



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 10.05.2010

+ **ITA 563/2010**

COMMISSIONER OF INCOME TAX Appellant

- versus -

MERCATOR HEALTHCARE LTD Respondent

Advocates who appeared in this case:-

For the Appellant : Mr Sanjeev Sabharwal

For the Respondent : Mr Vineet Garg

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

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)

1. This appeal is directed against the Income Tax Appellate Tribunal's order dated 01.06.2009 in ITA 4963/Del/2007 relating to the assessment year 2003-04.

2. In the year in question the assessee, *inter alia*, received share application money to the extent of Rs 20 lacs from 10 different share applicants. The Assessing Officer doubted the genuineness of the said transactions and treating the same to be unexplained investment, made an addition of Rs 20 lacs. The Assessing Officer had noted that although confirmations had been received from the share applicants along with the



them. The Assessing Officer also observed that the share applicants were also not produced before him in the course of the assessment proceedings and, therefore, he made the aforesaid addition.

3. Before the Commissioner of Income Tax (Appeals), it was submitted that the bank passbooks of the share applicants could not be produced at the assessment stage due to paucity of time as the enquiries had been taken up towards the closing of the financial year. The assessee sought an opportunity to produce the passbooks and some of the share applicants. Consequently, the matter was remanded to the Assessing Officer for necessary enquiry and verification and for submission of the remand report. As per the two remand reports dated 28.02.2007 and 09.03.2007 submitted by the Assessing Officer before the Commissioner of Income Tax (Appeals), it appears that two out of the ten persons were produced and as regards the other eight persons, the assessee expressed its inability to produce these persons as they were all based in Muzaffar Nagar. Consequently, the Assessing Officer sent an inspector to Muzaffar Nagar where these persons were residing and the bank passbooks and the statements of these eight persons were collected. Copies of the income tax acknowledgements/ returns and confirmation of all the persons were also taken. The inspector in his report stated that all the persons gave a statement to the effect that they had advanced money for investing in the shares of the assessee company.

4. The Commissioner of Income Tax (Appeals), considering the aforesaid, came to the conclusion that the identity of the shareholders was



proved beyond doubt and all of them had been produced personally either before the Assessing Officer or the inspector. All the said persons were assessed to tax. Bank statements of eight out of the ten persons had been produced and all the ten persons had confirmed in writing that they had invested in the assessee company. The only point raised by the Assessing Officer was with regard to the creditworthiness of these persons. However, the Commissioner of Income Tax (Appeals) found that the doubt in the mind of the Assessing Officer was not backed by any specific evidence or fact and no discrepancies have been pointed out in the deposits made in the bank accounts of the shareholders from which the investments had been made. Consequently, the Commissioner of Income Tax (Appeals) arrived at the conclusion that the assessee had discharged its onus of establishing the credit to be genuine and that the Assessing Officer had not been able to bring on record any fact which could indicate that the transactions were not genuine. The addition was deleted by the Commissioner of Income Tax (Appeals).

5. The Income Tax Appellate Tribunal has agreed with the findings returned by the Commissioner of Income Tax (Appeals). We find no perversity in the same. Consequently, no question of law arises for our consideration.

The appeal is dismissed.


BADAR DURREZ AHMED, J


V.K. JAIN, J

MAY 10, 2010