



* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.360 of 2007

% Judgment reserved on: 16th April, 2007

Judgment delivered on: 20th April, 2007

M/S. HARYANA INVESTMENT (P) LTD.
WZ-215, Palam Village,
New Delhi.

..... Appellant

Through Mr. K.R. Manjani, Advocate.

Vs.

COMMISSIONER OF INCOME TAX
Delhi-IV,
New Delhi.

..... Respondent

Through Ms. P.L. Bansal, Advocate.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may



- be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be reported
in the Digest? No

V.B. GUPTA, J.

The present appeal has been filed under Section 260 A of the Income Tax Act (hereinafter referred to as 'Act') by the Appellant against the impugned order dated 25th October, 2006 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'Tribunal') in Miscellaneous Application No. 50/Del/2006 in (ITA No. 363/Del/01) for the assessment year 1997-98.

2. Brief facts of the case which are relevant for the disposal of the present appeal are that the Assessee is engaged in the business of finance and investment. During the relevant assessment year, the Assessee Company raised fresh share application money amounting to Rs.16.10 lacs. Various details were filed in respect of share applicants as to their confirmation



and details of source of investments. To check genuineness of the share application money, the Assessing Officer issued summons to six persons. Out of six applicants, the Assessee produced two persons whereas the other four persons were not produced by him. Therefore, the Assessing Officer held that the identity/creditworthiness of the four share applicants had remained unexplained and accordingly he made an addition of Rs. 7.58 lakhs to the income of the Assessee under Section 68 of the Act.

3. On appeal filed by the Assessee, the Commissioner of Income Tax (Appeal) held that the Assessing Officer was not justified in making the addition of Rs. 7.58 lakhs.

4. The Revenue challenged the order of the Commissioner of Income Tax (Appeal) before the Tribunal. The Tribunal vide its order dated 29th October, 2004 allowed the appeal and set aside the order passed by the Commissioner of Income Tax



(Appeal) and directed the Assessing Officer to decide the matter in accordance with law after giving opportunity to the Assessee.

5. Thereafter, Assessee filed an application under Section 254(2) of the Act before the Tribunal and the Tribunal vide its impugned order dated 25th October, 2006 dismissed that application.

6. It has been contended by learned counsel for the Appellant that the Tribunal has decided the matter on the plea that the Assessing Officer had not been confronted with the material which has been considered by the Commissioner of Income Tax (Appeal) in spite of the fact that this ground was not raised by the Revenue and as there is a mistake of the fact, the Tribunal was bound to carry out the rectification.

7. We have gone through the order dated 29th October, 2004 passed by the Tribunal. As per this order there does not appear to be any mistake apparent from the record, since the Tribunal has clearly held in its



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order that:-

“However it is seen that the details in respect of share applicants, which were filed before the Commissioner of Income Tax (Appeals) have not been confronted to the Assessing Officer”

8. Since the details in respect of share applicants which were filed before the Commissioner of Income Tax (Appeal) were not confronted to the Assessing Officer, the Tribunal rightly set aside the order passed by the Commissioner of Income Tax (Appeal) and remanded the matter to the Assessing Officer to decide it in accordance with law after giving opportunity to the Assessee and thus there is no error/mistake apparent on the face of the record.

9. Under these circumstances, the application for rectification filed under Section 254(2) of the Act was rightly dismissed by the Tribunal.

10. Accordingly, we hold that there is no ambiguity in the impugned order passed by the Tribunal and the



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present appeal is without any force and the same is hereby dismissed.

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(V. B. GUPTA)
JUDGE

April 20, 2007
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A handwritten signature in cursive script, appearing to read 'Madan Lokur'.

(MADAN B. LOKUR)
JUDGE