



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

% Judgment delivered on: 16.12.2008

+ **ITA 1174/2007**

M/S BHAV SHAKTI STEEL MINES PVT LTD ... Appellant

- versus -

**COMMISSIONER OF INCOME TAX,
NEW DELHI**

... Respondent

Advocates who appeared in this case:

For the Appellant : Mr R. Santhanam

For the Respondent : Mr R.D. Jolly

CORAM:-

**HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE RAJIV SHAKDHER**

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 Digest ?

BADAR DURREZ AHMED, J (ORAL)

Admit.

The following substantial question of law arises for consideration of this Court.

“Whether the Income Tax Appellate Tribunal was justified in law in remanding back the case to the Assessing Officer when the matter has been examined on merits by the Commissioner of Income Tax (Appeals)?”



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agreed that this appeal can be disposed of straight-away.

We are of the view that the question framed above needs to be answered in favour of the assessee and against the Revenue. We note that the Tribunal arrived at the following conclusion:-

“It is seen that it is a case of private limited company and the money has been received in cash. Therefore, a heavy duty is cast to establish not on the identity of share applicant but also the creditworthiness of the share applicants and the genuineness of transaction. It is further seen that the assessee has only established the identity of the share applicants by producing PAN Card No., etc. There has been no investigation either by the Assessing Officer or by CIT(A) who has co-terminus power with the Assessing Officer to find out the credit worthiness of these persons. The assessee has filed the bank statement of some of the persons, however, there is no finding by CIT(A) that there existed the equivalent or more amount in the bank account of these persons which was withdrawn and the same was deposited in cash with the share application form with the assessee company. Thus, we are of the view that mere establishment of the identity of the share applicant would not be sufficient to satisfy the requirement of law as laid down in Section 68 of the Act, particularly when the share application money has been received in cash and the assessee is a private limited company. Thus, the burden heavily lies upon the assessee to establish the three ingredients of the Section 68 of the Act to the satisfaction of the Assessing Officer. In the facts and circumstances of the case, we consider it just and proper to set aside the impugned order and restore the same to the file of the Assessing Officer to examine the matter afresh in accordance with the law. In view of the aforesaid observations of the Hon’ble High Court that where money have been received in cash or demand draft, the standard of proof would be much more rigorous and stringent. We direct the Assessing Officer to examine the share applicants. Needless to mention that a reasonable opportunity of being heard be given to the assessee.”



However, when we went through the order of the Commissioner of Income Tax (A) we find that he has examined the question of identity, credit worthiness and genuineness of each of the share holders. The said examination appears in sub-paras (i) to (xx) in paragraph 2.4, which run from pages 48 to 57 of the appeal papers. We find that the CIT(A) had considered in detail the case of each of the share holders and came to a conclusion of fact that the identity and credit worthiness of the share holders and the genuineness of the transactions stood established. Therefore, the finding returned by the Tribunal to the contrary cannot be accepted as it is contrary to the record. In any event we also note that the Supreme Court in the case of *CIT vs. Lovely Exports Pvt Ltd* (2008) 216 CTR 195 considered the question as to whether the share application money can be regarded as undisclosed income under Section 68 of the Income Tax Act, 1961. The Supreme Court dismissing the SLP observed that if the share money is received by the assessee company from alleged bogus share holders whose names are given to the Assessing Officer, then the Department is free to proceed to assess them individually, in accordance with law. The Supreme Court did not find any infirmity with the impugned judgment of the High Court which was a common order along with the decision reported in *CIT vs Divine Leasing and Finance Ltd:* (2008) 299 ITR 268. Since the Commissioner of Income Tax (A) has not only found that the identity of each of the share holders stood established, but has



also examined the fact that each of them were income tax assessee: -----
had disclosed the share application money in their accounts which were
duly reflected in their income tax return as well as in their balance
sheets.

In these circumstances we see merit in what the learned counsel
for the appellant has submitted and we feel that the Tribunal was
unjustified in coming to the conclusion that the CIT(A) had not
considered the matter in the right perspective. Consequently we decide
the question in favour of the assessee and set aside the order passed by
the Tribunal.

The appeal stands allowed. No order as to cost.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

December 16, 2008

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