



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : October 30, 2007

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ITA 5/2007

COMMISSIONER OF INCOME TAX DEL Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

DWARIKADHISH INVESTMENT P.LTD. Respondent
Through Ms. Kavita Jha, Advocate

AND

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ITA 8/2007^G

COMMISSIONER OF INCOME TAX DEL Appellant
Through Ms. Prem Lata Bansal, Advocate

versus

DWARIKADHISH CAPITAL P.LTD. Respondent
Through Ms. Kavita Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR



HON'BLE DR. JUSTICE S.MURALIDHAR

ORDER

In these appeals under Section 260-A of the Income Tax Act, 1961 ('the Act'), the Revenue is aggrieved by the order dated 7th April, 2006 passed by the Income Tax Appellate Tribunal ('Tribunal') in ITA Nos. 2549/Del/2002 and 2550/Del/2002 relevant for the Assessment Year 1997-98.

Both the Assessee companies are engaged in the business of financing and trading in shares. For the Assessment Year in question, the Assessee companies declared a loss but were assessed at a positive income after making additions on account of unexplained share application money to the extent of Rs.17.35 lakh in respect of the Assessee company in ITA No. 2549 of 2002 and Rs.36.22 lakhs in respect of the Assessee company in ITA No. 2550 of 2002.

The Assessing Officer required the Assessee companies to furnish details and documents. The Assessee companies produced copies of sale and purchase bills of the share brokers through whom the transactions took place and photocopies of confirmations of persons who had contributed the fresh share application money.



The Assessee furnished the PAN (GIR) numbers of the applicants, the details of the cheque numbers and dates. The Assessee contended that letters sent to the shareholders had not been responded to.

The Assessing Officer required the Assessee to furnish bank statement to substantiate the money availability with the Assessee and also to prove the genuineness of the transactions. This not having been done, the Assessing Officer got enquiries made through an Income Tax Inspector who found that none of the applicants were found to exist at the address given in the confirmations. However, the report of the Income Tax Inspector was furnished to the Assessee on 22nd February 2000 and the Assessment order was passed on the very next day, that is, 23rd February 2000 giving the Assessee no time to respond.

Before the CIT (A) the Assessee furnished additional evidence, copies of which were sent by the CIT (A) to the Assessing Officer for comments. Despite reminders, no response was received from the Assessing Officer by the CIT(A) on the additional evidence. The CIT(A) then admitted the additional evidence. After examining the entire record, the CIT(A) deleted the addition on account of



the unexplained share application money for the following reasons:

- (i) The applicants concerned were identified.
- (ii) The applicants confirmed the payment of monies to the appellant for purpose of shares.
- (iii) The transaction in question were by cheques.
- (iv) The affidavits of the subscribers were filed indicating their full address, details of deposits made with the appellant and the source wherefrom money was obtained to make the deposits. Copies of Bank a/cs were furnished. These affidavits were notarized. There was no ground for disbelieving the contents of the affidavits.
- (v) If the Assessing Officer entertained any doubts regarding genuineness of the credits in respect of share application money, he could have issued summons to the subscribers or could have asked the assessee to produce them. This was not done.
- (vi) Most of the subscribers were companies incorporated with the Registrar of Companies. Proper enquiries would have revealed the true facts of the case. The appellant cannot be faulted if there was no time to give them an opportunity to rebut the Inspector's report made at the back of the appellant.
- (vii) The deposits were not of an order that could not be believed."

In the appeal by the Revenue, the Tribunal found that the facts of the case



were no different from those in the case of the group company of the present Assessee namely M/s. Dwarikadhish Financial Services. In the said case the Tribunal had deleted the addition made by the Assessing Officer on account of unexplained share application money. The said decision was upheld by this Court in its order in *Commissioner of Income Tax v. Dwarkadhish Financial Services* [2005] 197 CTR 202.

That apart, the Tribunal again examined the documents giving the details of each of the applicants. It noted that "the above documents were available on the file of the AO." Accordingly it dismissed the Revenue's appeals.

Learned counsel for the Revenue sought to distinguish this Court's decision in the case of the group company of the Assessee, on the ground that the facts there were different. However, we find that the findings of the CIT(A) as extracted hereinabove are sufficient to show that the additions made by the Assessing Officer were not justified. The reasoning and conclusions arrived at concurrently by the CIT(A) and the Tribunal suffer from no perversity and are consistent with the law as explained by this Court in *Commissioner of Income*



Tax v. Divine Leasing & Finance Limited (ITA No. 53/2005 decided on 16

November, 2006) reported in (2007) 207 CTR (Del) 38 and in particular para 16

which reads thus:

“In this analysis, a distillation of the precedents yields the following propositions of law in the context of Section 68 of the IT Act. The Assessee has to prima facie prove (1) the identity of the creditor/subscriber; (2) the genuineness of the transaction, namely, whether it has been transmitted through banking or other indisputable channels; (3) the credit worthiness or financial strength of the creditor/subscriber; (4) if relevant details of the address or PAN identity of the creditor/subscriber are furnished to the Department along with copies of the Shareholders Register, Shared Application Forms, Share Transfer Register etc., it would constitute acceptable proof or acceptable explanation by the Assessee; (5) The Department would not be justified in drawing an adverse inference only because the creditor/subscriber fails or neglects to respond to its notices; (6) the onus would not stand discharged if the creditor/subscriber denies or repudiates the transaction set up by the Assessee nor should the AO take such repudiation at face value and construe it, without more, against the Assessee. (7) The Assessing Officer is duty-bound to investigate the credit worthiness of the creditor/subscriber the genuineness of the transaction



and the veracity of the repudiation.”

We are of the view that no substantial question of law arises in these appeals. Accordingly, these appeals are dismissed.

A handwritten signature in black ink, appearing to read 'Madan Lokur'.

MADAN B. LOKUR, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

OCTOBER 30, 2007

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