

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No.1039/Ahd/2014
Assessment Year : 2005-06

M/s.Global Ship Trade P.Ltd. 321, Madhav Hill Waghawadi Road Bhavnagar. PAN : AADCG 1889 K	Vs	ITO, Ward-1(2) Bhavnagar.
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(Applicant)		(Responent)
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Assessee by	:	Shri B.R. Popat, AR
Revenue by	:	Shri Sushil Kumar Katiar, Sr.DR

मुनवाई की तारीख / Date of Hearing : 07/03/2024
घोषणा की तारीख / Date of Pronouncement: 05/04/2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

The present appeal has been filed by the assessee against order passed by the Ld.Pr.Commissioner of Income Tax-XX, Ahmedabad (hereinafter referred to as "ld.CIT(A)" dated 24.03.204 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Assessment Year 2005-06.

2. The grounds raised by the assessee are as under:

"1. Confirming the action of the AO in invoking the provisions of section 147 of the Act and the consequential action of passing the re-assessment order clearly without complying with the ratio of the judgment Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Vs. ITO, as reported at (2003) 259 ITR 19 (SC).

2. Confirming the addition of Rs.4,45,17,089/- which was made in the order passed under section 143(3) r.w.s. 147 by invoking section 69A of the Act."

3. Brief facts leading to the case are that a survey action under section 133A of the Act was undertaken in the case of M/s VMS Industries, Ahmedabad on 10.12.2010. Two months later and consequent to that, survey was also conducted in the case of the assessee and in the case of M/s Softouch Cosmetic Marketing P. Ltd. Bhavnagar ("SCMPL" for short) on 01.2.2011 in the office premises. During the course of survey it was revealed that the assessee had received an amount of Rs.4,45,17,089/- from the bank account of M/s.J.D. Steel and its associate firms ("JDS" for short) during the impugned year, and the transactions thereof were not reflected in the return of income. The case of the assessee was reopened by issuing notice under section 148 of the Act on 19.3.2012. Thereafter assessment was framed under section 147 of the Act, treating the amount received by the assessee of Rs.4,45,17,089/-, from the bank accounts of "JDS" and its associates, as own funds of the assessee, allegedly brought into its books as and in the guise of unsecured loans received from other parties. The same was accordingly added to the income of the assessee. The assessee filed appeal before the Id.CIT(A) challenging the validity of the assessment framed under section 147 of the Act, as also the merits of the addition made. All the grounds raised by the assessee were dismissed and the addition was confirmed by the Id.CIT(A).

4. Before us, ground no.1 raised by the assessee, challenging the validity of the assessment framed under section 147 of the Act was not pressed, and therefore, the same is dismissed as not pressed.

5. The only effective ground agitated therefore before us is against the addition made to the income of the assessee of Rs.4,45,17,089/-

received by the assessee from “JDS” and its associates, treated as own income of the assessee.

6. The contention of the ld.counsel for the assessee before us was that the addition was totally unjustified, because, the AO was aware of the fact that these funds were only being routed through the assessee to the ultimate beneficiary i.e M/s.VMS industries, Ahmedabad, and this fact had been pointed out to the ld.CIT(A) during the appellate proceedings, and demonstrated by filing various evidences in this regard; that despite the assessee demonstrating through circumstantial evidences that the assessee was only a conduit of all the funds which actually belonged to the VMS Industries, which was very much in the knowledge of the Department, as was evident from the information collected by the Department during the survey conducted on M/s.VMS Industries and “SCMPL” and consequential action taken by the Department in their hands, the ld.CIT(A) ignored all the submissions made by the assessee, and went on to confirm the addition in the hands of the assessee, treating its own income.

7. In this regard, the ld.counsel for the assessee drew our attention to the submissions made before the ld.CIT(A), which are reproduced at para 4.2 of its order, running from page nos.7 to 20 of the order. Referring to the same, the ld.counsel for the assessee pointed out that it had been brought to the notice of the ld.CIT(A) that –

- i) The AO while making addition of amount of Rs.4,45,17,089/- received by the assessee from the JDS and other associates had suppressed vital facts relating to the transactions, which he himself was aware of;
- ii) That the facts in the knowledge of the AO, were brought out before the ld.CIT(A) pointing out that the investigation

carried out in the case of M/s.VMS industries by the Department during the survey action conducted under section 133A of the Act revealed it had received huge share application money by allotting shares to various parties numbering seventeen, listed at page no.8 of the Id.CIT(A) at a huge premium, which was not justified.

