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

+ ITA 1243/2010

COMMISSIONER OF INCOME TAX-II Appellant
Through: Mr. Sanjeev Sabharwal, Advocate

versus

MOONLIGHT EXIM P. LTD Respondent
Through: None.

% Date of Decision: 27th 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

CM 15020/2010

For the reasons stated in the application, delay in re-filing the appeal is condoned.

Application stands disposed of.

ITA 1243/2010

1. The present appeal by the Income Tax Department has been filed under Section 260A of the Income Tax Act, 1961 (for brevity "Act



1961”) challenging the order dated 28th November, 2008 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA No. 475/Del/2006 for the Assessment Year 2002-2003.

2. Mr. Sanjeev Sabharwal, learned counsel for the Revenue submitted that the Tribunal had erred in deleting the addition of ₹12,50,000/- on account of unexplained credit under Section 68 of the Act, 1961. Mr. Sabharwal further submitted that the Tribunal had erred in restoring the matter for fresh adjudication to the Assessing Officer (in short “AO”) in respect of addition of ₹ 5,00,000/- as unexplained credit under Section 68 of the Act, 1961.

3. It is pertinent to mention that AO did not dispute either the identity or the creditworthiness of the Directors/shareholders in advancing the loan amount of ₹ 12,50,000/- to the respondent-assessee company. However, AO made the addition on the ground that the genuineness of loan transaction of ₹ 12,50,000/- did not stand proved by the respondent-assessee. The AO, in fact, made the addition as he was of the view that unaccounted money of the respondent-assessee company had been deposited in the bank account of the Directors/shareholders and the same then taken as loan from them.

4. However, the Tribunal in the impugned order has deleted the aforesaid addition of ₹ 12,50,000/- by observing as under:-



“We are of the opinion that there is no rule of law that any person withdrawing cash from his own a/c about 1 or 2 months back cannot keep the same with them at their residence. The statement of one of the directors was recorded wherein he has stated on oath the purpose for which it was withdrawn and since that purpose could not materialize, the same was again deposited in bank and given to the assessee as loan. Against the statement the tax authorities below have not brought on record any evidence to show that this withdrawal of cash was spent by the directors and the unaccounted money of the assessee was deposited in bank accounts of these directors/shareholders and then taken as loan from them and hence merely on these presumption the tax authorities below are not justified in treating the loan transactions as non genuine and making the impugned addition and accordingly we are of the opinion that in the existing facts and circumstances this impugned addition of Rs.12.5 lakhs made by the AO and sustained by CIT cannot be upheld and so the order of CIT sustaining the impugned addition is hereby set aside.

5. We are of the opinion that the issue raised in the present appeal is a pure question of fact and the final fact finding authority has rightly deleted the addition. In fact, the aforesaid conclusion of the Tribunal on facts is neither perverse nor arbitrary.

6. As far as the second addition of ₹ 5,00,000/- is concerned, we are of the view that as the Tribunal has merely remanded the matter back to the AO so as to give the respondent-assessee an opportunity to furnish confirmation duly signed either by the official liquidator or by a person authorised by it, consequently, no prejudice has been caused to the Revenue. Also, the said finding by no stretch of imagination can be called perverse.



7. Consequently, as no substantial question of law arises in present appeal, the same, being bereft of merit, is dismissed in *limine*.

MANMOHAN, J

CHIEF JUSTICE

AUGUST 27, 2010

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