



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA No.99/2006**

Date of Decision: January 23,2006

COMMISSIONER OF INCOME-TAX Appellant.
Through : Mr. R.D. Jolly &
Mr. Deepak Kumar, Advs.

versus

M/S. DOLPHIN CANPACK LTD. Respondent
Through : NEMO.

CORAM:
HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE B.N. CHATURVEDI

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

: T.S. THAKUR, J. (ORAL)

In its return for the assessment year 1998-99, the assessee claimed to have received share application money of Rs.62 lacs. Confirmations of the persons in whose favour the shares were issued were also filed apart from evidence to show that the share capital was paid by cheques in all the cases. The Assessing Officer, all the same, asked for certain further



amount mentioned above be not added back under Section 68 of the Income-tax Act, 1962 (for short "the Act"). The assessee submitted a reply, which did not find favour with the Assessing Officer, resulting in the addition of the amount indicated earlier to the taxable income of the assessee. In an appeal preferred by the assessee against the said order, the Commissioner of Income-tax (Appeals) relied upon judicial pronouncements to hold that the burden to prove the identity of the creditors and the genuineness of the transactions lay upon the assessee. Having said so, the Commissioner affirmed the view taken by the Assessing Officer that the burden had not been discharged by the assessee in the instant case. The addition of the amount was, on that reasoning, upheld.

In a further appeal filed before the Tribunal by the assessee, the view taken by the Assessing Officer and the Commissioner was reversed relying upon the decision of a Division Bench of this Court in CIT Vs. Steller Investment Ltd., 192 ITR 287. The Tribunal held that the assessee had furnished complete details to the Assessing Officer regarding the transactions in question, which included confirmation details of bank account and the Permanent Account Numbers of the parties in whose favour the share capital was subscribed. The



Tribunal also noted that all the payments were received by the assessee by cheques and that the assessee had, in the process, fully discharged the onus that lay upon it for proving the identity of the subscribers and the genuineness of the transactions. It has, on that basis, deleted the addition made by the authorities below. The present appeal assails the correctness of the above order passed by the Tribunal.

Mr. Jolly, learned counsel for the Revenue, strenuously argued that the Tribunal was in error in placing reliance upon the Division Bench decision of this Court in the *Steller Investment's* case (supra). He submitted that the view taken in the said case no longer held the field having been varied by a full Bench decision of this Court in Commissioner of Income-tax Vs. Sophia Finance Ltd., 205 ITR 99. He urged that the Assessing Officer was entitled to hold an inquiry to determine the genuineness of the transactions or the truthfulness of the explanation offered by the assessee and resort to Section 68 in case the same was found to be unsatisfactory. The facts in the instant case, according to the learned counsel, did not establish the genuineness of the transactions, no matter the genuineness of the persons, in whose favour the shares were alleged to have been issued, had



been established and the payments received by the assessee were by way of cheques.

In *Steller Investment's* case (supra), the issue which the Revenue proposed to raise, related to the proprietary of the Tribunal taking resort to section 263 in the case by ignoring the material fact that the Assessing Officer had failed to discharge his duties regarding investigation with regard to the genuineness and creditworthiness of the shareholders, many of whom were found to be students and housewives. The Income-tax Officer had assessed the company and accepted the increase in its subscribed capital. The Commissioner of Income-tax had, however, come to the conclusion that the Assessing Officer had not carried out a detailed investigation in as much as there had been a device of converting black money into white by issuing shares with the help of formation of an investment company. The Tribunal had, in a further appeal, reversed the decision taken by the Commissioner. In a petition under section 256(2), seeking a reference to the Tribunal, this Court observed:

“It is evident that even if it be assumed that the subscribers to the increased share capital were not genuine, nevertheless, under no circumstances, can the amount of share capital be regarded as undisclosed income of the assessee. It may be that there are some bogus shareholders in whose names shares had been



by some other persons. If the assessment of the persons who are alleged to have really advanced the money is sought to be reopened, that would have made some sense but we fail to understand as to how this amount of increased share capital can be assessed in the hands of the company itself.”

It is evident from the plain reading of the above passage that this Court proceeded on the basis that even if the subscribers to the increased share capital were on inquiry by the Assessing Officer found to be not genuine, nevertheless the amount of share capital could in no circumstances be regarded as undisclosed income of the assessee.

The issue as to whether an inquiry was possible into the genuineness of the transactions at the hands of the Assessing Officer came up for consideration of a full Bench of this Court in the case of *Sophia Finance Ltd.* (supra). The question there was whether the Income-tax Officer was entitled to enquire into the genuineness of the shareholders and the truthfulness of the explanation offered by the assessee to explain the credit entries in its books of account. Answering the question in the affirmative this Court held:

“Where, therefore, the assessee represents that it has issued shares on the receipt of share application money then the amount so received would be credited in the books of account of the company. The Income-tax Officer would be



duty to do so, whether the alleged shareholders do in fact exist or not. If the shareholders exist then, possibly, no further enquiry need be made. But if the Income-tax Officer finds that the alleged shareholders do not exist then, in effect, it would mean that there is no valid issuance of share capital. Shares cannot be issued in the name of non-existing persons.”

There is no dispute with the proposition stated in the above passage. An Income-tax Officer is indeed entitled to examine the truthfulness of the explanation. In cases where the credit entry relates to the issue of share capital, the Income-tax Officer is also entitled to examine whether the alleged shareholders do in fact exist or not. Such an inquiry was conducted by the Assessing Officer in the present case. In the course of the said inquiry, the assessee had disclosed to the Assessing Officer not only the names and the particulars of the subscribers of the shares but also their bank accounts and the Permanent Account Numbers issued by the Income-tax Department. Superadded to all this was the fact that the amount received by the company was all by way of cheques. This material was, in the opinion of the Tribunal, sufficient to discharge the onus that lay upon the assessee. This is evident from the passage extracted from the order passed by the Tribunal earlier. In the absence of any perversity in the view



the finding regarding the genuineness of the subscribers and the transaction suffers from any irrationality, we see no substantial question of law arising for our consideration in this appeal to warrant interference. This appeal accordingly fails and is hereby dismissed.



T.S. THAKUR, J



B.N. CHATURVEDI, J

January 23, 2006

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