



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

% **Date of Decision: 26th July, 2010**

+ **ITA NO.933/2010**

COMMISSIONER OF INCOME TAX Appellant
Through: Mrs. Prem Lata Bansal, Adv.

versus

VIKHYAT PROPERTIES PVT. LTD. Respondent
Through: Mr. R.P. Garg, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|----|
| 1. Whether reporters of the local papers be allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

DIPAK MISRA, CJ

Heard Mrs. Prem Lata Bansal, learned counsel for the revenue – appellant, and Mr. R.P. Garg, learned counsel appearing for the assessee – respondent.

2. In this appeal preferred by the revenue under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') assailing the order dated 26.6.2009 in ITA No.2777/Del/2008 pertaining to the assessment year 1999-2000 passed by the Income Tax Appellate Tribunal, Delhi Bench 'I', New Delhi (for short 'the tribunal'), the following substantial questions of law are sought to be urged:

“(a) Whether ITAT was correct in law in deleting the addition of Rs.2,22,75,000/- made by the Assessing Officer on account of unexplained share application money under Section 68 of the Act?



(b) Whether ITAT was correct in law in deleting the addition of Rs.4,45,500/- made by the AO on account of unexplained expenditure being notional commission might have incurred by the assessee for the purposes of receiving accommodation entries?

(c) Whether ITAT was correct in law in holding that the assessee had discharged the primary onus laid upon him and therefore, no addition could be made by Assessing Officer under Section 68 of the Act?

(d) Whether order passed by ITAT is perverse in law and on facts when it deleted the addition ignoring the well established principle of law that the burden is on the assessee to prove identity and creditworthiness of the shareholders as well as genuineness of the transactions?

(e) Whether ITAT was correct in law in deleting the addition ignoring the material fact that the alleged shareholders were non-existents and there were cash deposits just before issuing cheques by such so called shareholders?"

3. The facts which are essential to be stated are that the assessee – respondent received a sum of Rs.2,22,75,000/- from various persons by way of share capital. The assessee, in support of the amount received, filed letters of confirmations from the persons who have subscribed the said shares of the company. The assessee had also provided the income tax particulars. The assessing officer issued letters to the 9 persons and the said letters were received back undelivered by the postal authorities with remarks such as “no such person”, “left without address”, “left”, etc. As far as 5 shareholders are concerned, the letters were sent through speed post which were served but the said parties did not furnish any information. It was held by the assessing officer that it was requisite on the part of the assessee to prove the identity, genuineness and creditworthiness of these parties. Before the assessing officer,



particulars, copies of bank statements and copies of the allotment letter:

However, the assessing officer made an addition on the ground that the assessee had not been able to substantiate this transaction and failed to prove the identity and creditworthiness of the creditors and genuineness of the transaction.

4. Being dissatisfied with the aforesaid order, the assessee preferred an appeal before the CIT(A) contending, inter alia, that it had discharged its primary onus. It was also urged that the shareholders are limited companies and they were existing on the roll of Registrar of Companies and, therefore, their identity could not be doubted. That apart, it was canvassed that the amounts were received by account payee cheques and the income tax particulars had been provided. Before the first appellate authority, reliance was placed on the decisions of this Court rendered in *CIT v. Divine Leasing & Finance Ltd.* in ITA No.53/2005, *CIT v. Pandy Metal & Rolling Mills (P) Ltd.*, in ITA No.788/2006 and *CIT v. Lovely Exports (P) Ltd.* 2008 216 CTR 195 SC. Quite apart from the aforesaid decisions and quite a host of decisions, we are pressed into service to highlight the propositions that once it is established that the amount had been invested by a particular person or a company, the onus cast on the assessee is over and also to pyramid the submission that it is not the burden of the assessee to establish the source of source. Being of this view, the CIT(A) came to hold that the assessee – appellant had been able to discharge the onus in substantiating the transactions and the assessing officer was in error in negating the claim of the assessee. Being of this view, the CIT(A) deleted the addition of Rs.2,22,75,000/-. Be it

noted, the CIT(A) also deleted the alleged commission being the amount of



Rs.4,45,500/- towards the commission paid to the applicants of shares in assessee company.

5. Before the tribunal, the following question was raised:

“On the facts and in the circumstances of the case, the learned CIT(Appeals) has erred in deleting the addition on account of share application money received by the assessee company amounting to Rs.2,22,75,000/- and also notional commission of Rs.4,45,500/- paid to the applicants of shares in the assessee company”.

6. The tribunal in paragraph 6 of the order has held thus:

“6. We have considered the rival submissions. We find that the assessee has discharged the primary onus by filing confirmation letters, copies of bank statements of the share holders, their Income-tax particulars and by filing copies of allotment letters etc. Thus the assessee has discharged the onus of proving the existence of the share holders. However, in what circumstances the share holders brought the money is not for the assessee to prove. Hon’ble Supreme Court in the case of Lovely Exports Pvt. Ltd. (supra) held as under:

“If the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the A.O., 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.”

We, therefore, hold that the addition was rightly deleted by the learned CIT(A).”

7. In our considered opinion, the finding recorded by the tribunal is in accord with law and cannot be found fault with. The submission of Mrs. Prem Lata Bansal that the shareholders were non-existent and there were cash deposits just before issuing cheques by the so-called shareholders does not impress us inasmuch as the CIT(A) in a detailed order has given a categorical



finding that the amounts were paid by account payee cheques and further report of the postal authorities confirmed that the party was in existence at that address at some point of time and that the department has failed in its duty to track the relevant evidence. It is pertinent to note that the first appellate authority had dislodged the finding of the assessing officer that the people named in the share certificates were benamis of the assessee on the ground that the revenue had not brought any evidence whatsoever to prove the said allegation and neither such evidence was found during the search nor was any evidence unearthed after the search. The CIT(A) further took note of the fact that the payment was received through the banking channel and the same tallied with the share applications. That apart, the assessing officer did not cause any further enquiry to the effect that the shareholders did not invest the amount in the assessee company but the same was invested by the appellate company.

8. In view of the aforesaid analysis of the first appellate authority and the stamp of approval given by the tribunal to the same, we are disposed to think that no substantial question of law emerges for adjudication in this appeal and, accordingly, the same stands dismissed without any order as to costs.


CHIEF JUSTICE


MANMOHAN, J.

JULY 26, 2010

dk