

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI

श्री डी. मन्मोहन, उपाध्यक्ष एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI D. MANMOHAN, VP AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 6934/Mum/2010

(निर्धारण वर्ष / Assessment Year: 2003-04)

Dy. CIT, Central Circle-2, Old CGO Bldg., Annexe, 9 th Floor, M. K. Road, Mumbai-20	बनाम/ Vs.	Faisal Abbas 405, Venus Apts., Lane-A, North Main Road, Koregaon Park, Pune-411 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ACPPA 6146 G		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri A. K. Srivastava & Shri Girish Dave
प्रत्यर्थी की ओर से/Respondent by	:	Shri K. Gopal
सुनवाई की तारीख / Date of Hearing	:	17.02.2016
घोषणा की तारीख / Date of Pronouncement	:	29.02.2016

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Revenue directed against the Order by the Commissioner of Income Tax (Appeals)-36, Mumbai ('CIT(A)' for short) dated 28.07.2010, allowing the Assessee's appeal contesting its assessment u/s.143(3) r/w s. 153A of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2003-04 vide order dated 31.12.2008.

2. The sole issue arising in this appeal is the validity or otherwise in law of the deletion of the protective addition on account of unexplained credit/s in the hands of

the assessee. The basis of the deletion is that the same amount had been confirmed for assessment u/s. 68 of the Act, i.e., by way of unexplained credit, in the hands of Rheema Hassan Ali Khan (RHAK), the assessee's sister. Surely, therefore, in view of the Id. CIT(A) the protective assessment could not hold, holding as under:

'I have considered the submissions of the appellate. Remand Report of the A.O. and the order of the A.O. I found that the addition on the same issue for same amount for the same A.Y. has been upheld in the hands of Ms. Rheema Hassan Ali Khan as per ground no. 16 of A.Y. 2003-04. Since the addition was protective in the hands of the appellant, it deserves to be deleted.'

3. We have heard the parties, and perused the material on record.

No doubt, the protective assessments can, and are indeed commonly made by the Revenue, to protect its interest, and cannot be questioned on that basis, as clarified by the Hon'ble Apex Court in *Lalji Haridas vs. ITO* [1961] 43 ITR 387 (SC). They, in fact, serve a useful purpose in reserving the Revenue's right to collect tax where there is doubt with regard to the person in whose hands the income is to be rightly taxed, while causing no prejudice in-as-much as no tax can be collected, or punitive measure proceeded with, *qua* the protective assessment, during its subsistence. It is only when the same assumes a substantive nature, on the substantive assessment found or considered as being not on the right person, and the assessment fails, that the same shall have effect. We are, thus, not in agreement with the Id. CIT(A) when he deletes the impugned assessment on account of the same amount having been brought to tax in the hands of RHAK – that being, rather, as explained, the rationale or the *raison de'tre* of a protective assessment. At the same time, however, in our considered opinion, this is not a fit case for a protective assessment. The same is only where there is some genuine doubt, on account of complexity of facts and/or of law, with regard to the right person, i.e., in who's hands the income is rightly taxable. In the facts of the present case, the assessee is a man of, at best, modest means, deriving income as a horse trainer by rendering services to various horse owners, through Royal Western

India Turf Club (RWITC) (refer para 2 of the assessment order). There is no reference to his earnings in the past, and which therefore have to be considered as in tandem with that returned for the current year, i.e., at Rs.1.63 lacs, at which it stands assessed, so that his regular income stands accepted by the Revenue. His capital, as per his balance-sheet as on 31.3.2003 (enclosed along with the return of income for the year filed on 17.8.2007) *is in the negative at Rs.20.67 lacs*, implying his liabilities exceeding his assets to that extent. The impugned credit, stated as a loan received from Dhanshree Fincaps Ltd. (DFL), has been taken with the avowed and stated purpose of re-lending it to his sister, for the purchase of a residential flat at Mumbai by her. This is in fact not disputed by the Revenue, the same being in fact apparent from the statement of the assessee's savings bank account (No. 25574) with Bank of India, Mahalaxmi, Mumbai, through which both - the sums received from DFL and transmitted to RHAK, were routed, with the respective dates, listed at para 6 of the assessment order, being proximate in time. That is, the assessee acted as an intermediary, as also held by the tribunal in the case of RHAK, confirming the assessment of the impugned sum in her hands, and toward which reference may be made to para 30 of the said order (in ITA Nos. 4163 to 4169/Mum/2010 dated 29.02.2016), to which reference is drawn.

