



\$~

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

+ ITA 904/2010

COMMISSIONER OF
INCOME TAX-IV

..... Appellant

Through: Mr. N.P. Sahni, Advocate

versus

DHAWAN JEWELLERS PVT. LTD. Respondent

Through: Mr. Ajay Vohra, Advocate

Reserved on : 23rd July, 2010

%

Date of Decision: 2nd August, 2010

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

- | | |
|--|----|
| 1. Whether the Reporters of local papers may 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 |

J U D G M E N T

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 15th May, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 787/Del/2009, for the Assessment Year 2003-2004.

2. Mr. N.P. Sahni, learned counsel for Revenue submitted that the ITAT had erred in law in deleting the addition of Rupees Sixteen Lacs



made by the Assessing Officer under Section 68 of Act, 1961.

contended that the assessee had failed to discharge the burden as envisaged under Section 68 of Act, 1961 in respect of genuineness of the transactions relating to unexplained share capital.

3. However, on a perusal of impugned order, we find that ample evidence was led by the assessee to prove the identity and genuineness of the share applicants.

4. In fact, the ITAT in the impugned order has observed that the shareholders were corporate entities whose balance sheet, PAN and registration details with ROC had been filed. Even one of the Directors of share applicant had appeared before the Assessing Officer.

5. On a scrutiny of the order passed by the ITAT, it is clear that the ITAT has based its conclusion on the decision rendered in ***Commissioner of Income Tax v. Lovely Exports (P) Ltd.*** (2008) 216

CTR 195 wherein their Lordships have held as under:

“Can the amount of share money be regarded as undisclosed income under s. 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason 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. Hence, we find no infirmity with the impugned judgment.”

6. In our considered view, reliance placed by the ITAT on the said decision in the obtaining factual matrix is totally justified. In the case at



hand, the identity of the creditors is known and hence the Assess
Officer can proceed as has been held in *Lovely Exports (P) Ltd.* (supra)
against such creditors in accordance with law. We may mention that
during the course of arguments, learned counsel for appellant had relied
upon various judgments passed by different High Courts. We have
dealt with same in the judgment of even date passed in *ITA No.
91/2010 (Commissioner of Income Tax-IV Vs. M/s. Dwarkadhish
Investment (P) Ltd.)*. To avoid prolixity, discussion in the said
judgment is not being repeated herein.

7. In the result, we do not find any substantial question of law
involved in this appeal and accordingly the same stands dismissed *in
limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 02, 2010

rn