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% 02.09.2009

Present: Mr. Sanjeev Sabharwal, Adv. for the appellant.
Mr. R.M. Mehta, Adv. for the respondent.

+CM Appl. No. 5805/2009 (exemption)

Allowed, subject to just exceptions.

CM stands disposed of.

ITA No. 557/2009

The finding of fact has arrived by the Income Tax Appellate Tribunal that the assessee company has raised the share capital in the public issue. The share applications had been submitted by the various applicants and the assessee company had allotted the shares of the applicants, as per rules and regulations for raising the share capital. This was in fact an undisputed fact. Some of the share scripts were found at the residence of the Director. On this basis, the AO made additions of Rs.1,04,86,000/- under Section 68 of the Income Tax Act at the hands of the assessee company. The case of the assessee company was that in the said public issue the applicants who applied for the shares and had given money against the said allotment, were allotted the shares. If these were found at the residence of the Director, company could not be held liable and on that basis, additions under



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Section 68 of the Act could not be made. The AO neither made enquiries from the purported share-holders who were allotted shares to find out as to whether they were genuine subscribers, nor the AO made enquiries from the concerned Director in whose possession the share certificates were found.

In these circumstances, it is clear that the additions could not be made in the income of the assessee company under Section 68 of the Act. The following observations of the Tribunal in this behalf may be reproduced:

"14. It is not in dispute that the assessee had raised the share capital in a public issue. The share applications have been submitted by various applicants. The assessee had allotted the shares to the applicants as per rules and regulations for raising the share capital by public issue. The AO has not brought any material on record to show that the application money and any allotment money paid by different subscribers in their own names were actually paid by the assessee company. The department has doubted the genuineness of the share capital merely because some of the shares were found in the custody of one of its possibility and probability that the directors might have purchased the shares from the original allottees, and in pursuance thereof the said transfer deeds were happened to be signed by the original allottees. These facts noticed at the time of search are not sufficient to conclude that the share capital raised by the assessee is the undisclosed income of the present assessee company. The Hon'ble Supreme court in the case of *CIT v. Lovely Exports (supra)* has held that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual



assessments in accordance with law. But it cannot be regarded as undisclosed income of the assessee company. The Hon'ble Supreme Court's observations are as under:-

"ORDER BY THE COURT:

Delay condoned.

2. Can the amount of share money be regarded as undisclosed income under Section 68 of the IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share applicant money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment.

3. Subject to the above, Special Leave Petition is dismissed."

It is a clear case where, in spite of categorical stand taken by the company its reply dated 18.03.2000 in answer to quarry raised by the AO, the AO failed to make further investigation into the matter by calling upon the subscribers or the Director to explain.

This case stands covered by the Supreme Court judgment in the case of *CIT Vs. Lovely Exports Pvt. Ltd.*, (2008) 216 CTR (SC) 195. We are, therefore, of the opinion that no substantial question of law arises in this case, which is accordingly dismissed.


A.K. SIKRI, J.


VALMIKI J. MEHTA, J.

September 02, 2009
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