

Cit Vs. Electro Polychem Ltd.

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Court : Chennai

Decided On : Jun-21-2007

Reported in : (2008)217CTR(Mad)371; [2007]294ITR661(Mad)

Judge : P.D. Dinakaran and ;P.P.S. Janarthana Raja, JJ.

Appellant : Cit

Respondent : Electro Polychem Ltd.

Disposition : Appeal dismissed

Judgement :

P.D. Dinakaran, J.

1. The above tax case appeals are directed against the order of the Income Tax Appellate Tribunal in I. T. A. Nos. 1182 and 1714/Mds/2002 dated 24-3-2006, for the assessment years 1998-99 and 1999-2000 respectively, raising the following substantial questions of law.

(a) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that share application money in fictitious names cannot be treated as undisclosed income of the assessee ?

(b) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the enquiries can be conducted in the hands of the shareholders only,

when the entire addition is because the shareholders have been found to be non-existent/fictitious persons ?

2. The brief facts that led to the filing of the above appeals are as under.

3. The assessee filed its returns for the assessment years 1998-99 and 1999-2000. The assessing officer made additions in respect of the share application money under Section 68 of the Act, finding that the assessee had brought the undisclosed income by way of share applications in fictitious names and passed orders accordingly. Hence, the assessee preferred appeals to the Commissioner (Appeals). The Commissioner deleted the addition made by the assessing officer for the assessment year 1998-99 and upheld the addition made for the assessment year 1999-2000. Against the said order, the revenue as well as the assessee preferred appeals before the Income Tax Appellate Tribunal. The Tribunal allowed the appeal preferred by the assessee and dismissed the appeal preferred by the revenue. Hence, the above appeals.

4. In CIT v. Stellar Investment Ltd. : [1991]192ITR287(Delhi) , where the increase in subscribed capital of the respondent-company, accepted by the Income Tax Officer and rejected by the Commissioner on the ground that a detailed investigation was required regarding the genuineness of subscribers to share capital, as there was a device of converting black money by issuing shares, with the help of formation of an investment, which was reversed by the Tribunal, the Delhi High Court held that even if it is to be assumed that the subscribers to the increased share capital were not genuine, under no circumstances the amount of share capital could be regarded as undisclosed income of the company.

5. The view taken by the Delhi High Court in CIT v. Stellar Investment Ltd. : [1991]192ITR287(Delhi) was confirmed by the apex court and the same was reported in CIT v. Stellar Investment Ltd. : [2001]251ITR263(SC) .

6. Applying the ratio laid down in the decision cited supra, we do not find any substantial question of law arises for our consideration. Accordingly, these appeals are dismissed. Consequently, M. P. No. 1 of 2007 is also dismissed.