- iii) That the Department was also aware of the fact that from the survey action conducted, these shares of M/s.VMS at huge premiums were immediately thereafter bought by the promoter and their relatives at a much lower rate; substantially below par value. The investigation wing of the Department was aware that using this *modus operandi*, the promoters had introduced their own unaccounted income in the form of share capital/premium routed through various fictitious concerns.
- iv) That the share capital introduced in M/s.VMS included the amount received from the "SCMPL" amounting to Rs.3.34 crores. The survey also revealed that the funds had flown into "SCMPL" from the assessee before us, i.e. Global Ship Trade P. Ltd. who in turn had received this fund from the bank account standing in the names of various proprietorship concerns of Shri Haresh Parmar.

The Id.counsel for the assessee pointed out, therefore, that the assessee had demonstrated to the Id.CIT(A) that the Department was completely aware of the entire flow of funds from Haresh Parmar to VMS Industries, the ultimate beneficiary, with the assessee and "SCMPL" being intermediaries only facilitating the transfer of funds to the ultimate beneficiary i.e. M/s.VMS Industries.

8. The ld.counsel for the assessee, thereafter, pointed out that the ld.CIT(A) was also made aware of the fact that during the survey action conducted on the assessee and "SCMPL" statement of the common director of both the entities was recorded who had stated that Shri Manojkumar Jain, director of the VMS Industries had requested to accommodate by issuing cheques through companies for which the credits were arranged by Shri Manojkumar Jain through the accounts of JD Steel and other associate firms, and routed through the assessee company for safety. Even the relevant portion of the statement of Shri Sandeep Mehta was produced before the ld.CIT(A).

The ld.counsel for the assessee contended that the ld.CIT(A) was, thus, made aware of the fact that the investigation conducted on VMS Industries revealed the fact that the funds infused in the assessee company through JDS and other associate firms was for the ultimate beneficiary i.e. M/s.VMS industries. That this fact was further corroborated by the investigation conducted on the assessee and "SCMPL", when the director of both the companies had clearly admitted to the said facts and even revealed the *modus operandi* on doing so.

The ld.counsel for the assessee, thereafter pointed out that the ld.CIT(A) was also made aware of the fact that Shri Manoj Jain was able to exercise his command on the assessee-company, since, he was the statutory auditor of the assessee-company, and was director in VMS industries, and accordingly, he had taken undue advantage of its fiduciary position by taking cheques from the assessee, and arranging consequent funds from various accounts of Sri Haresh Parmar. The ld.counsel for the assessee further pointed out that the ld.CIT(A) was also made aware of the improbability of situation that

since, as a result of the fact of the shares purchased by the assessee at a huge premium and consequently sold to M/s.VMS Industries, promoters and others at a huge discounted price, the assessee had incurred huge loss, but had still not claimed the same in its income tax return filed. The ld.counsel for the assessee pointed out that it had been stated to the Ld.CIT(A) that no man of normal prudence would throw away his huge money by incurring huge losses, and not even claiming loss in its income tax return. The ld.counsel for the assessee contended that this improbability was pointed out to the ld.CIT(A) to demonstrate the fact that the assessee was not actually beneficiary in the transaction, and was only used as an intermediary for the personal benefits of the promoters and other associated concerns of VMS Industries. Further, the ld.counsel for the assessee, pointed out that after demonstrating all the above facts, which were very much in the know of the Department, it was pointed out to the ld.CIT(A) that the AO while making addition of the impugned amount of Rs.4,45,17,089/- received from JDS and others, had gone on to record incorrect facts. It was pointed out to the ld.CIT(A) that while the AO had recorded the fact of shares of M/s.VMS Industries sold at premium at Rs.2/- per share, but the fact of the matter was, they were sold at a price of Rs.2/- per share, which was much below par, and that it had pointed out to the ld.CIT(A) that the Department was well aware of the entire money trail and the ultimate beneficiary of the funds , that the funds had moved through the assessee in the form of unsecured loans taken from JDS, utilized for acquiring the shares in M/s.VMS Industries. The ld.counsel for the assessee also pointed out that it had been brought to the ld.CIT(A) that basis the survey conducted on the VMS Industries and its associate firms, the share capital received by it was subjected to tax in its hands, as its own income, and that in appellate proceedings in the case of M/s.VMS

Industries, the addition was deleted, but the Revenue had contested the matter before the ITAT.

