

ITAT No. 248 of 2011  
GA No. 2608 of 2011

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction  
[Income Tax]

ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA

Versus

M/S. TIRUPATI CARRIER LTD.

For Plaintiff/Petitioner :

For Defendant/Respondent :

BEFORE:

The Hon'ble JUSTICE BHASKAR BHATTACHARYA

The Hon'ble JUSTICE Dr. SAMBUDDHA CHAKRABARTI

Date : 2nd September, 2011.

This appeal is at the instance of the Revenue and is directed against order dated 13<sup>th</sup> March, 2011 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 479/Kol/2010 in respect of the assessment year 2006-07 thereby allowing an appeal filed by the assessee.

Being dissatisfied, the Revenue has come up with the present appeal.

It appears from record that the following two questions fall for determination in this appeal:

- “(I) Whether the Tribunal below was justified in deleting a sum of Rs.36 lakh in the hands of assessee under Section 68 of the Income Tax Act based on some subsequent event.
- (II) Whether the Tribunal below was justified in deleting the addition of a sum of Rs.24000/- towards accounting charges and a further sum of Rs.1, 75,702/-towards security service charges under Section 40(a)(ia) of the Act.”

So far the first question is concerned, it appears that the assessee had submitted the following documents in support of the claim of that amount of Rs. 36 lakh:

- “(a) Share Application form received from the applicant Company.
- (b) Copy of Memorandum of the Company.
- (c) Copies of the balance sheet of the applicant Companies to establish the fact that they are having substantial capital to make the share application.
- (d) Documents showing that all the payments have been received by account payee cheques and the details of the cheque and bank account of the applicants are filed.

- (e) Copies of I.T. Return of the share applicant to prove that they are regularly assessed to tax.
- (f) Details of the source of the money from which they contributed the share application money. Hence the source of source of the credit is also filed.
- (g) PAN Card of Director of the Companies.”

It appears that in respect of all the companies the assessing officer did not find any discrepancy in the above documents and the assessee also produced the documents of share application form, movement of funds through account payee cheques, source of the funds received by the assessee. The Revenue, on the other hand, heavily relied on the fact that this group share application has been sourced to one M/s. Satyam Traders. Bank account of M/s. Satyam Traders shows that cash totalling to about Rs.1,88,00,000/- had been deposited in the account of M/s. Satyam Traders during November, 2005 only in Federal Bank, R. N. Mukherjee Road, Kolkata. According to the Revenue, non-existence of such person established that the beneficiaries deposited money in the said account and after routing it through two – three layers, the same was introduced in the book of account. The Tribunal pointed out that such contention was not acceptable as the fact that in this case share application money had been received by the assessee-company prior to deposit of Rs.1.88 crore in November, 2005 in the bank account of M/s. Satyam Traders has been established.

On consideration of such fact, the Tribunal was of the view that the assessee had discharged the primary onus of proving the identity of the share applicants, genuineness of the transactions and creditworthiness of the share applicants and according to the Tribunal, there was no justification on the part of Revenue to make addition of Rs.36 lakh in the hands of the assessee under Section 68 of the Act based on the subsequent event, namely, deposit of Rs.1.88 crore in the account of M/s. Satyam Traders.

After taking into consideration the aforesaid explanation given by the Tribunal, we find that the Tribunal was quite justified in ignoring the subsequent transaction which had nothing to do with the earlier deposits of money all through the account payee cheque and the fact that the share applicants were all the assesses of the income tax had also been established.

We, thus, find that the aforesaid finding recorded by the Tribunal cannot be said to be vitiated by any error of law and we find no reason to interfere with such finding of the Tribunal.

As regards the second question, it appears that the Tribunal has pointed out that the sum of Rs.24,000/- was paid to two persons at the rate of Rs.12,000/- per head. Similarly, the sum of Rs.1,75,702/- was paid to the 9 different persons at the rate of Rs.910/- per head and consequently, there was no necessity of deducting TDS as required under Section 194C and 194J of the Act.

We find that once it is established that the sum of Rs.1,75,702/- was paid to 9 different persons under the head Security Service Charges, no question

of deduction of TDS arose. Similarly, payment of the sum of Rs.24,000/- on the face of it did not require any deduction for TDS.

We, therefore, find that the findings recorded by the Tribunal are quite justified from the materials submitted before it and consequently, no substantial question of law is involved justifying the admission of this appeal.

We, accordingly, summarily dismiss this appeal.

In view of the dismissal of the appeal itself, the connected application has become infructuous and the same is also disposed of.

Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(BHATTACHARYA, J.)

(DR. SAMBUDDHA CHAKRABARTI, J.)