appeal is dismissed.

SD/-

(Goutam Bhaduri)

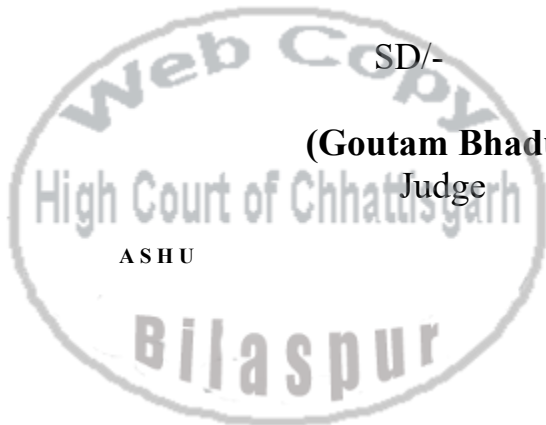
Judge

ASHU

SD/-

(Rajani Dubey)

Judge





TAXC No. 120 of 2024
HEAD-NOTE

Under Section 68 of the Income Tax Act, 1961, the initial onus is on the assessee to establish Proof of identity of the creditors; Capacity of creditors to advance money; and Genuineness of transaction.

आयकर अधिनियम 1961 की धारा 68 के तहत, ऋणदाताओं के पहचान का प्रमाण, ऋणदाताओं की अग्रिम धनराशि देने की क्षमता और संव्यवहार की वास्तविकता, स्थापित करने का प्रारंभिक दायित्व निर्धारिती पर है।