9. Having so pointed out from the pleadings made before the ld.CIT(A), the ld.counsel for the assessee added to the above contentions by pointing out that while the appeal of the Department in the case of VMS Industries was pending before the ITAT, the assessee had settled the dispute under *Vivad se Vishwas* Scheme (“VSVS”) in the case of VMS Industries by paying 50% of the tax demand.

10. The ld.counsel for the assessee also pointed out another very pertinent fact that in the assessment of the VMS Industries made under section 147 of the Act, the AO added the entire share application money received including the amount received from “SCMPL” routed through the assessee, identifying entire money trail of the transaction.

11. He drew our attention to the copy of the order of the AO in the said case placed before us at PB Page no.15 to 37. More particularly, para 5.4 of the order where the entire cash trail/movement of the money from “SCMPL” of Rs.3.34 crores to VMS Industries was outlined, and it was also identified therein that money has moved from the Global Ship Trade P. Ltd. the assessee before us, which was the sister concern of “SCMPL”. It was pointed out that the movement of all funds from the assessee to “SCMPL” and ultimately to VMS Industries was identified in the said order, and even further it was noted by the AO that money had been introduced in Global Ship Trade P.Ltd. as loans to JDS and its associated concerns through banking channel; that these entities were noted to be proprietary firms of Mahesh Parmar, who was the office-boy in “SCMPL” and on his

examination on oath, it was pointed out that he was man of no means and he had admitted that he was asked to open bank account in the name of the firm and signed blank cheques, for which, he was given Rs.5000/- per month. All these facts were verified from the bank statements of JDS and its associates concerns, and entire transaction and money trail from JDS to the assessee, M/s.Global Trade P.Ltd., and sister concern "SCMPL" identified in the said order. It was pointed out that, the AO in the said order, had also noted the statement of the director of the assessee-company, admitting to the fact of the VMS Industries being the ultimate beneficiary of these funds. The ld.counsel for the assessee further pointed out from the assessment order in the case of VMS that even the AO of "SCMPL" had admitted to this *modus operandi* adopted.

12. After having pointed out all the above, the ld.counsel for the assessee contended that surrounding facts and circumstances, which were adequately demonstrated to the ld.CIT(A) clearly pointed out to the facts, without any doubt, that money introduced in the assessee-company was not its own and that of VMS Industries. The ld.counsel for the assessee contended that the despite clarity of the facts, the ld.CIT(A) still went on to confirm the addition in the hands of the assessee, ignoring all these submissions made by the assessee before him, and merely on the basis that the addition made in the case of M/s.VMS Industries was deleted in the first appeal by the ld.CIT(A) and on the basis that identical money which came into "SCMPL" from through the Haresh Parmar and his firms, was added in the hands of "SCMPL". The ld.CIT(A) also confirmed the addition on the basis that identical addition in the assessee's own case for Asst.Year 2004-05 was confirmed in the first appeal.

13. On the other hand, the ld.DR relied on the order of the ld.CIT(A).

14. We have heard contentions of both the parties carefully, and have also gone through the orders of the authority below.

On a careful consideration of all the above facts, we are inclined to agree with the ld.counsel for the assessee that it was reasonably demonstrated to the ld.CIT(A) that the Department/AO was fully aware of the fact of the funds infused in the assessee company from JDS & associates being for the benefit of M/s VMS Industries. The assessment order in the case of M/s VMS Industries, copy of which was placed before us clearly notes the entire trail of money trail belonging to M/s VMS Industries moving from dummy concerns of one Mr Parmar in whose bank account cash is found to be deposited immediately before the movement of funds further. And moving from there to the ultimate beneficiary M/ s VMS Industries, involving the assessee and M/s SMCPL as intermediaries in the money trail. There is no denying the noting of every possible fact of each and every movement of money so noted by the AO in the assessment order of M/s VMS Industries.

