

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 02.02.2010

+ **ITA 1255/2008**

COMMISSIONER OF INCOME TAX ... Appellant

- versus -

HARI RAM CHHAGAN LAL & PARTY ... Respondent

Advocates who appeared in this case:-

For the Appellant : Ms P. L. Bansal
For the Respondent : Mr Prakul Khurana

CORAM:

HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

BADAR DURREZ AHMED, J (ORAL)

1. This is an appeal filed by the revenue in respect of the assessment year 1998-1999 arising out of the Income Tax Appellate Tribunal's order dated 16.03.2007 in ITA 3133/Del/2002.

2. On 10.11.2008, when this matter came up for admission for the first time, we had directed issuance of notice confined to the issue of Rs 57 lacs purportedly received as loan from M/s Sri Ram & Company and also the issue of allowance/ disallowance of interest of Rs 7.41 lacs thereon. The Assessing Officer had made an addition of, *inter alia*, the said sum of Rs 57 lacs on account of unexplained loans and had also disallowed interest thereon amounting to Rs 7,41,000/-.

3. We find that all the three aspects of identity, creditworthiness and genuineness have been examined by the Commissioner of Income Tax (Appeals) as well as by the Tribunal and they have both returned findings of fact in favour of the respondent/ assessee.

4. The Assessing Officer had objected on two counts. The first objection was that the loan of Rs 57 lacs taken from M/s Sri Ram & Company was not reflected in the balance sheet of the assessee. The second objection was that the assessee had not produced the bank statement of M/s Sri Ram & Company. As against this, the assessee had pointed out before the Commissioner of Income Tax (Appeals) as well as before the Income Tax Appellate Tribunal that it had discharged its burden inasmuch as it had produced the required documentary evidence in the form of (i) confirmation letter from M/s Sri Ram & Company giving all the relevant details such as name, address, permanent account number etc.; (ii) the income tax return of M/s Sri Ram & Company; as well as (iii) the balance sheet of the said party. After taking into account the material supplied by the assessee, both the Commissioner of Income Tax (Appeals) as well as the Tribunal were satisfied with regard to the identity of the creditor as well as its creditworthiness as also with regard to the genuineness of the transaction.

5. With regard to the objection that the loan of Rs 57 lacs had not been reflected in the balance sheet of the assessee, it was pointed out that the figure of Rs 57 lacs was not apparent inasmuch as a further sum of Rs 6,66,900/- had been credited to the account of the party on account of interest of Rs 7,41,000/- less TDS of Rs 74,100/-. Therefore, the closing

balance of the party was Rs 63,66,900/- and the same was duly verifiable from the balance sheet as on 31.03.1998 of the said party. With regard to the objection of the Assessing Officer that the bank statement of the party had not been supplied, the Tribunal observed that in view of the other overwhelming documents given by the assessee, it was clearly established that the loan was genuine and that the creditworthiness also stood established by the other documents on record.

6. As observed by a Division Bench of this Court in the case of *CIT v. Dalmia Resorts International: (2007) 290 ITR 508 (Delhi)*, the questions whether the lender was genuine, had resources and the capacity to lend money and had actually lent the money shown to have been borrowed by the assessee, are all pure questions of fact. As in that case, in the present case also, concurrent findings had been returned on these factual questions by the Commissioner of Income Tax (Appeals) as well as the Tribunal in favour of the assessee. In the absence of any perversity in the said findings, we find that no substantial question of law arises for our consideration and there is no cause for us to interfere with the impugned order passed by the Tribunal.

Consequently, the appeal is dismissed.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

FEBRUARY 02, 2010
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