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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1133/2010

COMMISSIONER OF INCOME TAX

..... Appellant

Through: Ms. Prem Lata Bansal, Advocate

versus

HLT FINANCE (P) LTD.

..... Respondent

Through: None

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Date of Decision: 16th 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

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 23rd June, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 2041/Del/2006, for the Assessment Year 1998-1999.

2. Ms. Prem Lata Bansal, learned counsel for the Revenue submitted that ITAT had erred in law in deleting the addition of Rs.18,00,000/- made by the Assessing Officer (in short 'AO') on



account of unexplained share application money under Section 68

Act, 1961. She further submitted that ITAT had deleted the said addition even though the primary onus had not been discharged by the respondent-assessee with regard to the identity, creditworthiness and genuineness of the transaction.

3. However, upon a perusal of the file, we find that the said addition was deleted by the ITAT on the ground that the share applicants were identified and the revenue was at liberty to reopen the assessment of all such bogus shareholders. In fact, ITAT in the impugned order has observed as under:-

“3. It was argued by the learned AR that all the primary information with regard to shareholders was furnished before the lower authorities. Our attention was drawn to Annexure I wherein with respect to each and every shareholder the assessee has furnished status of person, relationship with the company and the documents filed before the lower authorities. From this statement, we found that assessee has filed confirmation in respect of Shri N.R. Suri and Mrs. Harvinder Kaur. In respect of Shri M.P. Khanna and Shri J.P. Khanna, the assessee has filed capital account in the firm from where withdrawal for this investment was made and these two are the directors of the assessee company. The assessee has also filed copies of ledger account. In respect of three private limited companies, the assessee has filed copy of ledger account and in case of Hallmark Healthcare Limited, the assessee has also filed affidavit for advancing the money on account of share capital. In respect of all these three companies, the AO has directly obtained the bank statement from where relevant cheques on account of share capital were issued. On the basis of these certificates as narrated by the AO and CIT(A) we can safely conclude that identity of the shareholders was established and the only grievance of the CIT(A) was with regard to creditworthiness of these shareholders and genuineness of transaction. Hon’ble Supreme Court in the case of Divine Leasing and Finance Limited dismissed the SLP filed by the Revenue against the order of Hon’ble Jurisdictional High Court, with speaking order. In case of Value Capital Service (P) Ltd. in ITA No.348/08, vide order dated 25.4.2008, Hon’ble Delhi High



Court held that it is very difficult for the assessee to show the creditworthiness of strangers and if the Revenue had any doubt with regard to ability to make the investment, their returns may be reopened by the department. Hon'ble Supreme Court in the case of Lovely exports while rejecting the department's SLP No. 11993/07 dated 11.1.2008, held that when 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. Similar was the finding of Hon'ble Supreme Court in the case of Shipra Retailers (P) Ltd. In SLP No. 451/08 dated 21.1.2008 as also in the case of Divine Leasing & Finance Ltd. In SLP No. 375/08 dated 21/1/2008.

4. *The various judgments relied on by the learned AR and placed on record clearly lay down the ratio to the effect that in respect of money introduced by way of share capital, and the assessee company furnished the names and particulars of shareholders for establishing their identity, the department may proceed to reopen the assessments of all such alleged bogus shareholders whose investment in the share capital is found to be unexplained*
5. *In view of the above, we allow the appeal of the assessee with the similar direction to the effect that department is at liberty to reopen the individual assessment as alleged shareholders, as per provisions of law."*

6. In our considered opinion, the approach adopted by CIT(A) and ITAT is in consonance with the decision of Supreme Court in ***Commissioner of Income Tax Vs. Lovely Exports (P) Ltd., 216 CTR 195 (SC)*** wherein it has been held as under :-

"2. 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....."



7. Keeping in view the aforesaid mandate of law, the share application money of Rs.18,00,000/- cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 16, 2010

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