15. The assessment order passed in the case of M/s.VMS Industries, we have noted, brings out clearly that the information collected by the Department from the survey action conducted under section 133A of the Act on M/s.VMS Industries, and the assessee i.e. M/s.Global Ship Trade & Pvt. Ltd., and its sister concern, "SCMPL" clearly gave the Department the information that the promoters of M/s.VMS Industries had used the assessee-company and its concern for routing its own unaccounted money introduced at first into these two concerns from the firms of Mr.Haresh Parmar, and ultimately routed to VMS Industries Ltd. by way of share application money at unreasonably high premium, and subsequently, that shares being

sold at unreasonably low prices below par to the promoters of the company and their relatives. The Department was aware of the absence of any justification of the unreasonably high price at which shares were sold to the assessee-company and the "SCMPL" or of the price at which it was sold to the promoters of M/s.VMS industries and its associate concern. Each and every fund trail of the transaction was in the knowledge of the Department, which is evident from the fact noted in the order of the VMS industries Ltd. wherein entire movement of each and every fund from the firm of Haresh Parmar to the assessee-company and the "SCMPL" and ultimately to VMS Industries was identified.

The Ld.CIT(A) does not dispute this fact which was brought to his notice by the assessee during appellate proceedings. Nor does the Ld.DR before us.

16. Coupled with this is the admission of the director of the assessee-company, who was also director of the "SCMPL", who had admitted entire *modus operandi* of its transaction in the statement recorded post-survey action conducted on the assessee-company. He had also revealed, how the director of VMS Industries, Shri Manoj Jain who was auditor of the assessee-company had used his fiduciary capacity to manage these transactions. So much so, even the AO of "SCMPL" had admitted in writing of the AO of VMS Industries confirming the *modus operandi* of the entire transaction and ultimate beneficiary being M/s.VMS Industries.

17. We have noted that the assessee had also brought out the improbability of the situation that despite the assessee having incurred huge loss on account of selling shares of VMS Industries Ltd. ,bought at huge premium, at very low price below par, yet had not

claimed any loss on account of the same in its return of income filed. It was also pointed out to the ld.CIT(A) that no prudent man would indulge in such a transaction, throwing away huge funds in such a manner.

We completely agree with the ld.counsel for the assessee that the entire facts and situation were in the knowledge of the Department including the AO of the assessee i.e. Global Trade P. Ltd., and "SCMPL" and the AO of the VMS Industries corroborating the *modus operandi* adopted by the promoters of M/s.VMS Industries routing back their unaccounted funds into the company; that the entire money trail was completely unravelled by the Department, and the same clearly disclosed that the money that was received by the assessee company as unsecured loans from JDS and other Associates of Rs.3.43 crores did not remain/retain with the assessee, and the assessee had immediately passed it on to "SCMPL", which in turn, had transferred the funds to VMS by way of acquiring share capital therein.

18. In the light of the said facts we fail to understand, how the funds received by the assessee from JDS can be treated as its own funds when the money trail unravelled by the Department itself clearly revealed the ultimate beneficiary to be VMS Industries. There can be no other conclusion drawn from the facts before the department but that of VMS Industries being the ultimate beneficiary of the transactions, and the assessee only being intermediary in the entire process. The AO of VMS Industries and the AO "SCMPL" have also admitted to this fact. Even the AO of VMS Industries agreed with the same while taxing the entire share capital received in it, in its hands. Thus there appears to be clear unanimity between the AO's of all the three entities that the money brought into assessee and SCMPL was

only as intermediary, with M/s VMS being the ultimate beneficiary of the same.

19. Coming to the fact that the addition made in the hands of the VMS Industries of these funds stood deleted by the Id.CIT(A), we have been informed that the Department had gone in appeal against the order of the Id.CIT(A), but during the pendency of the appeal, the assessee settled the dispute under VSVS scheme. Therefore, no benefit can be derived from the appellate order passed in the case of VMS industries.

20. Ignoring thus the appellate order passed in the case of M/s VMS Industries and considering the entire facts and circumstances of the case, which had been extracted from the inquiry from the Department itself, by conducting survey on all the persons concerned in the money trail including the ultimate beneficiary and intermediary i.e. the assessee and the "SCMPL", the preponderance of probability is to the effect that the money introduced to the assessee-company from JDS Industries was not its own income. For this proposition, we heavily rely on the decision of the Hon'ble Apex court in the case of Sumati Dayal Vs. CIT (1995) 214 ITR 801.

21. In view of the above, the addition made in the present case is held to be not sustainable and is directed to be deleted.

Ground of Appeal No.2 is allowed

22. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the Court on 5th April, 2024 at Ahmedabad.

**Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 05/04/2024