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

+ ITA 1360/2010

COMMISSIONER OF INCOME TAX Appellant
Through: Ms. Suruchii Aggarwal, Advocate.

versus

SIRI RAM SYAL HYDRO POWER PVT. LTD. Respondent
Through: None

% Date of Decision: 06th September, 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 the Income Tax Act, 1961 (hereinafter referred to as “Act, 1961”) challenging the order dated 22nd January, 2010 passed by the Income Tax Appellate Tribunal (for brevity “Tribunal”) in ITA No. 3497/Del/2009 for the Assessment Year 2006-2007.

2. Ms. Suruchii Aggarwal, learned counsel for the Revenue submitted that the Tribunal had erred in law in deleting the addition on account of unexplained share application money under Section 68 of the Act, 1961. Ms. Aggarwal also submitted that the Tribunal had



deleted the said addition even though the genuineness of transaction, creditworthiness and identity of the creditor had not been proved by the respondent-assessee.

3. However, upon a perusal of the file, we find that the said addition was deleted by the Commissioner of Income Tax (Appeals) [for short "CIT(A)] and the Tribunal on the ground that identity of share applicant was not in doubt and he was an income tax assessee holding a valid Permanent Account number (PAN) . In fact, the CIT(A) in its order has observed as under:-

"2.5 I have carefully considered the submissions made on behalf of appellant. It is true that in appeal proceedings, the appellant's AR himself attended and volunteered for producing Sh. Sujit Acharya before the AO for examination which shows genuine intention of the appellant. On this specific request the remand order was passed. However the witness could be produced in the remand proceedings. The AR has explained the reasons for appellant's inability to produce him. However from the documents placed before the AO and in appeal it is found that the identity of the share applicant is not in doubt. Copy of his PAN card, for No. 32 his consent letter to be a director of the company and bank account (although of subsequent period) do prove the existence and identity of the party. He is a director of the company. The PAN number has also been checked on the computer system of department and it shows the jurisdiction of Sh. Sujit Acharya with ITO ward 23(4) New Delhi. It is also seen that the signature of Sh. Sujit Acharya on various documents do tally with each other. Same signatures appear on the confirmation letter in which he has confirmed having paid Rs.50 lacs to the appellant company. It is not in dispute that the payment has been made as share application money in lieu of which two share certificate allotting total 50,000 shares of Rs.100 each were issued to him on 1/2/07. The ratio of Supreme Court decision in the case of Lovely Exports is very clear and has been reconsidered or reviewed. In fact the ratio has been followed in many cases by other judicial authorities. Since in this case the identity of the person and genuineness of transaction is proved, in my opinion the addition of share application money in the case of appellant company is not justified. If the AO has any doubt about the source of payment, he may send the information to the AO having



jurisdiction over Sh. Sujit Acharya for further necessary action. In view of this addition of Rs.50 lacs is deleted.”

4. The Tribunal in its impugned order has also observed as under :-

“6. In the present case, it is not in dispute that the assessee has received share application money from its Director Shri Sujit Acharya, who has filed confirmation letter before the AO. The existence of Shri Sujit Acharya was not in dispute inasmuch as his identity and existence is established by fact that he was having Permanent Account Number as well as he is maintaining bank account with Axis Bank, a copy of which was filed before the AO. His existence is also established from the fact that in Form No.22, filed with the Registrar of Companies, Shri Sujit Acharya has been shown as a Director and he has given his consent to act as a Director of the Company. It is, thus, a case where identity of the share holder has been established, and it is the case where the share holder has confirmed that he has made investment of Rs.50 lacs towards share capital in the assessee company. The CIT(A) has also made his own enquiry and found that PAN has been allotted to Shri Sujit Acharya having jurisdiction with Income Tax Officer, Ward-23(4), New Delhi. The CIT(A) has also compared the signature of Shri Sujit Acharya on various documents and found that the signature were tallied with each other. It is also not in dispute that the shares were allotted to him on 01.02.2007. In the light of these facts, the CIT(A) has deleted the addition by applying the ratio of decision of Hon’ble Supreme Court in the case of CIT vs. Lovely Exports 216 CTR 195. It is also pertinent to note that it is not the case where certain investigation have been made by the department where from it has been revealed that this transaction of payment of share application money is bogus, and it is merely an accommodation entry. The department has also not been able to point out any material or evidence on the basis of which it could be said that money has been emanated from coffers of the assessee company so as to treat the share application money as undisclosed income of the assessee company. In case the department has any doubt about the source of payment made by Shri Sujit Acharya, the department is free to proceed against Shri Sujit Acharya for further action as so observed by the Id. CIT(A).

7. In this view of the matter, we don’t find any material or basis to take a view other than the view taken by the CIT(A) in deleting the addition of Rs.50 lacs being share application money received by the assessee from Shri Sujit Acharya. We, therefore, not inclined to interfere with the order of the CIT(A), which is accordingly upheld.”



5. In our considered opinion, the approach adopted by CIT(A)

Tribunal 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.....”

6. Keeping in view the aforesaid mandate of law and the concurrent finding of facts arrived at by the two authorities below, the share application money cannot be regarded as undisclosed income of assessee under Section 68 of Act, 1961.

7. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 06, 2010

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