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% 15.12.2010

Present: Mr.O.P.Sapra with Sandeep Sapra, Advocates for the Appellant.

+ ITA No.1984/2010 .

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The appellant is a Private Limited Company. The appellant/assessee in its return filed for the Assessment Year 2006-2007 had also shown that in this year many persons has prescribed to its share capital. The Assessing Officer found that as many as 11 parties who were all Private Limited Companies have invested in the appellant company by making share application money. The total money invested by these 12 parties was in the sum of Rs.54,54000/-. The Assessing Officer, in order to verify the genuineness of these investments, sent notices to all these companies which were returned back un-served as it was found that no such companies existed at the given addresses. The Assessing Officer also took into consideration the fact that all these 12 companies which had invested the money were subject to certain enquiries and investigation by the Investigation Wing wherein it was found that they were corporate entities for the name only as they were not engaged in any actual business activities. It was also found by the Investigation Wing that they were only paper entities, floated for the purpose of arranging accommodation entries to the others. Otherwise, they had no creditworthiness of their own nor do they have any worthwhile sources of income. It was also found by the Investigating Wing that the bank accounts existing in the names of these companies are being used as conduits for the purpose of



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arranging accommodation entries. The accommodation entry operators were identified by the Investigating Wing after thorough investigation as well as definitive analysis of their identity, creditworthiness and the sources of money routed through them into the accounts of beneficiaries. The Assessing Officer went into each and every account and found that huge cash was deposited in all the bank accounts of these investors/companies just one day or two days before the money was invested in the assessee company. It was also found that these amount claimed as having been received as share application money, actually belong to the Mahesh Garg group and the Mukesh Gupta group who were entry operators. Some of the persons belonging to these groups had given sworn statements u/S 131 of the Income Tax Act before the Additional Director of Income Tax (Investigation), Unit-1, New Delhi wherein they had admitted that these companies are not carrying on any actual business activities and no books of accounts were maintained. In their statements, it was also conceded that they were engaged in the activity of providing accommodation entries and the bank accounts existing in their names have been used only as conduits for the purpose of arranging accommodation entries. For all these reasons, the Assessing Officer made additions to the tune of Rs. 84.5 lacs in the income of the Assessee. Before doing so, the Assessing Officer also went into the creditworthiness of these companies and scanned through the bank accounts and these aspects are discussed in detail in the assessment order.




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The CIT(A) however, deleted the additions made by the Assessing Officer. According to the CIT(A), the requisite documents in the form of PAN Number, bank accounts and particulars of all these Private Limited Companies were given and therefore, the assessee had discharged its burden. The CIT(A) has relied upon the judgment of the Supreme Court in the case of *CIT v. Lovely Exports (P) Ltd. , 216 CTR (SC) 195* while reversing the order of the Assessing Officer. The matter was taken up in an appeal by the Revenue feeling aggrieved by the order of the CIT(A). The Tribunal has reversed the order of the CIT(A) and remitted the case back to the Assessing Officer for fresh consideration. Commenting upon the order of the CIT(A), the Tribunal has inter alia, observed that CIT(A) has not controverted the detailed findings recorded by the Assessing Officer with regard to each and every shareholder, nor has any further enquiry was made by the CIT(A) to establish the identity of the shareholders. It is further observed that the judgment of *Lovely Exports (Supra)* would be applicable when at least identity of the shareholders has been established. In the present case the statements were recorded by the Investigating Wing in respect of the promoters/directors of the companies involved in accommodation entries. Copies of these statements were also supplied to the assessee to controvert the same. The ITAT was of the view that when the identity itself was not being proved, mere filing of confirmation without verifying the correctness of the signature therein would not serve any purpose. At the same time, the Tribunal has opined that before making any



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addition on the basis of the statements recorded by the Investigation Wing from the alleged accommodation entry providers, it was the duty of the Assessing Officer to allow the assessee an opportunity to cross examine those persons. It is, under these circumstances, that the matter is sent back to the Assessing Officer for deciding afresh after giving due opportunity of cross examination to the assessee in this regard. Having regard to the aforesaid facts, we are of the view that the approach of the ITAT, in these circumstances, is quite reasonable and equitable to both the parties. We do not find that any substantial question of law arises for consideration in this appeal. The assessee would be given an opportunity by the Assessing Officer and therefore, it cannot say that it has been prejudiced by the order of the ITAT in any manner. We accordingly, dismiss this appeal.


A.K. SIKRI, J.


SURESH KAIT, J.

DECEMBER 15, 2010
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