

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

I.T.A. No.489 of 2009 (O&M)
Date of decision: 25.8.2009

Such Chain Chits Pvt. Ltd.

-----Appellant

Vs.

Commissioner of Income Tax, Panchkula.

-----Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Pankaj Jain, Advocate
for the appellant.

ORDER:

1. Delay condoned, subject to just exceptions. Heard on merits.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (for short, "the Act") against order dated 22.9.2006 of the Income Tax Appellate Tribunal, Delhi Bench-B, New Delhi in I.T.A. No.1905(Del) of 2003 for the assessment year 1992-93, proposing to raise following substantial questions of law:-

- (i) Whether on the true and correct interpretation of the provisions of section 69B, 69C the amount can be treated as income without piercing the corporate veil u/s 34 of the Companies Act, 1956?
- (ii) Whether the Tribunal order is sustainable when the finding has resulted into enhancement, which are unreasonable?

3. The Assessing Officer made additions to the declared income under Section 68 of the Act in respect of amount purported to have been paid to its Directors as chit money. It was held that payments were not in fact made and the amount remained available with the assessee as its income. The CIT(A) deleted the said additions. It was observed:-

“5.2. The Ld. A.R. has submitted that Assessing Officer was not at all justified in making above additions by invoking the provisions of section 68 of the Act because section 68 is about receipt of money by any assessee and the same is not about any payments. My attention has been invited to the affidavits of all the persons receiving the chit amounts which have been filed during appellate proceedings and which affidavits have already been taken on record. It has been pointed out that all these persons who have received the chit amounts were existing income tax assesseees, their Permanent Account Number/G.I.R. Numbers having been given in the respective affidavits. Thus, it has been contended that on facts as well as in law, the Assessing Officer was not at all justified in making the additions.

5.3. In addition to above submissions, the Ld. A.R. has produced Photostat copy of the assessment order passed u/s 143(3) in the case of the appellant for the assessment year 1991-92 and has invited my attention that the chits being run by the appellant have all been accepted by the department as genuine. It has further been contended that the chits are continuing process because the same get matured and finally settled after substantial period of time.

With this background, it has been argued that the receipt of money too from the persons who have contributed to the chits was not in doubt.”

4. The Tribunal accepted the appeal of the revenue by observing:-

“2.10. Coming to the other payments, it is found that the cheques were drawn in favour of Shri Suresh Chand Gupta and not in favour of the respective chit holders. This did not amount to any payment to the chit holders at all. Therefore, the affidavits filed by them are against the tenor of the evidence obtained from the bank. Such an evidence by way of affidavits is not reliable and it does not establish that the payments were made to the concerned chit holders. We are also not able to countenance the argument of the Id. Counsel that in such a situation, the action lied in the hands of the recipients. They were the directors of the assessee company, which is a private limited company, controlled by them. Their acts are the acts of the company and, therefore, payment to them amounts to the payment to company itself. Further, money received by the assessee on chits belonging to it as it merges with the money lying in its till. The money paid out to chit holders will be the expenditure incurred by the assessee. However, if the money involved in the expenditure is appropriated by its, as payment to directors has already been held to be payment to self, then, no expenditure can be said to have been incurred. Therefore, were are of the view that the Id. CIT(A) erred in deleting the addition of Rs.06,63,650/- without discussing the

matter in detail by merely mentioning that he found sufficient force in the submissions of the Id. DR on facts as well as in law.”

5. We have heard learned counsel for the appellant.

6. Contention raised is that case for piercing the corporate veil was not made out and additions, if at all, should have been made in the hands of the Director. As far as the assessee company is concerned, the payments had been duly made. The amount received by the Director whose identity is known would be unexplained income of the said Director. Reliance has been placed on judgment of Hon'ble Supreme Court in ***CIT v. Lovely Exports (P) Ltd.*** (2008) 216 CTR (SC) 195.

7. We are unable to accept the submission. The Tribunal has found that the amount representing payment to chit holders was in fact paid to Suresh Chand Gupta, a Director of the assessee, which was a private company controlled by the recipient of the amount. The amount was available with the assessee itself and payments were made representing expenditure which was never incurred. The amount was, thus, available with the assessee as undisclosed income which justified additions made by the Assessing Officer. In view of this finding, judgment in ***Lovely Exports (supra)*** is distinguishable.

7. The finding of the Tribunal being finding of fact, we do not find any ground to interfere under Section 260A of the Act. No substantial question of law arises.

8. The appeal is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

August 25, 2009
CHAUDHARY)
ashwani

(DAYA
JUDGE