

N THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.546 of 2009

=====

COMMISSIONER OF INCOME TAX-I - Appellant(s)

Versus

HIMATSU BIMET LTD - Opponent(s)

=====

Appearance :

MRS MAUNA M BHATT for Appellant(s) : 1,

None for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 04/05/2010

ORAL ORDER

(Per: HONOURABLE MS.JUSTICE H.N.DEVANI)

1. In this appeal under Section 260A of the Income-tax Act, 1961 (the Act),
appellant revenue has proposed the following two questions in relation to the
Assessment Year 1997-98:

- 1. Whether on the facts, in the circumstances of the case and in law, the
Appellate Tribunal erred in deleting the addition of Rs.81,07,000/- made
by the Assessing Officer on account of unexplained share application
money, and confirmation of the same by the CIT(A) holding categorically*

that the assessee had despite several opportunities given, failed to substantiate the claim before the Assessing Officer in the assessment proceedings, before the CIT(A) himself and even in course of remand proceedings before the Assessing Officer and thus, whether the order of the Appellate Tribunal is perverse in ignoring the overwhelming evidence altogether?

2. Whether on the facts, in the circumstances of the case and in law, the Appellate Tribunal erred in relying on the Supreme Court's decision in the case of Divine Leasing & Finance Ltd., laying down that the unexplained share application money to be taxed in the hands of the share applicants, whereas in the present case, the query letters issued directly by the Assessing Officer could not be served on the addresses given and thus, in respect of such non existing/traceable assessee, assessments can not be made in those applicants' hands making the Supreme Court's decision non applicable?

2. The assessee is a company, engaged in the manufacturing of beamless strips and bearings at its factory located at Village Kuvadva. In assessment proceedings under Section 143(3) of the Act, the assessee was asked to give details of unexplained share application money. Though the assessee appeared pursuant to notice under section 143(2), the Assessing Officer found that the assessee was avoiding giving details without reasonable cause. He, therefore completed ex parte assessment on the basis of the material on record and framed the assessment under section 144 of the Act

making the addition of Rs.81,07,000/- by way of unexplained share application money. The assessee carried the matter in appeal before Commissioner (Appeals), but failed. The assessee further carried the matter in second appeal before the Income Tax Appellate Tribunal (the Tribunal) and succeeded.

3. The learned Senior Standing Counsel for the appellant-revenue has invited attention to the findings recorded by Commissioner (Appeals) to submit that the Assessing Officer had served query letters to the depositors, however, no confirmation letters were received from them. That in several cases the query letters could not be served at the addresses of the share applicants. It is submitted that in the circumstances, the assessee had failed to discharge its onus that the deposits by way of share application money were genuine.

4. As can be seen from the impugned order of the Tribunal, the Tribunal has recorded that the respondent-assessee had filed confirmations from all share applicants with details of share capital paid which contained details such as full addresses, permanent account numbers and tax jurisdiction of the depositors. The Tribunal further recorded that all payments were received by cheques and were credited in the bank account of the respondent; the

share application forms contained all details of the depositors; their confirmations were clear with all addresses; and that they were on the departmental records as tax-payers. In the aforesaid factual background, the Tribunal was of the view that the respondent had sufficiently discharged its burden of explaining the same. The Tribunal further observed that the department has not brought any material on record to show that the depositors were bogus. According to the Tribunal none of the decisions relied upon by the revenue had held that the assessee was required to establish the credit worthiness of the share applicants strictly in the manner understood in the context of cash credits under section 68 of the Act. The Tribunal was of the view that the assessee had given the names and addresses of the share applicants, it was within the knowledge of the revenue that the said share applicants were assessed to income tax, hence the burden was on the revenue to make further inquiry. The Tribunal placed reliance upon the decision of the Apex Court in the case of C.I.T. Vs. Divine Leasing Finance Co. wherein it has been held that when the assessee company had given the name of the share holders, the department was free to reopen their individual assessment in accordance with law.

5. The Tribunal further observed that in respect of Mangal Finance Limited, the said company was assessed to tax on department records; the copies of

the application forms were submitted by the said company, which were at page 3 to 14 of the paper book; all funds had been received by cheque as per bank details at page 130 of the paper book; in the audited balance-sheet Mangal Finance Limited was shown to have been allotted shares of Rs.1.20 crores, which formed part of total paid up capital of Rs.3.80 crores of the assessee which was duly reflected in the balance-sheet; and that the return of allotment was also filed with Registrar of Companies. In the aforesaid factual matrix, the Tribunal was of the view that the respondent had discharged the burden and accordingly reversed the findings of the Commissioner (Appeals).

6. Thus the Tribunal has after appreciation of the evidence on record found as a matter of fact that the assessee had supplied addresses and permanent account numbers as well as confirmation letters of the share applicants. In the circumstances, it was for the revenue to make further inquiry in case it was of the opinion that the share applicants were not genuine. In absence of any findings recorded by the Assessing Officer to the effect that the share applicants are bogus, there is nothing on record to doubt or disbelieve the confirmations and application forms submitted by the depositors. In the circumstances, no infirmity can be found in the impugned order of the Tribunal in holding that the assessee had discharged its burden. Whether burden has been discharged or not is a question of fact.

7. In the light of the aforesaid, it cannot be said that the impugned order of the Tribunal suffers from any legal infirmity so as to warrant interference. In absence of any substantial question of law, the appeal is dismissed.

Sd/-

[D. A. MEHTA, J]

Sd/-

[H.N.DEVANI, J]