VIDHIK LEGIT ADVOCATES

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When we think we know, we cease to learn.

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COMPANY LAW:

Jagdish Kumar Dhingra V. AR Plaza (P.) Ltd. (NCLT New Delhi)

Oppression plea couldn't be entertained on failure of petitioner to prove his shareholding in company.

Facts:

Petitioner-ex-director of respondent company claimed to be shareholder of respondent company, alleging 53 percent shareholding as per MOU entered between parties. The Petitioner alleged oppression of his shareholding rights and mismanagement in affairs of company. However, no document had been produced by petitioner to establish his shareholding. It was noted that claim of petitioner over shares was based primarily upon Return of Allotment filed with Registrar of Companies (ROC) by Petitioner himself which was seriously disputed by respondent as not valid and categorized as Management Dispute.

Issue:

Whether the Petitioner satisfies the requirement of section 399 of the companies Act, 1956?

Decision:

Court found that there was lack of evidence to support the proof that the Petitioner is the shareholder of the Company against whom plea of oppression and mismanagement has been taken. Petitioner also failed to produce the alleged MOU before the Court to prove his shareholding on the ground that the same has been stolen. Thus application was not entertained for want of shareholding criteria.

FOREIGN EXCHANGE REGULATION ACT (FERA)

Madhav Maganlal & Co. V. Union of India

Separate penalty was to be imposed on firm and its partner involved in respect of hawala transactions.

Facts:

The premises of the appellant partnership firm were searched by Customs Department resulting in seizure of diamonds with unaccounted Indian currency. Further investigation also revealed that two partners of said firm with one of its employee, were indulged in hawala payments.

Issues: One of the issue

Whether separate penalties can be imposed on the company and its partners /directors under FERA?

Decision:

Hon'ble Delhi High Court interpreting Section 68 of FERA held that the Company as well as every person who is in charge of or responsible for the conduct of the business (if his complicity is proved) shall be held guilty and is liable to punished. The Explanation appended to section 68 further clarifies that penalty can be separately be levied against the director / partners in relation to the Company or firm who is found to punished under section 68 of the FERA.

INSOLVENCY AND BANKRUPCY CODE (IBC)

Balageria Central Co-Op Bank Ltd. Vs. S R Green Housing Projects (India) Ltd. (NCLT-Chd.)

Facts:

Application under Insolvency and Bankrupcy Code was filed in capacity as financial creditor on the basis that the debentures has been issued by the respondent company to the Petitioner. There were defects in the application mainly in relation to filing of copies of debenture.

Issue:

Whether failure to remove defects within time will entail the rejection of the Application.

Decision:

Hon'ble Bench observed and held that Application under Code has to comply with section 7 of the Code which prescribes filing of documents and evidences in relation to defaults on the basis of which provisions of Code are invoked. The Petitioner has to remove all the defects noticed within the time limit (seven days) granted by the Court as per the provisions of section 5 of the Code. On failure thereto the Application is liable to be rejected.

INCOME TAX

Aryan Arcade Ltd. Vs Commissioner of Income Tax (Guj)

Assessee claimed deduction under section 24(b) with respect to interest paid on debentures, utilised for repayment of past loans used for construction of building

FACTS:

The assesee a company registered under the Companies Act and engaged in the business of developing and renting immovable property filed return of income for Assessment Year 2011-12 declaring loss of 5.08 crores. The Assessing Officer passed an order u/s 143(3) without making any additions and assessing loss at 5.08 crores during scrutiny assessment.

The Commissioner, however, exercised his revisional powers and issued notice u/s 263 stating that the claim of interest paid on optionally fully Convertible Debentures u/s 24(b) as the funds raised through debentures has not been used for the construction of property.

The assessee contended that during the scrutiny proceedings the Assessing officer had taken a plausible view by making necessary inquiries and minutely considered the assessee' claim. According to the assessee, the amount raised through debentures was utilized to repay the loans taken for purpose of construction of property and therefore the claim of interest on such debentures was within purview of section 24(b). However, the Commissioner did not drop the revisional proceedings.

ISSUE

Whether it was open for the Commissioner to take such order in revision?

HELD

According to the Commissioner, the debentures were not used for the purpose of purchase of property as such debentures were raised during the financial year 2009-10 during which there were no purchases or addition to the property. According to him therefore, the claim was not in accordance with section 24(b) since the funds could not be said to have been used for the purpose of construction of property.

The fact that the claim of interest against income from house property was examined by the Assessing Officer during the scrutiny assessment is not possible to doubt. It was after examination of such representation of the assessee that the Assessing Officer passed the order of assessment and allowed the claim of interest of Rs.7.28 crores.

Thus when the Assessing Officer had made proper inquiry and taken a definite view, it would be open for the Commissioner to exercise revisional powers only if it is found that the order is erroneous and prejudicial to the interest of the revenue. If the view adopted by the Assessing Officer is a plausible view, the Commissioner would not substitute his opinion with that of Assessing Officer.

Court observed that before the amendment by the Finance Act of 2000 with effect from 1-4-2001, similar provision was found in clause (vi) of sub-section (1) of section 24. The language of the existing clause (b) of section 24 and clause (vi) of sub-section (1) of section 24 are para materia. *It was in this context that the CBDT in its above noted circular dated 20-8-1969 had clarified the position that if second borrowing has really been used merely to repay the original loan and this fact is proved to the satisfaction of the Income-tax Officer, the interest paid on the second loan would also be allowed as a deduction under section 24(1)(vi).*

Court further observed that through the accounts the assessee could establish the precise corelation between the debentures and repayment of past loans. This aspect, the Commissioner has not controverted in the notice for revision. The Assessing Officer after examining the issue accepted the assessee's claim for deduction under section 24(b) even with respect to interest paid on debentures which were utilised for repayment of past loans used for the purpose of construction of the building. The view of the Assessing Officer was certainly plausible, particularly, in view of clarification issued by the CBDT. It was therefore, not open for the Commissioner to take such order in revision.

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