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

+ ITA 380/2010

COMMISSIONER OF INCOME TAX Appellant
Through:Mr. Sanjeev Sabharwal

versus

J.M.W. INDIA PVT LTD Respondent
Through:Mr. Salil Kapoor with Mr. Sanat Kapoor,
Mr. Ankit Gupta and Ms. Swati Gupta.

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE V.K. JAIN

ORDER
26.04.2010

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This is an appeal filed by the Revenue in respect of the assessment year 2001-02 and is directed against the order dated 22.4.2009 passed by the Income Tax Appellate Tribunal in ITA No. 525/Del/2009. The Assessing Officer had made an addition of Rs. 20.00 lakhs on account of share application money received by the assessee, which, according to the Assessing Officer, were bogus transactions.

A sum of Rs. 10.00 lakhs each had been received by the assessee from M/s Suma Finance & Investment Ltd. and M/s Shruti Finstock Ltd. The Assessing Officer doubted these transactions and treated the same as



unexplained income of the assessee under Section 68 of the Income Tax Act, 1961.

In the appeal before the Commissioner of Income Tax (Appeals), it was pointed out by the assessee that he had discharged his burden by submitting documentary evidence including the certificate of incorporation, certificate of Registration, PAN Card, list of Directors, Board's Resolution dated 1.6.2000, share application form, allotment advice of shares, affidavit of Shri A.K. Gupta, Director, bank statement of the creditor, income tax return accounts slip for the assessment year 1998-99 and 1999-2000 in respect of the applicant. The Commissioner of Income Tax, after noticing the same, also observed that the share applicants being Private Limited Companies were regular income tax assesseees and had shown the transactions in their respective income tax returns. Consequently, the Commissioner Income Tax (Appeals) held that the assessee had discharged the onus to prove the genuineness, identity and creditworthiness of the transactions. A finding was returned by the Commissioner Income Tax (Appeals) that merely on the ground that the Principal Officers of the share applicants could not be produced by the assessee did not give sufficient reason to the Assessing Officer to consider the said transactions as not being genuine. Consequently, the Commissioner of Income Tax (Appeals),



following the decision of this Court in the case of Divine Leasing & Finance Ltd; 299 ITR 268 and the decision of the Supreme Court in CIT vs. Lovely Exports Pvt. Ltd.; 216 CTR 195, deleted the said addition. The Income Tax Appellate Tribunal has confirmed the findings and conclusions of the Commissioner of Income Tax (Appeals).

We see no reason to interfere with the factual findings. No perversity has been pointed out in the impugned order. No substantial question of law arises for our consideration.

The appeal is dismissed.

Amalwud.
BADAR DURREZ AHMED, J

V. K. Jain

V.K. JAIN, J

APRIL 26, 2010
RS