



Sr. No.	Date	Orders
		<p>* IN THE HIGH COURT OF DELHI AT NEW DELHI</p> <p>+ ITA 225/2005</p> <p>THE COMMISSIONER OF INCOME TAX Appellant Through Mr. R.D. Jolly, Adv.</p> <p style="text-align: center;">versus</p> <p>M/S DWARKADHISH FINANCIAL SERV Respondent Through Nemo.</p> <p>CORAM: HON'BLE MR. JUSTICE SWATANTER KUMAR HON'BLE MR. JUSTICE MADAN B. LOKUR</p> <p style="text-align: right;"><u>ORDER</u> 07.04.2005</p> <p>% <u>CM 3834/2005</u></p> <p>For the reasons stated in the application which is supported an affidavit we condone the delay in refiling the appeal.</p> <p>CM is disposed of.</p> <p><u>ITA 225/2005</u></p> <p>The challenge in this appeal under Section 260 A of Income Tax Act (hereinafter referred to as Act) is to the order passed the Income Tax Appellate Tribunal dated 26th February, 2002 in relat to assessment year 1997-98 inter alia on the following grounds:-</p> <p>(a) That the Assessing Officer had no jurisdiction and power</p> <p><u>ITA 225/2005</u></p>

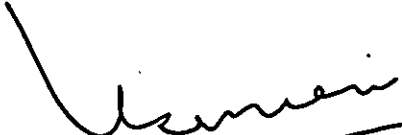



Sr. No.	Date	Orders
		<p>look into and investigate the source. In other words investigate identity of the share holders.</p> <p>(b) The onus was on the Assessee to establish that the transaction of the share application money was a genuine transaction.</p> <p>As far as first proposition of law is concerned the judgments of this Court as well as the Supreme Court are clear and there cannot be any dispute that the identity of share holder can be looked into by the Assessing Officer. However, this aspect of the matter would primarily be a finding of fact and not a question of law.</p> <p>The Assessee had produced all relevant evidence to establish that the share application money received by the company was as a result of the genuine transactions. It has been noticed even in the impugned order that evidence was produced by the Assessee including affidavits, copies of the share application forms, copies of the confirmation from the applicant company, copies of the Board of Directors Resolution approving such transactions as well as cheque number, branch and address of the bank through which the investment was made. Based upon this, the Appellate Tribunal recorded its finding as under:-</p> <p>"From various documents mentioned above, it is clear that all the 7 share applicants were companies incorporated under the Companies Act and the incorporation of a company under the Companies Act."</p>



Sr. No.	Date	Orders
		<p>Act requires certain documentary formalities. These formalities were gone through which warranted the incorporation of above share subscribers companies by the Registrar of Companies. Thus there should be no dispute about their identities. The affidavits from the directors of all the share applicant companies had also been filed. The share applicant companies are being assessed to tax. In the affidavits, we also find that the directors have taken the delivery of shares allotted to each share applicant. This meets the query of the AO regarding the allotment of share. On the basis of above evidences, if the identity of each share applicant was established then perhaps there was no need for making further investigation as has been held by the Hon'ble Delhi High Court in the case of Sofia Finance (Supra). But looking to the facts that the income tax inspector in his report to AO has reported the non-availability of the above share applicants on the given address, we have verified the creditworthiness of the share holders as well as genuineness of the transaction. In the affidavits, the cheque numbers, the addresses of the bank, the account number in the bank has also been mentioned. In case, the AO had any doubt about the credit worthiness/identity of such share applicants, he was free to make inquiries through the bank. This was not done. Merely because the Inspector reported that the share applicants were not found on the given address was not enough for holding that share holders neither existed nor their credit worthiness was established. The overwhelming evidence mentioned above clearly proved not only the identity of the share applicant but their credit worthiness as well as genuineness of the transaction. We, therefore, hold that the addition in respect of share application money received from the above 7 companies was a genuine share application money and the addition sustained by the CIT (A) in this respect is not justified and the same is deleted. "</p>



Sr. No.	Date	Orders
		<p data-bbox="523 250 1596 654">We may also notice that the Assessing Officer himself noticed in the order that the applicant share holders were Income Tax payee. In such circumstances, it cannot be presumed that the share holder who is assessed to tax is not in existence. This would tantamount to a contradiction in the stand of the Department itself.</p> <p data-bbox="523 703 1596 837">In view of the above circumstances, no questions of law may arise unless the substantial question of law arise in the present case.</p> <p data-bbox="694 887 858 922">Dismissed.</p> <div data-bbox="1145 974 1596 1176"> SWATANTER KUMAR</div> <div data-bbox="1193 1220 1596 1355"> MADAN B. LOKUR</div> <p data-bbox="529 1370 790 1411">APRIL 07, 2005</p> <p data-bbox="529 1422 630 1456">rkr/dk</p> <p data-bbox="529 1512 742 1545"><u>ITA 225/2005</u></p>