

Burden of proof lay on Co. if it was found as one of beneficiaries of alleged racket of accommodation entries

Summary – The Delhi ITAT in a recent case of Meghna Towers (P.) Ltd., (the Assessee) held that where Income Tax Department had busted racket of bogus accommodation entries and name of assessee was discovered as one of beneficiaries of alleged racket and further amounts were actually found in books of assessee to be credited in name of alleged entry operators, burden was on assessee to prove that it was not a beneficiary of racket

Facts

- The investigation wing of Income Tax Department intimated the Assessing Officer that certain persons were engaged in providing accommodation entries to various persons. The investigation wing recorded the statements of such persons allegedly providing accommodation entries who admitted on oath that they had provided the accommodation entries. Further, the assessee company also found to have received an amount from the aforesaid persons which included amount as share capital and amount as share premium. During assessment proceedings, the Assessing Officer asked the assessee to produce the Directors of the aforesaid alleged entry operators. However, the assessee failed to produce them before the Assessing Officer. Also, during assessment proceedings, the assessee company also filed letter before the Assessing Officer requesting to make available the material/statement so that the true state of affairs could be brought to notice of Assessing Officer. But the Assessing Officer did not provide such materials/statement to the assessee company. The Assessing Officer made an addition of the aforesaid amount taking adverse view of the fact that the assessee company failed to produce the directors of alleged entry operators.
- On appeal, the Commissioner (Appeals) deleted the additions made by the Assessing Officer.
- On cross appeal:

Held

- The central issue is whether the amount received by the assessee was genuine subscription of share capital and share premium of the assessee company or these were only accommodation entries. Whether it was genuine or not will depend on facts specific to this case. However, both the lower authorities, the Assessing Officer and the Commissioner (Appeals) have taken a view without allowing full facts to emerge. The assessee company failed to produce the Directors of the entry operators before the Assessing Officer. It is obvious that the Assessing Officer wanted to examine the Directors of alleged entry operators and wished to carry the investigation further in order to bring more facts on record. The failure of the assessee company to produce the Directors before the Assessing Officer resulted in denial of opportunity to the Assessing Officer to make further facts

emerge. On the other hand the Assessing Officer also failed to provide the material in his possession which have been used against the assessee in making the addition. Such materials included relevant portions of the statements of alleged entry operators recorded on oath by investigation wing which was forwarded to the Assessing Officer. Moreover, there are also conflicting evidences which have not been reconciled by the lower authorities. On one hand, the alleged entry operators have stated an oath before investigation wing of Income Tax Department that they have provided accommodation entries. On the other hand during assessment proceedings they have given confirmation in favour of the assessee and have also responded in support of the assessee in response to letter of the Assessing Officer seeking information under section 133(6). When somebody provides contradictory evidences at two different times or before two different authorities, as the alleged entry operators have done, it was appropriate to subject the alleged entry operators to further examination/cross-examination if either side (whether revenue or assessee) wished to examine/cross-examine. While the Assessing Officer has relied on the evidence against the assessee and while the Commissioner (Appeals) has relied on the evidence in favour of the assessee neither of the two lower authorities has explained why the evidence on the other side was overlooked. As the Tribunal is a final fact finding authority all relevant facts should be allowed to emerge before the issue is decided on merits. Both sides, revenue as well as assessee should have got adequate opportunity to bring relevant facts on record. If either of the two sides has not got reasonable opportunity for this purpose it will be appropriate to cause such opportunities to be provided. As neither revenue nor the assessee has received full opportunity to make relevant facts emerge. Perusal of appeal filed by revenue shows that assessee is one among many persons who may have attempted to benefit from the alleged racketeering. When Investigation Wing of Income Tax Department has busted the racket of bogus accommodation entries; alleged entry operators have admitted on oath that they ran this racket; and when name of the assessee was discovered as one of the beneficiaries of the alleged racket; and when amounts are actually found in the books of assessee to be credited in the name of alleged entry operators; burden was on the assessee to prove that it was not a beneficiary of the racket.

- In view of the foregoing the order of the Commissioner (Appeals) is set aside and the matter is restored to the file of the Assessing Officer to complete the assessment *de novo* with the direction to the Assessing Officer to provide copies of whatever adverse material the Assessing Officer has in his possession, which were used or are proposed to be used against the assessee. The Assessing Officer will be free to carry out further inquiries as per law; and the assessee will be free to submit/produce further materials/evidences before the Assessing Officer.
- It is clarified that no any opinion is expressed on the merits of the addition at present.