Where a credit is not proved or satisfactorily explained as to its nature and source, the same can be deemed as income, and the Revenue is not obliged to locate the source of the receipt and, as such, there is no further burden on the Revenue to show that the income is from a particular source (refer: *Roshan Di Hatti v. CIT* [1977]107 ITR 938 (SC); *CIT vs. Devi Prasad Vishwanath Prasad* [1969] 72 ITR 194 (SC); *A. Govindarajulu Mudaliar vs. CIT* [1958] 34 ITR 807 (SC)). At the same time, however, the word used in section 68 is 'may', and not 'shall'. As such, the assessment of income may not necessarily follow an unsatisfactory explanation with regard to a credit in accounts, and the Assessing Officer (A.O.) is obliged to consider,

for the purpose of its' assessment as income, the entirety of the facts and circumstances of the case. There is, in the facts of the present case, no indication of the assessee having any source of income, i.e., other than that disclosed, or as having not reported his income, at least to any material extent, with it being in fact not disturbed by the Revenue for the current year, nor is the assessee the beneficiary of the impugned credit. Both these aspects, on the other hand, are found to obtain for RHAK, in whose hands, accordingly, the income *qua* the same was deemed, and stands further confirmed for assessment by us. True, the credit in the accounts of RHAK is to Faisal Abbas, the assessee. However, *it is the nature and source thereof*, ascribed to a receipt by way of a loan to him from DFL, that is considered as not satisfactorily explained, much less proved, i.e., in terms of identity and capacity (of the creditor) and the genuineness of the transaction. If the explanation of the said credit is considered as proved, the same by itself explains the nature and source of the credit arising to RHAK, being only a transmission of the funds received by the assessee from DFL. The transaction in fact raises more doubts and questions than it answers or explains.

What are, firstly, the credentials of the assessee, or even RHAK for that matter, for any lender, who is primarily concerned with the integrity and the repayment capacity of the proposed borrower, for DFL to have considered lending him. Why should not DFL, the ostensible lender, and as any lender would, lend monies directly to RHAK, the person who requires the monies, and its beneficiary, or the real or *de facto* borrower? Why is not agreement executed, also registering it as well? How would, in its absence, the deposit of title deeds with it (DFL), as stated by RHAK, be of any assistance to DFL, the stated creditor? What are the terms and conditions of the loan, including as to its repayment and interest thereon, and which would in fact form the consideration for the loan. Why, then, are the funds not provided by way of a single sum, but in split amounts, all within few day of each other? Surely, the borrower would be able to transmit funds to the seller (of the residential flat), paying

thus the purchase price, only on the receipt of the entire sum. Has any title clearance of the said property be insisted upon by DFL, prior to releasing the loan, as any genuine lender would, as the same only would be an assurance with regard to the loan. Was Mr. Faisal Abbas, the person to whom the funds were given in the first instance, co-opted as a party to the arrangement, also acting as a surety? Why was, rather, Hassan Ali Khan (HAK), RHAK's husband, a co-beneficiary in-as-much as the house property would be equally enjoyed by him as a co-habitant and a man of much higher means than both the assessee and the RHAK, also not co-opted as a surety? The more closely we examine the transaction, the more serious doubts as to its genuineness arise, none of which are explained or addressed, the explanation being *sans* any reference to these incidents, much less accompanied by furnishing of any materials. In fact, the same appears, *ex facie*, a make believe transaction, with the assessee being included just to add a layer, providing a veneer of credibility to the transaction.

We, accordingly, find no merit in the explanation of the credit as a loan from DFL. Far from the same impugning the assessee's case, however, it fortifies the Revenue's stand in assessing the said credit in the hands of RHAK, the only beneficiary or the recipient of the impugned sum (refer: *Sreelekha Banerjee v. CIT* [1963] 49 ITR 112 (SC)). We, therefore, though not in agreement with the Id. CIT(A), for the reasons afore-stated confirm his deletion of the protective assessment in the hands of the assessee, a mere name lender. We decide accordingly.

4. In the result, the assessee's appeal is allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on February 29, 2016

Sd/-
(D. Manmohan)

उपाध्यक्ष / Vice President

Sd/-
(Sanjay Arora)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 29.02.2016

व.नि.स./Roshani, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai