



v

Sr. No.

Date

Orders

% 09.01.2004


Present: Mr Sanjiv Khanna and Mr. S.C. Sharma, Advocates, for
the Petitioner.

+ IT No. 5/2004

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Against an order made by Income Tax Appellate Tribunal in IT (SS)No. 204 (Del)02 for block assessment period 1.4.1986 to 19.4.1996 the Revenue has preferred this appeal. The company was assessed for the block period and addition was made to the tune of Rs.30,00,000/-. The Tribunal has examined the facts in detail. It was pointed out that the share capital stood recorded in the account books maintained by the assessee which were seized during the search and stood considered because income tax case of the assessee had also been completed from assessment year 1987-88 up to 1995-96 before the date of search and for the assessment year 1996-97 the assessment which was made under Section 143 (3) of the Income-tax Act after the date of search. It was contended before us that the assessee failed to produce the shareholders before the Assessing Officer and, therefore, there was justification in arriving at the above assessment. The Tribunal considered various documents on record in detail. It is noted by the Tribunal in para 4 of the impugned order that the



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		<p>facts stated by the learned counsel for the assessee have neither been controverted nor disapproved by the learned DRs. Admittedly, the entire share capital stood disclosed to the Department as having been entered in the regular account books maintained by the assessee Company prior to the date of search on 19.4.1996 under Section 132 against Sh. Alok Aggarwal as per details given by A.O. himself in paras 4.1 to 4.5 of the block assessment order. That apart, it is pointed out by the Tribunal that all the shareholders had confirmed in writing their investment in the share capital of the assessee and all had given their PAN/GIR numbers and other relevant particulars under which they were assessed to tax. It is in view of this, the Tribunal held that no adverse inference should be drawn against the assessee. If in response to summons under Section 131 of the Income-tax Act none of the shareholders had appeared before the Assessing Officer (though each one of them sent their confirmation to the Assessing Officer.) and if the Assessing Officer felt that their examination was absolutely necessary then he could have enforced their attendance as pointed out by Allahabad High Court in 49 ITR 561 and 651.</p> <p>This Court is of the opinion that when documentary evidence was placed on record to prove the identity of all the shareholders including their PAN/GIR numbers and filing of other documentary</p> <p style="text-align: right;"></p>



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		<p>evidence in the form of ration card etc. which had neither been controverted ^{not} and disapproved by the A.O., then no interference is called for. It may be noted that as pointed out by a Full Bench of this Court in <i>CIT vs. Sophia Finance Ltd.</i> reported in 205 ITR 98 "if the shareholders exist then, possibly, no further enquiry need be made". If still in the opinion of the Assessing Officer it was necessary to enquire further, then it was for him to issue coercive process to see that the shareholders are before him and they are questioned about the investment. In the case of <i>Commissioner of Income Tax vs. Precision Finance Pvt. Ltd.</i> reported in 208 ITR 465 the High Court of Calcutta was required to examine the question from a different angle as in that case the enquiry of the Income Tax Officer revealed that either the assessee was not traceable or there was no such file and accordingly the first ingredient as to the identity of the creditors had not been established. In the instant case, when necessary material has been produced before the Assessing Officer to establish the identity of the persons with their PAN/GIR numbers and other details, it was for the Assessing Officer to enquire further if he felt that it was necessary. Instead of doing so, after issuance of summons when these materials were produced before him, he thought that he is helpless and he passed the burden on the assessee to bring the shareholders before him. The Tribunal, considering the facts of the case,</p> <p style="text-align: right;"><i>RS</i></p>



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		<p>arrived at the following conclusion:</p> <p>"We find that the identity of the shareholders who had also confirmed their investment in the share capital in responses to summons under Section 131 of the IT Act also stood proved. Consequently, the addition of Rs.30 lakhs is deleted".</p> <p>In the backdrop of this finding on facts, we find that no substantial question of law arises in this matter and hence the appeal is dismissed.</p> <p style="text-align: right;"><i>B. Durrez Ahmed</i> CHIEF JUSTICE</p> <p style="text-align: right;"><i>B. Durrez Ahmed</i> BADAR DURREZ AHMED, J</p> <p>January 09, 2004 sk</p>